

	<p>माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क प्रधान मुख्य आयुक्त कार्यालय OFFICE OF THE PRINCIPAL CHIEF COMMISSIONER OF GST & CENTRALEXCISE</p> <p>केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क अंचल : तमिलनाडु एवं पुदुच्चेरी</p> <p>CENTRAL GST & CENTRAL EXCISE ZONE : TAMILNADU & PUDUCHERRY</p> <p>जी एस टी भवन, सं. 26/1, महात्मा गांधी रोड, चेन्नई - 600 034</p> <p>GST BHAWAN, No.26/1, MAHATHMA GANDHI ROAD, CHENNAI - 600 034</p> <p>ई-मेल/ Email cca.estt.section@gmail.com दूरभाष / Ph:044- 28335061/62</p>	
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Date

DRAFT TRANSFER POLICY 2022

INTRODUCTION

1.1 The earlier transfer policy is reviewed and based on the experience of its implementation, request of the concerned to consider the enhancement of the tenure from 8 years to 12 years in Groups other than Chennai, a new policy with the concurrence of all concerned is formulated. Accordingly, these transfer policy guidelines would supersede all the previous guidelines issued in by the Chennai Cadre Controlling Authority.

1.2 The jurisdiction of the Chennai Cadre Controlling Authority, headed by the Principal Chief Commissioner of CT & Central Excise, Chennai Zone is spread over Tamil Nadu & Puducherry covering Two Zones after rolling out to Goods and Services Tax regime viz (a) GST & Central Excise, Chennai Zone; and (b) Customs Preventive Zone, Trichy.

1.3 The Chennai GST & Central Excise Zone consists of 14 Commissionerates viz. Chennai North, Chennai South, Chennai Outer, Puducherry, Audit Chennai-I, Audit Chennai-II, Appeals Chennai-I, Appeals Chennai-II, Coimbatore, Madurai, Salem, Trichy, Audit Coimbatore and Appeals Coimbatore.

1.4 The Customs Preventive Zone, Trichy consists of two Commissionerates viz Trichy Customs and Tuticorin Customs.

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1.5 In addition to the above mentioned Zones / Commissionerates, the officers in the grade of Superintendent / Inspector are also deployed on local rotational transfer basis to the specified Directorates from the sanctioned strength of the office of the Principal Chief Commissioner of CT and Central Excise, Chennai Zone.

1.6 This Transfer Policy 2022 is made applicable to all the Group B & Group C cadres of this Cadre Control Zone.

2 AIM OF THE POLICY

2.1 The aim of the Transfer policy guidelines for all the Group 'B' and Group 'C' Officers in the Cadre Control Zone, Chennai is to lay down standard norms with a view to provide transparency, objectivity and increased perception of fairness and clarity in the Annual General Transfers. These policy guidelines are also aimed at promoting integrity, efficiency and improve performance by giving wide exposure to the officers and is formulated in tune with the various policy guidelines/instructions issued time to time by CBIC, DOPT and CVC.

2.2 Uniqueness and complexities of this common cadre along with the requirements of Zones / Commissionerates, besides the administrative requirement which prevails over, have been kept in view while formulating this transfer policy.

A) TRANSFER POLICY FOR GROUP B EXECUTIVE OFFICERS (GAZETTED AND NON-GAZETTED)

3 SALIENT FEATURES

3 . 1 The policy aims to provide rotation of officers invariably in all Sections with a view to give them widespread exposure to the functions of the Department. It also seeks to lay down guidelines for rotation of officers to sensitive and non-sensitive postings as per the guidelines of CVC, CBIC and its formations.

3.2 These guidelines are applicable to Inter Zonal transfers between the two zones covered by para 1.2 of this policy and postings and transfers within CT Zone and also rotation of officers from one station / charge to

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another within CT Commissionerates in Chennai Zone.

3.3 Transfer policy for posting within CC(P) Zone, Trichy will be governed by the policy formulated by the Chief Commissioner of Customs (Preventive)Zone, Trichy.

3.4 The offices located within the Chennai Cadre Control Zone are divided into groups as mentioned in the Table below. The various offices in each Groups are as given in para 6.

Groups	Name of the Group
I	Chennai
II	Puducherry
III	Coimbatore
IV	Madurai
V	Salem
VI	Trichy
VII	CCP Zone

4 ANNUAL GENERAL TRANSFER:

4.1 CCA will prepare a list of officers due for transfer in ensuing General Transfer as per Guidelines and place the same on website by 31st December and call for options of transfer/posting from the officers who are either due for transfer or otherwise seeking transfer on any ground. The officers may submit their options for posting, through proper channel, by 31st January.

4.2 The representations, if any, on any ground, should be submitted to CCA by the HoDs, by 15th February.

4.3 The Annual General Transfer will be normally issued by 30th April. The transfer orders within Commissionerates may be issued on or before 15th May of every year. All the officers under orders of transfer should join their nominated place of posting as prescribed in the order.

4.4 Representations, if any, arising out of the transfers effected could be addressed only after the officer joins his new place of posting.

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4.5 Administrative Officers and the concerned Head of the officer of each formation should ensure that every posting of each officer is recorded in the Service Records of the respective officers whenever there is a change of postings including postings within the Sections of H.Qrs of the same Commissionerates, Ranges, Divisions, Audit Circles etc.

5. TENURE OF POSTINGS

5.1 The cutoff date for counting of tenure for Transfer will be 31st May of the year. The length of the period posting at an office will be counted from the date of joining.

5.2 For the purpose of counting of tenure:-

- i. An officer under orders of transfer may be granted any kind of Leave only after the officer had joined the new place of posting. The period spent on any leave without joining the new place of posting will not be counted towards computation of tenure in that new posting. Officers who proceed on any leave without completing the minimum tenure prescribed will have to rejoin the same post/station for completing the prescribed tenure.
- ii. Periods spent on any leave, exceeding 30 days totally in a year, whether in the same posting or elsewhere, will not count towards computation of tenure in the posting.
- iii. Periods spent under suspension will count towards computation of tenure in the posting.

5.3 Tenure For Directorate/CESTAT/Settlement Commission Posting:

The period of tenure on local rotational transfer basis at all Directorates/CESTAT/Settlement Commission will be for a minimum period of 2 years initially as prescribed in the Board's letter F.No.A-11019/05/2017-Ad.IV dated 16/06/2017.

5.4 The tenure in a Group as specified in Para 6 will be counted separately for each Executive Cadre.

5.5 The tenure for Group /Commissionerate will be arrived at by considering the tenure of an officer in each Executive cadre separately before and after GST 01.07.2017 as detailed below. For example, Chennai-I/Service Tax-I is mapped into Chennai North. Hence, the combined tenure in Chennai-I/ Service Tax-I and Chennai North will be taken for

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arriving at the tenure in Chennai North Commissionerate.

SI. No.	Formations under Central Excise	Formations to which mapped under GST
1	Pr. CCO, Central Excise	Pr. CCO, Chennai GST & Central Excise
2	Chennai — I & Service Tax — CCO & ST-I	Chennai North
3	Chennai-II & Service Tax-II	Chennai South
4	Chennai-III & Service Tax-III	Chennai Outer
5	Chennai-IV	Chennai South
6	LTU, LTU Audit Circle & Audit-I CX Chennai	Audit-I
7	Audit-II CX & ST Audit	Chennai Audit-II
8	Appeals-I CX	Chennai Appeals-I
9	Appeals-II & ST Appeals	Chennai Appeals-II
10	Puducherry	Puducherry
11	CCO Coimbatore, Coimbatore CX	Coimbatore
12	Appeals Coimbatore	Appeals Coimbatore
13	Audit Coimbatore	Audit Coimbatore
14	Salem CX	Salem
15	Trichy CX	Trichy
16	Madurai CX	Madurai
17	Tirunelveli CX	Madurai

5.6 All transfers and postings between Zones will be effected with the approval of the Cadre Controlling Authority i.e. (Pr.) Chief Commissioner, CT& C.Ex. , Chennai Zone and postings within a Zone across the Commissionerates will be effected with the approval of the concerned (Pr.) Chief Commissioner of that zone. Postings within each Commissionerate of CT and Central Excise will be effected by the respective (Pr.) Commissioner. Deviation from the transfer policy, warranted, if any, for deployment to field formations within any Commissionerate will have to be done with the prior approval of the respective (Pr.) Chief Commissioner.

6. TENURE IN VARIOUS GROUPS

6.1 The tenure in various Groups are detailed below:-

GROUP I : CHENNAI.

(a) Group-I Chennai consists of Office of the (Pr.) Chief Commissioner, CT & C.Ex. (PCCO) ; Commissionerates of CT & C.Ex, - Chennai North,

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Chennai South, Chennai Outer, Chennai Audit-I, Chennai Audit-II, Chennai Appeals-I, Chennai Appeals-II; and Directorates under CBIC, located in TN & Pondicherry.

(b) The maximum continuous tenure of posting in a particular Commissionerate /PCCO/ Appeals will be as follows:

- | | |
|---|-----------|
| 1. PCCO | : 2 years |
| 2. CT & C.Ex. Commissionerates of Chennai North/South | : 4 years |
| 3. Chennai Outer | : 6 years |
| 4. Chennai Audit-I/II | : 4 years |
| 5) Chennai Appeals-I/II | : 2 years |

(c) The maximum continuous tenure in Chennai is 12 years (other than the excluded tenure in Para 6.2). The period of posting in Ranipet Division, Vellore Division and Kanchipuram Range on AGT which were considered as outstation posting in the erstwhile Transfer Policy are excluded from counting of Tenure for Chennai Group of 12 years.

GROUP II : PUDUCHERRY

Group II Puducherry consists of Puducherry Commissionerate. The maximum continuous tenure in this Group will be 12 years (other than the excluded tenure in Para 6.2). A maximum tenure of 1 year in Yanam and Mahe Ranges will be excluded from the maximum continuous tenure of this Group.

Group III: COIMBATORE

a) Group III consists of Coimbatore GST Commissionerate including offices situated at Ooty, Conoor and Gudalur, Coimbatore Audit Commissionerate and Coimbatore Appeals Commissionerate situated in Coimbatore

(b) The maximum continuous tenure in this Group will be as follows:-

- | | |
|------------------------------------|-------------------|
| Coimbatore GST Commissionerate | : 6 (Six) years |
| Coimbatore Audit Commissionerate | : 4 (four)years |
| Coimbatore Appeals Commissionerate | : 3 (three)years. |

(c) The maximum continuous tenure in this Group is 12 (other than the

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excluded tenure in Para 6.2). A maximum tenure of 1 year in office situated in Ooty, Coonoor and Gudalur will be excluded from the maximum continuous tenure of this Group.

(d) The tenure in Circles of Coimbatore Audit Commissionerate and units of Coimbatore (Appeals) Commissionerate situated outside Coimbatore will be counted towards the tenure of that particular Group.

GROUP IV: MADURAI.

- a. Group IV consists of Madurai GST, Madurai Circle of Coimbatore Audit and Madurai Appeal unit of Coimbatore Appeals Commissionerate situated in Madurai.
- b) The maximum continuous tenure in this Group is 12 years (other than the excluded tenure in Para 6.2).
- c) The tenure in Madurai Audit Circle of Coimbatore Audit Commissionerate and Coimbatore Appeals unit in Madurai will be counted towards the tenure in this Group.

GROUP V : SALEM

- a. Group V consists of Salem GST, Salem Circle of Coimbatore Audit and Salem Appeal unit of Coimbatore Appeals Commissionerate situated in Salem.
- b. The maximum continuous tenure in this Group is 12 years (other than the excluded tenure in Para 6.2).
- c. The tenure in Salem Audit Circle of Coimbatore Audit Commissionerate and Coimbatore Appeals unit in Salem will be counted towards the tenure in this Group.

GROUP VI : TRICHY

- a. Group VI consists of Trichy GST, Trichy Circle of Coimbatore Audit and Trichy Appeal unit of Coimbatore Appeals Commissionerate situated in Trichy.

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b. The maximum continuous tenure in this Group is 12 years (other than the excluded tenure in Para 6.2).

c. The tenure in Trichy Audit Circle of Coimbatore Audit Commissionerate and Coimbatore Appeals unit in Trichy will be counted towards the tenure in this Group.

6.2. EXCLUDED POSTING FOR RECKONING TENURE:

The period spent on the following postings, in any group, will not be counted towards calculation of service in that particular group, but may be so counted at the option of the officer.

- Posting on Deputation
- Posting on local rotational transfer basis to any Directorates
- Posting to CESTAT
- Posting to Settlement Commission
- Posting to SEZ.

7. ROTATION BETWEEN SENSITIVE AND NON SENSITIVE POSTS:

7.1 In accordance with CVC guidelines, all posts have to be identified as sensitive or non sensitive posts. Accordingly, the list of sensitive / non sensitive place of postings are detailed below:

Sl.No	Formations	Sensitive Places	Non Sensitive Places
1	(Pr.) Chief Commissioner's Office	---	All sections
2	CT Commissionerates H.Qrs	Preventive Wing	All other sections of H.Qrs
	Divisions	Sections handling - Refund/Rebate, LUT/ Bonds; and Registrations.	All other sections of Divisions
	Range	All Ranges.	-----
3.	Audit Commissionerates	Circles/ Groups	Sections of H.Qrs
4	Directorates	DGGI, DG DRI,	All other Directorates
5	CESTAT	----	All Sections
6	Settlement Commission-	----	All Sections

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7	Commissioner (Appeals)	----	All Sections
8	SEZ	Period of posting in SEZ	----

7.2 There will be a rotation of officers in every formation between sensitive and non-sensitive charges. The Posting to a sensitive charge normally would not exceed two years for each posting.

7.3 On reversion from a sensitive Directorate/SEZ/Airport as far as possible, officers would be posted to a non-sensitive charge for a minimum period of two years.

7.4 Officers posted from CCP Zone will be posted to sensitive or non-sensitive postings depending on their last postings in CCP Zone.

7.5 As per the CVC guidelines rotation of officers within sensitive and non-sensitive postings will be made periodically to ensure all round exposure and efficiency.

7.6 An officer in the subsequent cycle of postings should not be posted in the same sensitive charge.

8. ROTATION OF OFFICERS WITHIN EACH GROUP:

8.1 Rotation of Officers within each group will be governed by Para 6.

8.2 When a certain number of officers are due for local rotation to new postings in the same Group for the reason of having completed their tenure, but cannot be so transferred due to inadequate number of vacancies available, the officers who have served for longer periods will be transferred first.

