

Charan Singh Vs. Union of India and Others

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Court : Delhi

Decided On : Feb-07-2000

Reported in : 2000IIIAD(Delhi)111; [2000(86)FLR295]

Judge : A.K. Sikri, J.

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

Appeal No. : CWP No. 5811/99

Appellant : Charan Singh

Respondent : Union of India and Others

Advocate for Def. : Ms. Saroj Bidawat, Adv.

Advocate for Pet/Ap. : Ms. Rekha Pallai, Adv

Judgement :

ORDER

A.K. Sikri, J.

1. This is the writ petition filed by the petitioner impugning same order of transfer dated 13th August, 1999. Petitioner is working as Havaldar in Central Reserve Police Force on 19th June, 1998. He was posted in Group Centre, Jharoda Kalan, New Delhi in pursuance to order dated 15th April, 1998 by respondent No. 2 the

respondents issued order dated 14th August, 1999 whereby 30 persons were transferred from Group Centre Jharoda Kalan, New Delhi to different battalions. Name of the petitioners appears at Sl No. 13 as per which he is transferred to 112 Battalion. He earlier filed Civil Writ No. 5405/99 directing the respondents to decide petitioners representation on merits within four weeks and not to relieve him till then. This order dated 17.9.99 reads as under :-

CW No. 5405/99 and CM No. 9814/99

'Notice. Mr. Phoolka accepts notice. With the consent of the parties, the matter is heard and finally disposed of. This petition has been filed by the petitioner is transferred from GC Delhi to 112 Bn. Manipur on several grounds. The petitioner made representations dated 18.8.1999 and 2.9.1999 requesting for cancellation of the transfer order on various grounds including on the ground that the petitioner is suffering from severe vision problem and is undergoing regular treatment for the same at Guru Nanak Eye Hospital, New Delhi and Safdarjang Hospital, New Delhi after being duly referred by doctors at Base Hospital I, C.R.P.F. It is also stated in the representation that his wife is also undergoing treatment in the Safdarjang Hospital New Delhi after being referred by the Base Hospital I C.R.P.F. These are the factors which are normally to be taken into consideration by the administration and, therefore, it would be appropriate if the representation of the petitioner is considered by the respondent.

This writ petition is accordingly disposed of with the directions to the respondents to consider the representations dated 18.8.1999 and 2.9.1999 on merits within four weeks from today.

Till the representations of the petitioner are considered and decided the petitioner should not be relieved from the present post. Duty to both the parties.'

2. After the aforesaid order the respondents considered the representation of the petitioner and rejected the same by communication dated 17th September, 1999. The representation was considered at the level of D.I. G.P., New Delhi. Aggrieved against the said rejection the petitioner filed the present writ petition.

3.The order of the transfer is mainly challenged of two grounds which are as follows :-

1. The normal tenure of a particular posting, as per respondents guidelines, is four years. Petitioner was transferred to Group Centre Delhi on 19th June, 1998 and without allowing him to complete the tenure of four years the petitioner is transferred. During arguments it was submitted by learned counsel for the petitioner that in the counter affidavit the normal tenure is accepted as three years and conceding that this is the normal tenure. The petitioner has not completed even three years, period in Group Centre, New Delhi.

2. The transfer which is made in mid term is illegal as it is not only against the transfer guidelines issued by C.R.P.F. but also against the mandate of Supreme Court in the case of Amar Chand Dalani v. Mr. Justice G.G. Sohani, Acting Chief Justice, High Court of M.P. Jabalpur and Others reported in .

