

Union of India (Uoi) and ors. Vs. Ravi Kumar Batra and anr.

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Court : Allahabad

Decided On : Feb-26-2004

Reported in : 2004(2)AWC1412; (2004)2UPLBEC1207

Judge : S.P. Srivastava and ;Umeshwar Pandey, JJ.

Acts : Central Administrative Tribunals Act, 1985 - Sections 19

Appeal No. : C.M.W.P. No. 8175 of 2004

Appellant : Union of India (Uoi) and ors.

Respondent : Ravi Kumar Batra and anr.

Advocate for Def. : Rajeev Trivedi, Adv.

Advocate for Pet/Ap. : B.N. Singh, S.S.C.

Judgement :

S.P. Srivastava, J.

1. Heard the learned standing counsel representing the petitioner employer.
2. Shri Vikram Nath representing the respondent No. 1, who has put in appearance at this stage, has also been heard.

3. The petitioner-employer feels aggrieved by the order dated 1.12.2003 passed by the Tribunal which is of an interlocutory nature whereby the order transferring the applicant-respondent No. 1 from one commissionerate/zone to the other had been stayed until further orders.

4. Learned counsel for the petitioner has urged that considering the facts and circumstances as brought on record, no such interim order as in question ought to have been granted as, such a relief, if at all, could be available only at the final disposal of the application filed under Section 19 of the Central Administrative Tribunals Act.

5. It has further been urged that taking into consideration the ratio of the decision of the Apex Court in the case of Union of India and Ors. v. S.L. Abbas, AIR 1993 SC 2444, there could be no justification for issuing such an interim order specially when no statutory or enforceable right could be shown which could be taken to have secured in favour of the applicant a right to hold the post for a particular period at a particular place.

6. The learned counsel for the applicant-respondent No. 1 has, however, urged that the order of transfer in question is contrary to the guidelines regulating such transfers which have been issued by the competent authority.

7. We have given our anxious consideration to the rival submissions.

8. So far as the guidelines relied upon by the counsel for the applicant-respondent No. 1 are concerned, suffice it to say that nothing has been brought to our notice which may lead to an inference that these guidelines have any statutory force or vest the employees with a justiciable right enforceable at law.

9. This Court in its decision in Special Appeal No. 13 of 1992 in Regional Manager, Region II, State Bank of India and Ors. v. Pradeep Goel, rendered by a Division Bench decided on 7.2.1992 had clearly indicated that it should be realised that mere inconvenience caused on account of transfer cannot be taken to be indicative of the transfer being punitive in nature. It has to be something more than mere inconvenience inasmuch as a transfer in almost all cases involves some

amount of inconvenience. An employer has an inherent right of transferring its employee and the liability of transfer is in fact an incidence of service. The exercise of this right may however be controlled by some statutory rule of mandatory nature. Obviously, therefore, the inconvenience caused on account of a transfer is always a consequence of transfer and needs be suffered. However, the right of the employer to transfer an employee should not be in colourable exercise of power. Further it should not be with a view to victimisation. If an order of transfer has been passed with a mala fide intention or for a collateral purpose or is without jurisdiction or in violation of any statutory rule or has the effect of imposing a punishment or visits the employee with penal consequences, in that case the equity may intervene and forbid the enforcement of such an order. It is indeed 'great to have a giant's strength but it is tyrannical to use it as a giant'. In other words, in case of the exercise of this power of transfer in an arbitrary or capricious manner or where the case is of a total non-application of mind or the order stands vitiated on account of any such infirmities as indicated above, the order of transfer may be interfered with.

10. In the aforesaid connection it may further be noticed that in view of the decision of the Hon'ble Supreme Court in the case of Mrs. Shilpi Bose and Ors. v. State of Bihar and Ors., AIR 1991 SC 532, it is obvious that an appointee against a transferable post cannot claim to have any vested right to remain posted at one place and further that in case the order of transfer has been passed by a competent authority and did not violate any mandatory rule, such an order should not be interfered with.

11. The Apex Court in its decision in the case of State Bank of India v. Anjan Sanyal and Ors., (2001) 5 SCC 508, had observed as follows :

'An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a Court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order.'

12. It may also be noticed that in the case of Union of India and Ors. v. H.N. Kirtania, (1989) 3 SCC 445, the Hon'ble Supreme Court had observed that the 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 grounds of mala fide.

13. It has been strenuously urged by the learned counsel for the petitioner that while granting the interim relief of the nature as indicated above, the Tribunal had without any justifiable basis departed from the known rule of practice and procedure regulating the grant of an interim relief and in fact had exceeded the jurisdiction vested in it in this regard.

14. It may be noticed that in its decision in the case of U. P. Junior Doctors' Action Committee and Ors. v. Dr. B. Sheetal Nandwani and Ors., JT 1992 (1) SC 571, the Apex Court had indicated that it is a well known rule of practice and procedure that at an interlocutory stage a relief which is asked for and is available at the disposal of the matter is not granted unless there is very special reason to be indicated in clear terms in the interlocutory order.

15. We have searched in vain in the impugned interlocutory order passed by the Tribunal for any very special reason for the grant of an interlocutory order of the nature as in question.

16. It should not be lost sight of that the purpose of an interlocutory order is to preserve the rights of the parties so that the proceedings do not become infructuous by any unilateral overt act by one side or the other during its pendency. Further the interlocutory order may be justified to prevent landslide changes rendering the proceedings ineffective or infructuous.

17. No such contingency could be pointed out which can be said to have necessitated an interim relief as in question.

18. Taking into consideration the facts and circumstances as brought on record, we are clearly of the opinion that the Tribunal had manifestly erred in granting

such an interlocutory order which could, if at all, be available only at the final disposal of the application filed by the contesting respondent under Section 19 of the Central Administrative Tribunal Act.

19. Considering the facts and circumstances as brought on record, sufficient ground has been made out for interference.

20. This writ petition, accordingly, succeeds and the impugned order passed by the Tribunal is quashed.

21. It is, however, made clear that the observations made hereinabove, shall be taken to be only with reference to the stage of the proceeding and shall not be treated as comments or reflections on the merit of the case which shall be considered by the Tribunal after taking into account the affidavits exchanged between the parties.

22. The Tribunal shall further ensure that the application filed by the contesting respondent under Section 19 of the aforesaid Act is disposed of finally expeditiously preferably within one month from the date of production of the certified copy of this order.

23. Learned standing counsel for the petitioner states that the petitioner will co-operate and no further adjournment will be sought for by the petitioners.

24. Ordered accordingly.