

A NATIONAL HYDROELECTRIC POWER CORPORATION LTD.

v.

SHRI BHAGWAN AND ANR.

SEPTEMBER 11, 2001

B [S. RAJENDRA BABU, DORAISWAMY RAJU, JJ.]

Service Law :

C *Transfer—Government or public undertaking employee—Transferable Posts—Employees transferred from Corporate Office to new Project—Transfer orders challenged—Held, transfer is not only an incident but condition of service—Judicial Interference—Scope of—Held, unless the transfer order is malafide or in violation of statutory provisions prohibiting such transfer Courts/ Tribunals not to interfere.*

D Respondents, B & P, were transferred from Corporate Office of the appellant to the Project at Itanagar. The transfer orders were challenged by respondents in writ petitions before High Court which were allowed and the transfer orders were set aside on the ground that Corporate Office and the Projects constitute different units for purposes of seniority under the Rules which bar the transfer of an employee from one seniority to another seniority unit except with his consent. However, High Court rejected the plea of malafides. Hence this appeal.

E Appellant contended that transfer was an incident of service and was made in accordance with law and in public interest; that there was no proof of malafides or contravention of any specific statutory provision in passing the transfer orders; that Rule 4.1.1 or Seniority Rules was misconstrued, completely overlooking R. 5.14 of the Recruitment Rules; that there was no loss of seniority of respondents since the projects were new; and that transfers were absolutely necessary for undertaking new projects assigned to it in order to adjust staff from various Projects or Corporate Offices.

G Respondents contended that their seniority rights would be adversely affected by the transfer orders since the Corporate Office and Projects are distinct and separate entities for the purposes of seniority and such an order could not have been made without their consent; and that construction

placed by High Court on the scope of Rule 4.1.1 of the Seniority Rules was correct.

Allowing the appeal, the Court

HELD : 1.1. It is by now well-settled that no Government servant or employee of public undertaking has any legal right to be posted forever at any one particular place 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 malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine, as though they are the Appellate Authorities substituting their own decision for that of the Management, as against such orders passed in the interest of administrative exigencies of the service concerned. [22-E-F]

1.2. In the instant case, Rule 4.1.1 of the Seniority Rules does not interdict any transfer of the employees from one Office or Project or Unit to any one of the other as long as the seniority of such an employee is protected based on the length of service with reference to the date of promotion or appointment to the grade concerned irrespective of the date of transfer. No adverse consequences detrimental to the seniority of the respondents resulting from such transfer is bound to occur since the project undertaken to which they have been transferred is itself a new one. With the rejection of the plea of malafides, the High Court was not justified in interfering with the impugned orders of transfer. [22-H; 23-A; 22-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1095-1096 of 2001.

From the Judgment and Order dated 1.8.2000 of the Punjab and Haryana High Court in W.P. Nos. 1686 & 1705 of 2000.

B. Datta and Ajit Pudussery for the Appellant.

Jitendra Sharma, Ms. Minakshi Vij and P.N. Jha for the Respondents.

The Judgment of the Court was delivered by

A **RAJU, J.** The above appeals have been filed against the common order dated 1.8.2000 of the Punjab and Haryana High Court, wherein the orders of transfer of the respondents to Subansiri Hydroelectric Project, Itanagar, were set aside. The respondent-Shiv Prakash initially joined service of the National Hydroelectric Power Corporation Limited, Faridabad (hereinafter referred to as 'the Corporation') as Attendant Grade-III on 3.6.1982 pursuant to a letter of appointment dated 25.5.1982. In 1987, he was selected and appointed as Operator, Photostat Machine, by an order dated 29.9.1987 and thereafter promoted as Operator, Photostat Machine Grade-II, pursuant to the order dated 1.1.1993. He was further promoted as Operator, Photostat Machine Grade-I, in 1998 and by an order dated 5.1.2000, he was transferred from E&M Division, Corporate Office, to the Project at Itanagar. So far as Shri Bhagwan is concerned, C he joined the service of the Corporation as Attendant Grade-III in 1981 pursuant to an appointment letter dated 15.4.1981 and in 1996, he was selected and appointed as Assistant Grade-III (Hindi). While working in the office of Director (Schemes-II), Corporate Office, by an order dated 5.1.2000 he was transferred D to the Project at Itanagar.

