

(2002) 03 MP CK 0073

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5547 of 2001

Union of India (UOI) and Others

APPELLANT

Vs

Shri Vilas Ramesh Chand Tarhate and Others

RESPONDENT

Date of Decision : 06-03-2002

Acts Referred:

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 9

Citation : (2003) ILR (MP) 491 : (2002) 3 MPHT 474 : (2002) 3 MPLJ 475

Hon'ble Judges : Uma Nath Singh, J; Dipak Misra, J

Bench : Division Bench

Advocate : Indira Nair, for the Appellant; Sobha Menon, for the Respondent No. 1, for the Respondent

Judgement

Invoking the extra-ordinary jurisdiction of this Court under Article 227 of the Constitution of India, the petitioners, namely, the Union of India and the functionaries of the Railway Administration, have called in question the sustainability of the order dated 17-10-2001 passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (in short "the Tribunal") in Original Application No. 508/2001.

The facts as perceivable from the order passed by the Tribunal and the petition presented before this Court are that the respondent No. 1, Vilas Ramesh Chand Tarhate instituted Original Application No. 508/2001 u/s 19 of the Administrative Tribunals Act, 1985, before the Tribunal questioning the soundness of order dated 19-7-2001 whereby he had been transferred from Jabalpur to Mumbai. It was put forth before the Tribunal that the applicant therein was working as Chief Law Assistant and was posted at Jabalpur with effect from 11-5-2000. Earlier he had been transferred vide order dated 31-1-97 from Jabalpur to Mumbai. Thereafter, he was posted back to Jabalpur with effect from 27-5-97. As pleaded, he was posted again to Mumbai vide orders dated 30-6-98 and 13-7-98. Thereafter, at his own request he was re-transferred to Jabalpur and joined in the office of Divisional Railway Manager with effect from 11-5-2000.

The respondent No. 1 herein was placed under suspension vide order dated 15-6-2001. Thereafter he was issued a charge-sheet under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (for brevity "the Rules") as per Annexure A-6 to the original application. An explanation was called from him. After passage of some time, the order of suspension was revoked. After revoking the order of suspension the employer-Railway transferred him from Jabalpur to Mumbai in the same capacity by the impugned order which was received by him on 27-7-2001. It was urged by him before the Tribunal that he was suffering from Bilateral Pleural Effusion (Tuberculosis) and, therefore, the authorities should have been more sympathetic towards him. It was propounded before the Tribunal that as the charge-sheet had been issued to him and the order for departmental enquiry was passed he could not have been transferred from Jabalpur to Mumbai, as such an order of transfer is punitive in nature. It was put forth before the Tribunal that the order of transfer was passed to accommodate one Shri S.K. Singh.

The aforesaid factual assertions were disputed by the employer before the Tribunal. The Tribunal referred to the chronological events and took note of the fact that the applicant's request to be reposted at Jabalpur was accepted and further opined that an order of transfer could not have been passed making it a camouflage or a smoke-screen. The Tribunal further expressed the view that when the order of transfer is based on the misconduct and that is the main reason, the order of transfer would be deemed to be punitive as the same is passed without following the principles of natural justice. The Tribunal also expressed the view that when the applicant therein was served with a major penalty charge-sheet and he was transferred to Mumbai on identical allegations of misconduct it was evident that the applicant was not transferred on administrative exigency but on the main consideration of alleged misconduct. The Tribunal placed reliance on the decision rendered in the case of *Rajender Chaubey v. Union of India and Ors.* 1995 (31) ATC 237.

Assailing the aforesaid order, it is submitted by Mrs. Indira Nair, learned Senior Counsel for the petitioners that there were serious complaints against the respondent from the Standing Counsel of the Railways, the Presiding Officer of the CGIT and taking note of all these aspects, a disciplinary proceeding was initiated against him and he was put under suspension. After the order of suspension was revoked; it was thought apposite to transfer the respondent No. 1 to Mumbai. It is put forth by her that initiation of a disciplinary proceeding does not abrogate or abridge the rights of the employer to transfer the employee to another place as such an action sometime is warranted in the exigencies of service. The learned Senior Counsel has further canvassed that the petitioner had spent considerable length of time at Jabalpur and the concept of following principles of natural justice does not arise in a case of transfer.

Mrs. Sobha Menon, the learned Counsel for the respondent No. 1 submitted that the order of transfer was passed in the backdrop of initiation of disciplinary

proceeding and it certainly was stigmatic and therefore, the conclusion of the Tribunal is infallible and does not warrant any interference.

To appreciate the rival submissions raised at the Bar we have carefully perused the order passed by the Tribunal. The Tribunal has basically dwelled upon two aspects, namely, first once the charge-sheet has been issued and an order of transfer is passed, the same is punitive in nature; and secondly the respondent No. 1 was transferred at his own request and, therefore, he should not have been retransferred to Mumbai and if such an order of transfer is appreciated in the backdrop of initiation of the disciplinary proceeding it does exposit a canvas of malafide.

Before we discuss these two aspects we think it apposite to notice certain decisions of the Apex Court. In the case of Mrs. Shilpi Bose and others Vs. State of Bihar and others, the Apex Court in Paragraph 4 held as under :--

"In our opinion, the Courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

In the case of State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, in Paragraph 4, the Apex Court has expressed the view in the following terms :--

"It is contended for the respondent that the respondent had already worked at Jagdalpur from 1982 to 1989 and when he was transferred to Bhopal, there was no justification to retransfer him again to Jagdalpur. We cannot appreciate these grounds. The Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheel of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place."