9. ROTATION OF OFFICERS BETWEEN GROUP:

9.1 Officers who have completed the maximum continuous tenure in respective Groups (Group I to VI) as mentioned in Para 3.4 will be posted to any other group for a minimum period of 2 years on the basis of option given, availability of vacancies and administrative exigencies. They may be posted back to the previous station on request subject to availability of vacancies and administrative exigencies only after completion of minimum two years in any other group. The officers who are likely to be transferred out during AGT for the second and subsequent time in their service on completion of their tenure in the present Group will have a reduced tenure

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of one year in the new place of posting.

9.2 When a certain number of officers are due for transfer due to the completion of tenure in a Group but cannot be so transferred due to inadequate number of vacancies available, the officers who have served for longer periods will be transferred first.

9.3 On Promotion, officers will normally be posted to a Group / Commissionerate other than their current posting for a minimum period of 2 years. They may be posted back to the previous Group on request subject to availability of vacancies and administrative exigencies only after completion of minimum two years in any other group.

9.4 In case officers are retained in the same Group on promotion due to administrative exigencies/compassionate grounds, the total combined tenure in both Cadres will be counted for the tenure in that Group.

10. POSTING ON DEPUTATION:

10.1 Selection to the Deputation post will be based on the willingness, Vigilance clearance, APAR gradings and other criteria prescribed in respective vacancy circulars.

10.2 The period of service for eligibility as prescribed in the concerned Vacancy Circular would be strictly adhered to.

10.3 Tenure for deputation to Directorates including DRI and DGGI would be for an initial period of Three years and extendable by two years, one year at a time with the approval of designated authority as per existing guidelines.

10.4 Cooling-off Period: In terms of DOPT O.M.No.2/11/2016-Estt(Pay-II) dated 20.07.2018 there should be a 3 years 'Cooling Off' period for deployment of officers between two deputation posts.

10.5 Officers who have been repatriated, on completion of their deputation tenure or otherwise, should join the office of the (Pr.) Chief Commissioner of GST & Central Excise, Chennai. They will be posted to any of the offices situated in this Cadre Control Zone as per the Transfer Policy.

11. POSTING ON LOCAL ROTATIONAL TRANSFER BASIS

In terms of Board's letter F.No. A-11019/5/2017-Ad. IV dated

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16.06.2017 officers will be posted to Directorates from PCCO on local rotational transfer basis for a minimum period of two years initially. CCA will post officers on local rotational transfer basis only to those formations of the Directorates which are located within the jurisdiction of Chennai GST & Central Excise Zone.

12. EXCEPTIONS TO TRANSFER POLICY

12.1 Representations (through proper channel & duly supported by valid documentary evidences) seeking transfer or exemption from transfer during AGT may be considered on the following grounds as far as possible and subject to availability of vacancies and administrative exigencies.

- i. Officers having less than 2 years of service to Superannuation.
- ii. Officers having Autistic or Special / differently abled Children.
- iii. Children studying in Class X and XII.
- iv. Performing Sportspersons who represent the Department in sports and games.
- v. Single parent having School going children up to 12th Std.

In case the officer is considered for retention on the ground stated at (iii) above he or she will be liable for transfer in the subsequent AGT.

12.2 As regards posting of Husband and wife in same station, the DOPT's guidelines prescribed in F.No.28034/9/2009-Estt (A) dated 30.09.2009 and communicated in Board's Circular No. 78/2009 dated 27.10.2009 [F.No. O.21034/39/2009-SO (Coord)] will be followed as far as possible subject to availability of vacancies and administrative exigencies.

12.3 In terms of DOPT O.M F.No.42011/32014-Estt(Res) dated 08.10.2018, Physically challenged persons will be posted to a place nearer to their residence subject to availability of vacancies and administrative exigencies.

12.4 In case, officers are retained in any Group/posting beyond the tenure prescribed, they will normally be posted only to non-sensitive postings.

13. ROTATION BETWEEN GST ZONE AND CCP ZONE (GROUP VII):

13.1 Posting of all officers to CCP Zone will be made by CCA. Transfer and posting of officers to all formations within CCP Zone, Trichy will be as per the policy formulated by the Chief Commissioner, CCP Zone, Trichy.

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13.2 Officers of Chennai Cadre Control Zone will be rotated from Chennai GST Zone to CCP Zone and vice versa, as far as administratively feasible, on Seniority of the officers.

13.3. The maximum continuous tenure in each Cadre in CCP Zone will be for a period of 8 years. In case any officer on promotion is retained in CCP Zone, the total combined tenure in both cadres will be counted for the tenure in this Group.

13.4 On completion of the tenure, on the basis of option exercised by them, they may be posted to Groups other than where they were posted in CCP Zone and subject to availability of vacancies and administrative exigencies. They may be posted back to previous Group after completion of minimum of 2 years in any other Group subject to availability of vacancies and Administrative exigency only. The officers who are likely to be transferred out during AGT for the second and subsequent time in their service on completion of their tenure in the present Group will have a reduced tenure of one year in the new place of posting

13.5 The tenure of postings within CCP Zone will not be counted towards tenure of postings within CT and Central Excise Chennai Zone.

B. TRANSFER POLICY FOR GROUP 'B' MINISTERIAL OFFICERS (GAZETTED AND NON GAZETTED) & GROUP 'C' MINISTERIAL OFFICERS AND NON MINISTERIAL OFFICERS

14.1 On Promotion from Ministerial to Executive Cadre, officers will normally be posted to a Group / Commissionerate other than their current posting for a minimum period of two years. They may be posted back to the previous Group on request subject to availability of vacancies and administrative exigencies only after completion of minimum two years in any other group. In case officers are retained in the same Group on promotion due to administrative exigencies/compassionate grounds, the total combined tenure in both Cadres will be counted for the tenure in that Group.

14.2 While Ministerial officers (Group B & Group C) are also liable for transfer, like Executive officers, routine transfer of Ministerial officers from one group to another will be avoided except on administrative /

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Compassionate grounds.

14.3. **Gazetted Ministerial Officers** may be transferred from one charge to another within the Commissionerate once in every two years. Wherever there are more than one Commissionerate in a station, Administrative Officers in such station may be transferred to another Commissionerate of the said station on completion of 6 years.

14.4. **Senior Private Secretary, Private Secretary & Stenographer Grade-I & II** may be transferred from one Commissionerate to another on completion of 4 years wherever there are more than one Commissionerate in a station.

14.5. **Non Gazetted Ministerial Officers (Group 'B' & 'C')** are liable to be transferred from one charge to another, within a station, after 2 years. They will be rotated within the Commissionerate / Divisions between sensitive and non sensitive postings. They will be transferred from one Commissionerate to another on completion of 4 years, wherever there are more than one Commissionerate in a station .

14.6 **Group C Non-Ministerial officers:-** While Group-C Non-ministerial officers are also liable for transfer, routine transfer of Non-Ministerial officers from one station to another will be avoided except on administrative / Compassionate grounds. Group 'C' Non-Ministerial staff will be rotated between sensitive and non sensitive postings within the Commissionerate as per CVC Guidelines. The maximum tenure of posting for in a particular Commissionerate in a combined cadre in Chennai city will be six years.

14.7 **Drivers:-** While Drivers in all grades are liable to be transferred within the Zone, routine transfer will be avoided as far as possible except on administrative / Compassionate grounds.

14.8 Posting of all officers to CCP Zone will be made by CCA. Transfer and posting of officers to all formations within CCP Zone, Trichy will be as per the policy formulated by the Chief Commissioner, CCP Zone, Trichy.

14.9 Officers of Chennai Cadre Control Zone will be rotated from Chennai GST Zone to CCP Zone and vice versa, as far as administratively feasible, on basis of Seniority of the officers.

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14.10 The maximum continuous tenure in each Cadre in CCP Zone will be for a period of 8 years. In case any officer on promotion is retained in CCP Zone, the total combined tenure in both cadres will be counted for the tenure in this Group.

14.11 On completion of the tenure, on the basis of option exercised by them, they may be posted to Groups other than where they were posted in CCP Zone and subject to availability of vacancies and administrative exigencies. They may be posted back to previous Group after completion of minimum of 2 years in any other Group subject to availability of vacancies and Administrative exigency, if any.

15. MISCELLANEOUS:-

(a) Officers, while under suspension in relation to any case or on revocation of such suspension can be transferred out of the Commissionerates, within the Zone or out of the Zone .

(b) Notwithstanding anything contained in these Guidelines,

(1) CCA may, if it considers necessary to do so in public interest and in furtherance of organizational objectives, transfer, retain or post any officer to any Group /Commissionerate/formation.

(2) In between two Annual General Transfer exercises, on administrative exigencies, CCA may transfer any officer from one post/place/Group to another.

(3) CCA may transfer any officer in respect of whom the concerned (Pr.) Commissioner or (Pr.) Addl. Director General, under whom the officer is working, have made recommendations in writing that the continuance of a particular officer at a particular post / Group is not in public interest.

(4) Officers who are under orders of transfer should first join their new place of posting and then submit representation for retention/ transfer, if any.

This issues with the approval of Principal Chief Commissioner, Cadre Controlling Authority, CT & C.Ex. Tamilnadu and Puducherry.

(T.G. VENKATESH)

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ADDITIONAL COMMISSIONER

NOTE ON WILLINGNESS CRITERION IN TRANSFER POLICY

It is a settled issue that in the matters of transfer and posting of officers to various formations under any administrative authority, the “administrative requirement & Public interest” would prevail over; and “No Government servant or employee of public undertaking has legal right for being posted at any particular place”. (Ref: Gujarat Electricity Board &Anr. Vs AtmaramSungomalPoshani on 31 March, 1989 SC :: Equivalent citations: 1989 AIR 1433, 1989 SCR (2) 357).

In fact, “transfer is not only a condition of the Government service, but also an incidence of service; and who should be transferred, is a matter for the appropriate authority to decide”, as was held by the Hon’ble Supreme Court in the case of UOI Vs S.L. Abbas (AIR 1993 SC 2444).

Similar ruling that “the employee has no choice in the matter of the transfer” as was pronounced by the Apex Court in many other cases like: National Hydro Electric Power Vs Shri Bhagavandtd: 11.09.2001 :: Appeal No: 1095-1096 of 2001 (extracts of relevant judgements enclosed for ready reference).

In the above background, it is felt that the criterion of “Willingness” for general transfers and posting of officers to various formations (except for deployment to the posts on deputation basis in DGGI/DRI/DGS etc. against a notified vacancy) within the administrative control of the Cadre Control Authority, is against the interest of the administration and the various aims & objectives of the transfer policy, as enumerated hereunder:-

- (i) Since the transfer is not only a condition of service, but also an incidence of service; and the employee has no choice in the matter of the transfer (not applicable for postings on deputation basis, as for the deputation posts the concerned has to apply for being considered, which implies Willingness for the same) seeking Willingness (also implies refusal when willingness is not submitted by the concerned) for being posted to any particular formation/ charge, is against the said rulings of the Apex court and hence is not desirable;
- (ii) The willingness or preference or choice for being posted to any specific formations like Audit, Customs, Directorates on loan Basis etc., ought not to be a criterion for deployment, since such willingness /preference/choices is against the interests of the administration and restricts the scope of the deployment of officers in the interests of the effective functioning;
- (iii) The said criterion of “willingness” provided in the policy (besides other criterion like Seniority/ positive vigilance status etc.) has apparently lead to situation where it is only those officers who are interested/willing to be posted to Audit/Customs etc. alone will get

considered to these formations, while several other officers who meets other criterion Viz: seniority, positive integrity status etc., would not get considered for posting to these formations, merely because they did not express such willingness. Such situation is against the basic aims of the subject transfer policy; and no officer could directly or indirectly express that he/she will not serve in certain formations;

- (iv) One of the important underlying principle of the transfer policy is to provide adequate exposure and experience in various fields of work to the officers before they are promoted, to make them adequately prepared to assume higher responsibility, besides aiming to harmonizing objectives of institutional memory and avoid development of vested interests (Ref. DOPT OM No: 11013/10/2013 - Estt. Dtd: 02.07.2015). But the criterion of “willingness” is apparently against these principles/objectives;
- (v) The criterion like “Seniority”, “Never Worked”, “prescribed Cooling off period” etc. (other than the criterion of “Willingness”) would adequately protect the interests of the officers to ensure ‘fair play’ and ‘equal opportunity’ to be considered for posting to the various formations, including to those formations for which willingness was mentioned as one of the additional criteria. The said criterion of “Willingness” is apparently detrimental to the interests of the administration on one hand; and on the other hand, it is restricting the pool of the officers for such postings;
- (vi) From the point of view of the administration, all formations of the CBIC establishments (like Central Tax formations, Audit, Appeals, Customs, various directorates for posting on loan basis against the S/S assigned to PCCO, etc. other than the posts on deputation basis) under the CCA are equally important. Hence, prescribing the criterion of “Willingness” for some formations apparently gives an impression that these formations for which “Willingness” was an additional criterion, are distinct and special; while others for which such criterion was not prescribed, are less important, which, certainly is not at all the case;
- (vii) The criterion of the “Willingness” for posting to certain formations is apparently affecting the efficiency of administration, tax-payer service, commitment to public service etc. which are the broader objectives, as stated in the said Para 2 of the transfer policy 2018;
- (viii) Administration shall have the opportunity to deploy the officers (Superintendents/ Inspectors) to various formations, for effective functioning to ensure proper tax payer service and to protect the interests of revenue, in the public interest. Apparently, the criterion of “Willingness” is coming in the way of meeting such objectives;

- (ix) In view of the foregoing facts and circumstances, it is envisaged to delete the criterion of "Willingness" for deployment of officer (Superintendents/ Inspectors) to various formations like Audit/ Customs/ Directorates on loan basis in the proposed Transfer policy.
- (x) However criterion of "Willingness" for deployment to SEZs/Deputations will be retained, as they fall under a different category

Supreme Court of India

Gujarat Electricity Board & Anr vs Atmaram Sungomal Poshani on 31 March, 1989

Equivalent citations: 1989 AIR 1433, 1989 SCR (2) 357

Author: K Singh

Bench: Singh, K.N. (J)

PETITIONER:

GUJARAT ELECTRICITY BOARD & ANR.

Vs.

RESPONDENT:

ATMARAM SUNGOMAL POSHANI

DATE OF JUDGMENT 31/03/1989

BENCH:

SINGH, K.N. (J)

BENCH:

SINGH, K.N. (J)

VENKATARAMIAH, E.S. (J)

CITATION:

1989 AIR 1433 1989 SCR (2) 357
1989 SCC (2) 602 JT 1989 (3) 20
1989 SCALE (1)907

ACT:

CIVIL SERVICES: Transfer--An incident of service-No employee has legal right to be posted at any particular place--Transfer--Necessary in public interest and efficiency of administration--No employee has right to be absent from duty without sanction of leave.