The orders of transfer came to be challenged on the ground that they were contrary to the settlement entered into between the Corporation and its employees Union and the Model Standing Orders framed under the Industrial Employment (Standing Orders), 1946. Motive to penalize for Trade Unions activities of the respondents was also averred to be yet another reason. Per E contra, the appellant-Corporation contended that the plea of alleged malafides is baseless and that after drawing the necessary transfer allowance and other allowance for giving effect to the order of transfer, it is not given to and as a matter of fact, the respondents were estopped from challenging the orders of F transfer. The transfer was said to be consistent with the terms and conditions embodied in the letter of appointment as well as recruitment rules framed for the Corporation employees, according to which every employee is liable to be transferred and posted at any place within its service and in the absence of any bar as such for being so transferred from the Corporate Office to the Project and vice versa. By way of replication, their case was reiterated by the employees. G The High Court was of the view that the Corporate Office and the Projects constitute different units for purposes of seniority, as disclosed from the relevant rules, and that, therefore, an employee borne on a particular seniority unit cannot be transferred to another seniority unit, except with his consent. The plea based on the terms and conditions embodied in the letters of appointment H came to be rejected for the reason that the letters of appointment have to be

read in consonance with the rules and if so done, the transfers under challenge cannot be upheld, having regard to what the High Court has viewed to be the bar contained in the rules against an employee from one seniority to another seniority unit. The plea of malafides urged on behalf of the employees and the one based on estoppel urged on behalf of the Corporation came to be rejected, while allowing the Writ Petitions by quashing the orders of transfer. Hence, these appeals.

Heard Shri B. Datta, learned senior Advocate for the appellant-Corporation and Shri Jitendra Sharma, learned senior Advocate, for the respondent-employees. It was urged for the appellant-Corporation that transfer being an incident of service, no exception could be taken to the impugned orders of transfer, which came to be made according to the appellant in accordance with law and in public interest, particularly in the absence of any proof of malafides or contravention of any specific prohibitory provision in this regard, rendering the employees immune from such transfers. Rule 4.1.1 of the Seniority Rules was, according to the appellant, misconstrued completely giving a go-by to R 5.14 of the Recruitment Rules and a proper construction of the same would really support the stand of the Corporation to justify the transfers in the case on hand. The assumption made by the High Court on the alleged grievance of loss of seniority is said to be unwarranted having regard to the fact that the Projects to which the respondents were transferred being new, no such grievance could have been countenanced. It was also urged that the Government of India, from time to time, assigned new Projects to the Corporation for being executed and implemented and the above transfers become absolutely necessary for undertaking such new Projects in order to adjust the staff from various Projects or Corporate Offices where they were either not required or found to be surplus and so far as the case on hand is concerned, staff from the lowest level, namely, Class-IV, to the level of General Managers have been transferred, offering a package deal under which they were permitted to not only keep their families at the previous place of posting or any place of their choice in India entitling them to House Rent Allowance of that Station, but also giving them in addition, special House Rent Allowance of ten per cent of presently drawn basic pay, giving them, at the same time, temporary accommodation at the project site free of cost, besides granting them other benefits like site compensatory allowance, monthly ad hoc monetary assistance, free transport of essential commodities to the site and mess facilities, etc. More than one and a half times the insurance coverage that they would have got in the previous place of posting also become due to them for which the premium is said to be borne by the Corporation, in

A addition to the travel facilities to the members of the family.

B The learned senior counsel for the respondents, while adopting the reasoning of the High Court in the order under appeal, strenuously urged that as per the Seniority Rules, which came into force w.e.f. 1.6.1976, the Corporate Office and the Projects constituted different units for purposes of seniority and consequently, the High Court was justified in coming to the conclusion that the transfer from one unit to the other unit could not have been made without consent of the employee concerned to his detriment in respect of his rights of seniority. Argued the learned senior counsel further that the construction placed by the High Court on the scope of Rule 4.1.1 of the Seniority Rules is correct and that the transfer envisaged therein related to the transfer of employees from one cadre to the other cadre in the same Office, Project or Unit and not otherwise, since the Corporate Office and Projects are distinct and separate entities for the purpose of seniority. The learned senior counsel for the respondents repeatedly urged that the rights of the employees in respect of their seniority would be adversely affected by the impugned transfers and, therefore, no interference is called for in these appeals.

E On a careful consideration of the submissions of the learned counsel on either side and the relevant rules to which our attention has been invited to, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer. It is by now well-settled and often reiterated by this Court that no Government servant or employee of public Undertaking has any legal right to be posted forever at any one particular place 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 malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine, as though they are the Appellate Authorities substituting their own decision for that of the Management, as against such orders passed in the interest of administrative exigencies of the service concerned. On the facts and circumstances of the cases before us, we are also unable to agree with the learned counsel for the respondents that Rule 4.1.1 of the Seniority Rules interdicts any transfer of the employees from one Office or Project or Unit to any one of the other as long as the seniority of such an employee is protected based on the length of service with reference to the date of promotion or

appointment to the grade concerned irrespective of the date of transfer. We also consider it to be a mere submission in vain, the one urged on the basis of alleged adverse consequences detrimental to their seniority resulting from such transfer. In the facts of the present cases, at any rate, no such result is bound to occur since the project undertaken to which the respondents have been transferred is itself a new one and, therefore, we see no rhyme or reason in the alleged grievance.

Consequently, we are of the view that with the rejection of the plea of malafides by the High Court, no further interference could have been thought of by the High Court in these cases. We are also informed that the respondents have since joined at the Project site and are serving there.

The appeals are allowed accordingly. The impugned judgment of the High Court is hereby set aside and the Writ Petitions filed by the respondents shall stand dismissed. There will be no order as to costs.

A.K.T.

Appeals allowed.