

Major General J.K. Bansal vs Union Of India And Others on 23 August, 2005

Equivalent citations: AIR 2005 SUPREME COURT 3341, 2005 (7) SCC 227, 2005 AIR SCW 4079, 2005 LAB. I. C. 3593, 2005 AIR - JHAR. H. C. R. 2342, 2005 (6) SCALE 669, (2005) 4 JCR 49 (SC), 2005 (8) SRJ 282, (2006) 38 ALLINDCAS 136 (SC), (2005) 8 JT 11 (SC), 2005 SCC (L&S) 932, (2005) 122 DLT 562, (2005) 107 FACLR 37, (2005) 85 DRJ 449, (2005) 4 LAB LN 65, (2005) 3 BLJ 33, (2005) 3 SCT 794, (2005) 6 SCJ 713, (2006) 1 SERVLR 103, (2005) 5 SUPREME 716, (2005) 6 SCALE 669

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Bench: R.C. Lahoti, G.P. Mathur, P.K. Balasubramanyan

CASE NO.:

Appeal (civil) 5189 of 2005

PETITIONER:

Major General J.K. Bansal

RESPONDENT:

Union of India and others

DATE OF JUDGMENT: 23/08/2005

BENCH:

CJI R.C. Lahoti, G.P. Mathur & P.K. Balasubramanyan

JUDGMENT:

J U D G M E N T (Arising out of S.L.P. (C) No. 11258 of 2005) G.P. Mathur, J.

Leave granted.

2. This appeal, by special leave, has been preferred against judgment and order dated 5.5.2005 of Delhi High Court by which Writ Petition (C) No.7387 of 2005, filed by the appellant challenging the order dated 7.4.2005 by which he had been transferred to Defence Research and Development Establishment (for short 'DRDE'), Gwalior, was dismissed.

3. The plea taken by the appellant in the writ petition filed by him before the High Court was that he belonged to Army Medical Corps and was being shifted to a non-medical organization, which had only one officer of Army Medical Corps and that too of the rank of Major or Lt. Colonel. The transfer order was malafide as it had been passed on account of his success in an earlier writ petition filed by

him being W.P. (C) No. 6131 of 2003, whereunder he had sought quashing of certain proceedings initiated against him and on account of the decision in the writ petition the respondents ultimately promoted him to the rank of Major General. It was further pleaded that he had been transferred to Gwalior in order to accommodate one Brigadier R.P. Tripathi to the post of Director in the Institute of Nuclear Medicine and Allied Sciences (for short 'INMAS'). The writ petition was contested by the respondents on the grounds, inter alia, that the appellant was absorbed in the Defence Research and Development Organization (for short 'DRDO'), which is engaged in carrying out scientific and technical research and development work of various projects related to defence forces and of which both INMAS and DRDE are branches and their terms and conditions of services are governed by Ministry of Defence Letter dated 23.11.1979, which provides for transfer of officers to any place in the country or outside. Both the INMAS and DRDE, Gwalior, are system based laboratories engaged in Research and Development activities in bio-medical fields and it had been decided to conduct training programmes of NBC Defence to train military, para-military staff and AMC doctors at DRDE, Gwalior, under the present conditions. The appellant was found suitable for undertaking the new project in the field for which he was trained abroad at public expense. The allegations regarding malafide action of the respondents or that he had been transferred to Gwalior in order to accommodate Brigadier R.P. Tripathi or someone else at INMAS was denied. After a thorough consideration of the affidavits filed by the parties and the material on record the High Court found that there was no substance in the appellant's case and accordingly dismissed his writ petition.

4. Learned counsel for the appellant mainly confined his challenge to the transfer order dated 7.4.2005 on the ground of malafide. It was submitted that the appellant had an unblemished record, but on the basis of a complaint he was attached for disciplinary action with Head Quarter Technical Group, EME, Delhi Cantt. on 3.9.2003. Aggrieved by the said order the appellant filed Writ Petition (C) No. 6131 of 2003 before the Delhi High Court. During the pendency of the writ petition, the respondents issued a charge sheet for initiating General Court Martial proceedings against him. The writ petition was allowed by the High Court on 18.5.2004 and the order dated 3.9.2003 initiating disciplinary proceedings against the appellant was quashed. The proceedings initiated against the appellant for holding General Court Martial were also quashed and a direction was issued to the respondents to declassify the result of the Promotion Board held on 4.6.2003. Feeling aggrieved by the order of the High Court the respondents filed SLP (C) No. 11672 of 2004 before this Court, but the same was dismissed on 30.3.2005. The post of Director, INMAS had been advertised by DRDO on 20.1.2005, for which the appellant had also applied. He was called for interview on 22.4.2005 at R.A.C., Delhi. However, an order was issued by the respondents on 7.4.2005 whereby he was informed that he is promoted to the rank of Major General with effect from 1.2.2004. The order contained a further direction transferring the appellant to DRDE, Gwalior against an existing vacancy. The learned counsel has strenuously urged that the respondents had a grudge against the appellant on account of his having filed WP (C) No. 6131 of 2003 in Delhi High Court wherein judgment had been rendered in his favour on 18.5.2004 by which the disciplinary proceedings and General Court Martial proceedings initiated against him were quashed. The transfer of the appellant to DRDE, Gwalior had been made on account of the aforesaid malafide reasons. The learned counsel has further submitted that DRDE, Gwalior is one of the several laboratories functioning under the DRDO and it is not a medical organization like INMAS and consequently the expertise and experience of the appellant could not be utilized in the said institute. It has also been submitted that

