
86 CWN 990

Calcutta High Court

Case No: C.O. No. 4727 (W) of 1983

P. Dutta

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: Aug. 2, 1983

Acts Referred:

- Railway Protection Force Act, 1957 - Section 15

Citation: 86 CWN 990

Hon'ble Judges: B.C. Ray, J

Bench: Single Bench

Advocate: A.P. Chatterjee and A.K. Majumdar, for the Appellant; N.K. Choudhury for Railway, for the Respondent

Final Decision: Dismissed

Judgement

B.C. Roy, J.

This application is at the instance of the petitioner who is an Inspector Grade II (Fire) of the Railway Protection Force challenging the impugned order of transfer annexed as annexure C to the writ application issued by the Chief Security Officer on the ground inter alia that the said transfer purports to transfer the petitioner from Kharagpur Division to Garden Reach Division which is not permissible except with the sanction of the President of India. It has been also pleaded in the petition that the petitioner has six school and college going daughters reading in differed schools and colleges and more particularly two daughters reading in the school and if this transfer is effected in this mid session it will be difficult to get admission of those daughters of he petitioner in a Madhyamik School in Calcutta and this will seriously affect the educational career of these two daughters of the petitioner. It has also been submitted that the transfer has been made by the Security Officer who is not empowered to issue the impugned order of transfer. It has also been stated in this connection that the petitioner having hailed from Kharagpur which is his native place and he has only less than three years of service at his disposal and so

he should not be transferred on consideration of this compassionate ground that he being the father of six daughters in order to enable him to make some residential accommodation for members of his family. On all these grounds the impugned order of transfer has been assailed in the instant writ application before this Court on 19.5.83. On hearing the petitioner this Court directed the application to appear two weeks after the reopening of the Court after the summer vacation and an interim order of maintaining status quo as on that day was made. The petitioner thereafter made a representation against the order of transfer before the Chief Security Officer stating all the grounds and the representation has been annexed as annexure F to the petition. It appears from annexure G that the representation was considered by the Chief Security Officer and an order was made on 12.5.83 whereby it was found that no new grounds exist for retaining the petitioner in his present place of posting viz. at Kharagpur and the representation was rejected. Mr. Arun Prokash Chatterjee, learned Advocate appearing in support of this petition, has urged before this Court only two grounds. The first ground is that regarding the question of inter divisional transfer an appeal is pending before the Appeal Bench of this Court where it has been observed that the question involved requires to be decided and as such there was an order of stay of operation of the order of transfer made by the Appeal Bench. Referring to this order it has been pleaded before this Court that since the appeal is pending and stay order has been granted by the Appeal Bench stay should be granted by this Court and Rule should be issued. The second branch of Mr. Chatterjee's argument is that the petitioner is the father of six daughters of which four are reading in different colleges and two are reading in secondary schools in Midnapore and if this transfer is effected in this mid session then education, of these two children at least will be seriously affected and on this consideration he urged before this Court that the order of transfer should not be given effect to. It has been further submitted that the petitioner has got little less than three years tenure of service at his disposal and he is going to reach the age of superannuation on the 30th January, 1986 and as such considering this aspect of the matter the order of transfer should be kept in abeyance.

2. Mr. Choudhury, learned Advocate appearing on behalf of the Railways, has on the other hand submitted before this Court by referring to provision of sec. 15 of the Railway Protection Force Act that all the members of the Railway Protection Force are liable to be transferred in any part of India. Mr. Choudhury thereafter referred of rules 21 and 25 of Chapter II and also appendix I where from it appears that the Chief Security Officer is the authority empowered under these rules and regulations made or framed under the Railway Protection Force Act to pass appropriate order of transfer against an officer of the rank of the petitioner, viz. Inspector Grade II (Fire). In this case undoubtedly the impugned order of transfer has been passed by the Chief Security Officer as has been admitted by the petitioner. It has been therefore submitted by Mr. Chowdhury that there is no infirmity or defect in the impugned order of transfer. In this connection Mr. Choudhury drew the attention of this Court to the relevant circulars wherefrom it appears that transfer of an Inspector in the Fire Service Department of the Railway Protection Force can be made after he has completed certain years of service In a particular station and as such

in this case the order of transfer was made not only for the exigency of the administration but also on a consideration of his completion of seven years' service at Kharagpur. It has, therefore, been submitted that the order of transfer is not per se bad or in derogation of the provisions of the Railway Protection Force Act and/or the rules or regulations framed thereunder. It has been also submitted by Mr. Choudhury that the difficulties regarding the education of the children of the petitioner which he has specifically mentioned in the petition of appeal before the Chief Security Officer was duly considered by the Chief Security Officer and after considering those grounds the Chief Security Officer has found that there will be no difficulty in prosecuting studies for those daughters of the petitioner who are reading in schools under the West Bengal Board of Secondary Education which also controls the secondary education that is imparted in schools in Calcutta. It has therefore been submitted that there is no infirmity in the order itself. Mr. Choudhury in support of his submission contends that transfer being the normal incidence of the service and being made in consideration of the exigency of the service cannot be assailed in this writ application by citing some decisions of the Supreme Court as well as of this Court.

