

Salek Chand Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Sep-15-1999

Reported in : 1999(4)AWC3065; (2000)1UPLBEC574

Judge : O.P. Garg, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 5149 of 1999

Appellant : Salek Chand

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : A.N. Sinha and ;Om Prakash Lohia, Advs.

Judgement :

O.P. Garg, J.

1. By means of this writ petition under Article 226 of the [Constitution of India](#), the petitioner has prayed that the order dated 12/13.11.1998, passed by respondent No. 2-Deputy Inspector General of Police (Establishment), Police Headquarters. U. P., Allahabad as also the earlier order of transfer dated 27.5.1998 be quashed.

2. The facts leading to the present writ petition, put in brief, are that the petitioner Salek Chand is a Sub-Inspector of Police and was transferred from district Bijnor to Hardwar. He joined at Police Station Manglor in district Hardwar on 8.7.1997. It is alleged that at the behest of respondent No. 3-Harpal Singh Sathi, who was a Member of Parliament from Parliamentary constituency. Hardwar, he was shifted to Police Station Kankhal in district Hardwar itself. It is further alleged that the respondent No. 4. Suresh Rathore, who is General. Secretary of U. P. Bhariya Janta Party and is resident of Shastri Nagar, Jwalapur Hardwar, was incensed as the petitioner was not prepared to oblige and help him in the case of some accused. He made frantic efforts to get the petitioner shifted from Kankhal Police Station but on account of Kumbh Mela, the Senior Superintendent of Police, Hardwar did not accede to his request. Respondent Nos. 3 and 4 wrote letters to the Chief Minister, U. P.. Lucknow on 20.4.1998 and 15.4.1998, copies of which are Annexures-2 and 3 to the writ petition and in pursuance thereof, the petitioner was shifted in the Special Enquiry Cell, Hardwar and ultimately transferred from Hardwar to Allahabad. This order too was modified by diverting the petitioner from Allahabad to Lucknow. Thus, by the impugned order dated 27.5.1998, the petitioner was transferred from Hardwar to Lucknow. The petitioner, it is alleged, did not receive the order of transfer and while he was admitted in hospital due to his illness, he was shown to have been relieved in pursuance of the transfer order on 4.6.1998 and an entry to this effect was made in the general diary maintained at the Police Station. The impugned order of transfer dated 27.5.1998 was challenged by the petitioner by filing Civil Misc. Writ No. 31123 of 1998, which was disposed of by this Court on 23.9.1998, Annexure-4, with the following order :

'Against the impugned transfer order, the petitioner may make a representation to the authority concerned who shall decide the same within a month. Petition is disposed of,'

A representation, Annexure 5, was made to the respondent No. 2 on 26.9.1998 highlighting his personal difficulties that his two daughters are studying in Hardwar and that his transfer is the outcome, of the pressure exerted by the respondent Nos. 3 and 4. The representation of the petitioner has been rejected by the respondent No. 2 on 13.11.1998. Annexure-6. It was observed that the petitioner

could not support his contention by any documentary evidence that his transfer was effected on account of political pressure exerted by Harpal Singh Sathi, the then Member of Parliament. As regards the education of his daughters, it was pointed out that the education facilities available at Lucknow are far better and superior than Hardwar. The representation was rejected by further observing that it would not be proper from the administrative point of view to cancel the order of transfer of the petitioner.

3. Counter-affidavit has been filed on behalf of the respondent Nos. 1 and 2. In paragraph 4 Kha, it is maintained that the transfer of the petitioner was necessitated on account of the D. O. letter dated 19.4.1999 sent by S. P., Hardwar who had informed that the petitioner had established his contacts with certain criminals, he is instrumental in getting certain crimes committed by the criminals who are under his protection and that the petitioner is creating impediments in the smooth working of the department. A copy of the confidential D. O. letter No. Ashu. 52/99 dated 29.4.1999 has been brought on record as Annexure-C. A. 1 to the counter-affidavit. The fact that the transfer of the petitioner was effected on account of political pressure, has been denied.

