

Case No :WP(C) 0000228/2015

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Party Name : SURJYA MOHAN JHA Vs UNION OF INDIA & ORS

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. D. P. Ghosh, learned counsel appearing for the petitioner as well as Mr. A. Roy Barman, learned Central Govt. Counsel appearing for the respondents.

The order of posting dated 24.05.2015, Annexure P/2 to the writ petition, whereby the petitioner has been transferred from D/3 Signal to E/3 Signal, has been called in question by this writ petition.

Mr. Ghosh, learned counsel appearing for the petitioner has submitted that in terms of the Standing Order No.11/2002, Annexure P/6 to the writ petition, the petitioner is entitled to a tenure of three(3) years in a Static unit IA D/3 Signal as previously the petitioner had been posted in a field unit for 4(four) years. Clause-3 of the said Standing Order provides as under:

“Criterion for transfer, Newly recruited, remustered Signal Personnel should invariably be posted to a field Unit in operational area. They will not be kept at Static sub Units or Group Centres as far as possible. All personnel will be so rotated during summer chain transfers so that they get equitable opportunity to serve in soft/static locations. The tenure of an individual in a field unit will be four years. Thereafter, he shall be posted to a static Unit for three years. Tenure in a Signal Battalion will be seven years.”

Mr. Ghosh, learned counsel has further submitted that the vacancy in the D/3 signal has been filled up by the person, who was the regular Inspector at the place of the petitioner. If the impugned order of posting is implemented, Mr. Ghosh has assertively argued that the petitioner shall suffer jeopardy beyond reparation. In terms of the provisions in Clause-7(b) of the said standing order, this midterm transfer is wholly unsustainable inasmuch as the transfer order will be issued by the Communication Directorate by 7th of March every year and movement of transferees will be completed by 30th April. The movement may, however, start earlier where the individuals are in a position to move. Apart that, Mr. Ghosh, learned counsel has also referred to the Clause-7(a) which provides as under:

“Signal Battalions will forward names of personnel who complete seven years of service every year to communication Directorate for considering their transfer within the Signal Range. Transfer cases should reach Communication Directorate by 7th Feb of every year. The cut off date for calculation of tenure in all cases be taken as 30th April of the year in which transfer/posting are being effected.”

He has further submitted that the petitioner had filed two representations, one on 27.05.2015 and another on 02.06.2015, Annexures-P/3 and P/5 respectively to the writ petition. The representation that is made on 02.06.2015 was not at all responded. However, in response to the representation which was filed by the petitioner on 07.10.2015, the Commandant, 3/D signal has adverted as under:

“ There is no SO Crypto (Insp/C) posted in E/3 Signal hence he has been posted to E/3 signal on administrative ground// His static posting tenure will continue at E/3 signal // Relieve him immediately and intimate DOD to all concerned/////”

Mr. Ghosh, learned counsel appearing for the petitioner has finally submitted that the entire action is in breach of the standing order and as such, the order of posting is liable to be interfered with and set aside.

From the other side, Mr. Roy Barman, learned C.G.C. has submitted that the petitioner has utterly failed to make out any ground for interference in a order of posting inasmuch as the standing orders do not confer any right on the employee which is indefeasible in nature. Those standing orders are fundamentally for guidance of the competent authorities in the matter of transfer. They are always at liberty to transfer or give posting to any employee in the exigencies of the public interest.

Mr. Roy Barman, learned C.G.C. has submitted that the petitioner has been defying the order of the competent authority which is entirely unacceptable. He has placed reliance on the decision of the apex court in S.C. Saxena vs. Union of India reported in 2006(9) SCC 583, where the following has been observed by the apex court:

“6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Apart there from, if the appellant really had some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted. We too decline to believe the story of his remaining sick. Assuming there was some sickness, we are not satisfied that it prevented him from joining duty either at Tezpur or at Amritsar. The medical certificate issued by Dr. Ram Manohar Lohia Hospital proves this point. In the circumstances, we too are of the opinion that the appellant was guilty of the misconduct of unauthorisedly remaining absent from duty.”

Mr. Roy Barman, learned C.G.C having referred to B. Vardha Rao vs. State of Karnataka, reported in AIR 1986 (SC) 1955 where the apex court has approvingly quoted the decision of E.P. Royappa v. State of Tamil Nadu, reported in AIR 1974 SC 555. The relevant paragraph of E.P. Royappa v. State of Tamil Nadu is extracted hereunder:

“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 utilise 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 in 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.

The observation that transfer is also an implied condition of service is just an observation in passing. It certainly cannot be relied upon in support of the contention that an order of transfer ipso facto varies to the disadvantage of a Government servant, any of his conditions of service making the impugned order appealable under R.19(1)(a) of the Rules.”

Mr. Roy Barman, learned counsel has further submitted that the ground for seeking modification of the transfer order is that the petitioner purchased some utensils for his domestic use. This cannot be a ground for reconsidering the order of posting.

Having regard to the conflicting submissions made by the learned counsel for the parties, this court is of the considered view that an order of posting or order of transfer cannot be challenged unless it is established that the said order has been issued in colourable exercise of power or mala-fide and/or in breach of the statutory provision.

What has been contended as regards the enforceability of the standing order governing the postings in the CRPF cannot be accepted inasmuch as it is well settled by now that the guidelines or the standing orders are for guidance of the competent authorities for regulating the transfer in a systemic manner and also for keeping aloft the best of the interest of the administration. Such guidelines or the standing orders cannot take away the inherent power of the competent authority. What has to be kept in the consideration that such order of transfer or the posting is made in the interest of administration and not attended by any mala fide consideration. In this case, the petitioner has not pleaded mala fide. That apart, the petitioner has also not pleaded any breach of law while passing this order of posting. Apparently, there is no infirmity in the order of posting. Even the petitioner has not pleaded dislocation of his family or any irreparable harm that might visit for the impugned order of transfer and as such, this court is of the view that no interference is called for. However, the petitioner be given one month time to join in his new place of posting and for that period, the impugned order of posting shall not be given effect. If it is found that the petitioner has not complied the order of posting despite that accommodation as directed the competent authority would be at liberty to take appropriate disciplinary action against the petitioner.

With this observation and direction, this writ petition stands disposed of and there shall be no order as to costs.