

In the High Court of Judicature at Madras
Reserved on : 29.4.2015 & Delivered on : 05-6-2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice T.MATHIVANAN

Writ Petition No.12133 of 2015 and M.P.No.1 of 2015

A.Sathasivam ...Petitioner

Vs

1.Union of India, rep.by Secretary to
Government of India, Department of
Atomic Energy, Chatrapathi Sivaji
Maharaj Marg, Mumbai-1.

2.The Director, Indira Gandhi Centre
for Atomic Energy, Kalpakkam.

3.The Chief Administrative Officer,
Indira Gandhi Centre for Atomic
Energy, Kalpakkam.

4.The Registrar, Central Administrative
Tribunal, Madras Bench, Chennai.

...Respondents

PETITION under Article 226 of The Constitution of India praying
for the issuance of a Writ of Certiorari to call for the records of
the order dated 15.4.2015 in O.A.No. 310/00285 of 2015 of the Central
Administrative Tribunal, Madras Bench and quash the same.

For Petitioner

Mr.N.G.R.Prasad

For Respondents 1 to 3

: Mr.K.Gunasekar,
Senior Panel Counsel

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ORDER

V.RAMASUBRAMANIAN, J

This writ petition arises out of an order passed by the Central
Administrative Tribunal dismissing an application filed by the
petitioner, challenging an order of transfer.

2. We have heard Mr.N.G.R.Prasad, learned counsel for the petitioner and Mr.K.Gunasekaran, learned Senior Panel Counsel appearing for the respondents 1 to 3.

3. The petitioner joined the Indira Gandhi Centre for Atomic Energy way back in the year 1979 as a trainee. After gaining several promotions in the past for more than 30 years, he is now working as Scientific Assistant - E.

4. The petitioner claims to be the president of Atomic Energy Employees' Association, having a membership of about 1200 employees. He also claims to be the president of National Federation of Atomic Energy Employees.

5. It appears that the Confederation of Central Government Employees' and Workers' Association issued a strike notice proposing to go on strike on 12 and 13th February 2014. The petitioner appears to have been in the forefront leading the agitation of the employees working in the Centre.

6. On 22.8.2014, a show cause notice was issued calling upon the petitioner to show cause as to why he should not be placed under suspension and as to why disciplinary proceedings should not be initiated against him, both for his participation in the strike call and also for certain subsequent events.

7. Though the petitioner sent a letter dated 9.9.2014 seeking 45 days' time to give a reply, he was given only 11 days' time by a communication dated 11.9.2014. But, the petitioner sought more time and also sought copies of certain documents.

8. Therefore, by the proceedings dated 29.11.2014, the petitioner was placed under suspension under Rule 10(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Thereafter, a charge memo dated 16.1.2015 was issued. The charge memo contained seven articles of charges against the petitioner. In substance, the articles of charges are as follows :

(i) that he participated in the strike on 12.2.2014 and 13.2.2014
(ii) that as the president of the Atomic Energy Employees' Association, he was tacitly instrumental in abetting the strike and causing physical duress, preventing willing employees from attending work on those two days

(iii) on 2.5.2014, the petitioner deserted the work spot during the period 9.39 hours to 12.43 hours and from 13.03 hours and he also interfered with the action taken by the Principal of the Kendriya Vidyalaya in connection with a matter concerning the school

(iv) that pursuant to a notice issued on 16.6.2014 by the General Secretary of the Atomic Energy Employees' Association, the petitioner

refused to log in his attendance through Biometric Attendance Recording System on 23rd and 24th June 2014

(v) that on 23.6.2014, the petitioner deserted the work spot between 13.15 hours and 18.21 hours and participated in the dharna organized by the villagers of Kalpakkam Neighbourhood comprising of the presidents of local village panchayats, contractors of the Indira Gandhi Centre for Atomic Research

(vi) that he deserted his work place from 13.15 hours on 23.6.2014 and involved himself in the activities of the association in serving a joint memorandum addressed to all political parties and Members of Parliament criticising the policies and actions of the Central Government and

(vii) that he was instrumental in pasting the posters at different locations in the plant site criticising the Atomic Energy Regulatory Board and also containing objectionable, abusive, disrespectful and derogatory language against individual officers and staff of the Department of Atomic Energy.

