
(2006) 11 GAU CK 0042
In the Gauhati High Court

V.K. Mathew

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-11-2006

Acts Referred:

Citation : (2007) 1 GLT 183

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Judgement

U.B. Saha, J.—Heard Mr. Kh. Binoykumar, learned Counsel assisted by Miss Rosylyn, learned Counsel for the petitioner and Mr. K. Kumar, learned Addl. CGSC for the respondents.

2. Pleaded cases of the parties, deserved to be considered at the outset, are as under. Writ petitioner, who is presently working as Administrative Officer in the office of the Deputy Inspector General of Police (Administration) in the Central Reserve Police Force, Group Centre at Langjing (Imphal) and also presently, permanently settled at Bangalore in the State of Karnataka, being aggrieved by the order of Signal dated 05.04.2006 (Annexure-A/6 to the writ petition) wherein and whereunder choice posting of petitioner was cancelled and he is transferred from the present place of posting i.e. office of the DIG, Imphal to Group Centre, Nagpur, Western Sector, filed this writ petition on the grounds that the said Signal is contrary to the provisions of guidelines issued by the Director General, CRPF through its standing order No. 05/2003 (Annexure-A/9 to the writ petition), particularly, Sub-clause (b) and (c) of Clause 6 of the said standing order. This Court by order dated 24.04.2006 issued Rule made returnable within four weeks and also passed an interim order suspending the impugned Signal dated 05.04.2006 (Annexure-A/6 to the writ petition) until further orders. On 03.11.2006, after hearing the learned Counsel for the parties, this Court passed an order to the effect that "at this stage is to require the petitioner to submit a representation to the concerned authority of the CRPF to give him his choice posting i.e. Bangalore as per the norms in force and thereafter to require the

said authority to pass necessary orders on the said request of the petitioner. That the representation to be filed by the petitioner be understood by the respondents as the representation filed pursuant to this Court's order. Necessary orders on the said representation will be passed by the respondents within one week from the date of receipt of the representation".

3. In compliance with this Court's order dated 03.11.2006, the petitioner made a representation to the appropriate authority and the appropriate authority, after considering the facts and circumstances raised in the representation, rejected the same. After rejection of the representation, the petitioner challenged the said order of the authority in the Misc. Application No. 341 of 2006, wherein the petitioner also prayed that the said C. Misc. application may be treated as a part of this writ petition.

4. Learned Counsel of the petitioner, Mr. Kh. Binoykumar submitted in support of the contention made in the writ petition that the transfer of the petitioner from Imphal to Nagpur is wholly contrary to the Standing order No. 05/2003 i.e. the transfer policy of Ministerial Staff, as issued by the Director General of CRPF, for the benefit of ministerial staff like the petitioner. He also submits that the petitioner had served at different places within his long tenure of 37 years and he is going to be retired on 31.07.2007, order of transfer vide the aforesaid Signal in a place, which is far away from his permanent residence at Bangalore and, wherein, his wife is staying and his sons and daughters are completing their studies. Mr. Binoykumar contended that an employee can expect from its employer, some human touch at the verge of retirement after serving the nation long 37 years. A choice posting either to his permanent place of residence or to that place so, that he can built his house for future settlement to serve his family members even for some period when he is in service and lead future life happily. He further contended the standing order is issued to provide some benefits to the employee like petitioner, which the authority denied to the petitioner herein, such an action is not warranted from the authority and the authority by its action violated the policy framed by it, which is not permissible under law, he contended that impugned "Signal" is unfair, unreasonable and bad in law.

5. In response to the submission made by the learned Counsel of the petitioner, Mr. K. Kumar, learned Addl. CGSC appearing for the respondents submits that the petitioner is though a ministerial staff, but working under the disciplinary force, hence he is not like an ordinary employee working in a public office, he is bound by the discipline of the force and for which his service is transferred vide the impugned signal in a place, where his service is required and when there is no allegation of malafide against any authority including the issuing authority of the Signal, there is nothing wrong to transfer the petitioner from Imphal to Nagpur vide impugned "signal" as such transfer is an incidental to service. He also submitted that by this time, it is settled by the Apex Court that policy is nothing but guidelines, which does not confer any lawful right to an employee for a choice posting, and it is made clear in the said standing order i.e. the transfer

policy of the Ministerial staff that priority for choice posting shall be, as far as possible, be given to those who are due to retire within two years except those who have already availed 10 years or more of their service at that particular place and two choice posting will be given to every individual, as far as possible during entire service period. As in the instant case, it is not possible on the part of the respondents to post him to his place of permanent residence at Bangalore or near to that place, he was given the posting at Nagpur from where he can easily go to Bangalore within a very short distance, which is not possible from the present place at Imphal. Mr. K. Kumar again contended that there is nothing remain for the petitioner to assail the impugned "signal" and the order of rejection of his representation by the authority.