PRACTICE AND PROCEDURE: Supreme Court--Transfer of case from one Bench to another--Entitlement too--Only when Bench is biased or there are other reasonable grounds--Not when a Judge expresses opinion on merits of case on conclusion of hearing.

Indian Evidence Act, 1872: Section 114(e)--Registered cover sent to addressee presumption of service---When arises.

HEADNOTE:

The respondent joined service as technical assistant with the Gujarat State Electricity Board and was later promoted to the post of Deputy Engineer. While he was posted at Surat he was transferred to Ukai Sub-division under the order of the Superintending Engineer dated 29th March, 1974 and he was relieved from his duties at Surat on 30th March, 1974. He made representation to the Addl. Chief Engineer for

cancelling his transfer order which was rejected and he was directed to join at Ukai but he did not do so and continued to be absent without sanction of any leave and instead he filed a civil suit challenging validity of the order of transfer.

The Superintending Engineer by his letter dated 18th April, 1974 directed the respondent to show cause as to why action should not be taken against him for disobeying the order of transfer and also for unauthorised absence from duty in breach of service Regulation No. 113. The respondent failed to join his duty even after a warning. Thereafter the Superintending Engineer sent a letter dated 24th April, 1974 by registered cover which contained a warning but the same was returned back by the postal authorities with an endorsement that the addressee refused to accept the same.

Meanwhile, the Chief Engineer by his order dated 27th May, 1974

discharged the respondent from service in accordance with service Regulation No. 113 as he had continued to remain absent from duty since 30th March, 1974.

The respondent filed a writ petition before the High Court challenging the validity of the order of his discharge from service. A learned Single Judge of the High Court quashed the order of discharge but looking to the attitude of the respondent and continued conduct of disobedience of the orders of his superior he was not granted consequential reliefs. The respondent as well as the appellant-Board preferred Letter Patent Appeals.

A Division Bench of the High Court dismissed the appeal of the appellant-Board and allowed the respondent's appeal upholding the order of discharge as illegal and void and directed the appellants to reinstate the respondent, to treat him in service, and to grant him benefits of increments, seniority, and promotion. The Division Bench, however, did not grant full back-wages but directed the Board to pay the respondent 50 per cent of back-wages. Against the order of the Division Bench of the High Court the appellants preferred an appeal to this Court by special leave.

The appeal came up for hearing and advocates for both the parties were fully heard. Being satisfied that the Single Judge as well as Division Bench of the High Court committed error in allowing the writ petition of the respondent, this Court suggested to the counsel for the respondent that if he agreed the original writ petition of the respondent could be dismissed without directing him to refund the amount which he had already been paid by the appellants in pursuance to the orders of the High Court and of this Court. The bearing was adjourned to enable counsel to obtain instructions from the respondent. On the next hearing another counsel appeared on behalf of the respondent to argue on merits. The Court refused to hear fresh arguments as the hearing had already been completed. Thereupon, the respondent appeared in person to make his submissions

which the Court refused as oral. hearing has already been completed. However, in the interest of justice the respondent was permitted to file written submissions. No written submissions were filed, instead the respondent adopted an unusual course by sending an application by post expressing his no confidence in the Bench of this Court with a prayer to transfer the case to some other Bench. The Court ignored the request of the respondent as it was unusual, uncalled for, and unjustified.

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Allowing the appeal by special leave, this Court,

HELD: No party is entitled to get a case transferred from one Bench to the other, unless the Bench is biased or there are some reasonable grounds for the same. but no right to get a case transferred to any other Bench, can legitimately be claimed merely because the Judges express opinion on the merits of the case on the conclusion of hearing. [362E]

Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to other is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the Public Administration. [362H; 363A]

Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification, or cancellation of the transfer order. If the order of transfer is not stayed, modified, or cancelled the concerned public servant must carry out the order of transfer. [363B]

If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other. [363C]

No Government servant or employee of any public undertaking has a right to be absent from duty without sanction of leave, merely on account of pendency of representation against the order of transfer. [366B]

There is presumption of service of a letter sent under registered cover, if the same is returned back with a postal endorsement that the addressee refused to accept the same. No doubt the presumption is rebuttable and it is open to the party concerned to place evidence before the Court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered the registered letter to him or that there was no occasion for him to refuse the same. The burden to rebut the

presumption lies on

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the party, challenging the factum of service. [368B-C]

In the instant case, the respondent's failure to join his duties at Ukai resulted in unauthorised absence and his failure to join his duties in spite of repeated reminders and letters issued to him constituted sufficient valid ground for taking action under Regulation No 113. Before issuing the order of discharge the respondent was not only warned but he was also afforded an opportunity to explain as to why disciplinary action should not be taken against him. The respondent acted in an irresponsible manner in not complying with the order of transfer which led to his discharge from service in accordance with the Service Regulation No. 113. The Single Judge as well as the Division Bench both therefore erred in law in setting aside the order of discharge. [368E-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3561 of 1986.

From the Judgment and Order dated 28.2.1986 of the Gujarat High Court in SCA No. 1176 of 1974.

B.K. Mehta, Shishir Sharma and P.H. Parekh for the Appellants.

Respondent-in-person. (N.P.) The Judgment of the Court was delivered by SINGH, J. This appeal is directed against the judgment and order of the High Court of Gujarat dated 28.2.1986 allowing the respondent's writ petition and quashing order of discharge from service and directing his reinstatement in service.

The respondent joined service as technical assistant with the Gujarat State Electricity Board (hereinafter referred to as the Board). He was promoted to the post of Deputy Engineer. While he was posted at Surat as Deputy Engineer he was transferred to Ukai subdivision under the order of the Superintending Engineer dated 29th March, 1974. Pursuant to the order of transfer he was relieved from his duties at Surat on 30th March, 1974 to enable him to join at Ukai. He made representation to the Additional Chief Engineer for cancelling his transfer order on the ground that his mother aged 70 years was ailing and it would cause great inconvenience to him if he was required to join at Ukai. His representation was rejected and he was directed to join at Ukai but he did not do so instead he filed a civil suit at Baroda challenging validity of the order of transfer. Meanwhile, the Chief Engineer by his order dated 27th May, 1974 discharged the respondent from service with effect from 31st March, 1974 in accordance with service Regulation No. 113. The respondent challenged the validity of the order of his discharge from service by means of a writ petition under Article 226 of the Constitution before the High Court of Gujarat. A learned Single Judge of the High Court quashed the order of termination on the findings that the order of discharge was issued in violation of the basic principles of natural justice as no opportunity was afforded to the

re- spondent before discharging him from services under Regula- tion No. 113. The learned Single Judge granted a declaration in respondent's favour holding the order void and illegal but having regard to recalcitrant attitude of the appellant and his continued conduct of disobedience of the orders of his superior authorities, he refused to grant consequential reliefs regarding reinstatement or payment of back-wages. The respondent as well as the appellant-board, both pre- ferred Letters Patent appeals against the order of learned Single Judge. A Division Bench of the High Court dismissed the appeal preferred by the Appellants but it allowed the respondent's appeal. The Division Bench upheld the order of the learned Single Judge holding the order of discharge illegal and void but it set aside the order of the learned Single Judge refusing to grant consequential relief instead it directed the appellants to reinstate the respondent, and to treat him in service without any break in service and to grant him benefits of increments, seniority, and promotion to which he may be entitled under the rules. The Bench, however, did not grant full back-wages to the respondent instead it directed the Board to pay him 50 per cent of back-wages. Aggrieved, the appellant has preferred the instant appeal after obtaining special leave of this Court. This appeal came up for hearing before us on 28th Janu- ary, 1988 and on that day Sh. B.K. Mehta, Advocate appearing for the appellants and Sh. Vimal Dave, Advocate, appearing for the respondent were fully heard. After hearing learned counsel for the parties we were satisfied that the learned Single Judge as well as the Division Bench both had commit- ted error in allowing the writ petition and granting relief to the respondent. We expressed our view in the Court and suggested to Mr. Vimal Dave, counsel for the respondent, that if he agreed the original writ petition of the respond- ent could be dismissed without directing him to refund the amount which he had already been paid by the appellants in pursuance to the orders of the High Court and of this Court as during the pendency of the appeal, the appellants were directed by means of interim order of this Court to continue to pay salary to the respondent which was being paid to him regularly. The hearing was adjourned to enable Sh. Vimal Dave, to obtain instructions from the respondent. The appeal came up for hearing before us on 16.2.1988 when another counsel appeared to argue the appeal on behalf of the respondent on merits. We refused to hear the counsel as we had already completed hearing. Thereupon, the respondent himself appeared in person and sought permission to make his submissions personally. We refused to accede to his request as oral hearing had already been completed and the matter had been adjourned only to enable the respondent's counsel to obtain instructions. However, in the interest of justice we permitted the respondent to file written submissions. if any, in support of his case. Thereafter, the case was listed several times but no written submissions were filed instead the respondent adopted an unusual course by sending an application by post expressing his no confidence in us with a prayer to transfer the case to some other Bench. Since this was unusual, uncalled for and unjustified request we ignored the same and reserved the order. We are constrained to note that instead of utilising the opportunity granted to him for filing written submissions the respondent has mis- used adjournments for the purposes of raising frivolous objections for getting the case transferred to some other Bench. No party is entitled to get a case transferred from one Bench to the other, unless the Bench is biased or there are some reasonable grounds for the same, but no right to get a case transferred to any other Bench, can legitimately be claimed merely because the judges express opinion on the merits of the case on the conclusion of hearing. In the instant case on the conclusion of the oral hearing we had expressed our opinion on 28.1.1988 in the open court, that we were inclined to allow the appeal and set aside the order of the High Court and dismiss the writ petition but taking a sympathetic view we requested Sh. Vimal

Dave, learned counsel appearing for the respondent to obtain instructions as aforesaid. The opportunity granted to the respondent has, however, been misused by raising mischievous and frivolous objections instead of filing written submissions. The respondent's prayer is accordingly rejected and since oral hearing has already been completed, and in spite of several adjournments respondent failed to appear before the Court or to file the written submissions we proceed to decide the case on merits.

Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the Public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other.

There is no dispute that the respondent was holding a transferable post and under the conditions of service applicable to him he was liable to be transferred and posted at any place within the State of Gujarat. The respondent had no legal or statutory right to insist for being posted at one particular place. In fact, during the tenure of his service in the Board the respondent had been transferred from one place to another place several times. In March, 1974 he was transferred from Surat to Ukai. The distance between the two places as was stated before us during the hearing of the case is less than 50 kms. He was relieved from his duties at Surat on 30th March, 1974 but he did not join at Ukai till the impugned order of discharge was issued on May 27, 1974. The Chief Engineer who discharged the respondent's services exercised his power under Service Regulation No. 113, which runs as under:

"113. The continued absence from duty or overstay, in spite of warning, to return to duty shall render the employee liable to summarily discharge from service without the necessity of proceedings under the Gujarat Electricity Board, Conduct, Discipline and Appeal Procedure."

The above Rule provides that if an employee of the Gujarat Electricity Board continues to remain absent from duty or overstays the period of sanctioned leave and in spite of warning, he fails to return to duty, he renders himself liable to be discharged summarily from service without complying with the procedure prescribed for taking disciplinary action, under the Gujarat Electricity Board, Conduct, Discipline and Appeal Procedure. Regulation 113 confers wide powers on the authorities to

summarily discharge an employee from service, if he continues to be absent from duty in an unauthorised manner and refuses to join his duty even after warning. Under the disciplinary rules detailed procedure is required to be followed for removing an employee from service but Regulation 113 provides for summary discharge from service. Before this power is exercised, two conditions must be satisfied; Firstly, the employee must be found to be absent from duty without leave or overstaying the period of sanctioned leave, and secondly, he failed to join his duty even after a warning. The object and purpose of giving warning is to remind the delinquent employee that if he continues to be absent from duty he would be liable to action under Regulation 113 and to afford him an opportunity to make amends by joining his duty. If even thereafter he fails to join duty, his services are liable to be terminated by an order of discharge. It is noteworthy that the validity of Regulation 113 was not challenged before the High Court and the parties proceeded on the assumption that Regulation 113 was valid and applicable to the respondent's service. The Chief Engineer discharged the respondent from service as he had continued to remain absent from duty w.e.f. March 30, 1974 to May 27, 1974. The Division Bench of the High Court held that no warning as contemplated by service Regulation No. 113 had been issued to the respondent nor he had been afforded any opportunity of showing cause before the impugned order of discharge was passed and consequently, the order of discharge was null and void being contrary to service Regulation No. 113 itself. On perusal of the material on record we are of the opinion that the view taken by the High Court is not sustainable as there is sufficient material on record which shows that warning had been issued to the respondent before the order of discharge was issued. In determining the question whether any warning was given to the respondent it is necessary to refer to the sequence of events and the correspondence which ensued between the appellants and the respondent. On March 29, 1974 the Superintending Engineer of the Board issued the order, transferring the respondent from Surat to Ukai, on 30.3.1974 the respondent was relieved from Surat and directed to join his duty at Ukai, but the respondent did not join his duty at the new place of posting. Instead he made a representation to the Additional Chief Engineer on 8.4.1974 after the transfer order. The Transfer order was not stayed and as the respondent did not join his duties, he continued to be absent without sanction of any leave. In this situation the Superintending Engineer by his letter dated 18th April, 1974 directed the respondent to show cause as to why action should not be taken against him for disobeying the order of transfer and also for unauthorised absence from duty in breach of service Regulation No.

113. The letter is as under:

"GUJARAT ELECTRICITY BOARD O & M DIVISION Nana Varchha Road Surat.

Dated 18th April, 1974 To Shri A.S. Pohani Junior Engineer, Ukai 37, Gurunagar Society Near Jakat Naka, Surat-3. Sub: Transfer from Surat to Ukai. You have been relieved on 30.3.1974 A.N. on account of your transfer from Surat to Ukai, but you have not reported to Ukai till today and remained on unauthorised absence on relief, which is breach of S.R. No. 112 and 113. Please submit your explanation as to why action should not be taken against you for disobeying order of superior and breach of S.R. No. 112 and 113 within 7 days from receipt of this letter.

Sd/-Executive Engineer (O & M) Surat Copy f.w.c.s. to Superintending Engineer, GEB, Utran."