as per the manpower authorization of Government of India, the DRDE, Gwalior has no vacancy of Major General, which exists in INMAS. In order to substantiate this contention learned counsel has referred to certain clarifications issued by the Director General, Research and Development on 18.4.1990 and also by Ministry of Defence, Government of India on 23.8.2004 regarding formal equation between civilian scientists and service officers, which mention that a Scientist 'F' would be equal to Brigadier and a post of Major General or equivalent had been sanctioned for INMAS. Lastly, it has been urged that the impugned transfer order has been passed in order to accommodate an officer junior to the appellant, namely, Brigadier R.P. Tripathi as Director of INMAS.

5. The respondents have filed a detailed counter affidavit in this Court. It is averred therein that DRDO was established in 1958 under the Ministry of Defence and the head of this Organization is a civilian, namely, the Scientific Adviser to the Defence Minister, Government of India. The principal work and mandate of this Organization is research, design and development of new weapons, sensor system, communication systems and force multipliers. The research and development work is carried out by a network of 50 laboratories/ establishments located across the country and in variety of disciplines like electronics, missiles, telecommunication, rockets, radars and life sciences, etc. After the terrorist attacks and the imminent specter of chemical and biological warfare looming large in the form of chemical weapons and anthrax and other bio-warfare agents and the possible possession of nuclear weapons by non-State terrorist outfits, the research in the field of NBC defence has acquired a sense of urgency. Due to these reasons the structure and composition of DRDO had to necessarily undergo rapid, qualitative and quantitative changes in the light of the fast development that have taken place in the field of science and technology the world over. There are approximately 7000 scientists working in more than 50 laboratories and the strength of service officers is slightly more than 300. The appellant is a permanently seconded service officer from Army Medical Corps to DRDO. The service conditions of personnel in DRDO are governed by Defence Research Development Service Rules (DRDS), 1979, which clearly provides that the officers may be posted to any appointment in the Research and Development Organization on the basis of their qualification and experience and/or as required in public interest. The organizational structure of DRDO is divided into six distinct fields. The INMAS and also DRDE, Gwalior, are placed in the same group under "Life Sciences". Both the institutions are engaged in research in biomedical field. In view of peculiar nature of work, a different kind of system of manpower management has been adopted. The Organization has been empowered to activate the number of posts to the extent considered essential for its work.

6. It is further averred that in accordance with the above mentioned policy, the post of Major General sanctioned in the regular establishment of INMAS was withdrawn and the post of Lt. General was transferred from the pool vide letter dated 2.12.2004. Consequently, there is no post of Major General in INMAS as on date. However, one post of Major General has been given to DRDE, Gwalior. The Vigilance Branch of the Army Head Quarters had received a preliminary report of CBI according to which there was a prima facie case of submitting false disability certificate by the appellant to secure admission of his daughter in an engineering college, i.e., Netaji Subhash Institute of Technology, Delhi. The Vigilance Branch after having found substance in the complaint had imposed a DV ban on the appellant vide letter dated 29.8.2003. A decision was taken to proceed against him. Consequent upon which he was attached with an army unit vide order dated 29.8.2003.

On account of the aforesaid order, the assessment of the Selection Board regarding the appellant had to be kept in a sealed cover as a matter of policy. After the decision of the writ petition by the Delhi High Court and the dismissal of the SLP by this Court, the DV ban was revoked on 31.3.2005. As a result of this declassification of result he was found to be recommended for promotion and accordingly he was promoted to the rank of Major General on 7.4.2005.

