

**Mohammad Umar Vs. State of U.P. and ors.**

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**Court :** Allahabad

**Decided On :** Sep-21-1998

**Reported in :** (1999)IIILLJ877All

**Judge :** D.P. Mohapatra, C.J. and ;G.P. Mathur, J.

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

**Appeal No. :** C.M.W.P. No. 20072/1998

**Appellant :** Mohammad Umar

**Respondent :** State of U.P. and ors.

**Advocate for Def. :** Standing Counsel

**Advocate for Pet/Ap. :** T.P. Singh and ;Anil Kumar Srivastava, Advs.

**Disposition :** Petition dismissed

**Judgement :**

**G.P. Mathur, J.**

1. Both these writ petitions are connected and therefore, they are being disposed of by a common order. Writ Petition No. 20072 of 1998 shall be treated as the leading case.

2. Mohd. Umar, Executive Engineer in the Minor Irrigation Department (petitioner in the leading case) has filed this petition under Article 226 of the Constitution seeking quashing of the order issued by the State Government on May 27, 1998 by which he has been transferred from Dehradun to Nainital and Paramjeet Singh, respondent No. 3, who was attached in the office of Superintending Engineer, Minor Irrigation Circle, Pauri was transferred to Dehradun, By the same order Pradeep Kumar Srivastava, Executive Engineer, petitioner in Writ Petition No. 21281 of 1998 was transferred from Nainital to the Head Quarter at Lucknow.

3. We have heard Sri T.P. Singh for the petitioners in both the writ petitions, Sri S.P. Singh for Respondent No. 3 and Sri Sabhajeet Yadav learned standing counsel for the Respondent Nos. 1 and 4.

4. The principal submission of Sri T.P. Singh is that the State Government had issued a Government Order on June 3, 1997 which provided that before transferring any officer or employee posted in Uttarakhand Kshetra to any other place, it will be necessary to obtain prior: permission of Uttarakhand Vikash Vibhag and in absence of such a prior permission, the transfer order will be ineffective. It is urged that the petitioner has been transferred from Dehradun to Nainital without taking permission of Uttarakhand Vikash Vibhag and therefore, the transfer order is illegal. Sri Sabhajeet Yadav, learned standing counsel has submitted that several Government Orders were issued in this connection and as per the latest Government Order, prior permission of the Uttarakhand Vikash Vibhag is necessary only if an employee is transferred from Hill area to the plains or vice versa and no such permission is required when the transfer is from one place to another in the Hill area itself. He has further urged that Dehradun and Nainital being both in the Hill area, no permission on of the Uttrakhand Vikash Vibhag was required while passing the impugned transfer order transferring the petitioner to Nainital.

5. Since there was controversy regarding the Government orders which held the field at the time of the passing of the impugned order, we directed the learned standing counsel to file the relevant Government orders along with an affidavit of a competent officer. In pursuance of the aforesaid order, an affidavit has been filed

by Sri R.K. Dubey, Special Secretary, Minor Irrigation and Rural Engineering Service, U.P., Lucknow which has been described as short counter-affidavit. Paragraphs 4 to 7 of the aforesaid affidavit are being reproduced below as the position has been clarified therein:

'That as a measure of policy decision contained in various Government Orders as well as letters issued from time to time, Government of U.P. has formulated the policy with regard to the transfer and posting of officers/employees in Uttaranchal area whereby the Government had decided to obtain prior permission of Uttaranchal Vikas Vibhag of Government of U.P. before effecting any transfer of officers and employees of Government of U.P. within Uttaranchal and from outside it. In this regard a reference can be made to a Government Order dated March 22, 1993, Government letter dated March 31, 1993 and earlier Government Order dated April 3, 1981 and it was also stipulated in the aforesaid Government Order dated March 22, 1993 that in absence of requisite permission/approval from Uttaranchal Vikas Vibhag before effecting the transfer order, the same would be automatically rendered infructuous and ineffective. The copy of Government Order dated March 22, 1993, Government letter dated March 31, 1993 and earlier Government Order dated April 3, 1991 is being filed herewith and marked as annexures C.A. 1, to C.A. 3 to this affidavit.

5. That the aforesaid policy of Government pertaining to transfer and posting of officers and employees in Uttaranchal and from outside it, was continuing till August 6, 1997, as it was again reiterated vide Government Order July 22, 1996 and Government letter dated June 3, 1997. For ready reference of this Honb'le Court copy of the Government Order dated July 22, 1996 and Government letter dated June 3, 1997 is being filed herewith and marked as annexure C.A. 4 and C.A. 5 to this counter-affidavit.

