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Court : Rajasthan

Decided On : May-20-2007

Reported in : [2007(114)FLR903]; RLW2008(1)Raj910

Judge : H.R. Panwar, J.

Appellant : K. Shringi (Dr.)

Respondent : Nuclear Power Corp. of India Ltd. and ors.

Disposition : Petition dismissed

Judgement :

H.R. Panwar, J.

1. By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the order Annx. 14 dated 4.8.2006 with the consequential benefits.

2. The facts and circumstances giving rise to the instant writ petition are that the petitioner was initially appointed in the Department of Atomic Energy of Government of India on 19.3.1974 and since then he has been working with the said department. The respondent Nuclear Power Corporation of India Ltd. (for short, 'the NPCIL' hereinafter) is a Government of India Enterprise and thus amenable to writ jurisdiction being a 'State' within the meaning of Article 12 of the

Constitution of India. The NPCIL is having a Unit in Rajasthan known as Rajasthan Atomic Power Site (for short, 'the RAPS' hereinafter) and the petitioner has been posted in the hospital of the respondents situated in Bhabha Nagar, Kota and had been working as Medical Superintendent till issuance of the impugned order Annx. 14 dated 4.8.2006. By the order Annx. 14 dated 4.8.2006, the petitioner was transferred to the Directorate of Safety by designating him as Superintendent (Health and Environment). He was directed to report to the Senior EO (Safety), NPCIL, Headquarters, Mumbai. Aggrieved by the order Annx. 14 transferring the petitioner to the Directorate of Safety as Superintendent (Health & Environment), the petitioner has filed the instant writ petition.

3. A reply to the writ petition has been filed by the respondents stating therein that the respondents Corporation has transferred the services of the petitioner from Medical Division to the Directorate of Safety without changing the Headquarter and also without changing the status, perks and/or facilities etc. in any manner and designated him as Superintendent (Health and Environment) and, thus, according to the respondents, the present change has not caused any prejudice to the petitioner or his service conditions. It has further been stated that the petitioner was posted in the hospital of the Corporation as Medical Officer 'C' and was holding the charge of the Medical Superintendent in RAPS Hospital. It has further been stated that under the Policy of Human Resource Programmes sponsored by the respondents, the petitioner attended various training programmes. The petitioner was initially appointed as the Medical Officer 'C' at RAPP Hospital on 10.3.1974 and thereafter his services were transferred to Madras Atomic Power Station. In June 1990, he was transferred to Tarapur Atomic Power Station. Thereafter on 17.1.1996, the services of the petitioner were transferred to Kaiga wherein petitioner was designated as Medical Superintendent. In October 2000, the services of the petitioner were transferred to Headquarters at Mumbai with direction to report to the Executive Director (Operations) vide posting order dated 16.10.2000. It has further been submitted in the reply that the Government of India has decided to incorporate Bhartiya Nabhikiya Vidyut Nigam Limited for construction, commissioning, operation and maintenance of PFBR and FBRs for generation of Nuclear Energy and make it commercially viable for the development of the

country and as a policy decision, it was decided to draw the man power initially from various Units of Department of Atomic Energy as to fulfillment of scientific, technical, medical, administrative and financial expertise for management of the new Project and for the same, the petitioner was transferred on deputation for short period of two years by considering his long service experience. This new corporation has been set up under the administrative control of DAE and CMD of NPCIL is also the Chairman and Managing Director of Bhavini. It has further been stated in the reply that the transfer was made considering the experience of the petitioner on the same terms and conditions prevailing in the present department of employees and after the transfer of the petitioner to Bhavini, Dr. A.K. Manual was appointed as an officiating Medical Superintendent at R.R. Site who is a qualified doctor having other higher qualifications, hence it is not correct to say that Dr. A.K. Manuwal is not qualified to be posted as officiating Medical Superintendent at R.R. Site. It has further been submitted that at Rawatbhata Rajasthan site RAPS-2 to 4 are operating units of 220 Mwe PHGWRs and two units of the same capacity i.e. RAPP-5 and 6 and going to be commissioned shortly. Under expansion programme at the site envisages setting of two more units i.e. RAPP-7 & 8 with the capacity of 700 Mwe PHWRs at RR site. In nuclear power plants, electricity is being generated by fusion of atom with radioactive substances hence continue monitoring of Health and Safety for protection of humans and environment are essential functional requirement under the statutory guidelines. These functions are being carried out with the help of Safety, TLD, Environmental Survey Lab., etc. and therefore, there is an absolute necessity of a senior medical officer who is liable to interact easily with local population and having the experience of similar work was felt and hence the services of the petitioner has been transferred to the Directorate of Safety as Superintendent (Health and Environment).