7. It is further averred in the counter affidavit that the appellant along with several others had applied for the post of Director, INMAS, which is in the rank of Scientist-G. The Selection Board comprised of persons of international repute as external experts, including those who do not belong to the cadre of DRDO. The selection process was completed by RAC and Brigadier R.P. Tripathi was finally selected for the said post and an offer of appointment has been issued in his favour on 20.5.2005. The DRDE, Gwalior, which is engaged in the development of antidotes, prophylactic drugs, diagnostic kits and other defensive and protective equipments against chemical and biological threats, submitted a request vide their letter dated 7.3.2005 that there was a need for the services of a senior medical officer, who could handle the task of medical management in the event of actual combative engagement of the armed forces. The matter was discussed by the top management of DRDO in its meeting held on 21.3.2005 when it was decided to post the appellant at DRDE, Gwalior, in public interest. This decision was taken before the pronouncement of the order in SLP by this Court, while the recommendation of the Selection Board for the appellant's promotion to the rank of Major General was still in a sealed cover. Lastly, it has been submitted that the Defence Research and Development Organization (respondent No. 3) is not at all concerned with the disciplinary proceedings initiated by the Army authorities against the appellant. The respondent No. 3 was not even a party to the Writ Petition (C) No. 6131 of 2003, which was filed by the appellant in the Delhi High Court. The availability of the post of Director, INMAS at this period of time, viz., 1.4.2005 was purely coincidental as Lt. General T. Ravindranath, Director, INMAS, had submitted an application on 6.12.2004 seeking pre-mature retirement from service with effect from 31.3.2005, which request was accepted on 18.2.2005 and he was allowed to retire from service on 31.3.2005. It is also averred that DRDO (respondent No. 3) had acted with utmost bonafide and the appellant had not been posted to DRDE, Gwalior, on account of any malafide reasons.

8. Before we advert to the submissions made by the learned counsel for the appellant, it will be useful to take notice of the law regarding the scope of interference in a writ petition filed under Article 226 of the Constitution assailing an order of transfer.

9. In *Mrs. Shilpi Bose and others vs. State of Bihar and others* AIR 1991 SC 532, the appellants, who were lady teachers in primary schools, were transferred on their requests to places where their husbands were posted. The contesting respondents, who were displaced by the appellants, challenged the validity of the transfer orders before the High Court by filing a writ petition under Article 226 of the Constitution, which was allowed and the transfer orders were quashed. This Court allowed the appeal and set aside the judgment of the High Court by observing as under: -

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A

Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department....."

10. In *Union of India and others vs. S.L. Abbas* AIR 1993 SC 2444, the respondent was working at Shillong in the office of Botanical Survey of India and his wife was also working there in a Central Government office. He was transferred from Shillong to Pauri in the hills of U.P. (now in Uttaranchal). He challenged the transfer order before the Central Administrative Tribunal on medical ground and also on the ground of violation of guidelines contained in the Government of India OM dated 3.4.1986. The Tribunal allowed the petition and quashed the transfer order. In appeal this Court set aside the order of the Tribunal and observed as under: -

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right."

11. Similar view has been taken in *National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan* and another (2001) 8 SCC 574, wherein it has been held that no Government servant or employee of a 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 another 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 though they were the appellate authorities substituting their own decision for that of the management.

12. It will be noticed that these decisions have been rendered in the case of civilian employees or those who are working in Public Sector Undertakings. The scope of interference by courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The Courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made.

13. The detailed counter affidavit filed by the respondents clearly shows that it was the Vigilance Branch of the Army Head Quarters, which had taken the decision to proceed against the appellant. He was attached with an Army unit vide Head Quarters Western Command order dated 29.8.2003. The decision to initiate General Court Martial proceedings was also taken by the Army authorities. The impugned transfer order dated 7.4.2005 has been passed by the Defence Research and Development Organization, Ministry of Defence. The Selection Board for the post of Director INMAS consisted of persons of international repute as external experts including those, who do not belong to the cadre of DRDO. The appellant was considered for the post of Director, INMAS, but was not selected and Brigadier R.P. Tripathi was selected for the said post. Thus, the appellant could not have functioned in INMAS. A post of Major General has been given to DRDE, Gwalior and it was considered in public interest to post the appellant on the said post. The contention raised by the appellant that the transfer order has been passed on account of malafide reasons has, therefore, absolutely no substance and is wholly devoid of merit.

14. The learned counsel for the appellant has also urged that the appellant moved an application for leave on 16.8.2005 before the Director, DRDE, Gwalior and in the said application he had described himself as 'Associate Director'. However, while sanctioning the leave, the Director scored out the words 'Associate Director'. The contention of the appellant is that in the additional affidavit, which was filed on behalf of the respondents before the Delhi High Court, it was stated that the appellant would be designated as Associate Director. The learned counsel produced a photocopy of the leave application in order to substantiate his submission. Since this document has been produced during the course of the hearing of the appeal, the learned counsel for the respondent was not in a position to give any reply. We do not consider it necessary to make any observation regarding the status of the appellant in DRDE, Gwalior. The appellant has already been promoted to the rank of Major General and we have no reason to doubt that he would be given the status to which he is entitled by virtue of the rank currently being held by him.

15. The appeal lacks merit and is dismissed with costs.