

AIRPORTS AUTHORITY OF INDIA
v.
RAJEEV RATAN PANDEY & ORS.
(Civil Appeal No. 5550 of 2009)

AUGUST 17, 2009

[TARUN CHATTERJEE AND R.M. LODHA, JJ.]

SERVICE LAW:

Transfer – Writ petition before High Court challenging order of transfer as violative of transfer policy – Later, a supplementary affidavit filed alleging mala fides – High Court by an interim order staying transfer – Held: In matters of transfer of government employees scope of judicial review is limited and courts would not interfere with a transfer order lightly – The burden of proving mala fide is on the party who alleges it – In the instant case, prima facie, the allegation of mala fide is an after thought – Besides, except a bald statement, there is no convincing and cogent material on record in proof of the allegation – High Court erred in staying the order of transfer – Order of High Court set aside – Constitution of India, 1950 – Articles 136 and 226 – Judicial review – Interim order – Interference with.

Respondent no.1 filed a writ petition before the High Court challenging the order of his transfer from Lucknow to Calicut as violative of the transfer policy, and prayed for interim stay of the order of transfer. Initially, no stay was granted. Subsequently, the respondent filed a supplementary affidavit stating that the transfer order was actuated with mala fides. Thereupon the High Court passed an interim order staying operation of the order of transfer. Aggrieved, the Department filed the appeal.

Allowing the appeal, the Court

A HELD: 1.1. In a 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. This is so because the courts do not substitute their own decision in the matter of transfer. [Para 5] [347-F]

B 1.2. That the burden of proving mala-fides is on a person leveling such allegations and the burden is heavy, admits of no legal ambiguity. In the instant case, at the threshold, no allegations of mala fides have been pleaded in the writ petition. It is only by way of a
C supplementary affidavit that allegations of mala fides have been put forth by respondent no. 1 but even such allegations are not supported by any material whatsoever, leave aside any convincing and cogent material. Therefore, the plea of mala fides hardly deserved
D acceptance, prima facie, justifying stay of operation of a transfer order. [Para 5] [346-G-H; 347-A-D]

E 2. Ordinarily, this Court would not entertain a matter arising out of an ad-interim order, but since it is founded on a plea which apparently is afterthought, the Court is constrained to interfere with the matter. Accordingly, the impugned order is set aside. [Para 4 and 6] [346-C-D; 347-G-H]

F *State of U.P. v. Gobardhan Lal* (2004) 11 SCC 402, relied on.

Arvind Dattatraya Dhande v. State of Maharashtra & Ors. (1997) 6 SCC 169, held inapplicable.

Case Law Reference:

G (2004) 11 SCC 402 relied on Para 5
(1997) 6 SCC 169 held inapplicable Para 5

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5550 of 2009.

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From the Judgment & Order dated 03.07.2009 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No.820 of 2009.

Gopal Subramaniam, S.G., Atul Nanda, Rameeza Hakeem Law Associates & Co. for the Appellant.

Shail Kr. Dwivedi, AAG, Anuvrat Sharma Vandana Mishra, Alka Sinha, for the Respondents.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. 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

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A 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
 B 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
 C 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
 D 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
 E 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
 F 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
 G 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

H 1. (2004) 11 SCC 402.

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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 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 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.

R.P.

Appeal allowed.

2. (1997) 6 SCC 169.