

IN THE HIGH COURT OF UTTARAKHAND AT NA1NITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Special Appeal No. 143 of 2008

Smt. Damyanti Bisht. Appellant

Versus

State of Uttarakhand & others. Respondents

Mr. Subhash Upadhyaya, Advocate for the appellant.
Mr. L.P. Naithani, Advocate General with Mr. J.P. Joshi, Chief Standing Counsel
for the respondents.

&

Writ Petition No. 123 of 2008 (S/B)

Ramesh Chandra Bharti. Petitioner

Versus

State of Uttarakhand & others. Respondents

Mr. Paresh Tripathi, Advocate holding brief of Mr. Rajendra Kotiyal, Advocate
for the petitioner.
Mr. L.P. Naithani, Advocate General with Mr. J.P. Joshi, Chief Standing Counsel
for respondents Nos. 1 & 2.
Mr. Raman Kumar Shah, Advocate for respondent No.3.

Date of Judgment: 20.11.2008

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date: 20.11.2008

Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when
it is put up before the Judge for signature.

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Mr. Raman Kumar Shah, Advocate for respondent No.3.

Coram: **Hon'ble V.K. Gupta, C.J.**

Hon'ble B.C. Kandpal, J.

Hon'ble Dharam Veer, J.

Dated: 20th November, 2008

V.K. GUPTA, C.J.

By this common judgment, both these matters, Special Appeal as well as the Writ Petition, are being disposed of together.

2. It was on 19th September, 2008 that Special Appeal No. 143 of 2008, to be heard in ordinary course by a Division Bench, was referred for hearing to the Full Bench because, in the opinion of the Division Bench referring the matter for hearing to the Full Bench, the view taken by the earlier Division Bench in its order dated 1st July, 2008 passed in Writ Petition No. 123 of 2008 (S/B) required reconsideration by a larger Bench.

3. In the Special Appeal, the judgment dated 7th August, 2008 passed by a learned Single Bench of this Court in Writ Petition No. 807 of 2008 (S/S) is under challenge, whereby the writ petition filed by the petitioner against his transfer has been dismissed in limine. The petitioner / appellant, vide the impugned transfer order dated 25th July, 2008, was transferred from Kotabagh to Mukteshwar in district Nainital. The transfer order dated 25th July, 2008 was issued on "administrative grounds". In an earlier case, being Writ Petition No. 123 of 2008 (S/B), a Division Bench of this Court, while dealing with an identical issue and situation where a person was sought to be transferred on administrative grounds, had taken a view (while passing an interlocutory order) that if a person has been transferred on administrative grounds, it meant that his transfer was punitive in nature as well as it was based on considerations of some allegations / accusations having been levelled against him and this, in the opinion of the Division Bench while passing an interlocutory order, was not permissible under Service jurisprudence. The following observations in the aforesaid Division Bench order dated 1st July, 2008 passed in the aforesaid Writ Petition No. 123 of 2008 (S/B) are apposite and we quote:

"The impugned transfer order shows that the petitioner has been transferred on "administrative grounds". It therefore means that in his case the transfer is punitive in nature as well as it is based on considerations of some allegations / accusations against him. Transferring a person on this ground is not permissible under service jurisprudence."

4. In Writ Petition No. 123 of 2008 (S/B), transfer order dated 14th June, 2008 was challenged by the petitioner on the ground that since it was passed on "administrative grounds", it was bad in the eyes of law. As noticed hereinabove, interlocutory order dated 1st July, 2008 was passed in the said Writ Petition, relevant extract whereof has been quoted above.

5. The learned Single Judge, in the impugned judgment dated 7th August, 2008, even while in para 3 has made a reference to the aforesaid Division Bench order dated 1st July, 2008, in para 4, by referring to some Supreme Court Judgments, has taken the view that since the impugned transfer order, even though passed on administrative grounds, cannot be said to be punitive in nature, it should not be interfered with by the courts. The writ petition accordingly, challenging the said transfer order, was dismissed in limine by the learned Single Judge; hence the present Special Appeal.

6. Communication No. 545/XXIV(1)/2008-20/2008 dated 5th June, 2008 was issued by the Government of Uttarakhand addressed to Director, School Education, in which certain guidelines were issued relating to Transfers. Para 4 of this Communication dealt with and related to the transfers on administrative grounds. In this Para, it has been laid down that transfers on administrative grounds can be effected only in case of the following situations:

- i. If there are serious complaints against the person sought to be transferred; or
- ii. If the person sought to be transferred has misbehaved with superior officers; or
- iii. If the person sought to be transferred has not been taking interest in the work.

7. Para 4, after laying down the aforesaid three stipulations being grounds for effecting transfers on administrative reasons, goes on to further stipulate and lay down that transfers on administrative grounds should not be effected on "motivated" complaints nor should these be ordered in a "casual" manner and the Competent Authority, seeking to effect the transfers on administrative grounds, is required to verify / confirm the existence as well as truthfulness of the aforesaid grounds (of transfer) and only after arriving at and recording its satisfaction

about the existence and truthfulness of the grounds, should the transfer be effected.