4. Heard Sri A.N. Sinha, learned counsel for the petitioner and learned standing counsel. At the outset, it may be mentioned that the allegation in paragraph 4Kha of the counter-affidavit that the transfer of the petitioner was necessitated in view of the information transmitted by S. P., Hardwar through his letter dated 29.4.1999. Annexure-C. A. 1, is totally misconceived for one simple reason that the order of transfer of the petitioner from Hardwar to Allahabad was made on 9.5.1998 and it was modified by order dated 27.5.1998, whereby the petitioner was diverted from Allahabad to Lucknow. At the time, the transfer of the petitioner was effected in May, 1998, D. O. letter dated 29.4.1999. C.A. 1, which is now being relied upon, was not in existence. Therefore, the various allegations, which are now sought to be made against the petitioner are imaginary and with a view to bridge-up the yawning gap in the order of transfer and the alleged political pressure which was exerted on the department.

5. The submission of the learned standing counsel that the petitioner could not produce any documentary evidence of exerting political pressure and that the transfer was effected on administrative ground only, is wide off the mark and is clearly against the material brought on record by the petitioner. Tale-telling letters, Annexures-2 and 3 to the writ petition, are significant. The petitioner was admittedly posted on transfer from Bijnor at Police Station Manglor in district Hardwar. A Case Crime No. 267/97 was registered in which one Sher Singh resident of village Narsan Khurd was apprehended under Section 25 of the Arms Act. Subsequently, on the basis of self-incriminating statement, it transpired that Sher Singh was also involved in Crime No. 249 of 1997 relating to P. S. Manglor under Section 394, I.P.C. and certain looted property was recovered from his possession. Harpal Singh Sathi respondent No. 3, who was Member of Parliament of the same constituency sent a missive to the petitioner in the form of note on 11.10.1997, Annexure-1, handed over to Kunwar Pal Singh. Pradhan Salempur. It was mentioned that he would talk about Sher Singh, who is a good boy and, therefore, he should not be harassed. Petitioner failed to oblige Harpal Singh Sathi. Soon thereafter, the petitioner was shifted to Kankhal Police Station where he also met his Waterloo on account of the fact that the respondent No. 4 Suresh Rathore. Provincial Secretary of the BJP was not obliged by the petitioner in some criminal case. Obviously both these party leaders became annoyed and in their fury wrote letters, Annexures-2 and 3. Respondent No. 3. Harpal Singh Sathi, M. P. informed the Chief Minister that the petitioner is not working according to his 'orders' and that on his recommendation, apprehended criminals are not released with the result he (the petitioner) is deliberately causing damage to the party and, therefore, the continuance of the petitioner in the district would not be conducive to the interest of the party. Annexure-3, in the same tone and tenor, is the letter dated 15.4.1998, addressed by Suresh Rathore, Provincial Secretary, BJP. The name of the petitioner found a place in the computerized list of the complaints and on account of this fact, the petitioner was transferred as has been given out in the letter dated 23.11.1998 addressed by respondent No. 2 to the Special Secretary. Home, Police Anubhag. U. P. Lucknow, a copy of which is Annexure-S. A. 1 to the Supplementary Affidavit. The petitioner was transferred from district Hardwar to Allahabad within a period of about one year. Proximity of the dates of transfer and

the dates of the complaint made against him by the BJP leaders clearly leads one to an inescapable conclusion that the transfer order was the direct outcome of the complaint made by BJP leaders whose unlawful commands the petitioner was not prepared to obey. On account of the wrath of the political masters, the petitioner was shifted from Manglor to P.S. Kankhal and ultimately to Special Enquiry Cell before orders were passed to post him out of the district. The departmental authorities though have seemingly denied the pressure exerted by the respondent Nos. 3 and 4 in the matter of transfer of the petitioner, the fact remains that at the time when the petitioner was transferred within a period of hardly about one year from Hardwar district, there was no administrative exigency or urgency. From the material on record, it is undoubtedly established that the petitioner was transferred under political pressure. It is a sad commentary if the higher authorities of the department succumb to the political pressure, as has been done in the present case, it would have serious demoralizing effect on the subordinate officers/employees of the department who work under great constraints, tension and pressure. The transfer orders, which are tainted on account of political pressure have received serious condemnation by this Court as well as Apex Court.