4.As against the aforesaid submission of the petitioner, the respondents, case is that no right accrues to the petitioner in terms of transfer guidelines which stipulate normal period of three years and it is the right of the respondents to transfer an employee even before the completion the normal tenure of three years. It was further submitted that since the petitioner had already enjoyed the static posting in Delhi thrice i.e. from 1.5.90 to 18.5.1992, from 15.11.94 to 26.9.96 and from 18.6.98 till date, and to provide opportunity of static posting to other personnel who are serving in field units for a considerable long period, the petitioner was transferred from GC-N/Dli to 112 Bn. The transfer order dated 11.8.99 (not 18.8.1999 as quoted) issued to the petitioner by DIGP, CRPF, New Delhi, was quite justified and legal. It is further submitted that the petitioner had no genuine and valid ground to stay more in Delhi and therefore, the competent authority very rightly considered and rejected the representations submitted by the petitioner against his transfer.

5.I have considered the respective submissions of both the parties. It is now well settled law that it is right of the employer to transfer an employee and transfer can be interfered with by the Courts only if it is mala fide or against any statutory provision (Union of India Vs . H.N. Kirtania. : [1989]3SCR397 and Gujarat State

Electricity Board Vs . A.R. Sungomal Poshani. : (1989)ILLJ470SC). It is also an admitted position in law like that such guidelines relating to transfer confer no right on the employees and employee cannot file the writ petition for enforcement of these guidelines. (Bank of India Vs . Jagjit Singh Mehta. : (1992)ILLJ329SC and Union of India v. S.L. Abbas. 1993 (2) SLR 585 (SC).

6. Admittedly, the transfer is a condition of service. Petitioner belongs to C.R.P.F. which is a discipline force and if the respondents feel that due to administrative reasons petitioner should be transferred from Delhi, this Court would not interfere with such a decision. The reasons are given by the respondents for transfer of the petitioner and rejection of his representation in Para 1 of the paradise reply of the counter affidavit and noted above. Further in Para 2 of the brief facts the respondents have averred as under :-

'That the petitioner is working as a Havaladar in CRPF since 3.11.1980. His previous posting particulars as per records show that after his posting in 68 Bn CRPF, the petitioner remained posted in Group Centre, CRPF, New Delhi, and its affiliated Bns. from May, 1990 till date and enjoyed static posting in Delhi thrice i.e. from 1.5.1990 to 18.5.1992, from 15.11.1994 to 26.9.1996 and from 18.6.1998 till date the same is annexed hereto as Annexure R-I. Moreover, the petitioner is continuously enjoying the facility either of Govt. Accommodation or drawing House Rent Allowance since 1990, whereas other personnel of his status are serving continuously in sensitive area, i.e. in field units deployed in J & K & N.E. Region etc. and they are being deprived of giving better education to their children, availing facility of Govt. Accommodation, hospital facilities etc. due to not getting any opportunity of serving in static institutions like Group Centre/Static Units etc.'

7. In State of Madhya Pradesh & Others Vs . Shri S.S. Kourav and Others : (1995)ILLJ849SC Supreme Court observed that the courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to indict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decisions and such decisions shall stand unless they are vitiated

either by mala fides or by extraneous consideration without any factual background foundation.

8. Insofar as the judgment of the Supreme Court in the case of *Amarchand Dalani, v. Mr. Justice G.G. Sohani, Acting Chief Justice, High Court of M.P. Jabalpur and Others'* case (Supra) is concerned, the said case has no application in the instant case. It is a short order passed by the Supreme Court and perusal thereof would show that special leave petition of the petitioner was dismissed. While dismissing the SLP, the Court made observation that members of supporting judiciary should not be frequently transferred without compelling reasons and ordinarily they should not be transferred before the expiration of the period laid down by the High Court for transfer in regard to any particular station and as far as possible no transfer should be effected in mid term unless compelled by administrative exigencies. Thus, the observations of the Supreme Court were restricted to the members of supporting judiciary. Obviously, such observation will have no application in the instant case where petitioner belongs to a disciplined force namely C.R.P.F. and in such matters it is to be left to the wisdom of the competent authorities as to how the services of these employees are to be utilised.

9. This writ petition is, therefore, without any merit and is dismissed. Rule is discharged. Interim order stands vacated.

10. No order as to costs.