6. Mr. Binoykumar, learned Counsel of the petitioner, in reply to the arguments made by the learned Addl. CGSC submits that even for argument sake, it is admitted, that the policy/guidelines, like the standing order (Annexure-A/9 to the writ petition) does not create any right to the petitioner, but the question is whether same can give the right to the authority not to consider the representation of the petitioner, in proper way even after Court's order, when an employee like petitioner has some expectation for human touch from the said authority as well as the Court's had also, when the policy is framed for the benefit of employee not for employer, said proper consideration is totally absent in the present case. The petitioner is not claiming his "choice posting" as a matter of right but the authority should consider the provisions of the standing order for the benefit of the employee like the petitioner, when he is at the verge of his retirement, and the word possibility depends on the will of the transferring authority, not to the transferee. Hence, if the authority does not want to be posted an employee in his "place of choice", they can always take the plea of "possibility" in the negative way. Order of rejection of his representation shows that the authority applied its mind improperly and willingly not considered the matter with human touch.

7. This Court anxiously considered the rival submissions of the parties, and arguments advanced, as well as the records available before it. The entire arguments of the learned Counsel of the petitioner is based on humanitarian grounds and hardship, which is answered by the Apex Court as well as by this Court in catena of decisions that hardship cannot be a ground for interference, so far, a valid transfer order is concern. It is also settled by the Hon'ble Apex Court in the case of Union of India and Others Vs. S.L. Abbas, wherein the Apex Court held that "who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer of Government employee, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject, but the said guidelines do not confer upon the Government employee a legally enforceable right. 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."

8. It is also settled that an order of transfer cannot be faulted on the ground of hardship. Normally, the Court should not interfere with a transfer order. In this case also, considering the situation, the Court is not interfering with the impugned "signal" but which shocks the Court that even after the order of the Court on 03.11.2006 wherein it is specifically mentioned by this Court "that the representation to be filed by the petitioner will be understood by the respondents as the representation filed pursuant to the Court's order." The authority ought to have considered that Courts vide its earlier order wanted proper consideration of representation, keeping in mind that petitioner is going to be retired within period of about 9(nine) months. Unfortunately, the authority did not consider the said aspect. It straightway, rejected the representation like a normal practice. Due to the orders by the Apex Court in various decisions, the hands of this Court are tight but this Court expects something more from the higher authority, hence an employee like the petitioner is made a representation i.e. more sympathy with human touch, at the time of disposal of representation of an employee, when such employee is at the verge of retirement, as both the Director General of the CRPF and the petitioner are human beings. Expectation of the petitioner is not unreasonable as he already served the nation about 37 years in various stations.

9. According to this Court, improper consideration of representation violates the provisions of guidelines, which will create indiscipline in the administration in future and the employees for whom this policy is framed they will not be in a position to fully believe the employer and their actions, as the reason they themselves are not acting on their own policy in the name Doctrine possibility.

In S.L. Abbas (Supra), the Apex Court, though did not interfere with the transfer order but mentioned that "While ordering the transfer of Government employee, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject, but the said guidelines do not confer upon the Government employee a legally enforceable right". If, a reasonable man centralize of himself to the aforesaid observation of the Apex Court, then, he will find that their Lordships in the aforesaid case though did not interfere with transfer order impugned in that case but reminded the authority to see the object of the guidelines. In the instant case, authority fails to appreciate the purpose of policy, as the said authority flummoxing or was bewildering with the word "possibility" to deny real justice to its employee. The authority should not go by word "possibility" in literal spirit but they ought to have considered the object of the scheme beneficial for employees, which, here the authority fails.

10. Lord Denning in "The family Story, 1981, Page 174" stated

my root relief is that the Proper role of a judge is to do justice between the

parties before him. If there is any rule of law which impairs the doing justice, then it is the province of the judge to do all he legitimately can to avoid that rule or even to change it so as to do justice in the instant case before him.

11. Keeping in mind the observation of Lord Denning, this Court considered the acts and circumstances involved in this case. This Court allows the petitioner to again file a representation to the authority along with a copy of this order within a period of six weeks and the Director General, CRPF is directed to reconsider the representation, if any filed, with more sympathy and human touch considering his earlier service in various parts of the country and his retirement and future settlement, within a period of one month from the date of receipt of the copy of the said representation along with a copy of his order of this Court, and till the representation is disposed of by the authority, the "Signal" impugned dated 5.04.2006 and the order dated 15th November, 2006 being No. T.IX-34/2006 Pers-III on the representation submitted by the petitioner earlier shall remain stayed.

12. With the aforesaid observations and directions, this writ petition is disposed of.