

Pawan Kumar vs.union of India and Ors

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Court : Delhi

Decided On : Jan-19-2018

Appellant : Pawan Kumar

Respondent : Union of India and Ors

Advocate for Def. : Mr. Jasmeet Singh

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI W.P.(C) 227/2018 and CM APPL. 927-929/2018 Reserved on:

10. 01.2018 Date of decision:

19. 01.2018 IN THE MATTER OF: PAWAN KUMAR * + Through:

... Petitioner

in person.

... Petitioner

UNION OF INDIA AND ORS versus

... RESPONDENTS

Through: Mr. Jasmeet Singh, CGSC CORAM: HON'BLE MS. JUSTICE HIMA KOHLI HON'BLE MS. JUSTICE REKHA PALLI HIMA KOHLI, J.

1. The petitioner, working on the post of Labour Enforcement Officer (Central) [hereinafter referred to as LEO(Central)]. in the office of respondent No.2/Chief Labour Commissioner (Central) [hereinafter referred to as 'CLC (Central)']. is aggrieved by the judgment dated 21.11.2017 passed by the Central Administrative Tribunal, dismissing O.A. No.3052/2016, filed by him for quashing an order dated 15.01.2016 passed by the respondents/Ministry of Labour and Employment UOI, transferring him from Ranchi to Chennai, his relieving order dated 26.05.2016 as also the order dated 21.06.2016, posting another CLO (Central) in his place, at Ranchi.

2. The facts of the case as elicited from the records are that on 01.09.2006, the petitioner had joined the respondent No.1/Ministry of W.P.(C) 227/2018 Page 1 of 12 Labour and Employment, Government of India as a LEO(Central). Initially, the petitioner was posted at Jharia that falls under the Dhanbad Division and in the year 2010, he was transferred to Koderma in the same Division. The petitioner was transferred from Koderma to the office of the Regional Labour Commissioner (hereinafter referred to as RLC) at Ranchi. All the aforesaid transfers having taken place within the Dhanbad Division, in all, the petitioner remained posted in the said Division for over nine years.

3. Vide order dated 15.01.2016, the petitioner was transferred from Ranchi to Chennai with the approval of the respondent No.2/CLC (Central), the Head of the Department. On 26.05.2016, an order was issued relieving the petitioner from the office of the RLC (Central), Ranchi, with a direction to join in the office of the Deputy CLC (Central), Chennai. On 21.06.2016, the respondents issued an order transferring 36 LEOs (Central) to different places across the country. One of the officers transferred, whose name featured at Sr.No.14 of the said office order, was posted from Jharia to Ranchi, to take over from the petitioner in the office of the RLC, Ranchi.

4. Aggrieved by the aforesaid orders dated 15.01.2016, 26.05.2016 and 21.06.2016, the petitioner filed an Original Application before the Tribunal stating inter alia that he had been transferred to Chennai solely to cause him harassment because he had been exposing corrupt officers in the office of the RLC, Ranchi

and the Deputy Labour Commissioner, Dhanbad; that false complaints were made against him by the RLC to the SC/ST Commission and his transfer was motivated by frivolous complaints made by some Members of the Parliament.

5. When the O.A. was listed before the Tribunal on 21.09.2016, the petitioner's counsel had stated that he would be satisfied if the O.A. is W.P.(C) 227/2018 Page 2 of 12 disposed of by granting liberty to the petitioner to submit a comprehensive representation to the respondent No.1/Ministry with a direction that the same be considered and a reasoned order passed within a fixed timeline. As a result, the captioned O.A. was disposed of on 21.09.2016 itself with a direction issued to the petitioner to submit a representation within one week to the respondent No.2, who would consider and dispose of the same by a well reasoned order, under intimation to him.

6. Aggrieved by the aforesaid order, the petitioner filed a writ petition in this Court [W.P.(C) 419/2017]., which was disposed of by a Co-ordinate Bench vide order dated 18.01.2017 in the light of the submission made by the counsel for the petitioner that he may be permitted to withdraw the said petition with liberty to approach the Tribunal by filing a review application against the order dated 21.09.2016. Thereafter, the petitioner filed R.A.No.60/2017 before the Tribunal, stating inter alia that his counsel had exceeded the mandate given to him by agreeing to make a representation before the respondents. Observing that the order under review was passed in the open court and it had not expressed any opinion on the merits of the matter, the Tribunal dismissed the petitioner's Review Application on 28.4.2017.

