

(2013) 04 AHC CK 0153

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No.1883 of 2013

Ravi Shanker Tewari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: April 3, 2013

Hon'ble Judges: Anil Kumar, J

Final Decision: Disposed Of

Judgement

Anil Kumar, J.

Heard Shri M. P. Raju, learned counsel for the petitioner, Shri K. S. Kaushik, learned Addl. Solicitor General of India, Shri A. K. Chaturvedi, learned. counsel for the respondents and perused the record.

By means of the present writ petition, petitioner has challenged the impugned order of transfer dated 28.3.2013 (Annexure No.1) passed by opposite party no.4/Commandant, 93 Bn., Group Kendra, Central Reserve Police Force, Lucknow.

Learned counsel for the petitioner submits that the impugned order is in contravention to the policy of transfer/Standing Order dated 28.10.2011, on which reproduction reads as under:

"Normal stay on posting in a Group Centre/static institution/Peace station should not be more than 4 years. This may be extended upto 5 years only in case of Training staff posted in Training Institutions as a special case. The cutoff date for reckoning completion of tenure in GC/Static Institution/Peace Station will be 31st March of every year."

He further submits that the petitioner has been subjected to the hostile persons who have longer stayed at Lucknow in his service period at particular place is in contravention to the above said policy/standing order whereas petitioner has been transferred, so the said action on the part of the respondent is illegal and violative of Article 14 of the Constitution of India.

Another argument has been raised by learned counsel for the petitioner that petitioner's children are studying and if during the mid session, he has been transferred then his children will suffer irreparable loss.

Learned counsel for the respondents, on the basis of the instructions, submits that in pursuance of the impugned order, under challenge in the present writ petition, the petitioner has already been relieved from service on 30.3.2013.

I have heard learned counsel for parties and gone through the record.

Needless to mention herein that it is not disputed by learned counsel for petitioner that petitioner is holding a transferable post.

So far as the argument advanced by learned counsel for the petitioner is that the impugned order of transfer is in contravention to the transfer policy is concerned, transfer and posting is within the domain of the executive authority, who is the best judge to see as to where an incumbent should be posted and where his/her services can be best utilized. In the present case once uniform policy has been formulated and in the said direction uniform decision has been taken, then the petitioners, who are members of disciplined force, cannot have any grievance on account of passing of such transfer orders.

Law on the subject is clear. In the case of Mrs. Shilpi Bose and Ors. v. State of Bihar and Ors. (SC), the Hon"ble Apex Court held as under:

"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 order 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 U.P. v. Gobardhan Lal 2004 (101) FLR 586 (SC), Hon"ble Apex Court has held as under:

"7. it is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of services. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer

cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at the best may afford an opportunity to the office or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infringement of any career prospects such as seniority, scale of pay and secured emoluments. This Court has reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with as they do not confer any legally enforceable rights, unless as noticed supra shown to be vitiated by mala fide or is made in violation of any statutory provisions."

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 requirement 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.

9. The very questions involved, as found noticed by the High Court in these case being disputed questions of facts, there was hardly any scope for the High Court to generalise the situations based on its own appreciation and understanding of the prevailing circumstances as disclosed from some write ups in journals or newspapers reports. Conditions of service or rights, which are personal to the parties concerned, are to be governed by rules as also the inbuilt powers of supervision and control in the hierarchy of the administration of State or any authority as well as the basis concepts and wellrecognised powers and jurisdiction inherent in the various authorities in the hierarchy. All that cannot be obliterated by sweeping observations and directions unmindful of the anarchy which it may create in ensuring and effective supervision and control and running of administration merely on certain assumed notions of orderliness expected from the authorities effecting transfers. Even as the position stands, avenues are open for being availed of by anyone aggrieved, with the concerned authorities, the Courts and Tribunals, as the case may be to seek relief even in relation to an order of transfer or appointment or promotion or any order passed in disciplinary proceedings on certain wellsettled and recognised grounds or reasons, when properly approached and sought to be vindicated in the manner known to and in accordance with law. No such generalised directions as have been given by the High Court could ever be

given leaving room for an inevitable impression that the Courts are attempting to take over the reigns of executive administration. Attempting to undertake an exercise of the nature could even be assailed as an onslaught and encroachment on the respective fields or areas of jurisdiction earmarked for the various other limbs of the State. Giving room for such an impression should be avoided with utmost care and seriously and zealously Courts endeavour to safeguard the rights of parties.

Hon"ble Apex Court in case of Union of India and Ors. v. Janardhan Debanath and Anr. (2004) 4 SCC 245, has taken the view that transfer order should not be interfered unless same is in violation of statutory provisions or order passed is mala fide. Relevant extract is being quoted below:

"The High Court while exercising jurisdiction under Article 226 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon the peculiar facts and circumstances of the case concerned. No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident but a condition of service. Necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan (2001) 8 SCC 574."

Hon"ble Apex Court, in the case of S.C. Saxena v. Union of India and Ors., 2006 (9) SCC 583 has held as follows:

"In the first place, a Government Servant cannot disobey a transfer order by not reporting at the place of posting and then go to Court to ventilate his grievances. It is his duty first to report for work, where he is transferred and make representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed."

The caution given by Hon"ble Apex Court qua transfer matters of members of Force has been given in the case of Major General, J.K. Bansal v. Union of India 2005 (107) FLR 37, in following terms:

"It will be noticed that these decisions have been rendered in case of civilian employees or those who are working in Public Sector Undertakings. The scope of interference by Courts in regard to members of armed forces is far more limited and

narrow. It is for the higher authorities to decide when and where a member of the armed force should be posted. The Courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out no interference should be made."

Hon'ble Apex Court in the case of *State of Haryana v. Kashmir Singh* Civil Appeal No. 86908701 of 2010, decided on 6.10.2010 has cautioned in matter of transfer of police personnel from one place to another, that same is purely administrative matter, and High Courts should be loath to interfere with the same, and the same should be left to the authorities concerned.

Next argument advanced by learned counsel for the petitioner that the transfer order is against the principle of natural justice as the same has been passed during mid-session of the studies of his son/daughter, is also got no force as in the case of *Rajendra Prasad Vs. Union of India* 2005 (2) ESC 1224 after considering the judgment of Hon'ble Supreme Court in the case of *Director of School Education Madras and others Vs. O Karuppa Thevan and another*, 1996(1) UPLBEC 347 this Court has held as under:

"The issue of transfer in mid academic session was considered by the Hon'ble Supreme Court and it was held that" the fact that children of the employee are studying should be given due weight, if the exigencies of the service are not urgent." Therefore, it is for the employer to examine as to whether transfer of an employee can be deferred till the end of the current academic session. The Court has no means to assess as what is the real urgency of administrative exigency. Thus, the Court is not inclined to consider this submission at all."

For the foregoing reasons, I do not find any infirmity or illegality in the impugned order which is under challenge in the present writ petition, as such the present writ petition lacks merit and is dismissed.

However, as prayed by learned counsel for the petitioner, in the interest of justice, it is provided that the petitioner shall make a fresh representation to opposite party No.2/Inspector General of Police, Central Reserve Police Force, Vibhuti Khand, Gomti Nagar, Lucknow within a period of two weeks from the date of receiving certified copy of this order for redressal of his grievances which he has raised in the present writ petition annexing all the relevant documents and materials in support of his case and after receiving the same opposite party no.2 shall consider and dispose of by way of speaking and reasoned order in accordance with law within a further period of four weeks thereafter.