
(1986) 07 CAL CK 0032

Calcutta High Court

Case No: F.M.A.T. No. 600 of 1986

Jayram Jha

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: July 22, 1986

Acts Referred:

- Constitution of India, 1950 - Article 309

Citation: 91 CWN 285

Hon'ble Judges: P.K. Mukherjee, J; G.N. Ray, J

Bench: Division Bench

Advocate: R.N. Das, for the Appellant; Tapan K. Sengupta, for the Respondent

Judgement

G.N. Ray, J.

This application has been filed praying for stay of operation of the order dated 30th January, 1986 passed by this Court disposing of the writ petition made by the appellant writ petitioner challenging the order of transfer of the petitioner from the District of Malda to Calcutta passed by the Commissioner of Excise. The petitioner was an excise constable posted in the district of Malda, and by the impugned order of transfer, he had been transferred to Calcutta from the district of Malda. It is the case of the petitioner that such order of transfer had been passed because he had lodged certain complaints with the Superintendent of Excise, Malda, and by that process had incurred displeasure of the said Superintendent of Excise.

2. The petitioner's further case is that the Commissioner of Excise has no authority to pass an order of transfer of the petitioner outside the Division but by the impugned order of transfer he has been sought to be transferred to Calcutta outside Jalpaiguri Division. In support of this contention, Mr. Das, the learned Counsel for the petitioner, has referred to a Rule framed by the Governor under Article 309 of the Constitution of India on 18th March, 1982 regarding recruitment to the post of Excise Constable in the subordinate excise service under the Excise

Directorate, West Bengal. It has been specified in Rule 3 of the aforesaid Rules that the Commissioner of Excise shall be competent to transfer Excise Constable from the jurisdiction of one Superintendent of Excise to jurisdiction of another Superintendent of Excise under the same Division. Relying on the Rule, Mr. Das has submitted that the Commissioner of Excise is only competent to effect transfer within the Division itself, but not beyond the Division and hence such an order of transfer passed by the Commissioner of Excise against the petitioner is illegal on the face of it and should be set aside by this Court.

3. We are unable to accept the said contention of Mr. Das. Rule 3 of the said Rules only indicates that in case of transfer within the same Division, but outside the territorial zone of the District under the Superintendent of Excise of the District, the Commissioner of Excise only can effect transfer and not the Superintendent. But in the said Rule there is no clause by which the power of the Commissioner to effect transfer outside the Division has been taken away. The post of Excise Constable is a transferable post and under the inherent powers, the appropriate authority can effect transfer unless such right is circumscribed by any statutory rule or any policy accepted by the Government. In the absence of any such Rule and/or policy by which the power of transfer has been taken away it cannot be contended that the Commissioner of Excise being the highest authority cannot effect transfer of an Excise Constable outside the jurisdiction of the Division.

4. Mr. Das has further contended that even or, the score of malafide nature of transfer, the order of transfer should be set aside, it does not appear from the records placed by the petitioner for this Court's consideration that the Court can take a reasonable view that the Commissioner of Excise was biased against the petitioner and, with a malafide intention, passed the order of transfer. Even assuming for argument's sake that the petitioner had incurred displeasure of the Superintendent of Excise, Malda such fact of incurring displeasure by itself is riot sufficient to establish that the Commissioner of Excise had really acted at the dictate of the Superintendent of Excise, more so, when the Commissioner of Excise is a superior officer.

5. In the aforesaid circumstances, we are unable to proceed on the footing that the instant order of transfer is vitiated on the ground of malafide.

6. Mr. Das has lastly submitted before this Court that the order of transfer is causing a serious hardship to the petitioner and member's of his family and as a matter of fact, he has already made a representation before the Additional District Magistrate, Malda, who is the controlling authority in the district of Malda concerning the Excise Department. It appears from the report of the Additional District Magistrate, as contained in Annexure D (1), that by his Memo No. 142-ADM, dated 28th August, 1985. to the Commissioner of Excise, West Bengal, he has indicated that the prayer of the petitioner, Sri Joyram Jha, Excise Constable attached to the office of the Superintendent of Excise, Calcutta (South) may be sympathetically considered, and if

he is posted back to Malda District, he will not be considered for posting at the District Headquarters and will be posted at any of the outlying stations according to the convenience, of the District Excise authorities.

7. Mr. Das has submitted that in view of such recommendation of the Additional District Magistrate, the petitioner's representation should be considered by the Excise Commissioner sympathetically. Mr. Das has submitted that it is unfortunate that such representation is lying unconsidered for a pretty long time and the petitioner and the members of his family are suffering serious hardship.

8. It is not necessary for this court to make any comment on the aforesaid submission of Mr. Das and to give any mandate. It may however be observed that if any representation of an employee is made for transfer on the score of personal hardship, it is only desirable that such representation should be taken into consideration by the appropriate authority with such sympathy as it deserves within a reasonable time. It is reasonably expected that if a proper representation is made by the petitioner before the Commissioner of Excise pointing out the hardship being suffered by him at present and in such representation the views expressed by the Additional District Magistrate, Malda on his earlier representation is indicated, the Commissioner of Excise will consider the same on its merits and dispose of the same as early as possible. The application for stay is accordingly disposed of. In view of the above order in the application for stay no further order need be passed in the appeal and the appeal is also disposed of accordingly treating the same as on day's list. There will be no order as to cost.