There is no dispute that the respondent received the afore-said letter as he sent a reply to the Superintending Engineer on April 20, 1974, a copy of which was annexed as Annexure 'J' by the petitioner, to his petition before the High Court. By that letter respondent stated that he was waiting for the decision of his representation made for reconsideration of his transfer from Surat to Ukai and therefore, the question of his remaining on unauthorised leave was misconceived. Since the respondent had not obtained any sanctioned leave for his absence his absence from duty was unauthorised. No Government servant or employee of any public undertaking has a right to be absent from duty without sanction of leave, merely on account of pendency of representation against the order of transfer. Since the respondent continued to be absent from duty the Superintending Engineer by a registered post acknowledgment due letter dated April 24, 1974 informed the respondent that his request to postpone his transfer was rejected and he was directed to join his duty at Ukai and on his failure to do so disciplinary action would be taken against him. The Establishment Officer (P) of the Board, also informed the respondent by his letter dated May 6, 1974 that his representation against the order of transfer was not accepted and he was directed to obey the order of transfer. A copy of the letter filed by the petitioner himself as Annexure 'K' to the writ petition in the High Court. But even thereafter, the respondent did not join his duties. Ultimately, the Chief Engineer of the Board took action against the respondent and discharged him from service with effect from 31.3.1974 by his letter dated May 27, 1974. The sequence of events and the correspondence which ensued between the officers of the Board and the respondent clearly show that the respondent disobeyed the order of transfer and he remained absent from duty in an unauthorised manner without obtaining sanction of leave. The aforesaid documents leave no room for any doubt that the respondent was reminded of his failure to join his duties at Ukai and he was further reminded that his unauthorised absence had exposed him to disciplinary action. In fact, the Superintending Engineer had by his letter dated 18th April, 1974 clearly reminded the respondent that his unauthorised absence was in breach of Service Regulation No. 113 and called upon to show cause why action should not be taken against him but in spite of these letters the respondent failed to join his duties. The Division Bench of the High Court has held that since no warning was issued to the respondent action taken under Service Regulation No. 113 was not in accordance with law. This finding is wholly misconceived. A warning need not be in any particular form. The object and purpose of the warning as contemplated by the Regulation, is to remind the delinquent employee that his continued unauthorised absence from duties was liable to result in discharge of his service. The substance of the Superintending Engineer's letter dated 18th April, 1974 which was admittedly served on the respondent, contained warning to the respondent, which fully met the requirement of Regulation No. 113.

Before the High Court a controversy was raised as to whether the registered letter dated 24.4.1974 addressed by the Superintending Engineer to the respondent was received by him or not. The registered cover, containing the letter dated 24.4.1974 was returned back by the postal authorities with an endorsement that the addressee refused to accept the same. The respondent's case was that no such registered letter was tendered to him by the postman nor he ever refused to accept the same. The Division Bench held that letter dated 24.4.1974 which contained a warning had not been served on the respondent and since the Board had failed to raise the question before the learned

Single Judge it could not do so in the letters patent appeal. The Division Bench further held that since the letter dated 24.4.1974 was not served on the respondent, there was no material to show that any warning had been issued to the respondent before he was discharged from service. We do not agree with the view taken by the Division Bench. Firstly, even if the letter dated 24.4.1974 was not served on the respondent there is no dispute that the Superintending Engineer's letter dated 18th April, 1974 had been served on him. By that letter warning as contemplated by Regulation No. 113 had been issued to the respondent. Therefore even if the letter dated 24.4.1974 was not served on the respondent the order of discharge as contemplated by Regulation No. 113 is sustainable in law. But even otherwise, the Division Bench committed error in holding that the Board had raised the question of service of the letter dated 24.4.1974 for the first time before the Division Bench in the letters patent appeal. Perusal of the averments made in paragraphs 17, 18, 23 and 25 (2)(ii) of the counter-affidavit filed in reply to the petitioner's writ petition before the learned Single Judge shows that the Board had categorically pleaded that the respondent was informed by letter dated 24.4.1974 that his representation to postpone his transfer was rejected and he should obey the order of transfer. It was further pleaded that the respondent had refused to accept the registered letter and the same had been returned back by the postal authorities with an endorsement that the addressee refused to accept the same. In his rejoinder affidavit the respondent denied the aforesaid allegations and asserted that the letter was not tendered to him and he never refused to accept the registered cover and the postal endorsement was wrong and incorrect. Apart from denying the postal endorsement, the respondent placed no material before the Court in support of his pleading. In this view, we are of the opinion that the Division Bench was totally wrong in holding that no opportunity was afforded to the respondent to meet the case set up by the Board that the letter dated 24.4.1974 was served on the respondent. No new plea had been raised by the Board before the Division Bench instead the plea relating to service of the aforesaid letter had already been before the learned Single Judge.

There is presumption of service of a letter sent under registered cover, if the same is returned back with a postal endorsement that the addressee refused to accept the same. No doubt the presumption is rebuttable and it is open to the party concerned to place evidence before the Court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered the registered letter to him or that there was no occasion for him to refuse the same. The burden to rebut the presumption lies on the party, challenging the factum of service. In the instant case the respondent failed to discharge this burden as he failed to place material before the Court to show that the endorsement made by the postal authorities was wrong and incorrect. Mere denial made by the respondent in the circumstances of the case was not sufficient to rebut the presumption relating to service of the registered cover. We are, therefore, of the opinion that the letter dated 24.4.1974 was served on the respondent and he refused to accept the same. Consequently, the service was complete and the view taken by the High Court is incorrect. In view of the above discussion, we therefore hold that the respondent's failure to join his duties at Ukai resulted in unauthorised absence and his failure to join his duties in spite of the repeated reminders and letters issued to him constituted sufficient valid ground for taking action under Regulation No. 113. We further hold that before issuing the order of discharge the respondent was not only warned but he was also afforded an opportunity to explain as to why disciplinary action should not be taken against him. The respondent acted in an irresponsible manner in not

complying with the order of transfer which led to his discharge from service in accordance with the Service Regulation No. 113. The learned Single Judge as well as the Division Bench both erred in law in setting aside the order of discharge. We, accordingly, allow the appeal, set aside the order of the Single Judge as well as Division Bench and dismiss the respondent's petition. There would be no order as to costs. The respondent has been paid a sum of Rs. 1,04,170 towards salary under the interim orders of this Court. Now, since the order of discharge is held to be valid the amount paid to the respondent is liable to be recovered from him, but having regard to the facts and circumstances of the case and the hardship which could be caused to the respondent, we direct the appellant not to recover the amount already paid to the respondent.

S.K.A.
Allowed.

Appeal allowed.

Supreme Court of India

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

Author: G Mathur

Bench: Cji 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.

Supreme Court of India

Mrs. Shilpi Bose And Others vs State Of Bihar And Others on 19 November, 1990

Equivalent citations: AIR 1991 SC 532, 1991 LabIC 360, (1991) IILLJ 591 SC, 1991 Supp (2) SCC 659

Bench: K Singh, K Ramaswamy

ORDER

1. Leave granted.

2. The appellants are lady teachers in Primary Schools in the State of Bihar, On their request they were transferred to places where their husbands were posted by the District Education Establishment Committee. Respondents Nos. 4 to 18 who were displaced by the appellants challenged the validity of the transfer Orders before the High Court by means of a writ petition under Article 226 of the Constitution. The High Court by its judgment and Order dated 8-2-1989 set aside the transfer Orders and directed the reposting of the respondents to the places from where they had been transferred.

3. After hearing learned Counsel for the parties and having considered the facts and circumstances of the case, we are of the opinion that the High Court committed serious error in interfering with the transfer Orders of primary school teachers. The High Court held that the District Education Establishment Committee had no jurisdiction to transfer the Primary School teachers on their request. We find no justification for this conclusion. There is no dispute that the District Education Establishment Committee is competent to transfer Primary School teachers from one place to the other but merely because such transfers were made on the request of teachers, the committee is divested of its jurisdiction. The Director of the Primary Education had issued directions that lady teachers posted in distant areas or rural areas may be accommodated to the place of their request to avoid hardship to them. These directions are reasonable, and the District Education Establishment Committee followed the same principles in transferring the appellants on their requests to avoid hardship with was being caused to them. The respondents challenged the validity of the transfer before the High Court on another ground also that Primary School teachers posted in the urban areas were not liable to be transferred to rural areas though the State Government had issued circular on March 30, 1984 permitting transfers from urban areas to rural areas. The High Court did not interfere with the Order of the transfer on this ground instead it held that the transfer Orders were without jurisdiction as the same had been made on the appellants' request with a view of accommodate them. We fail to appreciate the reasoning recorded by the High Court. If the competent authority issued transfer Orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the Court merely because the transfer Order were passed on the request of the employees concerned. The respondents have continued to be posted at their respective places for the last several years, they have no vested right to remain posted at one place. Since they hold transferable posts they are liable to be transferred from one place to the other. The transfer Orders had been issued by the competent authority which did not violate any mandatory Rule, therefore the High Court had no jurisdiction to interfere with the transfer Orders.

4. 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 malafide. 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. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer Orders.

5. We accordingly allow the appeal, set aside the Order of the High Court and dismiss the petition filed by the respondents. The appellants should be posted to the places to which they had been transferred under the Orders impugned before the High Court. There will be no Order as to costs.

Supreme Court of India

N.K. Singh vs Union Of India on 25 August, 1994

Equivalent citations: 1995 AIR 423, 1994 SCC (6) 98

Author: J S Verma

Bench: Verma, Jagdish Saran (J)

PETITIONER:

N.K. SINGH

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT 25/08/1994

BENCH:

VERMA, JAGDISH SARAN (J)

BENCH:

VERMA, JAGDISH SARAN (J)

RAMASWAMY, K.

CITATION:

1995 AIR 423

1994 SCC (6) 98

JT 1994 (5) 298

1994 SCALE (3) 845

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by VERMA, J.- The appellant N.K. Singh belongs to the Indian Police Service and is an officer of the 1961 batch allocated to the State cadre of Orissa. The appellant was posted as IG, CID in Orissa when he was brought on deputation to an equivalent post of Joint Director in the Central Bureau of Investigation (CBI) in February, 1990. By a notification dated 7-2-1990 issued by the Government of Orissa, the services of the appellant were placed on deputation to the Ministry of Home Affairs in the Government of India for a period of five years and by notification dated 26-2-1990 issued by the Government of India he was appointed Joint Director in the CBI until further orders w.e.f. 12-2-1990. The appellant was working in this capacity 7 in the CBI and was in-charge of a Special Investigation Group conducting some sensitive investigations. By an order dated 21-3-1991 which was served on the appellant on 26-3-1991, the appellant was transferred from the post of Joint Director, CBI to the Border Security Force (BSF) in an equivalent post of IGP. Aggrieved by his transfer from CBI to BSF, the appellant filed an application before the Central Administrative Tribunal on 25-3-1991 challenging his transfer on certain grounds. The

Tribunal has dismissed that application by the impugned order dated 5-4-1991. Hence this appeal by special leave.

2. There is no dispute that the impugned transfer from CBI to BSF, both of which are Central Police Organisations, has no adverse consequence on the service career and prospects of the appellant and the transfer of the appellant to BSF was in an equivalent post of the rank of IGP. It has also been fairly stated by learned counsel for the appellant that the appellant has not suffered any setback in his service career by this transfer inasmuch as he was promoted in due course in the BSF in the year 1992 to the rank of Additional Director General of Police and then promoted further to the rank of Director General in the Bureau of Police Research and Development Branch of the BSF in January 1994. The real grievance of the appellant ventilated by his learned counsel is that the appellant has been eased out of the sensitive post in CBI as in-charge of the Special Investigation Group investigating into the St. Kitts' affair wherein there are allegations of forgery of some documents and of involvement in that forgery of some persons having political patronage, because of his impeccable reputation as an officer beyond approach. On this basis the transfer of the appellant from CBI to BSF is challenged on the ground of mala fides attributed mainly to the then Prime Minister of India, Respondent 2, Shri Chandrashekhar. It is further urged that the appellant's transfer from the CBI is prejudicial to public interest since it is with a view to scuttle the sensitive investigation. The incidental reference to Respondent 3, Dr Subramanyam Swami, the then Union Law Minister is not material and, therefore, does not merit any further reference. It must be placed on record that on behalf of the respondents, the calibre and high reputation of the appellant were not disputed but the allegation of mala fides was strongly refuted as also the alleged ulterior motive for the transfer while contending that the transfer of the appellant from CBI to BSF was due to exigencies of administration and not for the purpose of removing the appellant from the post he held in the CBI. Respondent 2 while vehemently denying the allegation of mala fides has asserted that the appellant's transfer was a necessary incident of his service and the reasons in the instant case are not judicially reviewable.

3. The Central Administrative Tribunal has rejected the appellant's application without even requiring counter- affidavits to be filed by the respondents. This indeed was an unusual course to adopt when the appellant had alleged mala fides on the basis of certain facts. For this reason, in this appeal, the parties were required to file their affidavits and both sides were heard at length with reference to the averments made in their affidavits.

4. There are two aspects of transfer of a public servant holding a sensitive and important post. One aspect relates to the private rights of the public servant as an individual pertaining only to his service career. The other is concerned with prejudice to public interest irrespective of the individual interest. The element of prejudice to public interest can be involved only in transfers from sensitive and important public offices and not in all transfers. Mere suspicion or likelihood of some prejudice to public interest is not enough and there must be strong unimpeachable evidence to prove definite substantial prejudice to public interest to make it a vitiating factor in an appropriate case unless it is justified on the ground of larger public interest and exigencies of administration. Such cases would be rare and this factor as a vitiating element must be accepted with great caution and circumspection.

5. In the instant case, Shri Jethmalani has attempted to integrate the two aspects to widen the range of attack, even though the case pleaded is only of mala fides. However, we have considered both the aspects since certain facts pleaded to urge mala fides may relate to public interest as well.

6. Shri Ram Jethmalani, learned counsel for the appellant did not dispute that the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision or guideline regulating such transfers amounting to arbitrariness. In reply, the learned Additional Solicitor General and the learned counsel for Respondent 2 did not dispute the above principle, but they urged that no such ground is made out; and there is no foundation to indicate any prejudice to public interest.

7. In substance, the appellant's case, as projected by Shri Jethmalani, combining the two aspects is that the then Prime Minister, Respondent 2, Shri Chandrashekhar was annoyed with the appellant because he felt embarrassed by the investigation made by the appellant of his complaint of phone tapping; Shri Chandrashekhar was also interested in the so-called Godman Nek Chand Gandhi alias Chandraswami against whom allegation of forgery of some documents relating to the St. Kitts' affair was being investigated by the appellant; and, therefore, to avoid any further embarrassment to Chandraswami as well as to wreak vengeance for the embarrassment in the phone tapping incident caused to him by the appellant, he had directed the transfer of the appellant from the CBI to the BSF. There is no allegation that the appellant was replaced in this investigation by a pliable or less competent officer who may have facilitated the alleged ulterior purpose.