6. A legal myth has gained ground over the years that an order of transfer is almost totally immune from judicial interference. It is true that Courts have used language which has helped in perpetuating this myth. Expression like 'Courts are chary to interfere' (see *C. Ramanathan v. Acting Zonal Manager, Food Corporation of India*, 1980(1) LLJ 1, and 'the Court has a limited Jurisdiction' (see *Amar Singh v. Union of India*, 1982 (3) SLR529 (All) have been used as props for this line of argument. The observations of the Apex Court have also been considered as laying down a restrictive power of judicial review (see *Shilpi Bose v. State of Bihar*, AIR 1991 SC 532 and *State of Punjab v. Joginder Singh Dhatt*, AIR 1993 SC 2486), even though Hon'ble Supreme Court has clarified the restriction by the word 'ordinarily', the Court's function and duty in this regard has been stated in clear and direct terms in *P. Pushpakaran v. Chairman, Coir Board*, 1979 (1) SLR 309 (Ker). It was observed :

'This Court can and should, in case where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer.'

7. A very useful analytical summary of the scope of judicial review, as is deducible from the various decisions of the Apex Court, may be stated as below, for future guidance :

(a) An order of transfer is an incident of Government service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it-Union of India v. S. L. Abbas. (1993) II LLJ 626.

(b) It may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions-Rajendra Roy v. Union of India. (1993) I SCC 148.

(c) The Government employee holding a transferable post has no vested right to remain in a particular place of posting itself and cannot claim, as a matter of right, the posting in that place even on promotion-Union of India v. N.P. Thomas. (1993) 1 LLJ 1063.

(d) Assessment of work must be left to the bona fide decision of the superiors in service and their honest assessment accepted as a part of service discipline. Transfer of a Government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables, requiring formation of a subjective opinion in that sphere may be involved at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinized judicially. There are not judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all Government departments. This must be left, in public interest, to the

departmental heads subject to the limited Judicial scrutiny indicated. Challenge in courts of a transfer, when the career prospects remain unaffected and also there is no detriment to the Government servant must be eschewed and interference by Courts should be rare. Such interference may be made only when a judicially manageable and permissible ground is made out-N.K. Singh v. Union of India, (1995) 1 LLJ 854.

(e) It is settled law that a transfer which is an incident of service not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principles governing the transfer-Abani Kanta Roy v. State of Orissa, (1995) Supp. (4) SCC 169.

(f) It is needless to emphasize that a Government employee or any servant of a public undertaking has no legal right to insist for being posted at any particular place. It cannot be disputed that concerned employee holds a transferable post and unless specifically provided in his service conditions, he has no choice in the matter of posting-Chief General Manager (Telecom) N. E. Telecom Circle V. Rajendra Chandra Bhattacharjee, AIR 1995 SC 813.

(g) Transfer order challenged on ground of mala fide, nature of evidence to establish mala fide has to be strong and convincing-State of U.P. v. V.N. Prasad (Dr.), 1995 Supp. (2) SCC 151.

(h) In absence of a legal and statutory right of the transferee, judicial review of the transfer of such an employee was held to be unjustified-Rajendra Chandra Bhattacharjee case (supra).

(i) In absence of strong and compelling grounds rendering the transfer order improper or unjustified, such an order was held not subject to judicial review-Rajendra Chandra Bhattacharjee's case (supra)

Theoretically the orders of transfer are vulnerable more or less on the same grounds as any other administrative action except that usually the Courts do not delve deep into the reasonableness of the transfer and by and large have been reluctant to evaluate the facts giving rise to the administrative exigencies for the

transfer. A very balanced Statement on this aspect is to be found in the case of Ilyas Ahmed v. Station Director, All India Radio. Hyderabad, 1979 (2) SLR 651 (A.P.), which is extracted herein below :

'It may thus be seen from the rulings referred to above that judicial review of an order of transfer is permissible. But it is not permissible to probe or enquire about the propriety or advisability authorities based on the exigencies of administrative which include a variety of factors, viz., suitability of the official to the post, his past conduct and reputation, his aptitude, the period for which (he) has been in that post etc.'

In Union of India v. H.N. Kirtania, 1989 (4) SLR 9 (SC). Hon'ble Supreme Court has said that an order of transfer should not be interfered with unless there are strong and pressing grounds like, e.g., mala fides, arbitrariness etc.. rendering the transfer order illegal. But the Court will not fold its hands merely because the Government asserts that, the transfer was bona fide. The Court, while exercising its jurisdiction under Article 226 of the Constitution, if necessary, can crack the shell of innocuousness which might wrap the order of transfer and by piercing the veil to find the operative reason behind the order of transfer. The original theory that the Government servant is liable to be transferred to a similar post in the same cadre which is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post, stands exploded in view of the fact that the transfers are effected sometimes at the instance of outside or extra legal authority or are punitive or stigmatic in nature.

