

7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Date of Order : 1-2-1995

O.A. No. 10/1995

B.L. Shakiya

...

Applicant

Versus

Union of India and Ors.

...

Respondents

Mr. A.K. Chhangani, Counsel for the applicant.

Mr. U.S. Bhargava, Senior Central Govt. Standing Counsel
for the respondents.

CORAM :

Hon'ble Miss Usha Sen, Administrative Member.

BY THE COURT :

The applicant who is working as Assistant Engineer (AE, for short) in the Central Public Works Department (CPWD, for short) has filed this Original Application seeking the relief of quashing the transfer order dated 29.12.94 at the Annexure A/1 posting him to New Delhi from Pokaran.

2. The salient features of the case are that the Director General of Works (DGW, for short), CPWD, New Delhi had called for options from AEs for posting in Border Fencing Works (BFR Works, in short) in Rajasthan vide his OM dated 15.10.1993 (Annexure A/2). This OM, inter alia, stated that those selected for posting would be entitled to opt for three choice stations for posting on completion of the tenure period of two years in the project and efforts would be made to accommodate them as far as possible in one of the stations opted by them. The applicant gave his option for posting to the BFR works. As a consequence, he was

...2



1
(9)

posted vide an order issued in April, 1994 to pokaran. He joined duties at pokaran on 16.5.1994. However, much before the completion of the period of 2 years in the project he has been posted to New Delhi vide the impugned order. The applicant has ~~asserted~~ claimed that he had a right to continue at pokaran for his full tenure of 2 years in terms of the conditions laid down in the letter dated 15.10.1993 (Annexure A/2) ibid and his posting out earlier is against these executive instructions; that the posting order has been made for some extraneous reasons rather than in public interest since the impugned order does not disclose any public interest that it meant to serve ; that the order is a colourable exercise of power and malice in law not being in public interest since the public interest has not been disclosed and the order has been made in violation of the conditions specified in the executive order dated 15.10.93 ibid.

3. The respondents have filed a reply. Their main argument is that the executive order of 15.10.93 supra did not create any vested right in the applicant to continue at pokaran for his full tenure of 2 years. The respondents retained the power to cut short this tenure if the circumstance so warranted. The activities of the applicant were considered to be unwarranted and to pose a risk to security in the sensitive border area. Hence, it was considered desirable to post him out even before the completion of the tenure period. In support of their contention, they have filed Annexures R/1 and R/2. Annexure R/1 is a letter dated 25.5.1994 from the Commandant, 94 Battalion, BSF, pokaran to the Executive Engineer, Border Fencing Division (BFD, for short), CPWD.

...3



Unit

1
9

94 Battalion, BSF, Pokaran, asking him to arrange for the posting out of the applicant as his unwarranted activities might lead to security hazard keeping in view the sensitivity of the Border area. Annexure R/2 is a letter dated 18.6.94 from the Executive Engineer, BFD, CPWD, Pokaran, to the applicant mentioning inter alia, that he had absented himself from duty without any leave application for the period 7.6.94 to 15.6.94 and that the Commandant, 94 Bn., BSF, Pokaran had also made a report of his unwarranted activities during this period due to which he had been asked to vacate the Officer's Mess and that he should not repeat such activities and also apply for leave.

4. A rejoinder was filed by the applicant. In this, he has stated that the opinion of the Commandant, 94 Bn. BSF that he could pose a security threat is not based on any material on record and that ^{he} is no authority to recommend his posting to the Executive Engineer concerned. The fact that the transferring authorities have relied on the recommendations of the said Commandant shows that they have allowed extraneous considerations to weigh in their decision-making and the transfer has not been made in any public interest. He has also stated that he was never ^{told} called at any stage that he had been indulging in undesirable activities. Further, if he was a security hazard then that matter should have been examined in a departmental inquiry in accordance with the law. Posting him out amounts to a punishment without any inquiry. Moreover, if he was a security hazard why was he posted



for the first time to the international border by the Executive Engineer (EE, for short) vide his order dated 30.11.94 (Annexure A/5) ? Thus his posting out of pokaran on the alleged ground of his posing [>] ~~here~~ a risk to security is neither based on any material nor is the action in accordance with law.

