

CASE NO.:
Appeal (civil) 1010-1011 of 2004

PETITIONER:
Union of India and Ors.

RESPONDENT:
Sri Janardhan Debanath and Anr.

DATE OF JUDGMENT: 13/02/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
JUDGMENT

(Arising out of SLP(C) Nos. 20002-20003/2003)

ARIJIT PASAYAT, J

Leave granted.

In these two appeals, the Union of India questions legality of the judgment rendered by a Division Bench of the Guwahati High Court, Agartala Bench, Agartala whereby two writ petitions filed by the respondents were allowed and the common order of transfer dated 10.9.2002 in respect of four employees was quashed so far as it relates to the respondents.

Background facts sans unnecessary details are as follows:

The respondents were working in the Postal Services Department. They were transferred from Agartala Division to Meghalaya Division by order of transfer dated 10.9.2002. Feeling aggrieved by the order, the respondents (writ petitioners) along with two others moved the Central Administrative Tribunal at Guwahati (in short the 'Tribunal'). The Tribunal after hearing the parties directed the authorities to consider the representations made by the two lady applicants who were co-applicants along with the respondents within one month. So far as the present respondents are concerned, no interference was made by the Tribunal with the order. Challenging the decision of the Tribunal, the writ petitions were filed. The grounds on which the writ petitions were filed were (a) the transfer orders of the two respondents were in violation of the provisions of Rule 37 of the Posts and Telegraphs Manual, Volume IV (in short 'the Manual') read with D.G. Posts Letter No.20-12/90-SPBI dated 23.8.1990; (b) the transfer is in violation of Rule 15 of the Fundamental Rules (in short 'FR 15') and (c) the inter Divisional transfer would effect the seniority and promotional prospects of the writ petitioners and (d) the transfer order was passed as a measure of penalty.

The Union of India took the stand that the transfer was done in public interest and on account of exigencies of administration. It was pointed out that the respondents not only misbehaved with the Director (Postal Services), a senior lady officer, she was confined and dragged from one room to another and this was done with a view to force her

to withdraw the charge sheet against the Deputy Post Master. She was abused in filthy language and was physically manhandled. This conduct was certainly unbecoming of an employee and with a view to enforce discipline and to avoid recurrence of such unfortunate incident, they were transferred. There was no violation of either Rule 37 of the Manual or FR 15. The High Court accepted the prayers made in the writ petitions and held that transfer was impermissible in terms of Rule 37 and was in violation of FR 15. It was as a measure of penalty and the seniority and the promotional prospects were likely to be affected.

In support of the appellants Mr. Raju Ramachandran, learned senior counsel submitted that the approach of the High Court is clearly erroneous. It erroneously held that there was violation of Rule 37 or FR 15. The interpretation put on the ambit of FR 15 is clearly wrong, as the proviso has not been taken note of. As the transfer was not a punitive one but as a measure of enforcing discipline, in public interest and in the exigencies of administration there was no scope for the High Court to entertain the writ petitions and grant relief.

Per contra, Mr. Rajinder Sachar, learned senior counsel submitted that in the transfer order itself it has been mentioned that the employees were undesirable, as they had misbehaved. Before effecting transfer there ought to have been an enquiry to find out whether there was any misbehaviour committed by the respondents, or that they were undesirable as stated. According to him, the High Court has correctly interpreted FR 15. With reference to a letter dated 23.8.1990, it was submitted that there was no scope for transferring from any part of the country to another part as was stipulated in the appointment order. It was submitted that in terms of the letter, the scope of transfer to any part of the country was obliterated. There can be no grievance if the transfer was affected within the same circle, but making the transfer from one circle to another was impermissible.

As Rule 37 and FR 15 form the foundation of the claim of the respondents, it would be appropriate to quote them. Rule 37 read as follows:

"All officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Transfers should not, however, be ordered except when advisable in the interests of the public service. Postmen, village postmen and Class IV servants should not, except for very special reasons, be transferred from one district to another. All transfers must be subject to the conditions laid down in Fundamental Rules 15 and 22."

FR 15 reads as follows:

"(a) The President may transfer a Government servant from one post to another provided that except-

(1) on account of inefficiency or misbehaviour, or

(2) on his written request,

a Government servant shall not be transferred to, or except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien."

A bare reading of Rule 37 shows that officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Transfers were not to be ordered except when advisable in the interests of public service. The transfers can be made subject to conditions laid down in FR 15 and 22. The appellant has indicated as to why and under what circumstances the transfers were thought proper in the interests of public service. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India, 1950 (in short the 'Constitution') 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 the 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 Corporation Ltd. v. Shri Bhagwan and Anr.* (2001 (8) SCC 574).

The Fundamental Rules primarily deal with the financial implications and consequences relating to services of government servants whose pay is debited to Civil Estimates and to any other class of Governments servants too which the President may, by general or special order, declare them to be applicable. Rule 15 has to be read along with Rule 14-B. FR 15 has been quoted above and, therefore, quotation of FR 14-B would suffice. The same reads as follows:

"FR 14-B: Subject to the provisions of Rule 15, the President may transfer to another post in the same cadre, the lien of a Government servant who is not performing the duties of the post to which the lien relates".

A bare reading of FR-15 makes it clear that except in

cases where the transfer is (a) on account of inefficiency or mis-behaviour or (b) on a written request the government servant cannot be transferred or except in a case covered by Rule 49 appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien. The clear intention of the prescription is that except the two categories indicated above, in all other cases the pay to be paid on transfer shall not be less than of the post on which he holds a lien. Exception is made in case of a transfer where it is on account of inefficiency or mis-behaviour. In a case where transfer is on account of inefficiency or mis-behaviour, the same can be made to a post carrying less pay than the pay of the post on which he holds a lien. Similar is the position where a transfer is made on a written request. Where the transfer is otherwise than for inefficiency or mis-behaviour or on a written request made by the transferred employee, the protection of pay is ensured. The High Court seems to have completely misconstrued the rule as if there cannot be any transfer in terms of FR 15 on account of inefficiency or mis-behaviour. The view is clearly contrary to the pronounced intention of FR 15.

That brings us to the other question as to whether the use of the expression 'undesirable' warranted an enquiry before the transfer. Strong reliance was placed by learned counsel for the respondents on a decision of this Court in Jagdish Mitter v. The Union of India (AIR 1964 SC 449, para 21, p.456) to contend that whenever there is a use of the word 'undesirable' it casts a stigma and it cannot be done without holding a regular enquiry. The submission is clearly without substance. The said case relates to use of the expression 'undesirable' in an order affecting the continuance in service by way of discharge. The decision has therefore no application to the facts of the present case. The manner, nature and extent of exercise to be undertaken by Courts/Tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions - status, service prospects financially and same yardstick, norms or standards cannot be applied to all category of cases. Transfers unless they involve any such adverse impact or visits the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration.

Additionally, it was pointed out by learned counsel for the Union of India that as indicated in the special leave petition itself there was no question of any loss of seniority or promotional prospects. These are the aspects which can be gone into in an appropriate proceeding, if at all there is any adverse order in the matter of seniority or promotion. It was also submitted that transfer was within the same circle i.e. the North Eastern Circle and, therefore, the question of any seniority getting affected by the transfer prima facie does not arise.

The allegations made against the respondents are of

serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.