

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : 20th November, 2009*

+ **WP(C) 9484/2009**

P. RAJAPRATAP Petitioner
Through: Mr.N.L.Bareja, Advocate.

versus

UOI & ORS. Respondents
Through: Mr.Ankur Chhibber, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

PRADEEP NANDRAJOG, J.

1. The petitioner has challenged a signal dated 6.4.2009 where under just within one year and two months of petitioner being posted at the GO's Bill Section PAO, Director General CRPF, Delhi, has been transferred to Jammu & Kashmir. The petitioner alleges the transfer to be mala-fide on account of his being a member of a Scheduled Caste. Petitioner alleges that respondent No.3, Shri N.P.N.Nair being a Brahmin and his immediate superior, has targeted him on account of caste bias. The petitioner further alleges that as per Standing Order No.2/2007, containing the transfer-posting

policy, it is a requirement that a person posted at a place should not be posted out within four years. The petitioner claims that his previous posting was at Agartala, a hard station, for 2 years and 9 months and there was no reason to post him to Jammu & Kashmir, another hard station. To bring home the allegations of mala-fide the petitioner points out that the speed with which the file was processed to issue a transfer order to the petitioner is a self-serving evidence of the malice. It is pointed out that the note requiring petitioner to be transferred out was prepared by the JAD(GO) on 23.3.2009. It was approved by the next higher officer the same day and the very next day i.e. on 24.3.2009, the necessary approval was granted.

2. During arguments learned counsel for the appellant stated that although a transfer/posting of an employee is the prerogative of the employer, but where the order is issued mala-fide, as held in the decision reported as 2009 (1) SCC (L&S) 411 Somesh Tiwari vs. UOI & Ors., a Court can certainly interfere exercising power under Article 226 of the Constitution of India.

3. As per the respondents the petitioner had always been extended a helping hand and evidenced by the fact that out of 22 years and 4 months service rendered by him, hard

posting was only for 2 years and 6 months and for nearly 19 years the petitioner was posted at family stations shows that far from acting hostilely against the petitioner, he had been treated with compassion. It is pointed out in para 2 of the counter affidavit that on being posted in the GO's Branch Office, it came to the notice of his superiors that there were large scale deficiencies in the working of the petitioner.

4. The same have been penned down in para 2 of the counter affidavit. The same are as under:- page 87-89 sub paras (i) to (viii).

5. It is thus pleaded that the immediate superior officer of the petitioner suggested that the petitioner be transferred and penned the note dated 23.3.2009. The same was approved resulting in the signal in question being issued.

6. To put it in simple words, the respondents claim that the petitioner was posted out due to administrative exigencies.

7. Responding to the averments in para 2 of the counter affidavit, the petitioner has given his version with respect to the 8 misdemeanours alleged against him in para 2 of the counter affidavit. We note that the petitioner has not denied the deficiencies but has tried to reason by stating that they were the result of excessive work in the office.

8. As held in the decision reported as UOI vs. S.L.Abbas AIR 1993 SC 2444, a policy guideline regulating transfer of employees does not create any enforceable legal right in favour of an employee. It being settled law that transfer and posting is an incident of service and it is up to the employer to decide where the employee should be deputed. Of course, as held in Somesh Tiwari's decision (supra), where malice is proved, a Court can interdict a transfer-posting order.

9. Thus, the petitioner cannot lay the foundation of a legal right under the standing order 2/2007.

10. On the issue of mala-fide against respondent No.3, the foundation laid by the petitioner in the writ petition is caste bias.

11. Except for averring that respondent No.3 used to utter racist remarks, no particulars of the time and the place when offending words were used have been disclosed. If the respondent No.3 used to do and say as alleged by the petitioner, we would have expected at least some representation in writing to the superior officers from the side of the petitioner. We find none.

12. As against that, the respondents have brought out as many as eight deficiencies noted in the working of the petitioner requiring his posting out from the said office.

13. The respondent has given his version by highlighting that the same were the result of excessive work in the GO's Bill Section.

14. But, that is not the issue before us. We are not to go into the issue whether the work which had got accumulated was on account of the petitioner's inefficiency or due to excessive work. The fact of the matter is that due to excessive work which got accumulated the petitioner came into conflict with his immediate superior officer.

15. It is good management to separate two employees in an organization who come into conflict with each other without apportioning blame on any, for the reason, a blame game vitiates the atmosphere in an organization. One of the two employees needs to be transferred out. We see no scope for malice in said approach being adopted.

16. That apart, respondent No.3 is not the competent officer to decide on the transfer-posting. He only initiated the note. The decision was of the superior authorities against whom no mala-fide has been alleged.

17. On the issue as to why was the petitioner posted to Jammu & Kashmir we may only respond by stating that it is up to the employer to find a suitable seat where the employee can be assigned some work. This is the subjective satisfaction of the employer and the Writ Court cannot delve into the issue for it would require an analysis of all the seats in the various offices of the respondent to be considered; each and every incumbent on the seat would have to be scrutinized and then a decision to be taken. Such an activity is clearly beyond the domain of a Writ Court.

18. Before concluding we note that in the absence of any interim order in favour of the petitioner he has already moved to the State of Jammu & Kashmir where he is working since May 2009.

19. We may also note that pertaining to his working at Delhi a penalty of censure has been awarded to the petitioner. Lest the petitioner be handicapped on the said issue on account of the instant writ petition being dismissed, we clarify that we have expressed no opinion on merits pertaining to the deficiencies in the working of the petitioner as laid in para 2 of the counter affidavit to which the petitioner has responded in the corresponding para of the rejoinder affidavit. If the petitioner were to question the penalty of censure which

needless to state would be on account of the said deficiencies alleged, the issue would be decided on merits in said proceedings.

20. The writ petition is dismissed.

21. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

November 20, 2009
Dharmender