6. That vide Government Order dated August 6, 1997, the earlier Government Order dated July 22, 1996 containing the aforesaid policy decision of Government pertaining to transfer and posting of employees in the Hill area from one district to another district and from one division to another division itself has been revoked and it has been decided that now it is not necessary for taking prior permission

from Uttaranchal Vikas Vibhag before making transfer of officers/employees in Uttaranchal area/hill area from one district to another and from one division to another. The copy of the aforesaid Government Order dated August 6, 1997 is being filed herewith and marked as annexure (A. 6 to this counter-affidavit).

7. That in view of the aforesaid facts and circumstances of the case, it is latest and recent decision of Government contained in the Government Order dated August 6, 1997 of continuing the current policy of transfer and posting of officers and employees in Uttaranchal area. By this Government Order the earlier Government Order No. 422 Usade/ 96 dated July 22, 1996 has been revoked/ rescinded and cancelled as this Government Order dated August 6, 1997 has come in force with immediate effect.'

The affidavit filed by Sri R.K. Dubey, Special Secretary, Minor Irrigation and Rural Engineering Service, Government of U.P. and the documents annexed therewith make it absolutely clear that it is no longer necessary to have prior permission from Uttarakhand Vikash Vibhag before transferring an employee from one district to another district within the Hill area. As already stated, the petitioner had been transferred from Dehradun to Nainital which are both in the Hill area. Therefore, no permission of the Uttarakhand Vikash Vibhag was required before passing the impugned transfer order. The principal ground of challenge raised by learned counsel for the petitioner has, therefore, no substance.

6. It may also be pointed out that if the contention of the petitioner is accepted, it will lead to queer results. Even while transferring an employee from one block to another block within the same sub-division or from one sub division to another sub-division within the same district, it would become necessary to obtain permission of Uttarakhand Vikash Vibhag. The taking of the permission is bound to take time and would result in virtually paralysing the administration to the detriment of public at large.

7. Sri T.P. Singh has next urged that the State Government had issued a G.O. on April 14, 1998 laying down the guidelines for effecting transfer of the employees and the impugned transfer order has been passed in violation of the aforesaid guidelines. It is contended that Respondent No. 3 had remained posted in

Dehradun from July, 1994 to September, 1997 and therefore, he should not have been posted back to Dehradun within a period of five years. The scope of interference by Courts with orders of transfer stands settled by the Supreme Court in *Ms. Shilpe Bose v. State of Bihar (1991-II-LLJ-591)(SC)* where it was observed-

'In our opinion, the Courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory/statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or order, the Courts ordinarily should not interfere with the order, instead affected party should approach the higher authorities in the Department.

Similarly, in *Union of India v. S.L. Abhas, (1993-II-LLJ-626)(SC)* the Court said : 'Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fide or is made in violation of any statutory provision, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer the appropriate authority must consider the same having regard to the exigencies of administration. The guideline says that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.'

8. Even assuming that the impugned transfer order has been passed contrary to the policy or guidelines issued by the State Government on April 14, 1998, it can be no ground to set aside the same. The scope of interference while exercising jurisdiction under Article 226 of the Constitution, with an order of transfer, is a limited one. The impugned order has not been passed in violation of any statutory provision nor any allegation of mala fide has been made. In these circumstances, we find no (sic.) ground to warrant interference with the impugned order of

transfer.

9. Pradeep Kumar Srivastava (petitioner in Writ Petition No. 21281 of 1998) has also sought quashing of the order dated May 27, 1998 by which he has been transferred from Nainital and has been attached with the Head Quarter at Lucknow. It may be mentioned here that he had filed Writ Petition No. 28125 of 1997 seeking quashing of the order by which he was transferred from Nainital and was attached in the office of Superintending Engineer, Pauri. This writ petition was disposed of by this Court on January 19, 1998 with the following observations :

'The petitioner does not belong to Hill cadre, hence we are of the view that the attachment of the petitioner to the office of the Superintending Engineer, Pauri, is totally vitiated but in view of the aforesaid situation we direct that the petitioner who does not belong (sic.) to a hill cadre be posted on regular line anywhere in the plain.

With the aforesaid direction the writ petition is finally disposed of.

The interim order granted earlier shall lapse after 10 weeks.'

In compliance with the aforesaid judgment Pradeep Kumar Srivastava has been posted to Lucknow. In view of the decision rendered in the earlier writ petition filed by him, no further relief can be granted to him in the present writ petition.

10. For the reasons mentioned above, we find no merit in the writ petitions and both the writ petitions are hereby dismissed.

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