
(2010) 03 RAJ CK 0097
In the Rajasthan High Court

Union of India (UOI) and Others

APPELLANT

Vs

Basta Ram Naval

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 323A

Citation : (2010) 2 WLN 237

Hon'ble Judges : Gopal Krishan Vyas, J;A.M. Kapadia, J

Bench : Division Bench

Judgement

Gopal Krishan Vyas, J.—In this writ petition, the Union of India, through Secretary, Ministry of Defence (Accounts), Government of India and other authorities of the Ministry of Defence are challenging the judgment dated 07.08.2009 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur in Original Application No. 5/2009, by which, the learned Tribunal allowed the original application filed by respondent Basta Ram Naval and passed the following order:

4. Since the applicant is to retire in another eleven months, I will be failing in my duty if, I do not pass any positive orders, therefore, the O.A. is allowed with cost as the answering respondent has interdicted judicial process by colourable and palpably false contentions. While balancing the twelve years of agony of the applicant and the need for supervisory prominence of Senior Officers and the following directions are issued:

(i) The respondents shall transfer and post the applicant to a post to which he is entitled in the Jodhpur City within 14 days from today.

(ii) The O.A. is allowed with a cost of Rs. 1000/- which the first respondent shall pay to the applicant and thereafter realize it from the answering respondent Sh. K. Vivwanathan S/o Sh. v. Krishnaurthy, who is Dy. Controller of Defence Accounts, (Admin), Pune, within one month from today.

(iii) A proper enquiry into the matter generally indicated, so far as the

department is concerned by a Senior Officer with investigating skills from outside the department might be desirable and the first respondent may look into it as expeditiously as possible.

2. While challenging the above order, learned Counsel for the petitioners invited our attention towards the fact that original application was filed by the respondent for seeking following two reliefs:

(i) By an appropriate order or direction of this Hon'ble Tribunal, the impugned communication dated 19.06.2008, passed by the respondent No. 3, may very kindly be declared unsustainable and consequently the same may very kindly be quashed and set aside.

(ii) The respondents may very kindly be directed to treat fairly to the applicant in the matter of transfer and the respondents, may very kindly be directed to consider the case of the applicant for his transfer from present place to any other office of the respondents at MES (Air Force), MES (Army), AAO GE (AF) or AAO GE (Army), so as to provide him honour of work.

3. Learned Counsel for the petitioner department vehemently argued that transfer is incidence of service and nobody can claim to post him at a particular place but, in the original application, a prayer was made by the applicant-respondent that his representation for transfer was wrongly rejected vide communication dated 19.06.2008 and by way of passing said communication the respondents have discriminated his case for giving him posting as per prayer made in the representation. Therefore, it is prayed that while quashing the said communication the respondents may be directed to treat fairly to the applicant in the matter of transfer and the respondents may be directed to consider the case of the applicant for his transfer from present place to any other office of the respondents at MES (Air Force), MES (Army), AAO GE (AF) or AAO GE (Army).

4. As per learned Counsel for the petitioners no direction can be issued to the employer to post an employee as per his desire, therefore, the Tribunal has committed gross error while exercising its jurisdiction and passing order impugned dated 07.08.2009, whereby, the Tribunal has directed the petitioner department to post the respondent in Jodhpur City within 14 days from the date of order and, so also, imposed cost of Rs. 1,000/- and recover the same from Sh. K. Vivwanathan S/o Sh. v. Krishnaurthy of Pune who was Deputy Controller of Defence Accounts within one month from the date of order. Learned Counsel for the petitioners invited our attention to the fact that even Sh. K. Viswanathan was not party in the original application but while observing wrong facts that Shri K. Viswanathan is answering respondent such order has been passed by the Tribunal. Therefore, the order impugned deserves to be quashed.