8. One of the elementary principles of administrative law is that the authority which has to exercise the power, is obliged to apply its mind before such exercise. It cannot abdicate its obligation to do so and act at the instance of another authority which is not authorised to exercise the power. In other words, it is the competent authority alone which has to apply its mind and make the order. In Achyutananda Behera v. State of Orissa. 1985 (2) SLR 16 (Ori), a transfer order, which was made at the behest of a Member of Parliament who was activated by unconfirmed complaints of some villagers, was struck down by a Division Bench of Orissa High

Court. Hon'ble R.C. Patnaik, J pointed out a disturbing feature in the administrative system which needs to be extracted :

'With the inroad of politics into various strata of society, it is not seldom that allegations are politically motivated. Therefore, when allegations are levelled against an employee, it is desirable nay imperative, that the administrator should himself ascertain the truth and act on his own satisfaction that the circumstances warrant a transfer.

'Any citizen can plead before an administrator for redress of his personal grievances or the grievances of the public at large, for pushing through the various schemes and projects, for social welfare programmes. Who can better serve as a spokesman than a legislator, an elected representative of the people? He is not only a law maker but a spokesman of the people inside the Legislature and outside it. He can plead, canvass and claim for the people and in the public interest. But it should not be lost sight of that there exists clear distinction between pleading, canvassing and claiming on the one hand and interference on the other. The respective jurisdictions of the legislator and administrator are well defined. It is not permissible for one to cross the boundary and trespass into the jurisdiction of the other. Much of the bane of the present administration is due to the breach of rule ; due to politicisation of administration, interference of politicians in matters of transfer, investigation and arrest of offenders etc.'

The letter of the Member of Parliament, which was set out in the judgment aforesaid, left no doubt in the mind of the Bench that the 'administrator did not apply his mind at all' and 'acted on the prodding of the legislator who had in turn acted on the complaint of some villagers. The transfer will be vitiated if it is directed at the instance of vested interests. In this connection, a reference may be made to the decision of *S. Rama Reddy v. Government of A. P.*, 1993 (1) SLR 256 (AP) ; *Prof. Shyam Prasad v. State of Bihar*. 1952 (2) PLJR 610 and *Om Prakash Sharma v. State of Rajasthan*, (1992) LLJ 422. A transfer order has been set aside on similar ground by a Division Bench of this Court in *Umesh Chand Tiwari v. State of U. P.*, 1988 (1) SLR 409 (DB) (All) ; *Pawan Kumar Srivastava v. U. P. State Electricity Board*, (1996) II LLJ 26 and *Bhanu Pratap Singh v. Secretary*.

Minor irrigation and Rural Engineering Service, U. P. Lucknow, 1998 (1) ESC 568 (All), In the last case, it was observed that the impugned order of transfer which was, in fact, in the interest of the complainant and not in public interest or due to administrative exigency, is afflicted by the vice of colourable exercise of power.

9. In a recent decision of the Division Bench of this Court in Harish Chandra Tiwari v. Upper Shiksha Nideshak (Uttarakhand) U. P., Lucknow and others, (1998) 3 ESC 2239, the entire controversy was summed up, in the following words, in paragraph 4 of the Report :

'4. We have carefully considered the case of the parties and the contentions raised by learned counsel appearing on their behalf. We are also conscious of the position that this Court is slow in interfering with orders of transfer passed by the departmental authorities. The position is to be accepted as well-settled that an order of transfer made arbitrarily and mechanically solely on the dictates of a political person or superior authority is unsustainable. In a democratic set up recommendation by politicians cannot be avoided. In such a case it is to be seen whether the transfer order under challenge was passed by the competent officer without due application of mind solely on the dictates of political persons and/or on extraneous considerations. If the answer to the question is in the affirmative the order has to be quashed. If any authority is necessary in support of the view, we may notice a few decided cases of the Supreme Court and this Court like Sri Arvind Dattatraya Dhande v. State of Maharashtra and others, JT 1997 (6) SC 229 ; Smt. Gyatri Devi v. State of U. P. and others, (1997) 2 ESC 970 (All) ; Pratap Narain Srivastava v. State of U. P. and others. 1995 (1) ESC 509 (All) ; Pawan Kumar Srivastava v. U. P. State Electricity Board and others, (1995) (2) ESC 48 (All) ; Pradeep Kumar Agarwal v. Director, Local Bodies, U. P. IV Lucknow and others, (1994) 1 UPLBEC 189 and Sheo Kumar Sharma v. Basic Shiksha Adhikari Kanpur Dehat and others. (1991) 1 UPLBEC 690.'

