

## Rameshwar Pandey Vs Additional Director (Medical Cure) Health and Family Welfare and Others

**Court:** Allahabad High Court

**Date of Decision:** Dec. 15, 1995

**Hon'ble Judges:** D.K. Seth, J

**Bench:** Single Bench

**Advocate:** T.N. Tiwari, for the Appellant; Ramesh Upadhyay, for the Respondent

### Judgement

D.K. Seth, J.

In the present case, the admitted facts are that by order dated 29th June, 1993 (Annexure "1") issued by the Additional

Director, Medical Health and Family Welfare, Gorakhpur Division, the Petitioner, along with some other persons including Respondent No. 4,

Mohammad Ilyas was transferred. By reason of the said transfer order, the Petitioner was posted at the District Hospital, Deoria in the post held

by Respondent No. 4 Mohammad Ilyas whereas the Respondent No. 4 was transferred to the District Leprosy Control Unit, Deoria, in the post

held by the Petitioner. Both the District Hospital, Deoria and the District Leprosy Control Unit are situated within the same Municipal limits. The

Respondent No. 4 continued to serve in the District Hospital, Deoria for the last 27 years. By an order dated 3.7.1993 (Annexure "3"), both the

Petitioner and Respondent No. 4 were released from their respective posts for Joining the transferred posts. The Petitioner was released by order

dated 5th July, 1993 (Annexures "4" and "5") and joined his transferred post on 5th July, 1993 (Annexure "6"), whereupon the Petitioner was

placed for duty in the Pathology Department (Annexure "7") where the Petitioner started working since 6th July, 1993 by submitting report

(Annexures "8" and "9"). By an order dated 24th August, 1993 (Annexure "11"), the Respondent No. 1 sought to cancel the transfer order dated

29th June, 1993 issued by the Respondent No. 3. It is this order which is the subject matter of challenge in the present writ petition moved by the

Petitioner Rameshwar Pandey and the Respondent No. 4 Mohammad Ilyas, in his turn, defends the said order though Mohammad Ilyas had

joined the post to which he was transferred.

2. By order dated 2nd September, 1993. Hon"ble R. A. Sharma J., was pleased to allow the writ petition following the decision in the case of

Smt. Beena Tripathi v. State of U.P. and Ors. 1987 LCD 153, by quashing the impugned order dated 24th August, 1993.

3. The Special Appeal filed against the said order, however, was allowed by an order dated 2nd May, 1995 in view of the Full Bench decision in

Special Appeal No. 472 of 1994 delivered on 24th January, 1995 and the order dated 2nd September, 1993 was set aside and the writ petition

was remanded to the learned Single Judge for disposal on merits.

4. By reason of this situation, the contention that order of transfer once implemented cannot be cancelled loses its force. Now the impugned order

of transfer is to be looked into on the basis of its merit, namely, on the facts as disclosed in the background of the present case.

5. In the present case, admittedly the Respondent No. 4 was working at the same place for 27 years and he was transferred along with some

others and only the order of transfer affecting the Respondent No. 4 was cancelled. In the counter-affidavit, a case has been made out by

Respondent No. 4 that as soon the District Leprosy Officer came to know about the transfer order, he recommended to the Additional Director

(Medical Health Services), Gorakhpur for reconsideration of the order dated 29th June, 1993 as posting of Respondent No. 4 at Leprosy Control

Unit, Deoria was likely to hamper leprosy programme and that the Petitioner was working in Leprosy Control Unit since long and, as such, his

transfer would adversely affect the Leprosy Cure Programme. A copy of the said recommendation is Annexure "CA-2". The Respondent No. 4

has further contended that he was permitted to continue on the post only in public interest as he had long experience in dealing with matter relating

to blood transfusion and other pathological working. Admittedly both the Petitioner and Respondent No. 4 are Laboratory Assistants/Technicians.

