

Form No. J(2)
Item No.19
Court No.26

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Partha Sarathi Sen**

**M.A.T. 915 of 2024
IA NO: CAN/1/2024**

**Sri Manas Das
vs.
Union of India & ors.**

For the Appellant : Mr. Achin Kumar Majumder
Advocate
Ms. Ananya Adhikary, Advocate

For the
Respondents : Mr. Rabi Prosad Mookerjee
Advocate
Mr. Debashish Basak
Advocate

Heard on : July 5, 2024

Judgment on : July 5, 2024

DEBANGSU BASAK, J.:-

1. Appeal is directed against an order dated May 3, 2024, passed by the learned Single Judge in WPA 10770 of 2024 dismissing the writ petition.

2. By the impugned order, the learned Single Judge refused to interfere with the order of transfer dated December 7, 2023 issued in respect of the posting of the appellant/writ petitioner.

3. Learned advocate appearing for the appellant submits that, the appellant was posted at Kolkata since June 21, 2022. A period of three years did not elapse from the date of such transfer for the authorities to retransfer the appellant to a new place. He refers to the transfer order and submits that, presently, the appellant is sought to be transferred to a place at Gaya. He refers to the policy of the authorities in this regard and submits that, apart from the tenure of posting, other aspects such as the spouse of the employee concerned is taken into consideration. Moreover, education of the children, is another relevant aspect for the purpose of transferring. He submits that, subsequent to the impugned order of transfer, there were two recommendations, one made by the Commanding Officer and another by the Inspector General rank officer recommending retention of the appellant at the present posting. He refers to the nature of work that, the appellant is required to discharge and contends that, the appellant is working in a dying cadre.

4. Relying upon **2016 (3) Calcutta Law Journal (Cal) 184 (Srikanta Saha vs Union of India & ors.)**, learned advocate appearing for the appellant submits that, there was no exigencies of service or administrative reasons for transferring the appellant. He relies upon **1982 (II) Calcutta High Court Notes 157 (Mrs. Mukul Mitra vs. Union**

of India & ors.) and submits that, no reason was ascribed in the impugned order of transfer.

5. Relying upon **(2008) 4 SCC 171**, learned advocate appearing for the appellant submits that, where, the Rules are silent circulars will fill up the gap by the supplementary Rules. He submits that, policy of the Government as made out in the Standard Operating Procedure dated August 10, 2016 and transfer guidelines for SSB personnel dated May 9, 2019 were not adhered to. Consequently, the impugned order of transfer should be quashed.

6. Learned advocate appearing for the respondents submits that, the appellant was posted at Siliguri prior to the present posting. Appellant was transferred to Debendranagar from Siliguri. On the same pleas as that canvassed by the appellant in the present transfer, appellant was redirected to the present place of posting by a writing dated June 21, 2022. Thereafter, the authorities deemed it prudent to transfer the appellant to the new place of posting by the writing dated December 7, 2023. He submits that, the appellant is required to be posted at the new place of posting in public interest. The impugned order of posting dated December 7, 2023 contains the reason for the transfer. According to him, no interference is called for with the impugned order of the learned Single Judge.

7. Appellant is an Assistant Sub-Inspector (Medic) with Sashastra Seema Bal (SSB). He is presently posted at the office of the Senior Instructor, Intelligence Training School, SSB, Kolkata.

8. The appellant was posted at Siliguri prior to the present posting. He was transferred to Debendranagar by a transfer order dated March 22, 2021. He made a request to withhold such transfer which was acceded to on the ground of the Class XII examination of his daughter for the year 2022. Such transfer order dated March 22, 2021 was deferred by writing dated April 23, 2022. Thereafter, appellant submitted an application before the authorities on April 29, 2022 for transferring him to the present posting since his wife is posted in Kolkata and for the higher education of his daughter. Considering such request, by an office order dated June 21, 2022, the appellant was transferred from Siliguri to the Intelligence Training School, SSB, Kolkata. Appellant joined such post on July 5, 2022.

