

(2007) 12 DEL CK 0029

Delhi High Court

Case No: Writ Petition (C) No. 8968 of 2007

State Farms Corporation of India
Ltd., Employees Union and Sh.
T.S. Sasi, Personal Assistant,
State Farms Corporation of India
Ltd.

APPELLANT

Vs

State Farms Corporation of India
Ltd. and Sh. Aby John, Executive
Officer, State Farms Corporation
of India Ltd.

RESPONDENT

Date of Decision: Dec. 6, 2007

Hon'ble Judges: J.M. Malik, J

Bench: Single Bench

Advocate: Mahesh Srivastava, for the Appellant; C.N. Sreekumar and P.R. Nayar, for the Respondent

Final Decision: Dismissed

Judgement

J.M. Malik, J.

Sh. T.S. Sasi, petitioner No. 2, Personal Assistant of State Farms Corporation of India Ltd. was transferred from State Farms Corporation of India Ltd., New Delhi to Central State Farms Corporation of India Ltd., Sardargarh on 26.10.2007. The petitioner contends that his transfer order is vitiated by malafides, arbitrary and is against the public policy.

2. In support of his case he has explained the following facts. The elections of State Farms Corporation of India Ltd. Employees Union was conducted on 07.06.2007. Petitioner No. 2 was elected as its Vice President. On 03.09.2007 the petitioner sent a representation to the various authorities including CMD, State Farms Corporation of India Ltd. wherein, it was explained that Brig. Mr. S.P. Mehla, CMD, who represents respondent No. 1, had adopted certain malpractices. These allegations

infuriated CMD. Respondent No. 1, issued a show cause notice to the General Secretary of State Farms Corporation of India Ltd. Employees Union on 25.10.2007. It is averred that there is no transfer policy in the Corporation and the respondents have adopted a pick and choose policy. On 29.10.2007 petitioner No. 2 sent a representation against his transfer order. However, being an obedient and faithful employee of the Corporation, petitioner No. 2 joined the place of transfer on 26.10.2007.

3. I have heard the counsel for the parties. The learned Counsel for the petitioners argued with vehemence that the transfer order is actuated with malafides. It was also argued that a transfer order cannot be made a weapon to wreck the morale of the employees and the transfer should be made in the public interest. The learned Counsel for the petitioners have drawn my attention towards the complaint made by the petitioners dated 03.09.2007 with the subject, ♦Request to control Irregularities, Corruption & Nepotism in SFCI ♦ Illegal activities of Sh. S.P. Mehla, CMD ♦ CBI Inquiry requested♦. This complaint was addressed to ♦Hon"ble Agriculture Minister, Govt. of India, Ministry of Agriculture, Krishi Bhawan, New Delhi♦. This complaint was signed by petitioner No. 1. Sh. Raj Singh, General Secretary, SFCI Employees Union, Nehru Place, New Delhi. This is interesting to note that the name of the petitioner No. 2 is conspicuous by its absence.

4. The learned Counsel for the petitioners also pointed out that Shri Bharat Kumar, who is a relation of CMD, was illegally and out of way appointed as Special Assistant to Chairman-cum-Managing Director. He also pointed out that certain other appointments were made illegally.

5. The last submission made by learned Counsel was that it was not mentioned in the transfer order that the above said transfer was being made in the public interest. He has cited few authorities in support of his case. These authorities are reported in Shri Hans Raj v. State of Punjab and Ors. 1984 (3) SLR 147 , [E.P. Royappa Vs. State of Tamil Nadu and Another](#), and N.K. Suparna v. Union of India and Ors. (CAT Bangalore), 1991 (15) ATC 1.

6. It is axiomatic that if transfer order is actuated with malafide or extraneous consideration or malice or has been made in violation of a statutory rule or regulation, it will be illegal. This is also the obvious implication of the dicta of the Hon"ble Supreme Court that a transfer order is liable to be struck down if it is made with the aforesaid reasons. It is well settled law that the transfer is an incidence of service. The Govt. employee or an office bearer of a Union cannot claim the posting at a particular place. Public interest demands that there has to be an equitable distribution of the manpower at different regional stations and at the headquarter on reasonable criteria.