6. The Respondent No. 4 in his defence, relies on the recommendation of the District Leprosy Officer contained in Annexure "CA-2" in order to

Justify the cancellation of the order of transfer by order dated 24th August 1993, impugned herein. From the English translation of the impugned

order Annexure "11" to the writ petition, it is clear that it does not disclose any reason leading to the cancellation of the earlier order of transfer

dated 29th June, 1993. The order dated 29th June, 1993, appears to be a routine transfer order. In a letter dated 5th July, 1993 (Annexure "12"

to the writ petition), the Chief Secretary, Uttar Pradesh directed implementation of all annual transfer orders. The State Respondents have not

come up with any counter-affidavit. Nothing has been placed before the court to show as to what was the reason for cancellation of the order of

transfer.

7. The Full Bench decision in Special Appeal No. 472 of 1994 (The Director Rajya Krishi Utpadan Mandi Parishad and Ors. v. Sri Natthi Lal)

decided on 24th January, 1995 emerged from a dent created by the judgment of Hon"ble R.A. Sharma, J. in Ranjeet Mat v. State of U.P. and

Ors. 1993 HVD 315, with regard to the view that transfer order once implemented cannot be cancelled and revoked, flowed from the decision in

the case of Ram Raj v. Basic Shiksha Parishad (Civil Misc. Writ Petition No. 2205 of 1985) decided by the Lucknow Bench on 20th May, 1985

following the Judgment in Indra Bahadur Singh v. Basic Shiksha Parishad (Civil Misc. Writ Petition No. 2028 of 1985) decided on 10th May,

1985 and the most quoted Judgment in the case of Smt. Beena Tripathi (supra), by observing that the said principle cannot be without exceptions

and it specified some circumstances on which it was open to the authorities to cancel, revoke a transfer order. The said question was considered in

the case K.N. Gahlot v. State of U.P. Special Appeal No. 593 of 1993. decided on 11th November 1993 where the view in the case of Beena

Tripathi (supra) was accepted. The Full Bench relying on the case of Dalbir Singh v. State of Punjab AIR 1979 SC 1384, did not agree with the

observations. The Full Bench held:

....there is no bar or restriction to the modification, revocation or cancellation of an order of transfer even after it has been implemented and to the

extent to which Beena Tripathi's case (supra) tends to or has been construed to have laid down any legal principle to the contrary, it does not lay

down correct law and we are consequently, with respect, constrained to overrule it....

8. The case of Ranjeet Mal (supra) lays down that even after implementation, an order of transfer can be cancelled and revoked. It was observed:

Principle that transfer order once implemented cannot be cancelled is not without exceptions. If such an order has been obtained by fraud or

misrepresentation or it is without jurisdiction, it is always open to the concerned authorities to cancel it at any time, because under these

circumstances, order of transfer is void ab initio. Transfer order can also be cancelled or modified on the representation of the aggrieved employee.

But if the order of cancellation affects any employee other than those, whose representations were allowed, the position would be different. As the

Division Bench of this Court in the case of Smt. Beena Tripathi (supra) was not dealing with the aforesaid types of cases, it has not expressed any

opinion on the same.

9. With regard to the above observation in the case of Ranjeet Mal (supra), the Full Bench observed:

Turning now to the grounds in which an order of transfer can be cancelled, after it has been implemented, we cannot, with respect, subscribe to the

view that they are limited to merely those as set out in Ranjeet Mal's case (supra). These grounds cannot be treated as exhaustive but merely

illustrative of the circumstances in which an order of transfer may be cancelled. We specifically hereby clarify that an order of transfer, even after it

has been implemented can be cancelled on other grounds too including administrative considerations and exigencies of service. An order cancelling

an order of transfer, after it has been implemented, would, of course, be open to challenge for reasons akin to those on which an order of transfer

may be questioned.

10. Thus issue of order of transfer is a rule and cancellation thereof is an exception. Therefore, there should be reason Justifying exception. There

cannot be exhaustive illustration of reasons. It depends on the necessity for making the exception either on the part of the administration or for

some reason special to the person transferred as may be weighed with the administration. In order to support the exception, reasons should either

be apparent or be asserted. Court can always scrutinise the reasons and find out the justification for the exception. Such reasons may either be

found out from the order itself or from such other material as may be available before the Court.

