

Rajendra Roy vs Union Of India (Uoi) And Anr. on 17 November, 1992

Equivalent citations: AIR1993SC1236, JT1992(6)SC732, 1993LABLC446, 1992(3)SCALE218, (1993)1SCC148, 1993(1)SLJ93(SC), AIR 1993 SUPREME COURT 1236, 1993 (1) SCC 148, 1993 AIR SCW 520, 1993 LAB. I. C. 446, (1992) 6 JT 732 (SC), 1993 () LAB LR 73, (1993) 1 SERVLJ 93, (1993) 1 APLJ 37.2, 1992 (6) JT 732, 1993 (1) UJ (SC) 73, (1993) 1 GUJ LH 389, (1993) 2 SCT 65, (1993) 1 SERVLR 126, (1993) 1 ANDH LT 33, (1993) 1 LS 1, 1993 SCC (L&S) 138, (1993) 2 PAT LJR 75, (1993) 1 LAB LN 237, (1993) 23 ATC 426, (1993) 1 CURLR 5

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Bench: G.N. Ray

JUDGMENT

G.N. Ray, J.

1. Leave granted. Heard the appellant in person and the learned Counsel for the respondents.
2. An order of transfer dated July 17, 1991 passed against the appellant transferring him to the post of Inspector of Exhibitions DAVP Calcutta from the post of Inspector of Exhibitions DAVP. New Delhi is the subject matter of challenge in the instant appeal. The appellant belongs to the Central Information Service since renamed as Indian Information Service. On December 17, 1990, the appellant was transferred to the post of Inspector of Exhibitions DAVP Calcutta and prior to the impugned order of transfer he held the post of Inspector of Exhibitions DAVP New Delhi. The appellant has challenged the order of transfer inter alia on the ground that such order of transfer was not passed for administrative reasons in the interest of public service but the same was passed mala fide in order to get rid of him because the respondent No. 2 had a personal score against the appellant and he manipulated the impugned order of transfer.
3. The appellant being aggrieved by the impugned order of transfer challenged the same before the Central Administrative Tribunal. After going through the records of the case and considering rival contentions, the Tribunal was of the view that the allegation of malice and grudge alleged by the appellant against the respondents could not be substantiated. No statutory rule was violated by the impugned order of transfer. As such, the Tribunal did not consider it appropriate to interfere with

the impugned order of transfer. The Tribunal has indicated that in case of personal difficulty, an employee can make representation to the authority concerned but simply on the score of personal hardship, an order of transfer relating to a transferable post cannot be held back. The Tribunal has also noted that the appellant did not make representation to the concerned department. He has therefore, not exhausted the remedies available to him under the relevant service rules and on that score also the application made by the appellant before the Central Administrative Tribunal is liable to be dismissed.

4. In the counter affidavit filed on behalf of the respondents to the special leave petition, it has been stated that the appellant was posted in Bihar which is his home State for 11 years and in Delhi for nine years. The respondents have denied that the impugned order of transfer was passed mala fide and for any oblique purpose or for wrecking vengeance on the appellant by the respondent No. 2 as sought to be alleged. It has been stated in the counter affidavit that Shri S.N. Patra was transferred from Orissa to Calcutta. He had joined his place of posting at Calcutta and made representation to the higher authorities pointing out the hardship being suffered by him by the order of transfer. Such representation was considered and the Department considering the representation decided to transfer Shri S.N. Patra back to Orissa. In view of such decision, there was a necessity to transfer one of the employees to Calcutta for holding the post Inspector of Exhibitions DAVP, Calcutta. The appellant was transferred to the said post and such order of transfer was passed in the exigencies of the service and for public purpose and there was no motive to penalise the appellant by passing the impugned order of transfer against him. The allegation made by the appellant that some of the employees mentioned by him in paragraph 3 of special leave petition have not been transferred but allowed to remain in the same station for years, has been disputed in the counter affidavit and it has been contended that Shri CM. Jha had served at Simla, New Delhi and also at Siliguri. Similarly, Shri. G.M. Mustafa also suffered orders of transfer earlier. It has been specifically stated in the counter affidavit that the allegation made by the appellant that the officers mentioned in paragraph 3 have been continuously serving in Patna for the last 20 years is totally incorrect. It has also been indicated in the counter affidavit that the appellant was in New Delhi for the last nine years and it is, therefore, not correct to contend that he had been transferred within a short time after the previous order of transfer. It has also been stated that the appellant has not made any representation to the Department against the order of transfer by pointing out the inconvenience or disability which may be caused to him in view of the impugned order of transfer. The/appellant has joined the post in terms of the impugned order of transfer and the order of transfer has been given effect to. It has also been stated that the appellant is holding a middle level post which does not require proficiency in the regional language and the appellant being a member of the Central Service is liable to serve anywhere in the country. The regional language proficiency is not required for the postings and transfers of the members of the Service at the middle management and senior levels.