7. The authorities cited by the learned Counsel for the petitioner are not applicable to the facts of this case. The facts of this case are different and peculiar. It is

noteworthy that nobody else from the elected office bearers was transferred. The transfer order pertained to the Vice President only. Sh. Raj Singh, General Secretary, who had signed the above said complaint dated 03.09.2007 was not transferred. Other points which must be borne in mind are that, the petitioner No. 2 was transferred after the lapse of as many as ten years. Moreover, there is no proof on the record that the complaint made by Sh. Raj Singh, General Secretary stood proved anywhere. The said complaint contains only allegations. There is no inkling on the record that some action was initiated against any officers including the CMD in response to the said complaint. It is well settled that transfer of a person in accordance with administrative requirement is not a punishment.

8. The Supreme Court in the case of [Union of India and Others Vs. H.N. Kirtania](#), had occasion to consider a similar point and the Supreme Court in that regard observed as under:

After hearing the Counsel appearing for the parties we do not find any valid justification for the High Court for entertaining a writ petition against the order of transfer made against an employee of the Central Government holding transferable post. Further there was no valid justification for issuing injunction order against the Central Government. The respondent being a Central Government employee held a transferable post and he was liable to be transferred from one place to the other in the country; he has no legal right to insist for his posting at Calcutta or at any other place of his choice. We do not approve of the cavalier manner in which the impugned orders have been issued without considering the correct legal position. Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides. There was no good ground for interfering with the respondent's transfer.

9. The Supreme Court in *Shilpi Bose (Mrs.) and Ors. v. State of Bihar and Ors.* (1991) 2 Supp. 659, held that:

In our opinion, the courts should not interfere with a transfer order which is 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 mala fide. 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 and 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

overlooked these aspects in interfering with the transfer orders.

10. The Apex Court in case of [Abani Kanta Ray Vs. State of Orissa and Others](#), was pleased to observe:

It is settled law that a transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer.

11. In case of [State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others](#), it was held:

The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous considerations without any factual background foundation. In this case transfer orders having been issued on administrative grounds, expediency of those orders cannot be examined by the court.

12. The Apex Court in [State of U.P. and Others Vs. Gobardhan Lal](#), took a view that transfer made even in transgression of administrative guidelines cannot be interfered with by the courts, as they do not confer any legally enforceable rights, unless such transfer is shown to be vitiated by mala fides or is made in violation of any statutory provision.

13. This position was reiterated by the Apex Court in [Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and Others](#), by observing that who should be transferred and posted where, is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines, the courts should not ordinarily interfere with it.

14. The Apex Court took similar view in the recent authority reported in [Purushottam Kumar Jha Vs. State of Jharkhand and Others](#), wherein, it was held:

As to mala fide exercise of power, the High Court held that neither sufficient particulars were placed on record nor the officers were joined as party respondents so as to enable them to make the position clear by filing a counter affidavit. In the absence of specific materials and in absence of officers, the Court was right in not upholding the contention that the action was mala fide.

15. See also [National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others](#), [State of U.P. and Others Vs. Siya Ram and Another](#), and [Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi](#).

16. Karnataka High Court in Vijaya Bank Officers' Congress (Regd.) and Ors. v. Vijaya Bank 1993 LLR 229, has held that an office-bearer of a union is first an employee then an official of the union. Hence, it is not open to the office-bearers of the union to contend that they are not liable to be transferred. This view was also taken in

Smt. Jayamma v. The General Manager (Personnel), Karnataka Silk Industrial Corporation and Ors. 1996 LLR 837.

17. Madras High Court in T.N.E.B. Engineers Sangam v. Tamil Nadu Electricity Board 1996 LLR 942 observed that the office-bearers of a trade union cannot claim immunity from transfer.

18. In the light of the above discussion, I find that petition is without merit. The same is, Therefore, dismissed.

CM No. 16900/2007

No further orders are required to be passed in this application in view of the dismissal of the petition.

Dismissed.