11. Thus the order of transfer impugned herein can very well be challenged in view of the above observation made by the Full Bench. It is to be

seen whether "CA-2" satisfied the test of exception.

12. In the present case, a perusal of the order of transfer dated 29th June, 1993 contained in Annexure "1" seems to appear as a routine transfer

order. In order to cancel the same, there must be some circumstances which overwhelms a routine transfer. Whether the recommendation of the

District Leprosy Officer contained in Annexure "CA-1" discloses such reason. There being nothing on record to show what weighed with the

authority either to issue the order of cancellation by order dated 24th August, 1993, it is not possible to hold as to extent of influence of the said

recommendation contained in Annexure "CA-2" to the counter-affidavit.

13. The order contained In Annexure "11" does not specify any reason even to the extent that the order of transfer is being cancelled in

administrative necessity or exigencies or in the public interest. Over and above, the reasons disclosed in Annexure "CA-2" as indicated in

paragraph 6 of the counter-affidavit that in absence of Petitioner who was working in the Leprosy Control Unit since long, the Leprosy programme

would be hampered cannot be accepted because the Jobs are transferable and no one is indispensable. If this was so, this ought to have been

taken into account before the routine order of transfer was issued. On the other hand, nothing is on record to show that a technician working in the

Leprosy Control Unit cannot be transferred or that the work of laboratory Technician in Leprosy Control Unit cannot be performed by any other

Laboratory Technician.

14. It is also distressing to note that posting of Respondent No. 4 would hamper the leprosy programme could be put forward as ground for

cancelling transfer order when he was also a Laboratory Technician. Even then if the Respondent No. 4 is found unsuitable at the Leprosy Control

Unit, then there could not be any reason of sending him back to the District Hospital, Deoria where he had been posted for long 27 years. He

could have been posted somewhere also and someone else could have been brought in his place even if the Petitioner was brought back to the

Leprosy Control Unit. At the same time, it has not been pleaded that the presence of Respondent No. 4 at Deoria Hospital was indispensable.

15. The above facts indicate that there was no application of mind while the order of cancellation of routine transfer was issued. Inasmuch as return

of a person to a post where he was serving for long 27 years after cancellation of a routine transfer itself is contrary to the transfer policy. If such

grounds are accepted against transfer orders, the same would generate administrative ingenuity and every person so transferred may have an

opportunity to create an atmosphere that his posting at the transferred post would hamper the working of the unit where he has been transferred.

16. The present case appears to be an exceptional one. Neither a person can be indispensable nor another can be unwelcomed. Admittedly, the

Petitioner is continuing in the District Hospital, Deoria and the Respondent No. 4 is continuing in the Leprosy Control Unit during the pendency of

this writ petition till today. No affidavit has come from the Leprosy Control Unit or from the State Government that in absence of the Petitioner, the

Leprosy programme has suffered in the meantime and is still suffering. Neither any affidavit has come asserting that the presence of Respondent

No. 4 is hampering the leprosy programme.

17. In the facts and circumstances of this case, in my opinion, the impugned order dated 24th August, 1993 does not satisfy the test laid down by

the Full Bench in the case of Director, Rajya Krishi Utpadan Mandi Parishad referred to above in respect of the reasons under which the

cancellation of an order of transfer after implementation can be Justified. The impugned order dated 24th August, 1993 (Annexure "11") cannot,

therefore, be sustained and is accordingly quashed. The Respondents, however, shall be free to take appropriate view of the matter and pass

further order of transfer if they are so advised in administrative necessities and exigencies and in the interest of the public, as the case may be.

18. In the circumstances, let a writ of certiorari be issued quashing the impugned order dated 24th August, 1993 passed by Respondent No. 1

contained in Annexure "11". The writ petition is allowed to the above extent. There will be no order as to costs.