3. After considering carefully the averments made in this writ application as well as the submissions advanced on behalf of the petitioner and the respondents I am unable to find any merit in this writ application for the reasons stated herein below.

4. The petitioner is an Inspector Grade II (Fire) in the Railway Protection Force. There is no iota of doubt nor it is disputed that he has been working in this capacity in Kharagpur for a period exceeding seven years and as such in accordance with the extent circulars he is liable to be transferred from this place to other place. Moreover it appears from the provision of the Act specially sec. 15 of the Rly. Protection Force Act that all employees of the Railway Protection Force are liable to be transferred during their period of employment in any part of India. This is one of the essential terms and conditions of his service. This being the position, it does not lie in the mouth of the petitioner to say that he can not be transferred from Kharagpur division to Garden Reach division.

5. Let us closely scrutinise also this contention. It appears from appendix I read with rule 25 of the Regulations framed under the Railway Protection Force Act that the Chief Security Officer is empowered to issue order of transfer against an officer of the rank of the petitioner. It also appears that such transfer from one division to another can be made by the Chief Security Officer. Therefore on a consideration of this legal position I do not find any apparent illegality, irregularity or infirmity in the impugned order of transfer made by the Chief Security Officer which has been annexed as annexure C to this writ petition and the pleading that has been made in the petition that such an inter divisional transfer requires the prior approval and sanction of the President is, in my opinion, wholly inapplicable in the case of a member of the Railway Protection Force.

6. The next question poses itself for consideration is whether this transfer is ex facie in accordance with law or not. The latest circular that has been placed before this Court which was issued on 19.5.81 by the Joint Director, Railway Board to all the General

Managers of Indian Railways on the subject of periodical transfer of fire service staff of Indian Railways it has been specifically mentioned as follows The Board have therefore decided that the periodical transfers in respect of fire service branch which is now effected after five years may be done after seven years.

7. As I have stated already hereinbefore that in this case the incumbent i.e. the petitioner remained in the Kharagpur Division as an Inspector Grade II (Fire) for a period of seven years. As such in accordance with this circular of the Railway Board there is no irregularity or illegality in making the impugned order of transfer. Secondly on a look at the terms of the order of transfer it will be clear and apparent that the transfer has been made in the interest of administration. Therefore, considering all these aspects I am unable to hold that the order of transfer is ex facie bad or illegal or unwarranted. Submissions on this score are, therefore, in my opinion, have no merits whatsoever. The last submission regarding the difficulties about the study of the two younger daughters of the petitioner in the schools at Midnapore in my opinion also does not stand a moment's scrutiny. These students undoubtedly are reading in schools. It is also clear and explicit from the statements made in the writ application and the annexures appended to the writ petition that the half yearly examination is over sometime in June. If that be so the giving effect to the order of transfer will not in any way prejudice the continuance of studies by these students inasmuch as they can get admission in any school in Calcutta because all the schools in Calcutta are governed by the West Bengal Board of Secondary Education which also is the authority governing the schools at Midnapore. This aspect of the case, it is needless to point out, has been very reasonably considered by the Chief Security Officer and he has given his finding. I do not find any fault in his finding. Regarding the other submission that the petitioner hails from Midnapore, his native place and as such he should not be transferred in view of the fact that he has got at his disposal less than three years' service and also of the fact that he has no son but six daughters of which three are marriagable daughters. This compassionate ground has to be considered in the background of administrative interest which is also one of the vital consideration to be taken into account. Even considering this aspect I do not find what is the difficulty of the petitioner to go to Midnapore from Garden Reach and can arrange for his residence or for an alternative place where he can stay after retirement from his service. It is well known that Kharagpur and Midnapore are not far off from this place and it can be travelled and can be returned back on the same day from Garden Reach. Therefore, this ground considering on the background of administrative exigency cannot weigh with the Court in undoing an order of transfer made in the interest of administration by a public officer who is empowered to do so in accordance with the provision of the Act and the Regulations framed thereunder and this is exactly observed by the Supreme Court in 1981 Labour and Industrial Cases, 1102 (Shanti Kumar v. Regional Deputy Director, Health Services, Patna Division & Ors. It has been observed by the Supreme Court as follows : "Transfer of a Govt. Servant may be due to exigencies of service or due to administrative reasons. The courts cannot interfere in such matters". The other decisions reported in 77 C. W. N. 249 and 334 decided by the Division Bench and a single Bench of this Court on the

question of ambit of the power of transfer is not required to be discussed here because it is well known that if transfer of an employee is a term and condition of service the same cannot be challenged except on the ground of malafide or on the ground of absence of administrative interest or exigencies of the service.

In the premises aforesaid the only irresistible conclusion follows that there is no merit in this application and the application is summarily rejected.

All interim order are vacated.

Prayer for stay of operation of this order is refused.