5. At the hearing the appellant appearing in person has submitted that although the appellant holds a transferable post, the order of transfer cannot be made mala fide and for an oblique purpose. An order of transfer may appear innocuous on the face of it but it on scrutiny of the facts it transpires that the order of transfer has been passed in order to penalise a concerned employee and not for administrative exigencies, the order of transfer is liable to be struck down. The appellant has contended that an order of transfer has various consequences and the concerned employee and the

members of the family often suffer seriously by the order of transfer. He has also contended that mala fide may not always be established very convincingly but from the facts pleaded in the case, the inference of mala fide may be drawn by the Court. The appellant has submitted that he had to move Courts of law against various unjust decisions of the Department and as a matter of fact he filed a contempt application before this Court alleging non-compliance of the order passed by this Court. Since the order passed by this Court was later on followed by the Department, the appellant in fairness submitted before this Court at the hearing of the contempt application that the said application should be disposed of in view of the compliance of the order. The contempt application was thus disposed of by this Court on July 15, 1991. So long the contempt application was pending and the appellant was appearing in person, the respondent No. 2 did not pass any order of transfer against him but immediately after the disposal of the said contempt application, the respondent No. 2 seized the opportunity and got the said Shri S.N. Patra transferred to Cuttack and in his place the appellant was transferred. The proximity of the time of disposal of the contempt application and the passing of the impugned order of transfer against the appellant clearly indicates that the said order of transfer was passed only to get rid of the appellant and to penalise him for making the application for contempt and also making allegations against the respondent No. 2. The appellant has contended that there was no necessity to pick up the appellant for being transferred to Calcutta when in past he had suffered nine orders of transfer. He has also contended that there was no bona fide administrative reasons to transfer Shri Patra from Calcutta to Bhubaneshwar but fortunately for Shri Patra such order was desired by the Hon'ble Minister of Information and Broadcasting and unfortunately for the appellant the respondent No. 2 was looking for an opportunity to get rid of him. He has, therefore, submitted that the impugned order should be set aside.

6. The learned Counsel appearing for the respondents, however, opposed such contentions and has submitted that there is no truth in alleging that the order of transfer was passed against him for wrecking vengeance by respondent No. 2 as alleged and the order of transfer was passed for bona fide reasons since there was a necessity to transfer an employee to man the post of Inspector at Calcutta.

7. After considering the respective contentions of the parties, it appears to us that the appellant has not been able to substantiate that the impugned order of transfer was passed mala fide against him for an oblique purpose and/or for wrecking vengeance against him because the respondent No. 2 was anxious to get rid of him and he seized the opportunity of transferring him from Delhi to Calcutta by transferring Shri Patra back to Orissa from Calcutta. It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. We are in agreement with the Central Administrative Tribunal that the appellant has not been able to lay any firm foundation to substantiate the case of malice or mala fide against the respondents in passing the impugned order of transfer. It does not appear to us that the appellant has been moved out just to get rid of him and the impugned order of transfer was passed mala fide by seizing an opportunity to transfer Shri Patra to Orissa from Calcutta. It may not be

always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions. In this case, we are unable to draw any inference of mala fide action in transferring the appellant from the facts pleaded before the Tribunal. It appears that Shri Patra was transferred to Calcutta and after joining the post he had made representation on account of personal hardship. Such representation was considered and a decision was taken to transfer him back to Orissa region. As a result, a necessity arose to transfer an employee to Calcutta to replace Shri Patra. It cannot be reasonably contended by the appellant that he should have been spared and some one else would have been transferred. The appellant has not made any representation about the personal hardship to the department. As such there was no occasion for the department to consider such representation. This appeal, therefore, fails and is dismissed but we make no order as to costs. It is, however, made clear that the appellant will be free to make representation to the concerned department about personal hardship, if any, being suffered by the appellant in view of the impugned order. It is reasonably expected that if such representation is made, the same should be considered by the department as expeditiously as practicable.