

(2011) 01 DEL CK 0440

Delhi High Court

Case No: Writ Petition (C) 10331 of 2009 and 6305 of 2010

Rajeev Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Jan. 24, 2011

Citation: (2011) 2 AD 429

Hon'ble Judges: Suresh Kait, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: Rajat Aneja and Shweta Singh, for the Appellant; Anil Gautam in W.P. (C) 10331/2009, Sachin Datta in W.P.(C) 6305/2010 and Abhimanyu Kumar, in W.P. (C) 6305/2010, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

Prayer made by Petitioner Rajeev Kumar in W.P.(C) No. 10331/2009 is to direct the Respondents to pay him transport allowance together with interest @ 12% per annum on the arrears.

2. The same Petitioner, Rajeev Kumar, prays in WP(C) No. 6305/2009 filed by him that the order dated 10.9.2010 transferring him from the Unit posted at Delhi to the Unit stationed at Shakti Nagar (UP) be quashed.

3. Basis of the claim in W.P.(C) No. 10331/2009 is the office memorandum dated 29.08.2008 issued by the Ministry of Finance records that as per the recommendations of the 6th Central Pay Commission, it has been decided that all employees of the Central Government be paid a transport allowance @ specified in the office memorandum and that the previous condition imposed vide OM dated 3.10.1997 which carves out an exception of transport allowance not to be paid to such employees who are provided official accommodation within a distance of one km from their office or within the campus housing stands withdrawn.

4. It may be noted here that though not expressly pleaded in the writ petition, at the hearing of the two writ petitions, learned Counsel for the Petitioner conceded that as per the OM dated 29.8.2008, vide Para 2(ii), the transport allowance is not admissible to those employees who have been provided with the facility of Government transport.

5. As per the averments made in W.P.(C) No. 10331/2009 it is pleaded that reason why transport allowance was not paid to the Petitioner was the stands taken by the Respondent, in the correspondence which was exchanged, that the management of National Thermal Power Corporation had provided a transport facility for the CISF Personnel to move between their place of residence and the Badarpur Thermal Power Station where they had to perform duties.

6. It may be noted that serving as a Constable under CISF, at the relevant time and even till today, the Petitioner is attached to the CISF Unit in-charge of Security at the Badarpur Thermal Power Station.

7. Needless to state, in the counter affidavit filed to the pleadings in W.P.(C) No. 10331/2009, the stand taken is that since the management of NTPC has provided transport facility, to and fro, between the residence and work place to the jawans of CISF, transport allowance has not to be paid.

8. We would be failing not to note that in the writ petition, in para 5, the Petitioner has pleaded that notwithstanding facility of Government buses provided for transportation between the place of residence till the place where they have to perform duties, transport allowance is paid to various CISF jawans stationed at some other units. In respect thereof the plea taken in the counter affidavit is that these averments are incorrect.

9. With respect to the claim of the Petitioner that notwithstanding Government bus service made available to CISF personnel at the 10 Units, named in Annexure P-4 to the writ petition, transport allowance is being paid, the Respondents were called upon to file an additional affidavit which they have done disclosing that to no CISF jawan who is provided transport facility by the Government any allowance by way of transport allowance is being paid. The detailed additional affidavit highlights that wherever Government transport facility is provided, no transport allowance is paid. The matter has been explained on affidavit with reference to each Unit.

10. Unfortunately, the pleadings in the writ petition are not clear as to what was the real grievance of the Petitioner and this surfaced for the first time in the pleadings of the Petitioner in the rejoinder and that too in a fairly obscure manner. To put it pithily, what the Petitioner is intending to convey is that the transport facility is not provided from his residence. Petitioner states that the CISF jawans walk from their residence to the quarter guard where they report for duty and draw weapons and thereafter are sent to the work place. Thus, what the Petitioner states is that the transport facility available is from the quarter guard and not the place of residence.

As per para 4 of the rejoinder affidavit it is pointed out that the distance between the family quarters of the force personnel and the quarter guard varies from between 500 meter to 800 meter.

11. Challenging the order dated 10.9.2010, transferring Petitioner from the Unit at Delhi to the Unit at Shakti Nagar Uttar Pradesh, Petitioner states that the same is in contravention of the transfer policy which requires a jawan to be stationed at a Unit for at least 3 years. As per the Petitioner he was posted at the Unit in charge of the Security of Badarpur Thermal Power Station in the month of March 2008 and would be completed 3 years tenure in the month of March 2011. Petitioner alleges mala fide in the transfer order; the basis of the mala fide alleges is the stated act of retaliation to teach Petitioner a lesson for claiming transport allowance and filing W.P.(C) No. 10331/2009. Petitioner further highlights that persons having spent more time at the Unit have been retained in Delhi and the Petitioner has been singled out for hostile treatment.