We may also refer to the observations made by their Lordships in Paragraph 6 of

the aforesaid judgment:

"This Court cannot go into that question of relative hardship. It would be for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration. If there is any such hardship, it would be open to the respondent to make a representation to the Government and it is for the Government to consider and take appropriate decision in that behalf."

In this context, we may profitably refer to the decision of a two Judge Bench of the Apex Court rendered in the case of Union of India and Others Vs. S.L. Abbas, , wherein their Lordships in Paragraph 7 held as under :--

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right."

We also think it apposite to refer to the decision rendered in the case of State of Punjab and others Vs. Joginder Singh Dhatt, , wherein their Lordships in Paragraph 3 expressed the view as under :--

"We have heard learned Counsel for the parties. This Court has time and again expressed its disapproval of the Courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the Constitution of India in a matter where, on the face of it, no injustice was caused."

In view of the aforesaid enunciation of law there remains no scintilla of doubt that an order of transfer can be assailed if there is violation of statutory mandatory rule or it is founded on malafide. Mrs. Menon, learned Counsel has fairly submitted that there is no rule which governs the aspect of transfer and hence the question of mandatory part does not arise. There may be a set of guidelines but the guidelines have no effect or enforceability. The second ground which has been pyramided by Mrs. Sobha Menon that if the chronological events as have been furnished in the petition before the Tribunal is appreciated, order passed is punitive in nature and once it is punitive the concept of malafide is inhered in it. The aforesaid submission pales into insignificance inasmuch as in the case at

hand charge-sheet was issued. Issuance of charge-sheet relates to the spectrum of conditions of service whereas transfer is in the realm of incident of service. When the departmental authorities were satisfied that the retention of petitioner at Jabalpur is against public interest, they thought it apposite to transfer him to Mumbai. Solely because charge-sheet had been issued it cannot be said in an unequivocal manner that the order of transfer was punitive. To put it differently, if malafide would have been established possibly the concept of punitive nature of transfer would have gained ground but if the disciplinary authority thought it appropriate that a particular officer should be kept away from the scene of occurrence it cannot be said that the order of transfer being punitive is liable to be quashed. If such a logic is adopted the effect would be catastrophic and the public administration will be in a state of total chaos. A person which has been charge-sheeted may conceive the notion that he will remain embedded where charge-sheet has been served against him. This can never be the case and should never be the one.

The next limb of submission by Mrs. Menon is that the order of transfer was passed only to accommodate Mr. S.K. Singh. The said argument is in the compartment for assailing the order of transfer on the ground of malafide. On a perusal of the order passed by the Tribunal and the documents which have been brought on record we are not able to attach any significance to the said submission. There may be cases where one particular employee is transferred some one has to be posted in his place unless there are overwhelming circumstance to show that whole thing has been contrived to adjust or accommodate the said employee. The present factual matrix does not so exposit. The respondent No. 1 was transferred because of the allegations made against him. When a public officer is visited with a charge-sheet on the basis of certain serious allegations, the department may in its wisdom would like to transfer him to another place. True it is, in the case at hand an order of suspension was passed and later on it was revoked, but revocation of the order of suspension does not confer a premium on the officer concerned to treat it as a privilege and put forth a claim as a matter of right to be retained at the place where he was posted.

In view of the aforesaid analysis we arc of the considered opinion that the decision rendered by the Tribunal is absolutely vulnerable and sensitively susceptible and we unhesitatingly quash the same.

We will be failing in our duty if we do not take note of another facet of submission of Mrs. Menon. It was urged by her that the respondent has been sent to Mumbai though he can be accommodated at other places namely Bhopal, Jhansi, Nagpur, Gwalior, Sholapur, etc. Keeping in view the assertion that the respondent is not in a good state of health and he has suffered immensely because he has not been able to join, it is thought apposite to grant leave to the respondent No. 1 to make a representation within a period of six weeks from today to the competent authority and the same shall be disposed of within a

period of four weeks therefrom. This Court hopes and trusts that the competent authority shall sympathetically consider the representation of the respondent No. 1 and give him a posting in a suitable place so that his grievance stands mitigated. The Railway as has been noted in many a case is one of the largest employer in this country and it is expected that it shall behave like a model employer. Though, the law empowers the employer to transfer an employee for the purpose of administration and carry out the work, simultaneously it should also have a sense of empathy towards its employees. No employee should be treated as an alien to the system. Thus, we have granted leave to the respondent No. 1 to represent and direct the competent authority to do the needful. We may at this juncture also hasten to add that it has been stated at the Bar that the respondent after being transferred has not joined at Mumbai. It is also putforth that he obtained an order of stay from the Tribunal but by that time he was relieved. It is submitted by Mrs. Menon that the department may proceed against him for not obeying the order of transfer in a departmental enquiry. Keeping in view the totality of circumstances we direct that no disciplinary proceeding shall be initiated against him on the aforesaid foundation. We may further add that after the representation is disposed of within four weeks and a place of posting is given to the respondent No. 1 he shall join within three weeks therefrom, failing which it will be open to the department to take appropriate action against him in accordance with law.

Before parting with the case we think it apposite to state here (we are saying so to avoid any kind of confusion) that we have not commented on the initiation of the departmental proceeding against the petitioner in any other regard and any observation made in this judgment is confined and restricted to the order of transfer and non-joining of the petitioner because of such order.

The writ petition is accordingly disposed of without any order as to costs.