

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA



O.A. 1297 of 2013

Order dated: 23.02.2016

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

PROSENJIT SEN

VS.

UNION OF INDIA & ORS. (Information & Broadcasting)

For the Applicant : Mr. A. Chakraborty, Counsel

Ms. W. Ansar, Counsel

For the Respondents : Mr. L.K. Chatterjee, Counsel

Mr. U.P. Bhattacharyya, Counsel

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. The applicant, a driver, aggrieved with his transfer from Ranaghat (South Region) to Malda North Region has assailed the transfer order dated 25.09.2013.

The case of the applicant in a nutshell would be that,

The illegal order of his transfer (Annexure A-3) has been issued to transfer him from one employer to another employer. It is issued by the Directorate of Field Publicity (Hqrs.), New Delhi transferring the applicant from Ranaghat (under jurisdiction of the applicant's employer of West Bengal South Region) to Malda (under the jurisdiction of another employer of West Bengal North & Sikkim Region). The fact that the employer of one Region cannot transfer its employees to another Region even within the same State unless the services of the employees of these two Regions are centralized or is a State-level service. Therefore, according to the applicant, Director General (Respondent No.3), Directorate of Field Publicity (Hqrs.), New Delhi acted without any authority and jurisdiction in transferring the applicant from one employer to another which is also in gross violation of the terms and conditions/agreement/contract of appointment and transfer policy guidelines. Therefore the applicant has prayed for a direction upon the respondent authorities, mainly upon the Director General, Directorate of Field Publicity (Hqrs), New Delhi, the respondent No.3 herein, to forthwith rescind and/or set aside impugned order of transfer of the applicant issued vide letter No.A-45011/21/2006-Admn (Pt.1) dated 25.09.2013.

His appointment order at Chinsurah already spelt out that he had a transfer liability within South Region whereas he was transferred out of the region.

3. The applicant would contend that the post of Driver was a Regional cadre post and not a centralized service. It was not a service at the State-level, therefore the compelling circumstances adduced by the Respondents were quite irrelevant, when the

transfer order itself was invalid and void. The applicant has been working in a regional cadre post of Driver and was posted in Field Publicity Unit (FPU), Ranaghat under West Bengal (South) Region. The title of the Recruitment Rules by which the applicant was appointed to the post of Driver was "the Directorate of Field Publicity (Regions) (Group C and D posts) Recruitment Rules, 1986". The very title of the Recruitment Rules would clearly establish that it was a regional cadre post and not under a centralized or State level service.

4. The Director General (Respondent No.3) DFP (Hqrs), New Delhi is not the appointing authority of the applicant or the Group C&D employees of the Region, and hence the Director General in exercise of his powers could not transfer the applicant from one Employer to another Employer even within the same State, unless the services of the employees of these two Regions were under a centralized or a State-level service.

In this connection reliance has been placed upon to the decisions of the Apex Court in Jawaharlal Nehru University v. Dr. K.S. Jawatkar and Ors. reported as AIR 1989 SC 1577.

5. It has been further argued that as per the Schedule attached to the Min. of I&B's gazette notification dated June 25, 1971 (Annexure A-2). The "Head of the Regional Office" is the "Appointing and Disciplinary Authority" in respect of Gr. 'C' (Class III) & 'D' (Class IV) posts including the post of Driver while the Director (DFP Hqrs) who is the Head of the Department is the Appellate Authority in respect of those Gr. 'C' & 'D' posts.

The applicant has been working as Driver (Gr. 'C' post) in West Bengal ((South) Region and as per Min. of I&B's aforesaid notification the Head of the Region (West Bengal - South) is the Appointing and Disciplinary Authority in respect of the applicant and accordingly, the employer of the applicant. The Head of the Department is the appellate authority in respect of the applicant. The impugned order of transfer of the applicant, issued by the appellate authority from the jurisdiction of one employer under

the administrative control of West Bengal – South Region to the jurisdiction of another employer under the administrative control of West Bengal – North Region was grossly illegal and malafide. The appellate authority could not exercise the jurisdiction of the employer and thus acted beyond jurisdiction in the instant transfer of the applicant which was not in accordance with the applicant's terms and conditions of employment and therefore, the impugned order of transfer is void and liable to be set aside.

6. It has been averred that the terms & conditions of appointment of the applicant state that "he will for the present be posted as the Driver at Midnapore and will be required to serve anywhere in West Bengal (South) Region and Andaman & Car Nicobar as the Govt. will think fit". Therefore the applicant could not be transferred to Malda which fell under the jurisdiction of another Employer and/or Appointing Authority of WB North & Sikkim Region and therefore beyond jurisdiction of his employer in West Bengal (South) Region, that too without the consent of the applicant. In **Jawaharlal Nehru University v. Dr. K.S. Jawatkar and others reported as AIR 1989 SC 1577** the Hon'ble Supreme Court inter-alia held that an employee could not be transferred from one employer to another without his consent.