8. Shri Jethmalani submits that the present case falls within the narrow scope of judicial review permitted in such cases since the transfer of the appellant was prejudicial to public interest being made for the ulterior purpose of scuttling the sensitive investigation of which the appellant was incharge in the CBI. It is urged that promotion of public interest must govern the exercise of all public power and its negation vitiates the action taken. This is the gravamen of the charge levelled against the then Prime Minister, Shri Chandrashekhar (Respondent 2) and constitutes the substance of the plea of mala fides. The question is, whether the ground is made out.

9. Transfer of a public servant from a significant post can be prejudicial to public interest only if the transfer was avoidable and the successor is not suitable for the post. Suitability is a matter for objective assessment by the hierarchical superiors in administration. To introduce and rely on the element of prejudice to public interest as a vitiating factor of the transfer of a public servant, it must be first pleaded and proved that the replacement was by a person not suitable for the important post and the transfer was avoidable. Unless this is pleaded and proved at the threshold, no further inquiry into this aspect is necessary and its absence is sufficient to exclude this factor from consideration as a vitiating element in the impugned transfer. Accordingly, this aspect requires consideration at the outset.

10. It is significant that there is no allegation by the appellant that his successor in the CBI was a pliable officer or that he was in any manner inferior to the appellant or unsuitable for discharging the duties of the sensitive office in the CBI. In fact there is not even a mention made at any stage of

the appellant's successor in the CBI or his credentials or even a whisper against him of any kind. He has neither been named nor impleaded as a party. It is, therefore, not a case where the inferior quality of the successor-in-office would by itself support the appellant's contention that the object of transfer was to scuttle the sensitive investigation which was being conducted by the CBI under the supervision of the appellant. Even though we have looked into the particulars relating to the progress of that investigation by the CBI after the appellant's transfer only for the purpose of satisfying ourselves that public interest has not been jeopardised, yet the facts of the present case and the context of absence of any allegation of the unsuitability of the successor-in-office are sufficient to require no further consideration of this aspect in the present context. In the present case, we must proceed on the assumption that the appellant's successor in the CBI was also a capable, competent and upright officer like him and, therefore, the appellant's transfer from the CBI to the BSF was not prejudicial to public interest. There is nothing else in the present case which requires any further examination of the public element for testing the legality of the impugned transfer.

11. The remaining scrutiny must now be confined to the private rights of the appellant based on the pleas of mala fides and contravention of the Tenure Rules regulating the period of deputation in the Central Police Organisations.

12. Shri Jethmalani has contended that according to the Tenure Rules, the appellant was entitled to continue on deputation in a Central Police Organisation ordinarily for a period of five years; and he having been posted on deputation in the CBI because of his background of experience in the investigative field, he should have been continued in the CBI for the entire period of five years. On this basis, the appellant claims that his transfer, with the background of annoyance of the then Prime Minister, Shri Chandrashekhar, was at least against the spirit of the Tenure Rules and supports the allegation of mala fides.

13. In the detailed counter-affidavit filed by Shri Chandrashekhar, Respondent 2, there is a categorical denial of the allegations made against him. He has asserted that even though he was unhappy with the manner in which the appellant handled the investigation into his complaint of tapping of his telephone but that had nothing to do with his transfer from the CBI to the BSF which was made in the ordinary course and according to the exigencies of administration. It is also contended that the appellant's transfer was an ordinary incident of his service which had no adverse effect on his service career. The appellant was transferred to the BSF in an equivalent post and since then he has also earned two promotions in the BSF which came to him in due course. It is further urged that the Tenure Rules which provide ordinarily a tenure of five years on deputation in the Central Police Organisations do not contemplate the entire period of five years in one Central Police Organisation alone and, therefore, the BSF also being a Central Police Organisation, there was no infraction even of the Tenure Rules.

14. As for the effect of the transfer personally on the appellant, it is undisputed that there was no adverse effect thereof on the appellant's service career. The transfer of the appellant from the CBI to the BSF was on an equivalent post and the appellant was given two promotions thereafter in due course as and when the promotions became due to him. There was also no infraction of any rules or

professed guidelines as a result of the appellant's transfer from the CBI to the BSF.

15. Rule 8 of the Tenure Rules for IPS Officers to which reference has been made by Shri Jethmalani provides that IPS officers appointed to the posts of Inspector General of Police directly from their respective cadres will have a tenure of five years. This has to be read along with Rule 1 thereof which says that IPS officers with a minimum service of seven years would ordinarily be considered for induction in the Central Police Organisations and in the event of their not being found suitable they would be repatriated to their State cadres. A harmonious construction of the provisions in these rules indicates that the ordinary tenure on deputation of five years of IPS officers appointed to the posts of Inspector General of Police from their respective cadres in the Central Police Organisations to which they are posted has to be not necessarily in any one Central Police Organisation but in all, in one or more Central Police Organisations to which they are posted. It is, therefore, clear that the officers found suitable for being continued on deputation in the Central Police Organisations have an ordinary tenure of five years not necessarily in one Central Police Organisation but in all, in the Central Police Organisations to which they are posted. These may be more than one also. The emphasis is on the total period of deputation in Central Police Organisations being five years and not on the entire deputation continuing only in one Central Police Organisation.

16. Admittedly, CBI and BSF are both Central Police Organisations and, therefore, there is full compliance of the Tenure Rules if the appellant has a total tenure of at least five years in the Central Police Organisations to which he is posted during the period of deputation. This need not be in the CBI alone. Obviously, this is the manner in which the Tenure Rules have been construed and understood in their application to the officers on deputation. A letter MHA U.O. No. 1-21021/21/90-Pers. III dated 14-6- 1991 of the Ministry of Home Affairs contained in the record produced by the learned Additional Solicitor General at the hearing before us relating to the appellant, reads as under :

"Subject : Appointment of Shri N.K. Singh, IPS (Ori : 61) as IG in BSF

DG BSF may please refer to their U.O. No. 11/5028/91-Pers/BSF dated 29-5-1991 on the above subject.

Shri N.K. Singh, IPS came on central deputation as Joint Director, CBI w.e.f. 12-2-1990 and transferred to BSF as IG w.e.f. 2-4- 1991. As such, his normal term of 5 years will expire on 31-5-1995."

There is thus no infraction of the Tenure Rules in any manner by the transfer of the appellant from the CBI to the BSF.

17. From the relevant record produced by the learned Additional Solicitor General, it is also clear that the proposal for transfer of the appellant from the CBI to the BSF as Inspector General of Police emanated in the ordinary course from the Ministry of Home Affairs and was occasioned by the urgent need to fill the post of Inspector General in the BSF with a suitable officer consequent upon the promotion of the seniormost Inspector General in the BSF as Additional Director General, BSF;

and the appellant was considered a suitable officer for appointment to that post. That proposal of the Ministry of Home Affairs was approved in due course by the higher authorities including the Prime Minister.

18. Shri Jethmalani rightly urged that the record is bound to show that nothing unusual was done and the inference of mala fides should be drawn by reading in between the lines and taking into account the attendant circumstances. We have referred to the record only to mention that there is nothing therein to suggest that the transfer was unusual. No other suspicious circumstance is made out to permit the contrary inference. No roving inquiry into the matter is called for or justified within the scope of judicial review of a transfer scrutinised with reference to the private rights of an individual. There is thus no basis to accept the appellant's contention that his transfer was occasioned by mala fides of the then Prime Minister on account of his annoyance with the appellant for the reasons stated or that it was in any manner contrary to the requirements of the Tenure Rules.

19. There is also material to indicate that there was need of a competent IPS officer in the BSF for being appointed to the post of Inspector General of Police as a result of the seniormost IGP of the BSF being promoted and appointed to the post of Additional Director General, BSF. As the record shows, that was the reason for moving the appellant from the CBI to the BSF to fill the vacancy created in the BSF of a senior IGP therein. These facts reflected in the relevant record negative the plea of mala fide urged by the appellant, even assuming that the appellant honestly believes in the correctness of his stand. The appellant's transfer cannot, therefore, be held to have been made by the then Prime Minister to wreak his vengeance upon the appellant. This impression of the appellant, even if honestly held, is not supported by any acceptable material.

20. It is not necessary to refer to the several decisions cited by Shri Jethmalani since the grounds for judicial review of a transfer and the limits thereof are settled and not in dispute. One decision on which particular emphasis was laid by Shri Jethmalani may however be referred. That decision is *R. v. Commissioner of Police of the Metropolis, ex p Blackburn* which is clearly distinguishable. That relates to the performance of a duty and holds that a police officer owed a duty to the public to enforce the law which he could be compelled to perform and that his discretion in the matter was not absolute. In the facts of this case and the reasons for which we have reached the conclusion that the appellant's transfer from the CBI to the BSF is not vitiated, we do not find this decision of any assistance.

21. We may observe that we do not approve of the manner in which the Tribunal proceeded to decide the case. Allegations of mala fides having been made by the appellant on affidavit, it is difficult to fathom how the Tribunal rejected them without even requiring a counter-affidavit to rebut them. The Tribunal's perception that the allegations made on affidavit by the appellant even without any rebuttal do not constitute the plea of mala fide, is obviously incorrect. The Tribunal also did not appreciate the true extent of scrutiny into such a matter and the grounds on which a transfer is judicially reviewable. The conclusion we have reached in the present case is for the reasons given by us and not those which impelled the Tribunal to reject the appellant's claim.

22. We are impressed by the track record of the appellant and the uninhibited acknowledgement and acclaim of his calibre and credentials even by the respondents in spite of the serious unsubstantiated accusations made by the appellant against them. The future (sic further) promotions earned by the appellant in due course are recognition of his merit and the assurance that his needless excursion into the arena of litigation to challenge a mere transfer not detrimental to his career prospects has fortunately not had any adverse influence against him.

23. However, acceptance of the appellant's claim would imply that no other officer in the CBI is competent and fit to conduct the sensitive investigation and his successor would stand automatically discredited without any such allegation being made or hearing given to him. That indeed 1 (1968) 2 QB 118; (1968) 1 All ER 763; (1968) 2 WLR 893, CA is a tall order and impermissible in this proceeding where the other officers are not even participants. The tendency of anyone to consider himself indispensable is undemocratic and unhealthy. Assessment of worth must be left to the bona fide decision of the superiors in service and their honest assessment accepted as a part of service discipline. Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.

24. The private rights of the appellant being unaffected by the transfer, he would have been well advised to leave the matter to those in public life who felt aggrieved by his transfer to fight their own battle in the forum available to them. The appellant belongs to a disciplined force and as a senior officer would be making several transfers himself. Quite likely many of his men, like him, may be genuinely aggrieved by their transfers. If even a few of them follow his example and challenge the transfer in courts, the appellant would be spending his time defending his actions instead of doing the work for which he holds the office. Challenge in courts of a transfer when the career prospects remain unaffected and there is no detriment to the government servant must be eschewed and interference by courts should be rare, only when a judicially manageable and permissible ground is made out. This litigation was ill- advised.

25. We do hope that this would be a passing phase in the service career of the appellant and his crusader's zeal would be confined to the sphere of his official activity for improving the image and quality of public service of the police force, in which he holds a high office. By achieving that purpose, he would render much greater public service. These observations are apposite in the present context.

26. The appeal is dismissed for the reasons given by us. No costs.

Supreme Court of India

National Hydroelectric Power ... vs 1.Shri Bhagwan on 11 September, 2001

Author: Raju

Bench: S. Rajendra Babu, Doraiswamy Raju

CASE NO. :

Appeal (civil) 1095-1096 of 2001

PETITIONER:

NATIONAL HYDROELECTRIC POWER CORPORATION LTD.

Vs.

RESPONDENT:

1. SHRI BHAGWAN

DATE OF JUDGMENT: 11/09/2001

BENCH:

S. Rajendra Babu & Doraiswamy Raju

JUDGMENT:

Raju, J.

The above appeals have been filed against the common order dated 1.8.2000 of the Punjab and Haryana High Court, wherein the orders of transfer of the respondents to Subansiri Hydroelectric Project, Itanagar, were set aside. The respondent-Shiv Prakash initially joined service of the National Hydroelectric Power Corporation Limited, Faridabad (hereinafter referred to as `the Corporation) as Attendant Grade-III on 3.6.1982 pursuant to a letter of appointment dated 25.5.1982. In 1987, he was selected and appointed as Operator, Photostat Machine, by an order dated 29.9.1987 and thereafter promoted as Operator, Photostat Machine Grade-II, pursuant to the order dated 1.1.1993. He was further promoted as Operator, Photostat Machine Grade-I, in 1998 and by an order dated 5.1.2000, he was transferred from E&M Division, Corporate Office, to the Project at Itanagar. So far as Shri Bhagwan is concerned, he joined the service of the Corporation as Attendant Grade-III in 1981 pursuant to an appointment letter dated 15.4.1981 and in 1996, he was selected and appointed as Assistant Grade-III (Hindi). While working in the office of Director (Schemes-II), Corporate Office, by an order dated 5.1.2000 he was transferred to the Project at Itanagar.

The orders of transfer came to be challenged on the ground that they were contrary to the settlement entered into between the Corporation and its employees Union and the Model Standing Orders framed under the Industrial Employment (Standing Orders), 1946. Motive to penalize for Trade Unions activities of the respondents was also averred to be yet another reason. Per contra, the

appellant- Corporation contended that the plea of alleged malafides is baseless and that after drawing the necessary transfer allowance and other allowance for giving effect to the order of transfer, it is not given to and as a matter of fact, the respondents were estopped from challenging the orders of transfer. The transfer was said to be consistent with the terms and conditions embodied in the letter of appointment as well as recruitment rules framed for the Corporation employees, according to which every employee is liable to be transferred and posted at any place within its service and in the absence of any bar as such for being so transferred from the Corporate Office to the Project and vice versa. By way of replication, their case was reiterated by the employees. The High Court was of the view that the Corporate Office and the Projects constitute different units for purposes of seniority, as disclosed from the relevant rules, and that, therefore, an employee borne on a particular seniority unit cannot be transferred to another seniority unit, except with his consent. The plea based on the terms and conditions embodied in the letters of appointment came to be rejected for the reason that the letters of appointment have to be read in consonance with the rules and if so done, the transfers under challenge cannot be upheld, having regard to what the High Court has viewed to be the bar contained in the rules against an employee from one seniority to another seniority unit. The plea of malafides urged on behalf of the employees and the one based on estoppel urged on behalf of the Corporation came to be rejected, while allowing the Writ Petitions by quashing the orders of transfer. Hence, these appeals.

