

B. Varadha Rao

Vs

State of Karnataka and Others

Special Leave Petition (Civil) No. 7904 of 1986

(A. P. Sen, B. C. Ray JJ)

26.08.1986

ORDER

1. The short point involved in this special leave petition is whether an order of transfer of a government servant made by an authority other than the government itself, is appealable before the government under Rule 19 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. There was a divergence of opinion in the High Court on the question as to the maintainability of such appeals. In a series of writ petitions, Rama Jois, J., took the view that 'transfer' is a condition of service and therefore the government servant has a right of appeal against the order of transfer under Rule 19. Dodda Kalegouda, J., on the other hand, dismissed the writ petition filed by the petitioner holding that no appeal lay to the State Government against an order of transfer made by the Commissioner of Labour transferring him from Bangalore to Tarikere under Rule 19 of the Rules. A number of appeals by the government as well as the civil servants against the orders passed by the learned Judges were heard together by a Division Bench. The learned Judges have upheld the view of Dodda Kalegouda, J.

2. We have heard B. Varadha Rao, Senior Labour Inspector in the Department of Labour, Government of Karnataka in person. We find no reason to interfere with the view expressed by the Division Bench. As the learned Judges point out, the answer to the question turns on whether an order of 'transfer' varies to the disadvantages of a government servant, any of his conditions of service "attracting the right of appeal under Rule 19(1)(a) of the Rules". Rule 19 of the Rules reads as follows :

19. Appeal against the order. - (1) Every member of any of the Services mentioned in Rule 5 shall be entitled to appeal to government against the order passed by a subordinate authority which -

(a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of services as regulated by any order, rules or by agreement, or

(b) interprets to his disadvantage the provisions of any such order, rules or agreement whereby his pay, allowances, pension or other conditions of services as regulated by any order, rules or by agreement.

3. Part IV enumerates the nature of penalties which can be imposed on a government servant. Rule 17 specifies the orders against which no appeal lies. Under Rule 18, an appeal is provided from an order passed by an authority imposing any of the penalties specified in Rule 8. Rule 8 specifies the nature of penalties that may be imposed on the government servants, such as :

- (i) fine;
- (ii) censure;
- (iii) withholding of increments;
- (iii-a) withholding of promotion;
- (iv) recovery from pay of the whole or part of any pecuniary loss caused;
- (iv-a) reduction to a lower stage in the time-scale of pay for specified period with further directions;
- (v) reduction to a lower time-scale of pay;
- (vi) compulsory retirement;
- (vii) removal from service which shall not be a disqualification for future employment, and
- (viii) dismissal from service.

4. The learned Judges observe that these penalties can be imposed on a government servant where disciplinary proceedings are initiated against him under the Rules by the competent authority. They further observe that Rule 18 of the Rules therefore provides for appeals against orders imposing penalties referred to and specified in Rule 8, and add :

If an order of transfer does not amount to an order of penalty or 'any other order' falling within Rule 19, such an order does not attract and is not appealable either under Rule 18 or Rule 19.

We agree with the view expressed by the learned Judges that transfer is always understood and construed as an incident of service. The words 'or other conditions of service' in juxtaposition to the preceding words 'denies or varies to his disadvantage his pay, allowances, pension' in Rule 19(1)(a) must be construed ejusdem generis. Any alteration in the conditions of service must result in prejudice to the government servant and some disadvantage touching his pay, allowances, pension, seniority, promotion, leave etc. It is well understood that transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post. As the learned Judges rightly observe :

The norms enunciated by government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer in the government servants.

5. It is no doubt true that if the power of transfer is abused, the exercise of the power is vitiated. But

it is one thing to say that an order of transfer which is not made in public interest but for collateral purposes and with oblique motives is vitiated by abuse of powers, and an altogether different thing to say that such an order per se made in the exigencies of service varies any condition of service, express or implied, to the disadvantage of the concerned government servant. The petitioner who appeared in person placed reliance, as he did in the High Court, on the decision of the Bombay High Court in *Seshrao Nagorao Umap v. State of Maharashtra* [(1985) 2 LLJ 73 (Bom)]. We do not see how the decision can be of any avail to the question at issue. The learned Judges were dealing with a petition under Article 226 of the Constitution by which a Medical Officer challenged his order of transfer on the ground that it was not only mala fide but was issued in colourable exercise of power and therefore wholly illegal and void. It was contended by the petitioner that he was being transferred contrary to the government policy with a view to accommodate one Dr R.P. Patil because of the political influence he wielded. In allowing the writ petition, the learned Judges observed that it was no doubt true that the government has power to transfer its employees employed in a transferable post but this power has to be exercised bona fide to meet the exigencies of the administration. If the power is exercised mala fide, then obviously the order of transfer is liable to be struck down. They relied on the observations made by this Court in *E.P. Royappa v. State of T.N.* [(1974) 2 SCR 348 : (1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SCC 555] for the positivistic view that 'equality is antithetic to arbitrariness' and held that the observations equally apply to the policy regarding the transfer of public servants. It was observed :

It is an accepted principle that in public service transfer is an incident of service. It is also all 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 mala 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, that 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 Rule 19(1)(a) of the Rules.

6. One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of class III and class IV employees stand on a different footing. We trust that the government will keep these considerations in view

while making an order of transfer.

7. The special leave petition is accordingly dismissed. The petitioner is given four months' time to join his new place of posting.

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