In the instant case, as said above, the order of transfer of the petitioner was not passed on account of any administrative exigency or public interest. As a matter of fact, the petitioner had hardly completed a year's stay at Hardwar. Except for the fact that the Member of Parliament of the constituency concerned and the General

Secretary of the State Unit belonging to the ruling party were emphatic and insistent in seeking inconvenient petitioner out of their district as the latter had not succumbed to their pressure to extend favour to certain persons of criminal propensities, there was no valid reason to transfer the petitioner out of the district within hardly a period of one year. As observed in Bhanu Pratap Singh's case (supra), a Government servant cannot be treated like chattels, who could be driven from one place to another without any valid reason for the mere asking of person(s) wielding political authority. Such are the cases where the Court would interfere to create a sense of protection under law and thereby securing the ends of justice. It is amazing to note that the departmental authorities have danced to the tune of the letters written by the local political masters, ignoring the well settled norms governing the transfers. In a democratic set up, officers high up in the hierarchy are expected to act and discharge their executive functions uninfluenced by any extraneous considerations strictly in accordance with rules and regulations. I am constrained to observe that in the instant case, the departmental authorities have been callous in succumbing to the pressure of the local Member of Parliament and the General Secretary of the State Bhartiya Janta Party, who incidentally also hails from district Hardwar. The transfer order of the petitioner dated 27.5.1998 from Hardwar to Lucknow is vitiated for the reasons stated above.

10. Learned standing counsel pointed out that the order of transfer has taken effect as the petitioner stood relieved on 4.6.1998 from Hardwar. This aspect of the matter came to be considered by a Full Bench of this Court in Director, Raiya Krishi Utpadan Mandi Parishad, Lucknow and others v. Natthi Lal, (1995) 2 UPLBEC 1128, in which it was ruled that there is no bar or restriction to the modification, revocation or cancellation of an order of transfer even after it has been implemented. In para 13 of the Report, the matter was clarified as under:

'13. Turning now to the grounds on which an order of transfer can be cancelled, after it has implemented, we cannot, with respect, subscribe to the view that they are limited to merely those as set out in Ranjeet Mal's case (supra). Their grounds cannot be treated as exhaustive but merely illustrative of the circumstances in which an order of transfer may be cancelled. We specifically hereby clarify that an order of transfer, even after it has been implemented, can be cancelled on other

grounds too, including administrative considerations and exigencies of service. An order cancelling an order of transfer, after it has been implemented, would of course, be open to challenge for reasons akin to those on which an order of transfer may be questioned.'

In another case of this Court. Rameshwar Pandey v. Additional Director, Health and Family Welfare Lucknow, 1996 (3) SLR 287 (All.), the legal position has been succinctly stated as follows :

'Thus issue of order of transfer is a rule and cancellation thereof is an exception. Therefore, there should be reason justifying exception. There cannot be exhaustive illustration of reasons. It depends on the necessity for making the exception either on the part of the administration or for some reason special to the person transferred as may be weighed with the administration. In order to support the exception reasons should either be apparent or be asserted. Court can always scrutinize the reasons and find out the justification for the exception. Such reasons may either be found out from the order itself or from such other material as may be available before the Court.'

11. In the light of the facts stated above, the order dated 27.5.1998 transferring the petitioner from Hardwar to Lucknow is illegal and against all established principles and guidelines on the subject. The competent authority did not apply his mind in transferring the petitioner but has ordered the same at the dictates of certain outsiders. The order of transfer, therefore, has to be quashed.

12. In the result, the writ petition succeeds and is allowed. The impugned order of transfer dated 27.5.1998 is quashed. It is directed that the petitioner shall be allowed to join his duties in district Hardwar immediately. The period of absence of the petitioner in between 4.6.1998 (on which date the petitioner has been shown to have been relieved) and the date on which he Joins, shall be regularized by sanctioning him all types of leave, due to him. It is, however, made clear that the competent authority, by reason of this order, shall not be prevented from passing a fresh order of transfer, if it is necessitated on account of administrative exigencies or in the public interest.