8. In the case of **Union of India & others Vs. Janardhan Debanath & another** reported in (2004) 4 S.C.C. 245, while dealing with the issue relating to the transfer of an employee on the ground of his being "undesirable", their Lordships of the Supreme Court observed as under:

"12. That brings us to the other question as to whether the use of the expression "undesirable" warranted an enquiry before the transfer. Strong reliance was placed by learned counsel for the respondents on a decision of this Court in *Jagdish Mitter v. Union of India* (AIR p. 456, para 21) to contend that whenever there is a use of the word "undesirable" it casts a stigma and it cannot be done without holding a regular enquiry. The submission is clearly without substance. The said case relates to use of the expression "undesirable" in an order affecting the continuance in service by way of discharge. The decision has therefore no application to the facts of the present case. The manner, nature and extent of exercise to be undertaken by courts/tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions - status, service prospects financially - and the same yardstick, norms or standards cannot be applied to all categories of cases. Transfers unless they involve any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration."

9. Whether the use of the expression "undesirable", as a means for transferring a person, warranted an inquiry before the transfer was actually effected, was the issue before their Lordships of the Supreme

Court. Dealing with this aspect, in para 12 (supra), it has clearly been laid down that use of expression "undesirable" in an order effecting the continuance in service by way of discharge is different and is in contradistinction to the use of this expression in transferring an employee. The manner, nature and extent of exercise to be undertaken by courts / tribunals in a case to adjudge whether the use of such an expression casts stigma or constitutes a stigma by way of punishment also very much depends upon the consequences flowing from the order. In the realm of the "consequences", also fell the aspect of the service conditions being adversely affected. Status and service prospects financially were two important factors, which could amount to adversely affecting the service conditions. While summing up, their Lordships held that the transfers, unless these involved any adverse impact or visited the transferred person with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination of service. Utmost latitude should be left with the Competent Authority to enforce discipline, decency and decorum in public service, which are un-disputably essential to maintain quality of public service as well as to meet administrative exigencies to ensure smooth functioning of the administration.

10. In the same judgment, their Lordships also dealt with the issue of holding an inquiry with respect to the allegations of misbehaviour etc. Whether there was any misbehaviour on the part of the employee concerned, was a question which could be gone into in a departmental inquiry. However, for the purpose of effecting a transfer, the question of holding an inquiry to find out whether there was a misbehaviour or a conduct unbecoming of a Government servant was unnecessary. What was actually needed in such a situation was a prima facie satisfaction of the Competent Authority, on the basis of contemporaneous record as well as reports about the occurrence complained of before issuing an order of transfer. In other words, even though holding of a departmental inquiry before issuing a

transfer order with respect to the allegations of misbehaviour or misconduct etc. was not required, it was essential that the prima facie satisfaction of the Competent Authority must be arrived at with respect to the existence or truthfulness of such an allegation. The following observations in this regard, as contained in para 14 of the judgment in the case of Union of India & others Vs. Janardhan Debanath & another (supra), are apposite and we quote:

"14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs."

11. Transfer on administrative ground does not amount to any punishment nor is it punitive in nature because by transferring a person from one place to another, no penalty as such is imposed, which is either minor or major in character or extent. All that happens is that the person transferred is removed from one place and post to another place and post. The status of the person transferred does not undergo any change nor his service prospects, in any manner, get financially adversely affected. The transfer does not visit the person transferred with any penal consequences.

12. One safeguard which is inbuilt in para 4 of the aforesaid Communication dated 5th June, 2008 and which also finds support in para 14 of the judgment of the Supreme Court in the case of **Union of India & others Vs. Janardhan Debanath & another** (supra) is that the existence and truthfulness of any of the three allegations, finding a mention in para 4, is sine qua non to ordering the transfer of a person on administrative ground and the existence and truthfulness of such an allegation has to be prima facie established in the mind of the Authority competent to transfer based upon contemporaneous record as well as reports. In other words, before effecting a transfer on administrative grounds, the Authority competent to transfer must prima facie arrive at and duly record its satisfaction about the existence and truthfulness, after due verification and confirmation, of the allegations against the person sought to be transferred. This is a condition precedent to the transfer of the person. If this does not happen and if the prima facie satisfaction, upon due verification and confirmation, is not arrived at and duly recorded, any and every order effecting a transfer on administrative ground is vitiated as well as it is against the principles of natural justice. On this ground alone, such an order deserves to be quashed and set aside.

13. In the present appeal as well as in the writ petition, the only ground which was raised against the impugned transfer orders was that they were passed on administrative ground and, therefore, per se were bad in law. The learned Single Judge, in the judgment impugned in the Special Appeal, in our considered opinion, has taken the correct view that the transfer order on administrative ground per se is not bad in law. We agree with him. We accordingly over-rule the view adopted by the Division Bench in the interlocutory order dated 1st July, 2008 in the aforesaid Writ Petition. We, while upholding the aforesaid view, substitute our own opinion by laying down that even though a transfer order on administrative ground per se is not bad in law, no person can be transferred on an administrative ground unless before issuing the transfer order, the Authority competent to transfer

has arrived at and recorded his satisfaction, upon due verification and confirmation, about the existence and truthfulness of anyone of the three factors / grounds / considerations warranting the transfer of the person concerned.

14. The Special Appeal as well as the Writ Petition have no merit. They are accordingly dismissed, but without any order as to costs.

(Dharam Veer, J.) (B.C. Kandpal, J.) (V.K. Gupta, C.J.)

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