4. Thus, according to the reply, the transfer of the petitioner has been made in the administrative exigency and public interest of safety of human beings and the environment and that too for a period of two years.

5. Even otherwise, the Court can interfere with the impugned transfer order only if the transfer order is in contravention of the statutory provisions or had been

passed on malafide reasons. The issue of transfer and posting has been considered time and again by the Apex Court and entire law has been settled by catena of decisions holding that it is entirely upto the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting.

6. An employee holding a transferable post cannot claim any vested right to work on a particular place as the transfer order does not affect any of his legal rights and Court cannot interfere with a transfer order/posting which is made in public interest or on administrative exigency. In *Gujarat Electricity Board v. Atmaram Sungomal Poshani* AIR 1989 1433, the Hon'ble Supreme Court has observed as under:

Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration.

7. Thus, it is clear that Courts can interfere with the transfer order only on the grounds of malafide or if the transfer order is found to be in violation of the statutory Rules. None of such ground exists in this case. Moreover, if the allegations of malafide are to be alleged, it becomes the duty of the employee to implead the person(s) against whom the allegations are made.

8. In *Shilpi Bose v. State of Bihar* : (1991)ILLJ591SC , the Apex Court has held that order of transfer/posting 'issued by the competent authority did not violate any of her legal rights.' The employee holding a transferable post cannot claim any vested right for his/her posting at a particular place.

9. In *State of Madhya Pradesh v. S.S. Kourav* : (1995)ILLJ849SC , it has been held by the Apex Court that it is not permissible for the writ Court or Tribunal to go into the relative hardship of an employee which maybe caused by his transfer/posting, it is for the competent authority/employer to consider the facts of

a given case and mitigate the real hardship in the interest of good and efficient administration. If the employees makes a representation before the Competent Authority against the impugned transfer order ventilating all his grievances, the employer is under a solemn duty to consider his representation and the said Authority cannot brush-aside the grievances of the employee being personal in nature. Therefore, it is for the employer and not for the Court to consider the grievances of the employee, if the same are personal in nature.

10. In *N.K. Singh v. Union of India and Ors.* (1994) 6 SCC 98, while explaining the scope of judicial review in transfer matters, the Apex Court observed that interference is justified only in cases of malafides or infraction of any professed norm or principle and further observed that where career prospects remain unaffected and no detriment is caused, challenged to the transfer order must be eschewed. The Apex Court further observed that transfer of a public servant from a significant post can be prejudicial to public interest only if the transfer was avoidable and the successor is not suitable for the post.

11. Thus, from the aforesaid settled legal proposition, the courts can interfere in transfer matters only and only if the same are out-come of malafide exercise of power, politically motivated or contrary to the provisions of law.

12. In the instant case, the petitioner has been transferred for a period of two years from Medical Division to the Directorate of Safety without changing the Headquarters and also without changing his status. His transfer has been made in the administrative exigency and public interest as he is an experienced Medical Officer and his services can be best utilized for protection of human-beings and the environment at the site where atomic plants may endanger the same. Petitioner could not prove any malafide on the part of any of the respondent authority in transferring him. Thus, In view of the legal position culled out from the aforesaid decisions of the Hon'ble Court and considering the fact that the petitioner has joined the duty in compliance of the transfer order, no case for Interference is made out and the writ petition deserves to be dismissed. Consequently, the writ petition is dismissed. There shall be no order as to costs.