5. The arguments of the counsel for the parties were heard besides perusal of their written affidavits. On the last date of hearing the respondents had been asked to produce the file containing the correspondence leading to the impugned transfer order. This file has been produced and I have gone through it. The file reveals that there were certain private activities of the applicant which were adversely affecting the satisfactory performance of his duties. It was on account of such of his activities that he had been asked by the Commandant, 94 Bn. BSF, to vacate the Officers' Mess. Hence, the applicant was well aware of the activities which were referred to as "unwarranted" by the EE, CPWD, pokaran in his letter dated 16.6.94 at Annexure R/2. It was not as if the applicant was unaware of the activities which were being viewed with ^{> disapproval} ~~this approval~~ by his superiors. I do not consider it necessary to right in detail about what these activities were. While I would not like to pass any opinion on the morality or otherwise of these activities per se, the activities become significant if they have an adverse effect on the satisfactory performance of the public duties and I also do not find myself on firm ground to challenge the opinion of the administrative authorities that these activities could at any time ^{> besides affecting the performance of duties.} become a security hazard. The posting out of pokaran has been done to pre-empt the occurrence of any act of

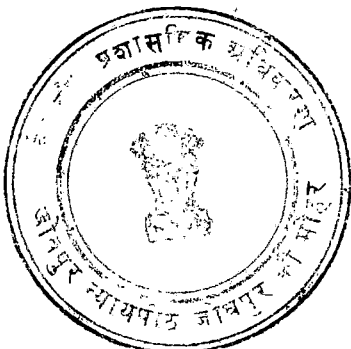


With

7/10

insecurity rather than to be wiser after the occurrence of the event when it would be no use crying over spilt milk. A transfer order need not disclose the reasons for the transfer. It need not be a speaking order. However, the decision making process as revealed through the official file shows that the transfer out of pokaran has not been made out of malice^{or} for any extraneous considerations but in public interest. The fact that the applicant has been posted on the international border by the EE vide order dated 30.11.94 & Annexure A/5 is also no guarantee that his activities had ceased to be regarded as a possible security hazard by the higher ups or by the EE himself. Whether or not he continued to be a security hazard was a matter for the final decision making authority to decide. It is a well settled law that who should be posted where is a matter for the appropriate authority to decide and the courts should not interfere with the decision unless such a decision is malafide or against statutory provisions. To bring home this law the counsel for the respondents ^{& also} ~~had~~ cited the following judgments:-

1. AIR 1993 SC 2444.
2. AIR 1993 SC 2486.
3. AIR 1993 SC 1236.
4. WIR 1994 Raj. 87.
5. WIR 1994 Raj. 887.
6. WIR 1993 Raj. 405.
7. WIR 1993 Raj. 450.



Ush

12

6. On the other hand the counsel for the applicant quoted the judgement of the ^{Honble} ~~order~~ of Supreme Court in K.B Shukla and Ors. Versus Union of India (1979 (4) SCC 673) to point out that the transfer order is liable to be struck down by the court if it has been made for " extraneous purpose " rather than in the " exigencies of the service ". He has also quoted the case of P. pushpakaran Versus Chairman, Coir Board, Kerala (1979 (1) AIR 309) to prove the same point. Lastly he referred to the judgment in the case of Mohinder Singh Gill Versus Chief Election Commissioner (1978 (1) SCC 405) in which it had been observed that, " when a statutor functionary makes an order based on certain grounds its validity must be judged by the reasons so mentioned and can not be supplemented by fresh reasons in the shape of affidavit or otherwise." By referring to this judgment he wanted to show that the reasons once stated in an order cannot be later supplemented by way of fresh reasons given in affidavits. The facts and circumstances of this judgment are very different from the case being dealt with here. A transfer order is an office order and not a public order of the type referred to in the judgment and such an order need not be a speaking order. However, it would stand to reason that the reasons that led to the transfer order as revealed from the official notings in the relevant file cannot be supplemented by fresh reasons in an affidavit. That would amount to reconstruction of facts. From a perusal of the file containing the correspondence in the matter in issue .