5. Learned Counsel for the petitioners invited our attention towards judgment of the Supreme Court in the case of Union of India and Others Vs. S.L. Abbas, and another judgment reported in State of Punjab and others Vs. Joginder Singh Dhatt, and submitted that no employee can claim to post him as per his desire, it

is for the employer to decide when, where and at what point of time a public servant should be posted and the Court should not ordinarily interfere in the orders passed by the transferring authority on administrative grounds. Therefore, in view of the aforesaid judgments, the judgment impugned passed by the Tribunal dated 07.08.2009 deserves to be quashed.

6. On the other hand, learned Counsel appearing on behalf of respondent vehemently argued that the order impugned is perfectly in consonance with law. The respondents while passing the transfer order discriminated the case of the petitioner though he made representation for his posting, therefore, no interference is required in this case. Further, it is brought to the notice of this Court that respondent was allowed to join at new place of posting and he is going to superannuate within 3 - 4 months, therefore, he may be permitted to work at the place of posting where he has been posted in pursuance of the judgment of the Central Administrative Tribunal, Jodhpur Bench, Jodhpur which is impugned in this writ petition.

7. Learned Counsel for the respondent further argued that so many persons were given posting as per their desire but the case of the respondent-applicant was discriminated against by the petitioner Department, therefore, the Tribunal has interfered and passed an order for giving posting to the respondent at Jodhpur and further passed order for imposing cost and holding inquiry against the authority who rejected the prayer of the respondent for transfer.

8. We have considered the rival submissions made by both the parties and perused the impugned order.

9. It is to be noted that the Hon''ble apex Court has held in so many judgments that transfer is incidence of service and transfer of an employee can be ordered by the competent authority on administrative grounds and administrative exigencies. No employee can claim particular posting at particular place nor the same is any legally enforceable right. Hon''ble Supreme Court in the case of Union of India and Others Vs. S.L. Abbas, , has held that the jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service matters. This is evident from perusal of Article 323A. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the exercise of jurisdiction by the Central Administrative Tribunal and the Tribunal cannot sit in appeal over the orders of transfer and it cannot substitute its own judgment for that of the competent authority who has passed the transfer order; meaning thereby, even against the transfer order the Court cannot interfere unless transfer is in violation of statutory rules or based on malafide.

10. Here, in this case, the respondent has not challenged any transfer order but has challenged rejection of his representation, in which, he made prayer for his transfer as per his choice. In our opinion, no such prayer can be accepted while exercising jurisdiction left with the Tribunal as noted above. In this case, the

Tribunal has exceeded its jurisdiction to interfere in the matter of rejection of the representation for transfer and has illegally and contrary to law passed order for posting the respondent at Jodhpur within 14 days. Such type of direction cannot be given by the Tribunal to post an employee at a particular place. Transfer is incidence of service and where and at what point of time employee is required to be posted at a particular place is purely an administrative matter within the domain of the administrative authority exercising the power and not the Court or Tribunal. Therefore, while following the judgment aforesaid we are of the view that the learned Tribunal has committed gross illegality while interfering in the matter of transfer and posting and issuing directions to the Union of India to transfer the respondent at Jodhpur. The Tribunal has further committed an error while directing the petitioner Union of India to pay cost of Rs. 1,000/- and initiate inquiry against a senior officer who has rejected the representation.

11. As a result, while following the aforesaid judgment in the case of Union of India v. S.L. Abbas (supra) this writ petition is allowed. Order impugned dated 07.08.2009 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur in Original Application No. 5/2009 is quashed and set aside.

12. However, during arguments it has been brought to our notice by counsel for the respondent that the respondent is going to superannuate from service within 3 - 4 months. If this fact is correct, upon human consideration, it is expected from the petitioner Department that appropriate decision will be taken sympathetically for allowing the respondent to work at the place where he is working at present till his superannuation in view of the fact that in pursuance of the judgment of the Tribunal, the respondents (in the O.A. before the Tribunal) posted the applicant at Jodhpur and he is going to be retired from service within short time.

13. No order as to costs.