7. Aggrieved by the order dated 28.04.2017 passed by the Tribunal on his Review Application and the earlier order dated 21.09.2016 passed by the Tribunal in the O.A., the petitioner filed a second writ petition before the High Court [W.P.(C) 6345/2017]., where he appeared in person and pleaded that he was a victim of political interference and had been transferred by unfairly stigmatising him. He stated that his O.A. ought to be decided on merits and that the High Court should itself adjudicate upon the grievances W.P.(C) 227/2018 Page 3 of 12 raised in the writ petition. Vide order dated 26.07.2017, the High Court declined to examine the

grievance raised by the petitioner in the first instance and observed that it is for the Tribunal to undertake the first tier scrutiny on facts and law. Accordingly, the impugned orders dated 21.09.2016 and 28.04.2017 were set aside and the O.A. was remanded back to the Tribunal for reconsideration on merits.

8. It is pursuant to the aforesaid directions that on completion of pleadings in the O.A. and after hearing arguments on merits, the impugned order dated 21.11.2017 has been passed by the Tribunal. By the impugned order, the Tribunal has rejected the contention of the petitioner that his transfer outside Ranchi is politically motivated and instead, expressed an opinion that his transfer from Ranchi to Chennai was done in the administrative interest of the Department, which did not warrant any judicial interference. To fortify the said view, reference was made by the Tribunal to the judgment of the Supreme Court in the case of Union of India and Ors. vs. S.L. Abbas reported as 1993 SCR (3) 427, wherein it was held that transfer is not only a condition of service, but an incidence of service.

9. The petitioner, who had appeared in person before us, argued that the impugned order is perverse inasmuch as the Tribunal has failed to appreciate that the order of transfer, posting him from Ranchi to Chennai is motivated by extraneous considerations and is not an incidence of administrative exigency but a punitive order; that the letters addressed by the Members of Parliament against him demonstrate a bias and an attempt to witch-hunt him; that his transfer is a result of colourable exercise of power by the respondents for extraneous considerations; that the transfer order has stigmatised him and is malafide and arbitrary; that the Tribunal erred in W.P.(C) 227/2018 Page 4 of 12 observing that besides him, several other officers had been transferred, which is factually erroneous; that the Tribunal failed to appreciate the sequence of events leading to the petitioners transfer on 15.01.2016; that the Tribunal gravely erred in failing to appreciate his plea that he was murderously assaulted by the staff/officers of the respondents in his office in May, 2016 and instead of taking action against them, they have transferred him. In short, the main plank of the petitioner's argument is that he has been victimized by the respondents time and again and his transfer order is a consequence of the said acts of victimization.

10. We have perused the impugned order, the pleadings on record and documents that are running into over 600 pages. We have also carefully considered the submissions made before us.

11. In the first instance, we may refer to the reply filed by the respondents before the Tribunal (Annexure W-6), wherein it was brought out that while working at Koderma as LEO (Central), the petitioner had a sour relationship with some officers of the employers, especially a Public Utility Organisation, namely, Damodar Valley Corporation and an enquiry was conducted against him by the then Assistant Labour Commissioner (Central), Hazaribagh, who had identified serious lapses committed by the petitioner; that despite the said acts of omissions and commissions on his part, the CLC (Central) had only issued an office memorandum dated 31.03.2013 issuing a warning, instead of issuing him a charge-sheet; that the petitioners conduct was also enquired into by the then RLC, Dhanbad, who had opined that he needed to change his attitude and work in coordination and cooperation with his seniors and other officers; that the petitioner had shown a serious tendency of insubordination and disrespect towards the then W.P.(C) 227/2018 Page 5 of 12 Deputy CLC (Central), Dhanbad; that in spite of getting administrative sanctions, the petitioner failed to file prosecution cases against 102 erring employers, for which three memos were issued to him by the Deputy CLC (Central) but he failed to respond thereto.