Heard Shri B. Datta, learned senior Advocate for the appellant- Corporation and Shri Jitendra Sharma, learned senior Advocate, for the respondent-employees. It was urged for the appellant-Corporation that transfer being an incident of service, no exception could be taken to the impugned orders of transfer, which came to be made according to the appellant in accordance with law and in public interest, particularly in the absence of any proof of malafides or contravention of any specific prohibitory provision in this regard, rendering the employees immune from such transfers. Rule 4.1.1 of the Seniority Rules was, according to the appellant, misconstrued completely giving a go-bye to R 5-14 of the Recruitment Rules and a proper construction of the same would really support the stand of the Corporation to justify the transfers in the case on hand. The assumption made by the High Court on the alleged grievance of loss of seniority is said to be unwarranted having regard to the fact that the Projects to which the respondents were transferred being new, no such grievance could have been countenanced. It was also urged that the Government of India, from time to time, assigned new Projects to the Corporation for being executed and implemented and the above transfers become absolutely necessary for undertaking such new Projects in order to adjust the staff from various Projects or Corporate Offices where they were either not required or found to be surplus and so far as the case on hand is concerned, staff from the lowest level, namely, Class-IV, to the level of General Managers have been transferred, offering a package deal under which they were permitted to not only keep their families at the previous place of posting or any place of their choice in India entitling them to House Rent Allowance of that Station, but also giving them in addition, special House Rent Allowance of ten per cent of presently drawn basic pay, giving them, at the same time, temporary accommodation at the project site free of cost, besides granting them other benefits like site compensatory allowance, monthly ad hoc monetary assistance, free transport of essential commodities to the site and mess facilities, etc. More than one and a half times the insurance coverage that they would have got in the previous place of posting also become due to them for which the premium is said to be borne by the Corporation, in addition to the travel facilities to the

members of the family.

The learned senior counsel for the respondents, while adopting the reasoning of the High Court in the order under appeal, strenuously urged that as per the Seniority Rules, which came into force w.e.f. 1.6.1976, the Corporate Office and the Projects constituted different units for purposes of seniority and consequently, the High Court was justified in coming to the conclusion that the transfer from one unit to the other unit could not have been made without consent of the employee concerned to his detriment in respect of his rights of seniority. Argued the learned senior counsel further that the construction placed by the High Court on the scope of Rule 4.1.1 of the Seniority Rules is correct and that the transfer envisaged therein related to the transfer of employees from one cadre to the other cadre in the same Office, Project or Unit and not otherwise, since the Corporate Office and Projects are distinct and separate entities for the purpose of seniority. The learned senior counsel for the respondents repeatedly urged that the rights of the employees in respect of their seniority would be adversely affected by the impugned transfers and, therefore, no interference is called for in these appeals.

On a careful consideration of the submissions of the learned counsel on either side and the relevant rules to which our attention has been invited to, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer. It is by now well-settled and often reiterated by this Court that no Government servant or employee of 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 other 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 a matter of routine, as though they are the Appellate Authorities substituting their own decision for that of the Management, as against such orders passed in the interest of administrative exigencies of the service concerned. On the facts and circumstances of the cases before us, we are also unable to agree with the learned counsel for the respondents that Rule 4.1.1 of the Seniority Rules interdicts any transfer of the employees from one Office or Project or Unit to any one of the other as long as the seniority of such an employee is protected based on the length of service with reference to the date of promotion or appointment to the grade concerned irrespective of the date of transfer. We also consider it to be a mere submission in vain, the one urged on the basis of alleged adverse consequences detrimental to their seniority resulting from such transfer. In the facts of the present cases, at any rate, no such result is bound to occur since the project undertaken to which the respondents have been transferred is itself a new one and, therefore, we see no rhyme or reason in the alleged grievance.

Consequently, we are of the view that with the rejection of the plea of malafides by the High Court, no further interference could have been thought of by the High Court in these cases. We are also informed that the respondents have since joined at the Project site and are serving there.

The appeals are allowed accordingly. The impugned judgment of the High Court is hereby set aside and the Writ Petitions filed by the respondents shall stand dismissed. There will be no order as to

costs.

J.

[S. Rajendra Babu] J.

[Doraiswamy Raju] September 11, 2001.

Supreme Court of India
Rajendra Singh vs State Of U.P.& Ors on 31 July, 2009
Bench: Tarun Chatterjee, R.M. Lodha

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4975 OF 2009
(Arising out of SLP) No. 16307/2007)

Rajendra Singh etc.etc. . . .Appellants

Versus

State of U.P. & Ors. . . .Respondents

With

CIVIL APPEAL NO.4976 OF 2009
(Arising out of SLP) No. 18428/2007)

JUDGEMENT

R.M. Lodha, J.

Leave granted.

2. These two appeals are directed against the Judgment and Order passed by the High Court of Allahabad at Lucknow on August 22, 2007 whereby the High Court although upheld the order of the transfer of Karvendra Singh (hereinafter referred to as, "Writ Petitioner") but quashed the order of transfer of Rajendra Singh (hereinafter referred to as, "Respondent No. 5"). Both, Writ Petitioner and Respondent No. 5, are aggrieved by the order of the High Court and hence, these two appeals by special leave.

2. The Writ Petitioner and Respondent No. 5 are in the revenue service of the State of Uttar Pradesh. Both of them are Sub-Registrar. By an Office Order dated July 31, 2007 issued by I.G. Registration, Writ Petitioner, working as Sub-Registrar, Ghaziabad has been transferred to Hapur-II while Respondent No. 5, working as Sub-Registrar, Hapur-II has been transferred to Ghaziabad-IV. The transfer order dated July 31, 2007 came to be challenged by the Writ Petitioner before the High Court of Allahabad, Bench Lucknow. While challenging the legality of the transfer order, Writ Petitioner set up the grounds that he joined as Sub-Registrar, Ghaziabad, Sadar-IV only a month back; that the transfer order has been issued on the complaint of one Radhey Lal, Sanyojak Dalit

Morcha Sangharsh Samiti, Lucknow and that the order of transfer was arbitrary, stigmatic and suffers from non-application of mind. The Writ Petitioner also set up the case that Respondent No. 5, who has been transferred in his place as Sub-Registrar, Ghaziabad-IV did not have good service record; that there was vigilance enquiry pending against Respondent No. 5 on charges of corruption and that his service record bears adverse entry in the year 2005.

3. Respondent No. 5 as well as the State Government vehemently opposed the writ petition. On behalf of the State Government, it was submitted that although a complaint came to be received from one Radhey Lal against the Writ Petitioner but Ghaziabad-IV being an important Sub-District from the point of view of registration of deeds/instruments as well as revenue collection, the transfer of Writ Petitioner from Ghaziabad-IV to Hapur-II was done on administrative grounds. The State Government emphatically refuted the allegation of mala fides and denied that the order of transfer was stigmatic or punitive.

4. Respondent No. 5 filed a separate counter affidavit in opposition to the writ petition. He set up the plea that he has rich experience as Sub-Registrar having worked at places such as Allahabad, Kanpur, Varanasi and Ghaziabad. He stated that vigilance enquiry against him has been closed and his appeal against the adverse entry made in his service record in 2005 is pending and that pending disposal of that appeal, no effect has been given to the said adverse entry.

5. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires [see *State of U.P. v. Gobardhan Lal*; (2004) 11 SCC 402].

6. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In the case of *Shilpi Bose (Mrs.) & Ors. v. State of Bihar & Ors.*¹, this Court held :

"4. In our opinion, the courts should not interfere with a transfer order which is 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. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which

would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

7. In *N.K. Singh v. Union of India & Ors.*², this Court reiterated that the scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any specific provision.

8. Insofar as the transfer of Writ Petitioner from Ghaziabad-IV to Hapur-II is concerned, the High Court found that the transfer order has not affected his service conditions AIR 1991 SC 532 (1994) 6 SCC 1998 and pay and other benefits attached to the post which was held by him. As a matter of fact, the High Court did not find any flaw in the transfer of the Writ Petitioner from Ghaziabad-IV to Hapur-II. As regards Respondent No. 5, the High Court considered the matter thus :

".....in our view, it is evident that the respondent No. 5 also can not be said to be an Officer having a better conduct and integrity in comparison to the petitioner justifying his posting at Ghaziabad and in this regard, it appears that I.G. (Stamps) did not give correct information to the Principal Secretary. However, it can not be held that the respondent No. 1 in passing order dated 31st July, 2007 has acted maliciously or for extraneous reasons amounting to malafide. Once the basic ground of challenge to the impugned order of transfer that the same is malicious in law falls, we do not find any reason to interfere with the impugned order of transfer, transferring the petitioner from Ghaziabad to Hapur. It is not the case of petitioner that his transfer is contrary to rules or has been issued by an authority who is not competent. It is well settled that an order of transfer is amenable for judicial review on limited grounds namely it is contrary to rules or has been passed an incompetent authority or is a result of malafide. In view of admission on the part of the respondent No. 1 in his Counter Affidavit that the respondent No. 5 has been found guilty of serious misconduct for causing loss to the Government revenue by acting without jurisdiction and colluding evasion of stamp duty, in our view transfer of the respondent No. 5 to Ghaziabad can not be sustained in view of further admission on the part of the respondent No. 1 that the interest of department requires posting of an honest and efficient person at Ghaziabad."

9. It is difficult to fathom why the High Court went into the comparative conduct and integrity of the petitioner and Respondent No. 5 while dealing with a transfer matter. The High Court should have appreciated the true extent of scrutiny into a matter of transfer and the limited scope of judicial review. Respondent No. 5 being a Sub-Registrar, it is for the State Government or for that matter Inspector General of Registration to decide about his place of posting. As to at what place Respondent No. 5 should be posted is an exclusive prerogative of the State Government and in exercise of that prerogative, Respondent No. 5 was transferred from Hapur-II to Ghaziabad- IV keeping in view administrative exigencies.

10. We are pained to observe that the High Court seriously erred in deciding as to whether Respondent No. 5 was a competent person to be posted at Ghaziabad-IV as Sub- Registrar. The exercise undertaken by the High Court did not fall within its domain and was rather uncalled for. We are unable to approve the direction issued to the State Government and Inspector General of Registration to transfer a competent officer at Ghaziabad-IV as Sub-Registrar after holding that Respondent No. 5 cannot be said to be an officer having a better conduct and integrity in comparison to the petitioner justifying his posting at Ghaziabad-IV. The High Court entered into an arena which did not belong to it and thereby committed serious error of law. The only question required to be seen was whether transfer of Respondent No. 5 was actuated with malafides or otherwise in violation of statutory rules. The transfer of Respondent No. 5 was not found to suffer from any of these vices. The High Court went into the competence and suitability of Respondent No. 5 for such posting. It is here that the High Court fell into a grave error. As a matter of fact, the impugned order of the High Court casts stigma in the service of Respondent No. 5 which may also act prejudicial to his interest in the pending appeal against the adverse remarks.

11. We may also observe that transfer of the Writ Petitioner from Ghaziabad-IV to Hapur-II cannot be said to be stigmatic and any observation made in the impugned order about the work and conduct of the Writ Petitioner shall not be read adversely by the authorities against the Writ Petitioner.

12. Consequently, the order dated August 22, 2007 passed by the High Court quashing the transfer of Respondent No. 5 from Hapur-II to Ghaziabad-IV is set aside. Appeal of Rajendra Singh is allowed while appeal of Karvendra Singh stands dismissed with clarification as indicated above. The parties shall bear their own costs.

.....J (Tarun Chatterjee)J (R. M. Lodha) New Delhi July 31, 2009.

Supreme Court of India

State Of U. P. & Ors vs Gobardhan Lal on 23 March, 2004

Author: D Raju

Bench: Doraiswamy Raju, Arijit Pasayat.

CASE NO. :

Appeal (civil) 408 of 2004

PETITIONER:

State of U. P. & Ors.

RESPONDENT:

Gobardhan Lal

DATE OF JUDGMENT: 23/03/2004

BENCH:

Doraiswamy Raju & Arijit Pasayat.

JUDGMENT:

J U D G M E N T W I T H CIVIL APPEAL No.409 OF 2004 D.B. Singh Versus D.K. Shukla & Ors.

D. Raju, J.

Since the challenge in these appeals relates to identical orders, they are dealt with together. In Civil Appeal No.408/2004, one Zila Desh Bhakta Society, Meerut (U.P.), has filed an application for intervention. In our view, the same does not deserve to be countenanced having regard to the nature of the rights and grievance involved for consideration in these appeals. Hence, the application is rejected.

Civil Appeal No.408 of 2004:

This appeal has been filed by the State of U.P. and others, who were arrayed as respondents before the High Court, against the order dated 3.4.2000 of a Division Bench of the Allahabad High Court in Civil Misc. Writ Petition No.2893 of 2000, whereunder the writ petition filed challenging the transfer of the respondent came to be disposed of with certain directions general and far-reaching in nature - affecting the rights of the Government and various officers of the Government in the administrative hierarchy to pass orders of transfer of Officers/Servants serving under them. The salient and necessary facts relating to the appeal are that the respondent, who was working as District Supply Officer, Meerut, came to be transferred by an Office Order dated 8.12.1999 by the Secretary, Food and Civil Supplies Department of the Government, to Head Office Office of Food Commissioner at Lucknow. This Office Order involved the posting of not only a substitute to the respondent at Meerut but the transfer of another officer as well. The grievance with which the said transfer order came to be challenged before the High Court was that though by an order dated 10.4.1999 the respondent, who was serving at Unnao, was transferred to Meerut and joined as such, he came to be transferred again by the impugned order due to political pressure and influence, particularly that of the local MLA by name Atul Kumar, to the Head Office at Lucknow in order to

help another to be posted in his place. It seems to have been urged further that the District Magistrate of Meerut has commended the services of the respondent in dealing with the public and despite such views expressed, the transfer order came to be made for extraneous purposes, at the behest of and in order to oblige the local MLA. Carried away by the copies of the letters filed as Annexures before the High Court, allegedly written by the MLA, the Court, while issuing notice, seems to have granted interim orders of stay as well. The respondents filed counter affidavit disputing the claims made in the Writ Petition as to the alleged motives and baseless accusations relating thereto, and as found noticed in the order under challenge, it was categorically asserted for the respondents before the High Court that the so-called letter said to have been written by the MLA is a fake one and it was neither written by him nor was it available in the files. That apart, it was also, among other things, contended that the performance of the respondent in the previous stations as well came under a cloud and as a matter of fact, he was suspended on 10.2.1997 for alleged serious irregularities and misconduct while he was District Supply Officer at Hamirpur and Gonda. Though, subsequently reinstated on 11.7.1997 and departmental proceedings instituted were pending, once again he was said to have been suspended on 15.12.1997 for irregularities committed and reinstated on 20.3.1999, subject to the condition that the departmental proceedings pending against him will continue and as a matter of fact, two departmental proceedings were said to be pending against him. The respondent (Writ Petitioner before the High Court) himself is said to be the real brother of an MLA, by name Shri Ram Pal Verma, and through him and another MLA he was said to be bringing a lot of pressure to bear on the authorities, at every stage to get favourable treatment. In the light of the above and the further claim made that the criminal proceedings have also been sanctioned against him, it was contended that his transfer was purely in public interest and necessitated by the exigencies of service to keep him away from the field work and to take him into the Head Quarters Office on the administrative side.

