

A STATE OF MADHYA PRADESH AND ANR.

v.

SRI S.S. KOURAV AND ORS.

JANUARY 19, 1995

B [K. RAMASWAMY AND N. VENKATACHALA, JJ.]

*Service Law—Transfer of Government officer on administrative grounds—Question of expediency of posting at a particular place—Court not to interfere—Transfer during period of President's Rule—Approval of Advisor to Governor obtained—Order of transfer is valid—Question of relative hardship—Government to consider and take appropriate decision.*

D The respondent, an Executive Engineer in the Department of Water Resources of the Government came to be transferred on administrative grounds. He challenged the order before the Administrative Tribunal. The Tribunal quashed the order on the ground that there was a ban imposed for transfer of the officers during the period of President's Rule until prior approval of the Governor was obtained which was not done in this case; therefore, the transfer without such approval was bad in law. This appeal had been filed challenging the Tribunal's order.

E The State contended that the Advisor to the Governor had given his approval and then only the orders of transfer came to be issued.

F The respondent contended that he had already worked at Jagdalpur from 1982 to 1989 and when he was transferred to Bhopal, there was no justification to retransfer him again to Jagdalpur. It was next contended that the approval of the Governor was a condition precedent and unless the Governor gave his approval, the order of transfer was bad in law. It was also alleged that the respondent would suffer extreme hardship if he had to work in the tribal area.

G Allowing the appeal, this Court

H HELD : 1.1. The courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative

system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by *malafides* or by extraneous consideration without any factual background foundation. In this case on the administrative grounds the transfer orders came to be issued. Therefore, this Court could not decide into the expediency of posting an officer at a particular place. [484-H, 485-A]

1.2. Under the business rules the powers of the Governor during emergency would be delegated to various officers to be exercised on his behalf. The Adviser (A.S.) had been given power to approve all the orders of transfer and the Administrator had given his approval on 9.7.1973. When he had given his approval, it should be deemed that, he acted on behalf of the Governor in exercising the statutory powers. Therefore, it was not necessary that the Governor should personally sign the orders. Under the business rules, only files in certain cases will be submitted to the Governor for his personal consideration but not all matters of administrative routine. In this view, the transfer order being an administrative routine, delegation had been made to the Adviser (A.S.). Therefore, the order of transfer was perfectly legal. [485-C-D]

1.3. This court cannot go into question of relative hardship. It would be for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration. If there is any such hardship, it would be open to the respondent to make a representation to the Government and it is for the Government to consider and take appropriate decision in that behalf. [485-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1285 of 1995.

From the Judgment and Order dated 7.8.93 of the Madhya Pradesh Administrative Tribunal, Bhopal in O.A. No. B-489 of 1993.

A.K. Chitale, Niraj Sharma and S.K. Agnihotri for the Appellant.

B.S. Banthia for the Respondents.

The following Order of the Court was delivered :

Leave granted.

A The respondent is an Executive Engineer working in the Department of Water Resources of the appellant-Government. He worked as Assistant Engineer from 3.6.89 to 25.7.92 at Bhopal and after a short spell of six months again he was transferred to Bhopal in the promoted post of Executive Engineer and he continued at Bhopal from 19.10.92 to 9.7.93.

B The Department initiated orders of transfer at the instance of the Chief Engineer. The respondent came to be transferred from Bhopal to Jagdalpur vide proceedings dated 9.7.93. He challenged the correctness thereof by filing O.A. No. 489/93 before the Administrative Tribunal at Bhopal. The Tribunal by its order dated 7.8.93 allowed the application, quashed the order of transfer and directed that it would be to the Government to

C pass appropriate orders for transfer on the administrative grounds as per rules and law. It has also directed that the respondent would not be transferred during the period of ban. Calling in question the above order, this appeal, by special leave, came to be filed.

D The main ground on which the Tribunal quashed the order of transfer was that since there was a ban imposed for transfer of the officers during the period of President's Rule until prior approval of the Governor was obtained which was not done in this case. Therefore, the transfer without such approval is bad in law. The learned counsel appearing for the State has placed before us the proceedings of transfer initiated in File No.

E 3(B)/160/93/P/31 which would show that on the recommendation made by the Chief Engineer, the respondent was proposed to be transferred as Executive Engineer from Hydromaterology Division at Bhopal to the office of the Supdtg. Engineer, W.R. Circle, Jagdalpur in a vacant post. When it was submitted to the Secretary, after giving approval, the Secretary

F despatched the file to the Advisor to the Governor. The Adviser to the Governor has given his approval on 9.7.93 and on the same day the orders of transfer came to be issued.

G It is contended for the respondent that the respondent had already worked at Jagdalpur from 1982 to 1989 and when he was transferred to Bhopal, there was no justification to retransfer him again to Jagdalpur. We cannot appreciate these grounds. The courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative

H system by transferring the officers to proper places. It is for the administra-

tion to take appropriate decision and such decisions shall stand unless they are vitiated either by *malafides* or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place. A

It is next contended that the approval of the Governor is a condition precedent. Unless the Governor gives his approval, the order to transfer is bad in law. We find no force in the contention. Under the business rules the powers of the Governor during emergency would be delegated to various officers to be exercised on his behalf. We have seen the proceedings that the papers have been placed before the Adviser (A.S.). Obviously, the Adviser (A.S.) had been given power to approve all the orders of transfer and the Administrator had given his approval on 9.7.1993. When he had given his approval, it should be deemed that he acted on behalf of the Governor in exercising the statutory powers. Therefore, it is not necessary that the Governor should personally sign the orders. Under the business rules only files in certain cases will be submitted to the Governor for his personal consideration but not all matters of administrative routine. In this view, the transfer order being an administrative routine, delegation has been made to the Adviser (A.S.). Therefore, the order of transfer is perfectly legal and valid. B C D

It is further contended that in an unfortunate situation the respondent's wife committed suicide leaving three children and he would suffer extreme hardship if has to work in the tribal area. This court cannot go into that question of relative hardship. It would be for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administrator. If there is any such hardship, it would be open to the respondent to make a representation to the Government and it is for the Government to consider and take appropriate decision in that behalf. E F

The appeal is accordingly allowed but, in the circumstances, without costs. G

A.G.

Appeal allowed.