7. Further more, The transfer policy guidelines would specify that inter regional transfer of regional cadre Group 'C' and 'D' employees including the Drivers could be made only on mutually agreed basis between the concerned staff and acceptance of bottom seniority of the respective Regions.

8. During the course of hearing as well as by way of written notes of arguments it was contended that the respondents could not produce any copy of order of the competent authority to demonstrate that the Director General, DFP (Respondent No.3) as the Head of Department could exercise administrative power to order any inter region and/or State level transfer of regional cadre Group 'C' and 'D' employees beyond the jurisdiction of their Employer and/or Appointing Authority. In the absence of any special or general order by the Respondents, the Director General DFP as the Head of Department cannot, in the garb of "administration and control of employees" could not

change their employer by transferring them from one Employer/Region to another without their consent.

9. It would be strenuously urged that the post of Driver at Malda that remained unfilled for a period of more than a year stood deemed abolished in terms of Min. of Finance O.M. dated 18.09.2013 read with their OM No.7(7)-E (Coord)/93 dated 3-5-1993. In such a situation there was no existence of the post of Driver in Malda (under West Bengal North Region) as on the date of issue of the transfer order in question.

Therefore the transfer order of the applicant to Malda was bad in law illegal, arbitrary in nature, malafide and liable to be cancelled.

Further the Malda unit was defunct and/or non-functional due to abolition of the posts of Key functionaries of the unit i.e. there was no Field Publicity Officer who was the Head of the Unit, (who plans and holds publicity programmes in rural areas as a provider of information and acts as a communicator of the Government to project the themes with their communication skill in an objective manner.

Therefore, transfer of the applicant to Malda would be help to the FPU. The transfer of the applicant was therefore totally unwarranted, meaningless, redundant and issued with malafide intention and closed mind.

The Respondent No. 5 i.e. Director, DFP, Kolkata, who is the employer of the applicant had already written to the Respondent No.3 i.e. Director General, New Delhi not to transfer the incumbent Drivers, instead to transfer the idle vehicles from West Bengal (North) on the ground inter-alia that West Bengal (South) was a "fully functional region while West Bengal (North) region to which the applicant is transferred largely non-functional".

10. It was further urged that within 15 months from the date of earlier transfer from Chinsurah to Ranaghat the applicant was again ordered to be transferred prematurely from Ranaghat to Malda whereas Drivers of those FPUs (in West Bengal South Region) who have long stay in their present place of posting have been retained and continuing

to function without vehicle. It was therefore a case of hostile discrimination infracting article 14 & 16 (1) of the Constitution of India.

11. The Respondents have contended that the Vehicle of Ranaghat Unit was declared condemned vide their order dated 24.8.2011, so there was no need for Driver at Ranaghat and therefore, the applicant was transferred to Malda w.e.f. 25.9.2013 under another employer.

12. Such contention was dispelled by the applicant stating that if the Ranaghat Unit's vehicle was condemned on 24.8.2011. There was no bonafide reason to transfer the applicant from Chinsurah to Ranaghat hardly 15 months ago vide order dated 18.5.2012.

The malicious intention of the Respondents in transferring the applicant from Chinsurah to Ranaghat on 18.5.2012 and again from Ranaghat to Malda was to conspicuous to be glossed over.

13. It would be contended that "it was unjust to transfer the applicant to Ranaghat on 18.05.2015 where there was no vehicle. The malady becomes eye hitting to see that the services of the applicant was withdrawn from Chinsurah only to accommodate the incumbent Driver who was functioning without vehicle at Ranaghat Unit. In the glare of the "ADDENDUM" issued at a later stage by the Respondent No.5 vide letter No.A.22015/1/2007-Admn/634-638 dated 08.06.2012 it is evident that the transfer of the incumbent Driver of Ranaghat Unit to Chinsurah was not "in public interest" as stipulated in the "ADDENDUM" but was made at the request of the incumbent Driver of Ranaghat to accommodate him at Chinsurah against the applicant who was posted with vehicle. In other words, the applicant was transferred from Chinsurah Unit with the object of accommodating the incumbent Driver (Shri G. Choudhury) at a particular station of his choice i.e. Chinsurah to safe guard his interests for undisclosed reasons.

The order was, therefore, for collateral purpose and was malafide in view of the fact that had the applicant not been transferred from Chinsurah to accommodate the

incumbent Driver of Ranaghat unit in Chinsurah, the question of up-rooting him from Ranaghat within a period of 15 months on the grounds adduced by the Respondents would not have arisen.

14. Further the following instance were brought to notice:

Shri R.K. Das, Driver at Sl. No.4 in the Transfer Order at Annexure A-3 was transferred from Berhampore (WB-S Region) to Siliguri (WB-N and Sikkim Region) but was transferred back to his parent Region (i.e. WB South) within just 4 (four) months to his original place of posting i.e. Berhampore unit which was functioning without vehicle. Similarly, Shri C.A. Hossain, Driver at Sl. No.2 in the Transfer Order at Annexure A-3 who was transferred from Burdwan (WB South Region) to Raiganj (WB-N and Sikkim Region) was also transferred back to his parent Region (i.e. WB South) to his original place of posting i.e. Burdwan Unit.