9. In response to the charge memo, the petitioner submitted a one line reply on 29.1.2015 denying the charges. Thereafter, the first respondent appointed a Presenting Officer by the proceedings dated 12.2.2015.

10. Subsequently, the second respondent issued an office memorandum dated 24.2.2015 transferring the petitioner to Bhabha Atomic Research Centre, Visakhapatnam. It is stated in the office order that the transfer was in public interest. On the very same day, the petitioner was also relieved.

11. Challenging the order of transfer, the petitioner filed an application in O.A.No.285 of 2015 on the file of the Central Administrative Tribunal, Madras Bench. Initially, the Tribunal granted an interim stay. Subsequently, the interim stay was modified into one of status quo, by an order dated 25.3.2015. But ultimately, the main application was dismissed by the Tribunal by an order dated 15.4.2015. It is against the said order that the petitioner has come up with the above writ petition.

12. The main grounds on which the petitioner challenged the order of transfer before the Tribunal were

- (i) that the order of transfer was vitiated by mala fides;
- (ii) that he has been transferred for taking up the cause of employees for the implementation of the recommendations of the Pay Commission; and
- (iii) that the order of transfer was as a measure of victimisation.

13. Apart from the above contentions, the petitioner has also added two more grounds, which were not pleaded and argued before the Tribunal. The first additional ground relates to invocation of the provisions of the Industrial Disputes Act. It is found in Paras 12 and 13 of the affidavit, which reads as follows :

"12. Atomic Energy Employees Association made an appeal to Director IGCAR on 27.2.2015 to reconsider the transfer as the conciliation proceedings is pending under ID Act on the existence of an Dispute.

13. I submit that I am an officer bearer of the recognized association which raised the Industrial dispute and was pending no permission was sought as per Section 33 of Industrial Disputes Act, 1947."

14. The second additional ground relates to discrimination and the same is found in Paras 14 and 15 which is as follows :

"14. I was picked for transfer for union activities as all the associations/and unions under the affiliation of Confederation of Central Government Employees and Workers participated in the strike and in specific three recognized associations in Kalpakkam DAE Units participated in Strike. 7 (Seven) office bearers and activists in Kalpakkam DAE Units were given show cause and out of seven, only 4 (four) were suspended and charge sheeted.

15. I Submit originally four office bearers of our association including myself were suspended for our union activities. While the three office bearers' suspension was revoked and reinstated back into service at Kalpakkam itself, I was alone victimized with the issuance or the transfer order."

15. Before the Tribunal, the respondents, apart from denying the allegation made by the petitioner, took a specific stand, which is found in Para 10 of the reply and it runs as follows:

"Transfer and relieving of Shri Sathasivam was necessary so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. Further the transfer and his subsequent relieving was necessary to keep the officer away from office as his presence (sic.-in this office) when there is necessity to examine his colleague and superiors and examine documents would be causing considerable embarrassment to others and likely to obstruct the proper trial of the charges against him."

16. With reference to the stand that he was in the Safety Section and that he cannot be transferred without prior consent from the Competent Authority, it was stated in Para 14.3 of the reply affidavit, as follows :

"The applicant is not designated as Safety Officer and therefore, the contention of the applicant that he cannot be transferred without the concurrence of the Competent Authority of Atomic Energy Factories Rules, 1996 is without substance."

Though the petitioner filed a rejoinder affidavit, there was no reply on this point.

17. The Tribunal placed reliance upon two judgments of the Supreme Court to the effect that to avoid suspension, the Government will be at liberty to transfer the Government servant to any of its offices within or outside the State and also that a challenge to order of suspension should not be countenanced by the Tribunal.

