

(2006) 07 DEL CK 0054
In the Delhi High Court
Case No : Writ Petition (C) 9537 of 2006

V.K. Gaur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-07-2006

Acts Referred:

Citation : (2006) 07 DEL CK 0054

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Arvind Singh, I.P.S. Raghuvanshi and Vinod Jindal, for the Appellant;
S.B. Upadhyay, for R-2 to 6 and P.L. Gautam, for the Respondent

Final Decision : Dismissed

Judgement

Manju Goel, J.—This writ petition challenges an order of transfer dated 22.5.2006 whereby the petitioner was transferred from Mandola to Bhinmal. The petitioner was appointed as a Technician in NTPC in 1986 and was posted at Agra sub-station in February, 1988. In 1988 he was transferred to Jaipur as a Technician. In 1989 he was posted at the Faridabad sub-station and was placed in the Finance Department. He has also worked at Sahibabad and Muradnagar as Technician. In 1999 he was transferred from Muradnagar to Mandola. Faridabad, Mandola, Muradnagar and Sahibabad are within the National Capital Region. The petitioner was elected as the President of the Power Grid Employees Union Northern Area in 1995 and remained so till 1998 and was again so elected in February, 2004. It is alleged that he made certain complaints in his capacity as the President of the Union against the Deputy Manager Shri C.S. Tiwari bringing to the notice of the authorities the irregularities committed by him on which no action was taken. It is further alleged that the petitioner being the President of the Power Grid Employees Trade Union Northern Area filed Civil Writ Petitions being Nos.8158-59/2005 in the High Court of Delhi against the respondents, namely, Union of India and officers of the Power Grid Corporation of India Limited challenging the alterations made in the pension scheme. It is further alleged that

the petitioner was served with the statement of imputation of misconduct dated 20.4.2006 and was directed to submit his representation within 15 days. As per the statement of imputations the allegations of the petitioner that Mr. Tiwari had favored a contractor and had caused loss of crores of rupees to the organization turned out to be false and, Therefore, the petitioner was liable to disciplinary action for having made a false complaint. The petitioner further alleges that he wrote a letter to DGM, Mandola, Ghaziabad on 26.4.2006 requesting him to supply 13 documents in order to bring home the irregularities committed by Mr. Tiwari which were not supplied to him. The petitioner was repeatedly asked to file a reply to the statement of imputations and accordingly the petitioner replied to the statement of imputations on 22.5.2006 and on 23.5.2006 the petitioner was served with the order No. 142/2006 along with another office order dated 151/2006 whereby the petitioner had been transferred to Bhinmal and had been relieved from his post at Mandola. The petitioner further alleged that the respondent had committed default in complying with the interim orders of the court in Civil Writ No.8558-59/05 on account of which a contempt petition was preferred against the Chairman-cum-Managing Director of Power Grid Corporation of India Limited and against the Chairman of the Power Grid Self Contributory Superannuation Benefit (Pension) Trust. The notice of this contempt petition was issued on 9.5.2006. It is alleged that the transfer was made on account of bias and mala fides which originated in the mind of the respondents on account of the petitioner holding the post of President of the Power Grid Employees Trade Union Northern Area, in which capacity he has made several complaints of the irregularities & corruption and had engaged the respondent in litigation. It is further alleged that the aim behind transferring him is to stop him from pursuing the pending litigation, viz., the writ petition and the contempt petition, and it amounted to unfair labour practice. The petitioner, Therefore, prays for a writ of certiorari quashing the transfer order No.151/2006 dated 22.5.2006 and the consequent office order No.142/2006 dated 23.5.2006.

2. The petition is vehemently opposed by respondents no.2 to 6, who are the Chairman-cum-Managing Director; the Executive Director (NR-1); DGM (HR) NR-1; Manager (HR) and DGM (Mandola). Respondent no.5 has sworn the counter affidavit. It is stated in the affidavit that the respondent/Power Grid Corporation of India is engaged in providing transmission of electricity through the Northern Grid throughout the country and is now establishing new sub-stations at Bhinmal, Rajathan within the Northern Grid and for administrative exigencies, the service of the petitioner was transferred to Bhinmal by the impugned order of 22.5.2005. The petitioner, it is submitted in the affidavit, has already served in the National Capital Region for about 17 years and in the best judgment of the respondent Corporation, his services were required in the new place. The allegations of mala fides are denied. It is submitted that the presence of the petitioner is not required for the purpose of pursuing the writ petition filed on behalf of the union as there are other office bearers of the union who can pursue the matter. It is further submitted that the petitioner is being transferred

under the service rules in exigency of service and the same cannot be said to be mala fide only because disciplinary proceedings has been initiated against the petitioner. It is denied that no pressure of any kind has ever been brought upon the petitioner to withdraw the writ petition. Denying that there was any mala fides in withholding the relevant copies of documents demanded by the petitioner, it is stated that that the disciplinary authority had asked the petitioner to furnish the relevance of the particular documents to enable it to take a decision regarding supply of relevant documents to the petitioner.