The learned Judges of the Division Bench, after adverting to these claims and counter claims made in the pleadings, though observed that in view of the conflicting statements in the affidavits, it was not possible for them to decide the disputed question of facts in writ jurisdiction as to whether the transfer order was passed due to political pressure or not, the Bench, in our view, fell into an error in attempting to lay down general principles relating to transfers and postings of Government Servants keeping in view, as found noticed in the order under challenge, some large-scale transfers said to have been taking place due to political interference in the State as disclosed from certain proceedings said to have been brought before the Court as well as some of the newspaper reports. As part of its attempts and endeavours to obviate such happenings, the High Court has not only directed the respondent to approach the Chief Secretary with a representation as to his grievance besides making a consequential direction to Chief Secretary to dispose of the same, but also issued the following directions: -

"Hence in such cases it is better for the government servant to approach the Chief Secretary, U.P.

Government, and this internal mechanism will be better for this purpose. The Chief Secretary is a very senior government officer with sufficient maturity and seniority to withstand political or other extraneous pressure and deal with the issue fairly and we are confident that he will do justice in the matter to civil servants. This will also avoid or reduce the floodgate of litigation of this nature in this

Court. As regards Class-I Officers, the Civil Service Board shall be constituted for dealing with their transfers and postings (as already directed by us above)."

Hence, this appeal.

Civil Appeal No.409 of 2004:

This appeal has been filed by the appellant, who was respondent No.3 in the High Court in Civil Misc. Writ Petition No.7429 of 2000, which came to be filed by the first respondent herein challenging the promotion and appointment of the appellant as Director of U.P. Local Fund and Audit Department. It is unnecessary for us to advert to the respective claims of parties for the reason that when the Writ Petition came up for hearing, the very Division Bench, which dealt with the other Writ Petition giving rise to the other appeal, after noticing the fact that highly disputed facts are involved in this case, made reference to the judgment rendered by them in the other case and directed that the first respondent, the appellant herein and any other person concerned may also make a representation before the Chief Secretary, which may be considered by the Chief Secretary or his nominee and pass appropriate orders thereon. It is in such circumstances that one of the respondents before the High Court has come up before this Court by way of this appeal. During the course of hearing, apart from reiterating the stand taken in the pleadings, it has been further stated that the first respondent is no longer in service and he came to be dismissed as a sequel to the disciplinary proceedings initiated against him and that, therefore, nothing survives in the appeal so far as the first respondent is concerned. But yet it has been urged that the general observations and directions made and liberties granted to Government Servants, as a class, by the High Court in the order under challenge ought not to be allowed to stand.

The learned counsel appearing for the appellant-State contended that once the High Court had come to the conclusion that disputed questions of facts have been raised rendering it not possible to adjudicate on the facts as to whether the transfer order was passed due to political pressure or not as also in the other case relating to the promotion, the High Court ought to have rejected the Writ Petitions leaving liberty with the parties concerned, if they felt so aggrieved, to vindicate their rights, if any, in any other manner known to and in accordance with law and ought not to have embarked upon generalising the problems stated to be prevailing in the State with reference to transfer of public servants or promotions and given such sweeping directions whittling down the existing well-settled policies and guidelines regulating transfers and overriding the competence, authority and powers vested with the concerned and competent authorities of the State to deal with transfers of their subordinates, as was permissible in law. It has been also contended that pursuant to the directions of the Court, the relevant Government Orders laying down the norms and principles for regulating transfers, etc. have already been brought to the notice of the Court and in spite of it some sweeping observations, which cannot be countenanced in law, came to be passed by the Court. So far as the other appeal is concerned, it has been urged by the counsel for the State as well as the appellant that the rights relating to conditions of service have got to be asserted and adjudicated in accordance with law availing of the avenues of remedies provided therefor and the same could not be short-circuited by relegating everything to the Chief Secretary to be dealt with on mere administrative side, de hors the relevant service rules, as well as other governing provisions of law

and binding instructions relating to the conditions of service of a Government servant.

Per contra, the learned counsel for the respondents, having regard to the efflux of time and also the subsequent developments and changed circumstances, were not that serious as to defending the general directions of the nature given in this case by the High Court. Keeping in view all this, we find it necessary to deal with the legality and propriety of the directions issued and also the desirability or otherwise of the Court embarking upon such ventures, without affecting the rights of individual parties, who approached the Court for relief in these matters. Since, as pointed out earlier, having regard to the efflux of time the respondent in Civil Appeal No.408/2004 could not claim to continue in the same place forever, apart from the fact that we have been told that he has already been serving in a different station. Likewise, so far as the first respondent in Civil Appeal No.409/2004 is concerned, it is stated that he is no longer in service and if he or any of the parties have any rights to be vindicated, our orders in these appeals shall not stand in the way of their rights to pursue the same in accordance with and as is permissible in law. We reiterate that the prime concern in these appeals, at the present stage, is only with reference to the omnibus and general directions issued by the High Court placing an embargo on the right of the competent and concerned authorities of the Government to pass orders of transfers and also as to the remedial or other measures, if any, to be provided for in such cases, apart from those as are available in law.

It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises

and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

The very questions involved, as found noticed by the High Court in these cases, being disputed questions of facts, there was hardly any scope for the High Court to generalise the situations based on its own appreciation and understanding of the prevailing circumstances as disclosed from some write ups in journals or newspaper reports. Conditions of service or rights, which are personal to the parties concerned, are to be governed by rules as also the inbuilt powers of supervision and control in the hierarchy of the administration of State or any Authority as well as the basic concepts and well-recognised powers and jurisdiction inherent in the various authorities in the hierarchy. All that cannot be obliterated by sweeping observations and directions unmindful of the anarchy which it may create in ensuring an effective supervision and control and running of administration merely on certain assumed notions of orderliness expected from the authorities effecting transfers. Even as the position stands, avenues are open for being availed of by anyone aggrieved, with the concerned authorities, the Courts and Tribunals, as the case may be, to seek relief even in relation to an order of transfer or appointment or promotion or any order passed in disciplinary proceedings on certain well-settled and recognized grounds or reasons, when properly approached and sought to be vindicated in the manner known to and in accordance with law. No such generalised directions as have been given by the High Court could ever be given leaving room for an inevitable impression that the Courts are attempting to take over the reigns of executive administration. Attempting to undertake an exercise of the nature could even be assailed as an onslaught and encroachment on the respective fields or areas of jurisdiction earmarked for the various other limbs of the State. Giving room for such an impression should be avoided with utmost care and seriously and zealously courts endeavour to safeguard the rights of parties.

For all the reasons stated above, we set aside the judgments of the High Court under challenge. The appeals are allowed accordingly, with no order as to costs.

Supreme Court of India

Union Of India And Ors vs S.L. Abbas on 27 April, 1993

Equivalent citations: 1993 AIR 2444, 1993 SCR (3) 427

Author: B Jeevan Reddy

Bench: Jeevan Reddy, B.P. (J)

PETITIONER:

UNION OF INDIA AND ORS.

Vs.

RESPONDENT:

S.L. ABBAS

DATE OF JUDGMENT 27/04/1993

BENCH:

JEEVAN REDDY, B.P. (J)

BENCH:

JEEVAN REDDY, B.P. (J)

VERMA, JAGDISH SARAN (J)

CITATION:

1993 AIR 2444

1993 SCR (3) 427

1993 SCC (4) 357

JT 1993 (3) 678

1993 SCALE (2) 718

ACT:

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Civil Services:

Fundamental Rules 11 and 15-Transfer of a Government servant-When can be questioned in a Court/Tribunal-Guidelines issued by Government-Whether have statutory force.

Constitution of India, 1950/Central Administrative Tribunals Act, 1985:

Article 323-A/Section 14-Jurisdiction of Central Administrative Tribunal-Exercise of-Whether Tribunal can interfere with an order of Transfer.

HEADNOTE:

The respondent, a Central Government employee, who was transferred from one place to another, challenged the order of transfer on the grounds that: his wife was also employed at the same place in a Central Government office; his children were also studying there; he himself had suffered backbone fracture injuries some time ago; the guidelines contained in Government of India O.M. dated 3.4.1986 had not been kept in mind while ordering his transfer; some other officials, who had been serving at the same place for a

longer period than the respondent had been allowed to continue and his transfer was due to the mischief of his Controlling Officer.

In the counter-affidavit filed by the appellants, it was submitted that the transfer was ordered on administrative grounds and was unexceptionable.,

A Single Member of the Central Administrative Tribunal quashed the order of transfer on the ground that the power of transfer was not an unfettered one, but was circumscribed by various circulars/ guidelines contained in the administrative instructions issued by the Government and an order of transfer could be interdicted if it was discriminatory, that in the matter of considering transfer of an individual officer, the Office Memorandum dated 3.4.1986, educational dislocation of the children and health ground,if present deserved special consideration and that in view of the facts and circumstances of the case the transfer order in question in respect of the respondent was mala fide.

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Allowing the appeal, preferred by the Union of India and others, this Court,

HELD: 1.1 An order of transfer is an incidence of Government service. Who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of statutory provisions, the Court cannot interfere with it. There is no doubt that, while ordering the transfer 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, the husband and the wife must be posted at the same place. The said guideline, however, does not confer upon the government employee a legally enforceable right. Executive instructions issued by the Government are in the nature of guidelines. They do not have statutory force. [430-C-E]

1.2. There is no dispute that the respondent is liable to transfer anywhere in India. It is not the case of the respondent that the order of his transfer was vitiated by mala fides on the part of the authority making the order, though the Tribunal says so, merely because certain guidelines issued by the Central Government were not followed. The immediate superior of unit, against whom mischief had been attributed by the respondent, has nothing to do with his transfer. [430-F]

2.1. The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service matters, as is evident from Article 323-A of the Constitution. The constraints and norms which the High Court observes while

exercising the said jurisdiction apply equally to the Tribunal created under Article 323A. The Administrative Tribunal is not an Appellate Authority sitting in judgment over the order; of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. [430-H,431 -A]

2.2. In the instant case, the Tribunal has dearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if it were sifting in appeal over the order of transfer made by the Senior Administrative Officer (competent authority). [431-B]

Bank of India v. Jagjit Singh Mehta, [1992] 1 S.C.C. 306, explained.

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JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2348 of 1993. From the Judgment and Order dated 13.7.1992 of the Central Administrative Tribunal, Guahati in O.A. No. 33/91. Ms. K. Amareswari, B.P. Sarathy and C.V. Subba Rao for the Appellants.

P.K. Goswami, Kailash Vasdev, Ms. Lira Goswami and Ms. Alpana Poddar for the Respondent.

The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J. Heard counsel for the parties. Leave granted.

Respondent is a Garden Curator in the Office of the Scientist-SE, Botanical Survey of India, Eastern Circle, Shillong. By order dated January 29, 1991 he was transferred from Shillong to Pauri (Uttar Pradesh) by the Senior Administrative Officer, office of the Director, Botanical Survey of India, (Ministry of Environment and Forests, Government of India). As many as 19 persons were transferred under the said order including the respondent. The respondent has been working in Shillong since the year 1979.

The respondent approached the Gauhati Bench of the Central Administrative Tribunal (Original Application No. 33 of 1991) questioning the order of his transfer. He submitted that his wife is also employed at Shillong in and off-ice of the Central Government, that his children are studying at Shillong and further that he himself had suffered back-bone fracture injuries some time ago. He submitted that the guidelines contained in Government of India O.M. dated 3.4.1986 have not been kept in mind while ordering his transfer. tie complained that some other officials who have been serving at Shillong for a longer period, have been allowed to continue at Shillong. He attributed 'mischief' to his Controller Officer, Shri B.M. Wadhwa (third respondent in the O.M.).

In the counter affidavit filed by the respondents, they submitted that the transfer was ordered on administrative grounds and is unexceptionable.

The learned Single Member of the Central Administrative Tribunal quashed the order of transfer on the following reasoning: the decisions of the Courts establish that the power of transfer is not an unfettered one but is circumscribed by various circulars/guidelines contained in the administrative instructions issued by the Government. An order of transfer can be interdicted if it is discriminatory. The said principles are applicable to the case of the respondent. Further "in the matter of considering transfer of an individual officer, the Office Memorandum dated 3.4.1986, educational dislocation of the children and health ground, if all present, deserve special consideration not to pass the order." Having said so the learned Member recorded the following finding: "In view of the above facts and circumstances and findings it is held unhesitatingly that the transfer order no. BSI. 80/5/80- Estt. dated 29.1.1991 in respect of applicant S.L.Abbas was malafide and liable to be quashed." The Union of India has preferred this appeal.

An order of transfer is an incident of Government Service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". Fundamental Rule 15 says that "the President may transfer a government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that order of his transfer is vitiated by mala fides on the part of the authority making the order,- though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at shillong, his children are studying there and also because his health had suffered a set-back some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides 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.

The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the constitution of India in service matters. This is evident from a perusal of Article 323-A of the constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Article 323-A. (We find it all the more surprising that the learned Single Member who passed the impugned order is a former Judge of the High Court and is thus aware of the norms and constraints of the writ jurisdiction.) The Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if it were sitting in appeal over the order of transfer made by the Senior Administrative Officer (competent authority). Shri Goswami, learned counsel for the

respondent relies upon the decision of this Court in Bank of India v. Jagjit Singh Mehta [1992] 1 S.C.C.306 rendered by a Bench of which one of us (J.S. VermaJ.) was a member. On a perusal of the judgment, we do not think it supports the respondent in any manner. It is observed therein:

"There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all- India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station,'they cannot as-of right claim to be relieved of the ordinary incidents of all-India service and avoid transfer to a different place on the ground that-the spouses thereby would-be posted at different places..... No doubt the guidelines requires the two spouses to be posted at one pi" as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees."

(emphasis added) The said observations in fact tend to negative the respondent's contentions instead of supporting them. The judgment also does not support the Respondents' contention that if such an order is questioned in a Court or the Tribunal, the authority is obliged to justify the transfer by adducing the reasons therefor. It does not also say that the Court or the Tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can it be characterised as malafide for that reason. To reiterate, the order of transfer can be questioned in a court or Tribunal only where it is passed malafide or where it is made in violation of the statutory provisions.

For the above reasons, the appeal is allowed. The judgment under appeal is set aside. There shall be no order as to costs.

N.P.V.

Appeal Allowed.