18. Though Mr.N.G.R.Prasad, learned counsel for the petitioner strenuously contended about the mala fides involved in the order of transfer, this court is unable to accept any factual basis for the same. On the other hand, before the Tribunal, no personal mala fides were alleged against any officer of the administration. In the present case, the order of transfer has emanated from the highest functionary of the Government. The question as to how mala fides have to be alleged and proved and the standard of proof required came to be considered in two judgments of the Supreme Court. In both cases, the persons aggrieved were Chief Secretaries of the respective State Governments and strong allegations were made against the respective Chief Ministers regarding the mala fide nature of the transfer orders given to them. It will be useful to extract relevant passages from those decisions.

19. In E.P.Royappa Vs. State of Tamilnadu [1974 (4) SCC 3], the Supreme Court dealt with the scope of alleging mala fides against the Government and in para 92, it was stated as follows:

"92. Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility.The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration.It is from this standpoint that we must

assess the merits of the allegations of mala fides made by the petitioner against the second respondent."

20. In *M.Sankaranarayanan, IAS Vs. State of Karnataka* [1993 (1) SCC 54], the Supreme Court, in Para 12, gave the standard that is required for proving mala fides in a matter of transfer and it is as follows :

"12. After considering the respective contentions of the learned counsels appearing for the parties, it appears to us that the appellant has not been able to lay any firm foundation warranting a finding that the impugned order of transfer was passed mala fide and/or for an oblique purpose in order to punish the appellant and/or to humiliate him..... It may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture. "

21. In the present case, no mala fides were attributed to any particular officer and no factual basis for such mala fides were made in the affidavit filed before the Tribunal. The scope for interference with an order of transfer came to be considered in a line of cases by the Supreme Court and it will be relevant to refer to few of them to understand the limited nature of judicial review available to courts on an order of transfer.

22. In *State of U.P. Vs. Siya Ram* [2004 (7) SCC 405], the Supreme Court had observed as follows :

"5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the

employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan (2001 (8) SCC 574)."

23. Again in State of U.P. Vs. Gobardhan Lal [2004 (11) SCC 402], over which, the Tribunal placed a reliance, it was held as follows :

"It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

24. The question as to whether a Government servant can be transferred pending enquiry after revoking his suspension came to be considered by the Supreme Court as early as in Government of India, Ministry of Home Vs. Tarak Nath Ghosh [1971 (1) SCC 734] wherein it was observed as follows :

"When serious allegations of misconduct are imputed against a member of a Service normally it would not be desirable to allow him to continue in the post where he was functioning. If the disciplinary authority takes note of such allegations and is of opinion after some preliminary

enquiries that the circumstances of the case justify further investigation to be made before definite charges can be framed, it would not be improper to remove the officer concerned from the sphere of his activity in as much as it may be necessary to find out facts from people working under him or look into papers which are in his custody and it would be embarrassing and inopportune both for the officer concerned as well as to those whose duty it was to make the enquiry to do so while the officer was present at the spot. Such a situation can be avoided either by transferring the officer to some other place or by temporarily putting him out of action by making an order of suspension."

25. Even in cases of officers involved in corruption charges and facing criminal cases, the Supreme Court opined that in view of the prolonged nature of criminal trial, officers can be posted to other stations so as to facilitate smooth conduct of enquiry and trial and at the same time, the right of the officer to work and earn can be guaranteed. In its recent decision in Civil Appeal No.1912 of 2015 dated 16.2.2015 in *Ajay Kumar Choudhary vs Union Of India*, it was observed as follows :

"We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/chargesheet is not served on the delinquent officer/employee; if the memorandum of charges/chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration."

Therefore, we find nothing wrong in the administration revoking the order of suspension and transferring the petitioner pending enquiry.

