

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5550 OF 2009
(Arising out of SLP(C) No. 17128/2009)

Airports Authority of India

...Appellant

Versus

Rajeev Ratan Pandey & Ors.

...Respondents

JUDGEMENT

R.M. Lodha, J.

Leave granted.

2. This appeal by special leave is directed against an ad-interim Order dated July 3, 2009 whereby the Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow stayed the operation of transfer order dated May 15, 2009.

3. Rajeev Ratan Pandey, Senior Manager, Engineering (Civil), Respondent No. 1, vide order dated May 15, 2009, came to be transferred from Lucknow (Northern region) to Calicut (Southern region) by the appellant. The Respondent No. 1 challenged the order of transfer by filing a writ petition before the High Court on the grounds, viz., that the order of transfer has been issued against the transfer policy inasmuch as it provides that the inter-regional transfers shall not be made before the incumbent completes at least five year tenure in that region; that the official shall not normally be transferred within region second time unless all others in that cadre have done one turn of out of region transfer; that except in cases where operational/administrative reasons warrant, transfers shall normally be avoided and transfer when made shall be in accordance with the seniority at the station in the region. He made a representation to the Competent Authority on May 25, 2009 for cancellation of his transfer. On May 28, 2009, the Respondent No. 1 was relieved from his posting at Lucknow. His representation came to be rejected by the

Authority on June 2, 2009. In the writ petition initially no interim order of stay was granted. It transpires from the record that on June 9, 2009 he sent a letter to the Director, Airport Authority, Calicut that he was under medical treatment and the doctor has advised him some rest. He informed the said Authority that he would join duties at Calicut Airport as soon as he got well. He did not join his duties at Calicut Airport and on July 3, 2009 filed a supplementary affidavit before the High Court alleging therein for the first time that the transfer order was actuated with mala-fides. On that day itself, i.e., July 3, 2009, the Division Bench passed an ad-interim order staying the operation of the transfer order dated May 15, 2009.

4. Ordinarily, we would not have entertained a matter arising out of an ad-interim order but since it is founded on a plea which apparently is afterthought, we are constrained to interfere with the matter. In prima facie view of the Division Bench, the order of transfer suffers from strong mala-fides but the fact of the matter is that in the entire petition, there is not even whisper of mala-fides against the Authority. The writ petition was filed by the Respondent no. 1 on June 1, 2009

which contains no allegation that the transfer order has been issued maliciously. For the first time in a supplementary affidavit filed on July 3, 2009, the allegations of mala-fides have been made by the Respondent No. 1. Prima facie, we have no doubt that the allegations of mala-fides are afterthought. Moreover, except the bald statement in the supplementary affidavit, there is no convincing and cogent material placed by the Respondent No. 1 in proof thereof.

5. In the case of *State of U.P. v. Gobardhan Lal*¹, while dealing with a matter of transfer, this Court observed that allegations of mala-fides must inspire confidence of the Court and ought not to be entertained on the mere asking of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference would ordinarily be made with an order of transfer. That the burden of proving mala-fides is on a person leveling such allegations and the burden is heavy, admits of no legal ambiguity. Mere assertion or bald statement is not enough to discharge the heavy burden that the law imposes upon the person leveling allegations of mala-fides; it must be supported by requisite

¹ (2004) 11 SCC 402

materials. In the present case, as noticed above, at the threshold, no allegations of mala-fides have been pleaded in the writ petition. It is only by way of a supplementary affidavit that allegations of mala-fides have been put forth by the Respondent No. 1 but even such allegations are not supported by any material whatsoever. In a matter such as the present one where plea of mala-fides is not made in the writ petition and the assertion of mala-fides is made for the first time in a supplementary affidavit which too is not supported by any convincing and cogent material, the plea of mala-fides hardly deserved acceptance, prima facie, justifying stay of operation of a transfer order. The High Court has referred to a decision of this Court in the case of *Arvind Dattatraya Dhande v. State of Maharashtra & Ors.*² but in what we have said above, that decision cannot be applied to the facts of the present case. In the writ petition, the transfer order has been assailed by the present Respondent No. 1 on the sole ground that it was violative of transfer policy framed by the appellant. The High Court, did not, even find any contravention of transfer policy in transferring the Respondent No. 1 from Lucknow to Calicut. In a

² (1997) 6 SCC 169

matter of transfer of a government employee, scope of judicial review is limited and High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer. In the present case, High Court fell into a grave error in staying the transfer order which, if allowed to stand, may cause prejudice to the administrative functioning of the appellant.

6. Appeal is, accordingly, allowed. The impugned order dated July 3, 2009 is set aside. No order as to costs.

.....J
(Tarun Chatterjee)

.....J
(R. M. Lodha)

New Delhi
August 17, 2009.