12. The respondents have further averred in their reply that subsequently, the petitioner was transferred to Ranchi as a LEO, where he started quarrelling with his superior officers and inspite of getting sanctions from the higher authorities, he failed to file over 145 prosecution cases and though he had detected short payments made to the workers by the contractors/employers under the Minimum Wages Act, 1948, he took 8 to 18 months to file over 50 claim cases when the prescribed period of limitation for filing the said cases is six months; that the respondents/Department had called upon the petitioner on two occasions in the month of March, 2016 to explain as to why vigilance proceedings ought not to be initiated against him but he did not bother to reply to the said notices to show cause. In a nutshell, the respondents pleaded that there were several complaints received against the petitioner regarding misuse of his official position,

misbehaviour, insubordination, lack of diligence at work, tendency to pick up quarrels with senior officers and officers of Public Sector Undertakings in his jurisdiction, including two PSUs, namely, Heavy Engineering Corporation Ltd. and Damodar Valley Corporation. The transfer order was defended by stating that it was issued on administrative grounds for maintaining smooth functioning of the office and on account of exigencies of service and therefore, it did not deserve any interference.

13. It is settled law that a challenge to an order of transfer should normally be eschewed and transfer of a Government servant in a transferable W.P.(C) 227/2018 Page 6 of 12 service must be treated as an incidence of service. There are a catena of decisions declaring that a transfer order being a consequence of administrative exigencies, must be left in the domain of the Departmental Head, subject to a limited judicial scrutiny only to satisfy the Court that the said decision is not vitiated by malafides or the principles governing transfer. In the case of State Of U. P. & Ors vs Gobardhan Lal reported as (2004) 11 SCC402 the Supreme Court had expressed the above view in the following words:-

"7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career

prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, in W.P.(C) 227/2018 Page 7 of 12 shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.(emphasis added) 14. In Mohd. Masood Ahmad vs State Of U.P. & Ors. reported as (2007) 8 SCC150 the Supreme Court referred to its earlier decisions in State of Punjab vs. Joginder Singh Dhatt reported as AIR 1993 SC2486 Rajendra Rao vs. Union of India reported as (1993) 1 SCC148 Abani Kanta Ray vs. State of Orissa reported as 1995 (Supp.) 4 SCC169 State Bank of India vs. Anjan Sanyal reported as (2001) 5 SCC508 and National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan reported as (2001) 8 SCC574 and held that an order of transfer is a part of the service conditions of an employee, which should ordinarily not be interfered with by a Court of law in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India, unless and until it finds that the order is malafide or the service rules prohibit such a transfer or that the authorities, who have issued the order, were not competent to pass the said order. W.P.(C) 227/2018 Page 8 of 12 15. In the case of Registrar General, High Court of Judicature at Madras vs. R. Perachi and Ors. reported as (2011) 12 SCC137 the Supreme Court had restated the aforesaid legal position and observed that in a matter of transfer of a government employee, the scope of judicial review is limited and the High Court ought not to interfere with an order of transfer lightly, be it at

the interim stage or the final stage or on a final hearing for the reason that the courts do not substitute their own decision in matters of transfer.

16. Coming to the facts of the case in hand, the petitioner has not challenged his transfer order on the ground that the service rules governing him prohibit such a transfer or that his order of transfer has been issued by an authority, that is not competent to pass such an order. The main thrust of his arguments is that his transfer order is tainted with malafides and is stigmatic in nature. In this context, we may note that the impugned transfer order dated 15.01.2016 is a one line order, whereunder the petitioner has been transferred from Ranchi to Chennai. Well before the date the petitioner was relieved from the office of the RLC, Ranchi to join the place of his posting in the office of the Deputy CLC (Central), the respondents No.1 and 2 had issued an office order dated 21.06.2016, transferring 36 LEOs (Central) from one city to the other. Only thereafter was the office order dated 26.05.2016 issued by the respondent No.3, reliving the petitioner w.e.f. 26.05.2016, for him to report at Chennai. Under the aforesaid transfer order, an officer, who was then posted at Jharia, was directed to report to Ranchi to take over the position that the petitioner was holding. We are of the opinion that the impugned office order dated 15.01.2016 cannot be treated as a stigmatic one particularly in the light of the fact that in the month of May, 2016, not only the petitioner, 36 other officers were W.P.(C) 227/2018 Page 9 of 12 transferred by the respondents to different parts of the country.