11/11

13

I also find that it was not for any " extraneous purpose " that the transfer was ordered. It was not the opinion of the Commandant 94 Bn, BSF, Pokaran that prevailed with the authorities that ordered the transfer. Apart from the said Commandant, the Executive Engineer, the Superintending Engineer and the Chief Engineer concerned were all in the know of the activities of the applicant and had applied their minds as to whether it would be desirable to continue him at his present place of posting. They finally decided it would not. It would not be appropriate to substitute my opinion for that of the appropriate administrative authorities in such a case as I do not find any material on record in support of the contention of the applicant that the transfer was for extraneous reasons and not in public interest. Nor can I agree with the contention that the applicant had acquired a right to remain at pokaran for a period of 2 years under all circumstances in view of the O.M. dated 15.10.1993 (Annexure A-2). The Hon'ble Supreme Court in the case of Union Of India & others versus S.L. Abbas (JT 1993 (3) 678) has made an observation to the effect that the guidelines issued by the administrative authorities on transfer policy do not " confer upon the Government employee a legally enforceable right ". The O.M. of 15.10.93 supra is not a statutory provision which could not under any circumstances be modified by the appropriate administrative authorities. In the present case the appropriate authorities have not found it fit to take the security risk that the activities of the applicant could pose. Apart from the risk the lett dated 24.9.94 from the Superintending Engineer, Jaisalmer to the Chief Engineer, Border Fencing Zone, CPWD, New Delhi



Ush

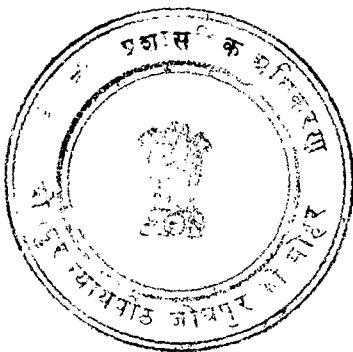
14

at page 22/c of the file produced by the respondents before the Court would show that his activities were ~~having~~ ^{an} adverse effect ~~of~~ the performance of his duties.

7. ^{incidentally it is stated that} The applicant had ~~made~~ ^{made a} representation dated 15.10.94 (Annexure A-4) to the Chief Engineer concerned apprehending his transfer out of pokaran making a request therein not to post him out till the completion of his tenure of 2 years. He did not receive any reply to the same. He has therefore, been under the impression that the proposal to transfer him must have been dropped. However, the file produced by the respondents shows that the proposal was still on the anvil and the decision on the same was taken only in December, 1994 by the DG (W).

8. It would be relevant here to reproduce the following extract from the judgment of the Hon'ble SC in the case of U.O.I. & others versus S.L. Abbas ibid :-

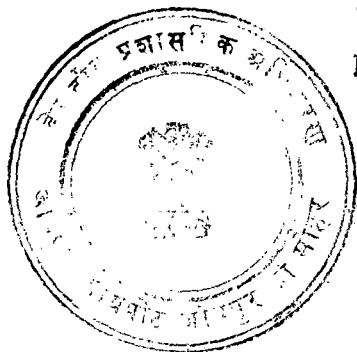
" The Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order transfer. The order of the Tribunal reads as if it were sitting in appeal over the order of transfer made by the Senior Administrative Officer (Content Authority). "



Unsh

9. And again, the Hon'ble Supreme Court has observed in the same judgment, " who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides ^{or} is made in violation of any statutory provision the Court cannot interfere with it."

10. In view of the position of law as stated above and considering the facts and circumstances of the case as brought out ~~above~~ I am unable to grant the relief sought by the applicant and interfere with the transfer order. The OA stands dismissed with no order as to costs. However, the applicant may make a representation to the concerned authorities if he so desires against his transfer. The same may be considered by the authority and a decision taken as deemed fit within a month of its receipt under intimation to the applicant. The decision of the administrative authorities in the matter shall however not be adjudicated again by this bench.



Usha Sen
USHA SEN
(Member Adm.)