The Vehicle of Midnapore unit under the same administrative control of West Bengal (South) Region had also been condemned but an incumbent Driver has been retained and functioning there without Vehicle.

The Vehicle of Port Blair unit under the control of the same West Bengal (South) Region has been lying out of commission and/or off the road since 07.02.2008 but the incumbent Driver has been retained there without Vehicle.

There were total 7 (seven) F.P. Units functioning under the control of West Bengal (South) Region out of which in 6 (six) Field Units have Drivers without Vehicles. The services of the Drivers of those Units were being utilized in organizing Field Programmes, as confirmed by the Head of the Region, i.e. Director, DFP, Kolkata.

The positions of Drivers being depicted as follows:

Names of seven Field Publicity Units and status of Drivers

Sl. No	Names of seven Field Publicity Units	Driver in position
1.	Port Blair unit	Driver in position without vehicle
2.	Medinipur unit	-do-
3.	Bankura unit	-do-
4.	Ranaghat unit	-do-
5.	Berhampore unit	-do-
6.	Burdwan unit	-do-
7.	Chinsurah unit	Driver with vehicle

Therefore the contention of the Respondents that "question of retaining the applicant without the vehicle does not arise" was self-contradictory, ill convincing, illogical, baseless and misleading proposition and could be relied upon.

15. It was argued that the applicant along with other Drivers have been instructed to render all cooperation and assistance in programme places while filed unit was on tour during coming months/ period to avoid programme shortfalls. (Director, Kolkata's letter dated 09.07.2014). Further, as per practice in all FPUs and pursuant to the directions of the Directorate of Field Publicity (Hqrs), New Delhi and Regional Head, the applicant has been deployed with the filed staff to organize field programmes regularly and the monthly tour programmes of the applicant were being approved by the Regional Head being the competent authority.

Therefore, the contention of the Respondents that the Drivers were sitting idle at their respective unit was based on hypothesis, mere inference, conjecture or hearsay and therefore misleading, incorrect and could not be relied upon. In fact the services of the applicant was being utilized regularly. He was performing his assigned work as would be evident from the authenticated documents/information furnished by the Respondents in reply to the RTI applications (Annexure AA-2).

16. The Counsels were heard and perused the materials on record.

17. The contentions of applicant as enumerated in forgoing para could not be successfully traversed by the respondents.

They could not justify transfer of the applicant while retaining 6 drivers at other places.

They could not substantiate with rules/laws/reason and facts aground for it.

- (i) Inter regional transfer of applicant by from South region to North region in violation of a clause in the appointment order and transfer liability it carried, that 'He will for the present be posted as Driver at Midnapore and will be required to serve any where in West Bengal South Region and Andaman & Car Nicobar as the Government may think fit.'
- (ii) Retaining 6 drivers of their place of posting with no vehicles to run

(iii) The need for transfer of applicant from Chinsurah in 2012 to Ranaghat when the vehicle at that unit stood already condemned in 2011.

While bringing in his place at Chinsurah another driver.

The lack of administrative exigency is apparent and glaring.

18. A Division Bench of the Bombay High Court in a brief passage but with admirable comprehensiveness has summarized the law on this aspect:

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The government is the best judge to decide how to distribute and utilize the services of its employees. However this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair." [Seshrao Nagorao Umap v. State of Maharashtra, (1985) II LLJ 73]

The true import of *mala fides* in relation to exercise of power was eloquently explained by Justice Krishnalyer. In *State of Punjab v. Gurdial Singh*, AIR 1980 SC 319 in the following way:

"The question then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power – sometimes called colourable exercise or fraud on power and often times overlaps motives, passions and satisfactions – is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach and end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat...that all power is a trust – that we are accountable for its exercise – that, from the people, and for the people, all springs, and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice laden or even benign. If

the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action *mala fides* or fraud on power vitiates the acquisition or other official act."

Exigencies of administration or administrative exigency only means the need or demand for running a good administration. As the Supreme Court has pointed out:

"The responsibility for good administration is that of the Government. The maintenance of an efficient, honest and experienced administrative service is a must of the due discharge of that responsibility. Therefore, the Government alone is a best suited to judge as to the existence of exigencies of such a service requiring appointments by transfer. The term "exigency" being understood in its widest and pragmatical sense..." [K.B. Shukla v. Union of India, 1979 (2) SLR 58 (SC)]

Where the transfer is demonstrated to be not in the exigencies of administration, it will be illegal and liable to be set aside. [J. Ramachandra Rao v. A.P. State Cooperative Union Ltd., 1993 (3) SLR 1 (AP)]

19. In view of the above the respondent No.3 or any other competent authorities is directed to justify the transfer by way of a well reasoned speaking order, to be issued within two months from the date of communication of this order.
20. Till such time the inter regional transfer of applicant shall remain stayed.
21. O.A. is accordingly disposed of. No costs.

(Bidisha Banerjee)
Judicial Member

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