

Before Ashutosh Mohunta & T.P.S. Mann, JJ

KAMAL INDER PAL SINGH,—Petitioner

versus

UNION OF INDIA AND OTHERS,—Respondents

C.W.P. No. 8706 of 2007

23rd July, 2007

Constitution of India, 1950—Art. 226—Border Security Force (Tenure of Posting and Deputation) Rules, 2000-R1.5—Transfer within 10 months of posting—Petitioner appointed Law Officer (Deputy Commandant/Litigation) by way of static posting in June, 2006—Before completion of tenure of 3 years petitioner reverted to his parent battalion—Challenge thereto—Chief Law Officer/Supervisory authority finding performance of petitioner not up to the mark and recommending premature posting out of petitioner—Commandant examining in detail case of petitioner and further recommending for posting out petitioner—Director General, BSF approving recommendation on file—Once detailed reasons had been given by Commandant there was no need for Director General to pass a detailed and speaking order, therefore, petitioner's contention of necessity of passing speaking order rejected—Order of transfer upheld, petition dismissed.

Held, that the Commandant (Personnel) examined the case of the petitioner in detail and also went through the note made by Chief Law Officer (D &L)/DIG and was of the opinion that the performance did not permit the petitioner to continue as the post in question was full of responsibility. Under these circumstances, he recommended the posting out of the petitioner from his present appointment. The file was then put up before DIG (Personnel), who agreed with the noting made by the Commandant. Inspector General (Personnel) also agreed with the posting out of the petitioner. The file was then put up before the Director General on 18th May, 2007 when the recommendation made was approved. Once detailed reasons had been given by the Commandant (Personnel) for posting out the petitioner, there was no need for the Director General to pass a speaking and detailed order. His approving the recommendation was sufficient.

(Para 7)

Rajeev Anand, *Advocate for the petitioner.*

Ms. Renu Bala Sharma, Central Government Standing Counsel
for the respondents.

T.P.S. MANN, J.

(1) The action of the respondents in transferring the petitioner as Deputy Commandant of Border Security Force from HQ Punjab FTR to 91 Bn, has been challenged by him by way of the present petition.

(2) It was submitted on behalf of the petitioner that he had been transferred from his present place of posting by disregarding the statutory provisions and the rules for transfer and, that too, within ten months of his posting. He has an unblemished record of service since his appointment from the year 1993. He had been working to the utmost satisfaction of his superior officers, where his work and conduct had been commended. He had been given responsible jobs/appointments, commensurate with his qualifications and rank. No departmental proceedings had even been initiated or even contemplated against him. By dint of his work and dedication, besides fulfilling the requisite criteria and eligibility, he was able to obtain promotion as Deputy Commandant on 7th October, 1998.

(3) It was also submitted on behalf of the petitioner that he had done LL.B from Panjab University, Chandigarh and based on his said qualifications, he was given the appointment of Law Officer (Deputy Commandant/Litigation) by way of static posting in June, 2006. As per Rule 5 of Border Security Force (Tenure of Posting and Deputation) Rules, 2000, his posting to static formation was to be for a period of three years and only thereafter he could be reverted to his parent battalion. Further, as per Rule 7, only those members of the force were eligible for posting to static formation, who were found suitable for the job, which suitability was to be assessed by the competent authority. All these formalities were duly complied with by the competent authority and it was only thereafter that the petitioner was appointed as Law Officer (Deputy Commandant/Litigation). Under these circumstances, when the petitioner had not completed the period of three years in static formation, he could not be transferred to his parent battalion. It was also contended on behalf of the petitioner that the impugned transfer order was passed on the basis of recommendation

made by the Commandant for posting the petitioner out from his present place of appointment, yet while approving the same, Director General did not pass a speaking order and simply approved the recommendation.

(4) Learned counsel for the respondents had submitted that though the petitioner was posted as Deputy Commandant (Law) in BSF HQ Punjab Frontier, Jalandhar on 28th June, 2006, yet his performance was not found up to the mark. The Chief Law Officer, HQ DG BSF, who was the supervisory authority of law setup of the Force, recommended for premature posting out of the petitioner. Based on the Chief Law Officer's recommendation, case of the petitioner was examined in detail by the Commandant, who after examining the same, came to a conclusion that though the petitioner had not completed his tenure, yet his performance did not permit him to continue as such and therefore, he further recommended for posting out the petitioner. The recommendation was finally approved by the Director General, Border Security Force and accordingly, the petitioner was posted out to 91 BN BSF.