9. Thereafter, the authorities deemed it expedient in public interest to transfer the appellant from the present place of posting to the 32 Battalion which is presently stationed at Gaya. It is this transfer order which impugned in the Writ Court.

10. The transfer order dated December 7, 2023 is not limited to the appellant before us only. Apart from the appellant, two other personnel were transferred by such office order. Subsequent to such office order, appellant obtained two recommendations, one from his Commanding

Officer and another from the rank of the Inspector General, recommending retention of the appellant at the present place of posting. The Court is informed on behalf of the respondents that, the appellant is presently on medical leave. That apart, there is an office order requiring all transfers to be completed by today i.e, July 5, 2024.

11. A writ petitioner, to successfully assail an order of transfer, needs to establish any of the following three grounds:-

- (i) transfer order was issued by an authority who was without jurisdiction to do so;
- (ii) transfer order was in violation of a statute and
- (iii) transfer order was issued malafide.

12. The writ petitioner did not allege excess of jurisdiction on the transfer order being issued by an authority without jurisdiction. Essentially, the next two grounds are canvassed to assail the transfer order. Both the grounds are taken up for consideration together as they are intertwined in this appeal. Malice in law may be understood to mean as something done deliberately without lawful excuse, in disregard of rights of others.

13. In the facts and circumstances of the present case, we are unable to arrive at a finding that, the order of transfer of the appellant was issued mala fide. It is claimed on behalf of the appellant that, the order of transfer was in breach of the Standard Operating Procedure and the transfer guidelines of SSB. Standard Operating Procedure governing the

field so far as SSB personnel are concerned suggest that, three years period of posting is available to a personnel of the nature of the appellant. Such Standard Operating Procedure however, does not prohibit the authorities from transferring the personnel concerned in the public interest at any point of time prior to the completion of the period of 3 years. Ideally, 3 years is the maximum period of time a personnel should be posted at a place.

14. The other contention of the appellant is that, if there is spouse of the transferred employee then both should be ideally placed at the same place of posting. This appears from the office memorandum dated September 30, 2009. In the facts and circumstances of the present case, appellant is sought to be transferred to the 32 Battalion. The wife of the appellant is also in service with SSB. No doubt the authorities will take in to consideration the office memorandum dated September 30, 2009 when the question of transfer of the wife of the appellant arises. Office Memorandum dated September 30, 2009 can neither be used as a shield nor as a sword by the appellant to contend that his transfer order is bad. Such office memorandum in our understanding does not prevent transfer of one of the spouses. All that it requires is consideration of placing the other spouse in the same place of posting so far as practicable.

15. The two recommendations sought to be relied upon by the appellant also do not assist the case of the appellant. None of them are

any authority vested with the jurisdiction to decide on the transfer of the appellant.

16. Transfer order itself contains reasons for the transfer. Transfer of the appellant was made in public interest. Transfer order is not demonstrated nor established to be mala fide.

17. In **Srikanta Saha (supra)** learned Single Judge found the transfer order to be punitive in the facts and circumstances of that case. We are unable to arrive at a finding so far as facts and circumstances of the present case is concerned that, the transfer order is punitive. In fact, materials placed on record suggest that, plea of the appellant with regard to the higher education of his daughter was taken in to consideration earlier and that, his posting from Siliguri to Debendranagar was redirected and the appellant was to be posted in Kolkata.

18. **Mrs. Mukul Mitra (supra)** is in relation to a case where, the transfer order was shown to the transferred employee through a telex message. In the facts of that case, it was held that no reason was ascribed for the transfer. As noted above, the order of transfer herein contains the reason of public interest for the transfer.

19. **Dhananjay Malik (supra)** considers a recruitment process and the scope of judicial review with regard thereto. It also considers a challenge to a selection process thrown at the behest of unsuccessful candidates. The facts and circumstances of the present case that are absolutely different to those obtaining in **Dhananjay Malik (supra)**.

20. In such circumstances, we find no merit in the present appeal.

21. MAT 915 of 2024 along with IA NO: CAN 1 of 2024 are dismissed without any order as to costs.

(Debangsu Basak, J.)

22. I agree.

(Partha Sarathi Sen, J.)

CHC/Dd