17. The petitioner has strenuously urged before us that the Tribunal has committed a grave error by recording in para 14 of the impugned order that the transfer order dated 15.01.2016 showed that besides him, several order officers had been transferred, which is factually incorrect. No doubt, the Tribunal has referred to the transfer order dated 15.01.2016 in para 14 of the impugned order but quiet apparently, it is an oversight. The correct date of the said order is 21.06.2016, which was issued by the respondents, transferring at one go, 36 LEOs (Central). It was in this context that the Tribunal has observed that the petitioners transfer from Ranchi to Chennai was a general order issued in the course of administrative exigencies. The petitioner cannot gain any advantage from the said error that has crept in para 14 of the impugned order.

18. As for the petitioner's contention that his transfer from Ranchi to Chennai is politically motivated, we can do no better than to reproduce the observations made by the learned Tribunal in para 15 of the impugned order, which is reproduced below:-

"15. We do not agree with the contention of the applicant that his transfer outside Ranchi is politically motivated. No doubt, Dr. Pradeep Kumar Balmuchu, Member of Parliament, vide his letter dated 15.03.2016 (Annexure R-5), has recommended for his transfer from Ranchi, and so also Mr. Ram Tahal Choudhary, Member of Parliament, vide his letter dated 22.05.2016 (page 343 of the paper book), as well as Mr. Ramji Prasad, President of BJP, Ranchi, Jharkhand. It is to be noted that the applicant was transferred vide the impugned order dated 15.01.2016, whereas letters of Members of Parliament seeking his transfer were written much later. Hence, it cannot be construed that the transfer order was politically motivated. Pertinent to mention that the applicant the W.P.(C) 227/2018 Page 10 of 12 had also secured a recommendation from Dr. Arun Kumar, Member of Parliament, Lok Sabha favour. The recommendation was for his retention at Ranchi and against his transfer outside. Thus, it could be seen that the applicant also did not have any inhabitation in using political influence to secure his interest. in his 19. We are inclined to agree with the view expressed by the Tribunal as above and are of the opinion that the transfer order passed in the case of the petitioner cannot be treated as politically motivated, more so when he had remained posted in the Dhanbad Division for over nine years at a stretch; nor do we find any error in the observations made by the Tribunal in para 17 of the impugned judgment that the petitioner is fearful of his security at Ranchi. The very same fact has been averred by the petitioner himself in his O.A., particularly, in ground (e) thereof. It is in this context that the Tribunal observed that not only has the petitioner been working in Dhanbad Division for over nine years, he is also fearful of his security at Ranchi and for this reason, his transfer to Chennai was necessary.

20. In the course of arguments, the petitioner had also sought to urge that though he had joined his place of posting at Chennai on 09.09.2016, when the Tribunal had declined to grant him any interim relief, after joining, he has not been permitted to work with dignity. The aforesaid plea has no relevance for deciding

the present petition inasmuch as the scope of judicial review is limited to examining the legality and validity of the impugned order dated 21.11.2017 passed by the Tribunal and no more.

21. Having gone through the records, the allegations of malafides levelled by the petitioner against the respondents do not ring true. Transfer of the petitioner is an essential condition of his service and the transfer order W.P.(C) 227/2018 Page 11 of 12 passed by the respondents in this case is a consequence of the administrative exigencies, which does not warrant interference. In view of the aforesaid facts and circumstances, there is no infirmity, illegality or arbitrariness in the impugned order dated 21.11.2017. The present petition is accordingly dismissed as meritless, along with the pending applications.

22. Before parting with the case, we would like to record that arguments were heard and after orders were reserved in the present petition on 11.01.2018, the petitioner, who had appeared in person, made a complete nuisance of himself and went on shouting and screaming. He continued with his tirade against the court levelling wild allegations and claiming that he was not given sufficient hearing to the point that Marshals had to be summoned to escort him from the court room as he had brought the court proceedings to a grinding halt. When the Marshals did arrive and attempted to escort the petitioner out of the court room, he put up so much resistance and created such a fracas that we had to rise and could re-assemble only after he was physically removed from the court room. Despite the aforesaid contumacious conduct of the petitioner, who was given enough latitude to address arguments knowing that he was appearing in person, we have abstained from initiating contempt proceedings against him or imposing any costs. JANUARY19 2018 rkb/sk HIMA KOHLI, J REKHA PALLI, J W.P.(C) 227/2018 Page 12 of 12