(5) We had heard learned counsel for the parties.

(6) It was not denied by learned counsel for the petitioner that the rules allowed the transfer before the completion of tenure of three years posting at static formation. However, it was submitted that the Director General, BSF was required to pass : a speaking order before approving the recommendation made by Commandant for posting out the petitioner.

(7) The Commandant (Personnel) examined the case of the petitioner in detail and also went through the note made by Chief Law Officer (D & L)/DIG and was of the opinion that the performance did not permit the petitioner to continue as the post in question was full of responsibility. Under these circumstances, he recommended the posting out of the petitioner from his present appointment. The file was then put up before DIG (Personnel), who agreed with the noting made by the Commandant. Inspector General (Personnel) also agreed with the posting out of the petitioner. The file was then put up before the Director General on 18th May, 2007 when the recommendation made was approved. Once detailed reasons had been given by the Commandant (personnel) for posting out the petitioner, there was no need for the Director General to

pass a speaking and detailed order. His approving the recommendation was sufficient. The entire file was before him. We have also gone through the file in question and find that the Director General was fully aware of the background of the case.

(8) Learned counsel for the petitioner referred to **N.S. Bhullar versus The Punjab State Electricity Board and Ors (1), Pankaj Kumar Sarkar versus Food Corporation of India and Ors (2), Jyoti Kumar Das versus Rubul Sarmah (3), and Bhabendra Sharma versus The State of Assam and others (4)** to contend that where the transfer was made for some extraneous reasons to punish an employee, the Court could interfere and quash it in exercise of powers under Article 226 of the Constitution of India.

(9) There is no dispute with the law laid down by the aforementioned judgments. However, it is to be seen that all the aforementioned judgments have been passed in the case of government servants, who were in public services and not in para-military service as is the case of the petitioner.

(10) In **Major General J.K. Bansal Vs. Union of India and Others (5)**, it was held that the scope of interference by Courts in regard to members of armed forces was far more limited and narrow than in the case of civilian employees. Further that the Court should be extremely slow in interfering with an order of transfer of such category of persons unless an exceptionally strong case was made out. The relevant observations made by the Hon'ble Supreme Court are as under :---

“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 Court should be extremely slow in interfering with an order of

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- (1) 1991(1) S.C.T. 392
 - (2) 2005(2) S.L.R. 208
 - (3) 2004(5) S.L.R. 386
 - (4) 2004(6) S.L.R. 385
 - (5) 2005(4) R.S.J. 187

transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made.”

(11) In **Shri P.R. Sumiyon Vijayraj, Commandant, 17 Bn. B.S.F., Mawpat, Shillong versus Union of Indian and Others** WP(C) No. 8797 of 2004 decided by Gauhati High Court on 11st January, 2005 it was held that the transfer of a government servant could not be treated as punitive if it was on account of mismanagement and unbecoming behaviour of such a government servant. Further that the scope of judicial review in the matter of transfer was very narrow and could be resorted to only if it was shown that the transfer was an outcome of *mala fide* exercise of power or prohibited by service rules or passed by an incompetent authority. para 15 of the said judgment is reproduced hereinbelow :

“It is settled law that transfer is an incident of service and the same cannot be treated to be punitive if the Govt. servant is transferred out from one place of posting to another due to his mismanagement and unbecoming behaviour. If the behaviour and conduct of the public servant become undesirable and unbecoming causing embarrassment to the concerned department/establishment, the competent authority shall have the liberty to take any action like transfer. The Court cannot substitute its own decision in the matter of transfer for that of the superior authority. The transfer of an employee, unless shown to be an outcome of *mala fide* exercise of power or prohibited by service rules or passed by an incompetent authority, is not subject to judicial interference as a matter of routine. The scope of the judicial review of such transfer order is very narrow.”

(12) In view of the above, we do not find any merit in the present writ petition. The same is consequently dismissed. There shall be no order as to costs.

(13) Interim order passed earlier stands vacated.

R.N.R.