26. The additional ground regarding the invocation of the provisions of the Industrial Disputes Act more particularly Section 33 cannot be raised for the first time before this Court. No such contention was raised and argued before the Tribunal. In any event, the factual foundation for pleading defence under Section 33 of the

Industrial Disputes Act was not even laid before us. Even assuming that there was an industrial dispute between the union, of which, the petitioner is the President and the management pending before a Conciliation Officer, whether an order of transfer will attract the invocation of Section 33 is doubtful.

27. In the case of the petitioner's union, their members participated in an all India strike concerning general demands. Whether, in the aftermath of the suspension of the office bearers, any conciliation was initiated by the Labour Department was not explained. Even in a public utility service, how a strike notice by itself cannot legitimise a subsequent strike came to be considered by the Supreme Court in *Management, Essorpe Mills Ltd Vs. Presiding Officer, Labour Court* [2008 (7) SCC 594]. It will be useful to extract the observation made by the Supreme Court in that regard, which is as follows :

"19. Somewhat unacceptable plea has been taken by the respondents 2 to 23 that in terms of Section 22(1)(b) after 14 days of giving the notice, the workmen can go on strike. If this plea is accepted six weeks' time stipulated in Section 22 (1)(a) becomes redundant. The expression "giving such notice" as appearing in Section 22(1)(b) refers to the notice under Section 22(1)(a). Obviously, therefore, the workmen cannot go on strike within six weeks notice in terms of Section 22(1)(a) and 14 days thereafter in terms of Section 22(1)(b). 20. The expression "such notice" refers to 6 weeks advance notice. Earlier illegal strike is not remedied by a subsequent strike as provided in Section 22. If such stand is accepted it will go against the requirement of Section 22 which aims at stalling action for illegal strike."

28. The other additional ground raised by the learned counsel for the petitioner with reference to discrimination of the petitioner, on the plea that he alone was subjected to transfer does not merit acceptance. Perhaps such grounds may be of some assistance to the petitioner in the matter relating to disciplinary action initiated against him and resultant punishment, if any. Certainly in a matter of transfer, such grounds are not material and we do not see any substance in the argument advanced.

29. In view of the above we do not see any merit in the writ petition and we decline to interfere with the order of the Tribunal.

30. The writ petition shall stand dismissed and the interim order granted in the miscellaneous petition shall stand vacated and also shall stand dismissed. The parties are allowed to bear their own costs.

05.06.2015

This Writ petition having been posted 'For Being mentioned' on Monday, the eighth day of June 2015, in the presence of Mr.N.G.R.Prasad, Advocate for the petitioner and of Mr.K.Gunasekar, Senior Panel Counsel for the respondents 1 to 3 this Court made the following Order:.

RS

O R D E R
(Made by V.Ramasubramanian,J.)

We passed orders on 05.6.2015 dismissing the writ petition filed by the petitioner challenging an order of the Central Administrative Tribunal upholding the order of transfer. After orders were pronounced, the learned counsel for the petitioner made a representation to give time for the petitioner to join duty. Therefore, to ascertain the views of the learned Central Government Standing Counsel, we posted the case today for being mentioned.

2. Today, the learned counsel for the petitioner submitted that the petitioner has joined duty today at Vishakapattinam, the place to which he stands transferred by the impugned order. Therefore, leaving it open to him to make a representation with respect to the interrugnum period, we record the fact that he has joined duty.

08.6.2015

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

kpl

To

1.The Secretary to Government of India, Department of Atomic Energy, Chatrapathi

Sivaji Maharaj Marg, Mumbai-1.

2.The Director, Indira Gandhi Centre for Atomic Energy, Kalpakkam.

3.The Chief Administrative Officer, Indira Gandhi Centre for Atomic Energy, Kalpakkam.

4.The Registrar, Central Administrative Tribunal, Madras Bench, Chennai.

1 cc to Mr.K.Gunasekar , Advocate Sr.No.27028

1 cc to M/s.Row & Reddy, Advocate Sr.No.26995

WP.No.12133 of 2015.

kv (co) pmk.19.6.2015