3. It is not disputed that the service of the petitioner is liable to transfer. The legal position is also not disputed. The transfer is the prerogative of the authorities concerned and the order of transfer cannot be interfered with except when:

- (i) transfer order is shown to be vitiated by mala fides; or
- (ii) is in violation of any statutory provision; or
- (iii) has been passed by an authority not competent to pass such an order.

4. In the present case the petitioner's counsel does not say that any statutory provision has been violated or that the order of transfer has been passed by any authority not competent to pass such an order. The only ground for challenge to the impugned transfer is existence of mala fides.

5. Allegations of mala fides must be based on concrete material and must inspire confidence of the Court. This has been repeatedly stated by the Supreme Court in various judgments. The judgments relied upon by the respondent's counsel is in the case of State of U.P. and Others Vs. Gobardhan Lal, . In para-8 of the judgment, the Supreme Court held as under:

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

6. In the present case the petitioner has put-forth four factors; namely,

- (i) The petitioner, as the President of the Trade Union, has been pursuing the writ petition regarding the claim of pension of the employees. In this writ petition an application for taking action for contempt has also been filed;
- (ii) The petitioner made allegations of corruption against some senior officer;

(iii) The petitioner has been served with a notice asking him to show cause as to why disciplinary proceedings should not be initiated against him for making a false complaint against the senior officer, as mentioned in para-2. The disciplinary authority has been reluctant to give copies of the documents asked for by the petitioner for the purpose of making a reply; and

(iv) The transfer order being passed on the very day on which the petitioner filed a reply to the notice.

7. There is no direction allegation that the officers who have issued the transfer order bore any grudge or ill-feeling against the petitioner for any reason. There is no allegation that any particular officer has been instrumental in inducing the transfer order. There is nothing to show that there was any correlation between the time of service of the transfer order and the pendency of the disciplinary proceeding or the reply filed by the petitioner except that they came simultaneously. As such, the allegations of mala fides must be held to be vague. The petitioner simply wants to raise the suspicion of mala fides by putting the above factors together. Thus, the petitioner's case depends entirely on conjectures and surmises rather than on any concrete allegation.

8. The petitioner's plea that the respondent organization wants to transfer the petitioner in order to prevent the petitioner from pursuing the writ petition and the contempt petition is not of much force. The copy of the writ petition filed by the Trade Union shows that a senior officer like the Chief Manager (HRD) Shri Ashok Kumar Garg, joined the writ petition as petitioner no. 2. Therefore, it is clear that apart from the petitioner, there are others in the Union who are enthusiastic about pursuing the writ petition. There is nothing to show that the management of the respondent Corporation has ever taken any vindictive action against the second petitioner in the writ petition. Therefore, it cannot be inferred that simply because the writ petition is filed, the respondents have become vindictive against the present petitioner. In a very similar case, in the case of Mysore Paper Mills Ltd. Bangalore v. Mysore Paper Mills Officers Association, Bhadravathi and Anr. etc. 1999 (6) SLR 77, the Karnataka High Court refused to interfere with the transfer order. In any case, the transfer of the petitioner will not automatically bring the writ petition to an end. Nor can it be said that the contempt proceedings will come to an end or even weaken because of the transfer of the petitioner.

9. The respondent management has found the petitioner's allegations against Mr. C.S. Tiwari to be false. The petitioner has been served with a memorandum informing him about the proposal to take action against him and he has been given an opportunity to make a representation. DGM, Mandola, who issued the memorandum may have delayed supplying all documents demanded by the petitioner. Unless it is alleged or shown that either Mr. C.S. Tiwari or DGM, Mandola has been instrumental in getting the petitioner transferred, the transfer and the disciplinary proceedings/complaint against Mr. C.S. Tiwari must be held to be unrelated incidents.

10. In view of the above discussion, I am of the opinion that the petitioner has utterly failed to establish that the impugned order of transfer is vitiated by mala fides.

11. The petition is dismissed.