12. The response to the pleadings in W.P.(C) No. 6305/2010 is that the policy envisages 3 years posting at a city and that the Petitioner was posted at Delhi on 20.3.2007. He was first attached for duty under Delhi Metro Rail Corporation and after one year at the Badarpur Thermal Power Station. It is justified that 3 years posting at Delhi was completed in the month of March 2010 and thus it is stated that the transfer policy has not been violated. On the plea that persons with a longer tenure have been retained at Delhi and the Petitioner has been transferred, it is pointed out in the counter affidavit that the transfer order relate to 78 personnel and not to the Petitioner alone. It is pointed out that of the 244 personnel work at BTPS Badarpur, 93 personnel have been transferred out, one of whom is the Petitioner. Thus, mala fides is refuted.

13. Pertaining to the pleadings and the stand finally taken by the Petitioner in W.P.(C) No. 10331/2009, it is apparent that the Petitioner does concede that if transport facility is available from the residence to the work place and back, transport allowance has not to be paid.

14. The case projected by the Petitioner in the rejoinder affidavit is that the transport is not provided from the residence i.e. the barracks where the jaw an actually resides, but is provided from the quarter guard. The Petitioner states that the distance between the quarter guard and the barrack ranges between 500 meter to 800 meter.

15. For purposes of security, the CISF barracks are housed in a large complex which includes the quarter guard. Now, public transport does not enter within the precincts of the complex and picks up and drops persons at the gate. The quarter guard is next to the gate.

16. Let us take the case of a person residing in a multi-storied complex, on the 30th floor, of a multi-storeyed building. Surely, Government transport cannot reach the

floor on which the person resides. He has to either walk down the staircase or use a ramp or lift to reach the ground floor and therefrom take transport to reach his destination. Can such a person state that notwithstanding he using Government transport, but since the same is not a facility from his flat and that he has to come down to the ground floor to avail the transport facility, notwithstanding his availing the transport facility, he is entitled to a transport allowance?

17. Since law has to be interpreted with commonsense and with practicality and not in a pedantic manner, the obvious answer would be that such a person would not be entitled to transport allowance.

18. The example may be in the extreme, but certainly helps us in identifying the process of reasoning needed to be adopted in the instant case.

19. Housing complex of CISF jawan has entry from the main gate. There would be a play field, a small little shopping area, may be a medical unit, a bank, a post office and the residential barracks. We could have understood if the area was spread into a couple of square kms. We could have understood if to reach the gate one had to take transport from the barrack where the residential units were located. But, to walk 500 meters or 800 meters is neither here nor there. It is as good as a transport facility which can be said to be a pick up and drop down facility from the residence to the work place.

20. We are hardly impressed with the stand taken by the Petitioner in W.P.(C) No. 10331/2009.

21. We may note that the Petitioner made a feeble attempt to urge that he had declined to avail the transport facility provided by the management of NTPC. But, we refrain from adjudicating on the said plea for the reason we do not find any stand taken in the writ petition that notwithstanding the management of NTPC providing buses to pick up and drop back CISF jawans from the quarter guards, Petitioner had categorically informed that he would not be using the said transport facility. A meaningful perusal of the pleadings shows that the stand taken by the Petitioner is that since transport facility was available from the quarter guards and not the barracks where residential accommodation was made available to the Petitioner he would be entitled to transport allowance.

22. As regards the other writ petition, it is not in dispute that the Petitioner was first posted to Delhi in March 2007 and duties were assigned to him at the Delhi Metro Rail Corporation and after one year he was assigned duties at the Badarpur Thermal Power Station. It is also not in dispute that the Petitioner has completed 3 years tenure posting at Delhi by March 2010 and that when the order transferring him was issued he had rendered service for 3 years and 6 months in Delhi.

23. The transfer policy does not require 3 years posting at a particular work place. It contemplates tenure of 3 years in a city.

24. Thus, we find that the transfer policy has not been violated.

25. As regards the plea of mala fide, suffice would it be to state that 94 personnel from Badarpur have been transferred to various other cities. The transfer order is a routine transfer order and is not directed singularly against the Petitioner. That the Petitioner was claiming transport allowance and thus it should be inferred that the transfer order is by way of retaliation is too far-fetched a reasoning to be countenanced.

26. That apart, such kind of mala fide alleged has to be personal to a person concerned. There are no averments in the writ petition that the officer issuing the transfer order has acted with malice. Suffice would it be to state that the plea of mala fide is obviously a plea of mala fide in fact and not mala fide in law.

27. Thus, both writ petitions are dismissed.

28. Since Petitioner has the benefit of the transfer posting being stayed by means of an interim order passed in W.P.(C) No. 6305/2010, we grant Petitioner 15 days' time to report to the station where he has been transferred.

29. Copy of this decision be supplied dasti today itself to learned Counsel for the parties.

30. We refrain from imposing costs for the reason the Petitioner is a constable and we do not wish to burden him with costs, notwithstanding his fighting a cause which was hardly worthy of being litigated.