Supreme Court of India

State Of U.P. And Anr vs Siya Ram And Anr on 5 August, 2004

Author: Arijit Pasayat

Bench: Arijit Pasayat, C.K. Thakker

CASE NO. :

Appeal (civil) 5005 of 2004

PETITIONER:

State of U.P. and Anr.

RESPONDENT:

Siya Ram and Anr.

DATE OF JUDGMENT: 05/08/2004

BENCH:

ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:

J U D G M E N T (Arising out of SLP) No. 2196/2004) ARIJIT PASAYAT, J Leave granted.

While respondent No.1 was functioning as an Executive Engineer (Mechanical), Irrigation Division-I, Government of U.P., he was transferred from the Tubewell Division-I, Ghazipur to the office of Joint Chief Engineer, Tubewell East, Faizabad. The transfer order dated 23.10.2002 shows that the transfer was on administrative grounds.

The said order of transfer of respondent No.1 having been quashed by a Division Bench of the Allahabad High Court, State of U.P. is in appeal. The respondent filed a writ petition in the Allahabad High Court questioning the order of transfer. The primary stand taken in the writ application was that the order of transfer was as a measure of punishment. An enquiry in a departmental proceedings had been initiated. Without affording him an opportunity of being heard, the transfer was done as a measure of punishment. The disciplinary action which was taken against respondent No.1 pursuant to the enquiry conducted was referred to the Uttar Pradesh Public Service Commission for approval. But it was not approved. The present appellant-State filed a counter affidavit taking the stand that the transfer of the writ petitioner was on administrative grounds and merely because the writ petitioner was transferred to a non-working post that did not in any way vitiate the order of transfer.

The writ petition was allowed by the impugned judgment dated 5.11.2003 holding that the order of transfer was punitive in nature and had been passed by the State Government without awaiting the decision in the disciplinary proceedings.

The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India, 1950 (in short the 'Constitution') had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of

a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other 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 mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan and Anr. (2001 (8) SCC 574).

The above position was recently highlighted in Union of India and others v. Janardhan Debanath and another (2004 (4) SCC 243). It has to be noted that the High Court proceeded on the basis as if the transfer was connected with the departmental proceedings. There was not an iota of material to arrive at the conclusion. No mala fides could be attributed as the order was purely on administrative grounds and in public interest.

In view of the settled position in law the judgment of the High Court is indefensible and is set aside.

Learned counsel for respondent No.1 submitted that respondent shall file a representation highlighting the various difficulties which may or have resulted from the transfer and the non-desirability thereof. If such representation is made to the appropriate authorities, it goes without saying that the same shall be considered in its proper perspective and in accordance with law. We do not express any opinion in that regard. The appeal is allowed to the extent indicated with no order as to costs.

The mother of the respondent, then made a complaint to the General Manager, alleging that her son is being harassed. This complaint was made in the year 1991. The General Manager, therefore, called upon the Deputy General Manager to ascertain and advise, as to whether the respondent has received the communication of having been transferred to Mumbai. On 9.7.1991, the bank informed the respondent that he is absenting from duty unauthorisedly, and therefore, he should report for duty within three days at Calcutta and explain the reasons for absence. On 19.7.91, the respondent was again posted temporarily at M.B.Street at Calcutta. On 8.8.91, he was then transferred to Siliguri, and was directed to report to Deputy General Manager, Siliguri. Instead of joining at Siliguri, the respondent filed a writ petition, challenging the order of transfer to Siliguri. While entertaining the writ petition, the Single Judge passed an interim order, directing the respondent to obey the transfer order and report at Siliguri, but he never obeyed the same. On the other hand, he approached the Division Bench, assailing the said order. The Division Bench also by its order dated 10.2.92, directed the respondent to join his new posting at Siliguri within fifteen days. The respondent being aggrieved by the said directions, approached this Court in a special leave petition, which however was dismissed on 30.3.92. Even, thereafter, the respondent did not join at Siliguri. The learned Single Judge of Calcutta High Court, however delivered the judgment in the writ petition on 10.3.93 and allowed the same, setting aside the orders of transfer. The bank went in appeal to the Division Bench and by the impugned judgment, the appeal having been dismissed, the bank has approached this Court.

The learned Single Judge did notice the fact that ordinarily, writ Court does not interfere in the matters of transfer, but yet being of the opinion that in the case in hand, it is not a case of transfer simplicitor and on coming to the conclusion that the order of transfer from Narkeldanga Branch to Mumbai, not having been served on the respondent, the said transfer orders could not have been given effect to, even if being aware of such order of transfer, the concerned employee might have filed representations. The learned Single Judge also relied heavily upon the fact that even though, the respondent wrote to the Personnel Manager on 12th January, 1988 that he has not been instructed to report to the Chief Officer (Personnel Administration), Central Office, Mumbai, but no reply was received by him. The learned Single Judge, ultimately came to the conclusion that the order of transfer had not been served on the employee and as such in the eyes of law, the employee had not been directed to join any office, after he was released from the Narkeldanga main Branch of the bank. The subsequent period, therefore, must be held to be in a state of suspended animation till July, 1991 and as such the employee would be entitled to claim all benefits of increments and promotion on the basis that he was actually discharging his duties, throughout the span of the intervening five years. So far as the order of transfer to Siliguri is concerned, the Court even interfered with the same, on the ground that until and unless the respondent gets his due promotion at regular intervals, and gets all the emoluments for the past period, he cannot be transferred to Siliguri, as he may have to serve under an officer who might have been junior to him and it will be cruel to send him in the improvised condition, thereby reducing him into a pauper in the place of his new posting. The Single Judge, therefore, directed that the respondent cannot be held to have been transferred from Narkeldanga main branch in December, 1986 or any time, thereafter and he must be treated as if he was on duty throughout the period from January, 1987 to July, 1991 with all its attendant benefits of getting regular monthly emoluments, the annual increments and the chances of promotion at regular intervals and unless all the steps are taken, the question of transferring the

respondent to any place other than the Narkeldanga Main Branch cannot and does not arise. We are indeed shocked to find this sort of order from the High Court, in a matter of transfer and the Court seems to have taken the view that an officer of the State Bank of India in the Middle Management Grade II can only be allowed to continue at Narkeldanga Branch at Calcutta and nowhere else in the country.

On appeal being filed before the Division Bench, the performance of the Division Bench was no better. The learned Judges of the Division Bench reaffirmed the conclusion of the learned Single Judge that no formal order of transfer had been issued and served upon the respondent, transferring him from Narkeldanga Branch to the Central Office at Mumbai. The perversity of the approach of the Division Bench is apparent from the fact that the learned Judges did refer to the letter of the respondent dated 19th of October, 1986 and held that even though, the respondent did not deny the existence of the order of transfer, but nowhere he had stated that he had seen or had been served with the order of transfer and there was no admission on the part of the respondent about the existence of the order of transfer. The High Court has totally lost sight of the fact that it was dealing with the legality of an order of transfer of an employee and not dealing with a criminal case, where the conviction had been maintained on the basis of a confessional statement. The further perversity of the Division Bench was that it came to hold that if in fact the respondent had been transferred from Calcutta to Mumbai, in that event, Calcutta office must have lost all control or jurisdiction over the service of the respondent and the respondent should be treated to be an officer under the administrative control of the Central office, Mumbai, and therefore, the respondent could not have been posted by the Calcutta office temporarily at Muktaram Babu Street Branch of the State Bank of India. To say the least, when the employer takes a sympathetic attitude and taking into account the fact that the employee is not going out of Calcutta for the last so many years, even if transferred and a posting is given to the employee, somewhere in Calcutta, that has been considered by the Court to hold that the earlier order of transfer to Mumbai never existed. We also do not find any justification for the Division Bench of Calcutta High Court to go into the question about the admissibility of drawing travelling allowance and daily allowance and then come to a conclusion that the things have been dealt with in a cavalier fashion and there was no order of transfer to Mumbai. The Court ultimately came to hold that there is no question of going into the validity of the transfer, which was neither issued nor conveyed to the person concerned and which had no actual or factual existence at all but only a myth. This conclusion of the Division Bench with utmost respect must be held to be a conclusion on surmises and conjectures and we really fail to understand how the Division Bench of the High Court has come to the aforesaid conclusion, in view of the series of correspondence, which we will refer later. It is also further surprising that the fact that while posting the respondent at Muktaram Babu Street Branch, the order had not indicated about the cancellation of the earlier order of posting at Mumbai and it would be possible for any Court of law to come to a conclusion that there had been no order of transfer as such. The Court then holds the employer liable and guilty of lapses and on that score, allows the salary and emoluments as well as other service benefits from 17th December, 1986. The Court also records a conclusion that the employee should not suffer because of deliberate lapses and negligence on the part of the bank and the bank cannot take advantage of its own wrong done to the employee for so many years. It is curious to note that an employee serving in an All India Organisation, where the service is transferable, could be allowed to flout the orders of transfer on the so-called pretext that the order of transfer had not been

served upon him and then would be allowed to draw his emoluments on an erroneous finding that the bank was negligent in not serving the orders of transfer. This case is a glaring instance where the Court in its anxiety to help an employee, recorded the conclusions contrary to the relevant materials and arrived at findings on surmises and conjectures, even in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India.

An order of transfer of an employee is a part of the Service conditions and such order of transfer is not required to be interfered with lightly by a Court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order. The Central Board of the State Bank of India in exercise of powers conferred under sub-section (1) of Section 43 of the State Bank of India Act, 1955, have framed a set of rules called the State Bank of India Officers Service Rules. Rule 47 thereof, unequivocally provides that every officer is liable for transfer to any office or branch of the bank or to any place or deputation to any other organisation in India. Rule 49 of the said rules, stipulates the joining time, which an employee is entitled to when he is transferred to a new place from his old post. Rule 50 casts an obligation on the employee to comply with and obey all lawful and reasonable orders and directions, which may from time to time be given to him. Rule 50(1) may be quoted herein-below in extenso:

Rule 50(1) : Every officer shall conform to and abide by these rules and shall observe, comply with and obey all lawful and reasonable orders and directions which may from time to time be given to him by any person under whose jurisdiction, superintendence or control he may for the time being be placed.

Any violation of the aforesaid rules, constitutes a misconduct under Rule 66 and becomes punishable under Rule

67. With this background, when we consider the legality of an order of transfer, alleged to have been passed on 14.6.1986, after the employee had continued in Calcutta for more than a decade and the said order has not been held by the High Court either to be mala fide or that the competent authority had not passed the order, it is indeed difficult to come to a conclusion that the said order had not been passed nor had been communicated to the employee concerned. Mr. H.N.Salve, the learned Solicitor General, appearing for the State Bank of India, invited our attention to the letter of the respondent addressed to the General Manager (Operations), State Bank of India, Calcutta Local Head Office, where- under the respondent had requested to defer his transfer upto June, 1987 and in that letter in the very first paragraph, the respondent in no uncertain terms had indicated that the Branch Manager of the State Bank of India, Narkeldanga Branch, has addressed to me by his letter dated 9th October, 1986, which he alleged to have received on 16th of October, 1986, informing him about his transfer to the Central Office at Mumbai. In the teeth of the aforesaid letter of the respondent, we are little surprised to find the conclusion of the learned Judges of the Calcutta High Court, both the Single Judge as well as the Division Bench in entering into an arena of conjecture and come to a conclusion that there had been no existence of an order of transfer nor the same had been communicated to the respondent. The Branch Manager of Narkeldanga Branch had addressed a letter to the respondent on 8th of January, 1987, intimating him that he has been relieved of his

duties from the said Branch. The respondent again in his letter dated 5th of December, 1987 addressed to the Chief General Manager, State Bank of India, categorically stated that he had been informed by the Branch Manager, State Bank of India, Narkeldanga Branch, about his transfer to Central Office at Mumbai and he prayed for cancellation of the said posting and consider the desirability of posting him at a suitable place in Calcutta. The State Bank of India, Calcutta Branch, immediately replied to the aforesaid letter of the respondent, informing him that as per the records, he had been relieved from Narkeldanga Branch at the close of business on 6th December, 1986, with instructions to report to the Chief Officer, Central Office, Mumbai by their letter dated 14th December, 1987, to which the respondent replied by his letter dated 12th January, 1988. Even in that letter, the respondent stated that even though, he has been relieved from the Narkeldanga Branch w.e.f. 6th December, 1986, but he had not been instructed to report to the Chief Officer (Personnel Administration), Central Office, Mumbai, would itself indicate the frivolous pretext of the employee, as in all earlier letters he had been candid enough to state that he had been transferred to the Central Office at Mumbai. In view of the aforesaid correspondence between the employee and the employer, we are indeed surprised, how the High Court could rely upon a sentence in the letter of 30th April, 1991, wherein a mention had been made that the officer concerned was not advised in writing by the Branch at the material time and it is on the basis of this sentence, the High Court jumped to the conclusion that neither there existed an order of transfer nor it had been communicated to the respondent. The bank authorities, on the other hand, have been repeatedly intimating the respondent that he is remaining absent without joining at the place to which he was transferred but yet the employee concerned did not comply with the order in question. Having desperate in their attempt to give effect to a lawful order of transfer, when the authorities, took a sympathetic attitude and posted the respondent temporarily to M.B. Street, Calcutta on 19.7.1991 and then transferred him to Siliguri on 8.8.1991, the High Court finds fault with the same, on the ground that he having been already transferred to Mumbai, could not have been posted to the M.B. Street, Calcutta without cancellation of the earlier order and further could not have been transferred to Siliguri. This in our view is an entirely erroneous approach of the High Court in dealing with the legality of an order of transfer. The entire fact situation unerringly point out to one fact namely the respondent flouted the orders of transfer, did not join the place of posting, did not apply for or take leave for his absence, did not discharge his duties, and yet the High Court in exercise of its discretionary jurisdiction, not only set aside the order of transfer on a pretext which does not appeal to us with regard to the non- communication of the orders of transfer and even directed that the respondent would be entitled to his salary, increment, promotion and then only, could be considered for further transfer to anywhere else. To us, it appears that the High Court has granted premium to an errant officer, who did not obey the orders of transfer and did not discharge any duty for which conduct of his, he could have been proceeded with, in a departmental proceeding on the charge of gross misconduct and could have been punished.

Mr. S.S. Ray, the learned senior counsel, appearing for the respondent, strongly argued that an officer of a bank could not be orally transferred and, therefore if there does not exist an order of transfer or if the said order had not been communicated to the employee concerned, the Court would be justified in holding that the so-called transfer is illegal and invalid. From the series of correspondence, referred to by us earlier and in view of unequivocal statement of the respondent therein, it is difficult for us to hold that there did not exist any order of transfer and that the

respondent did not know of the same. On the other hand, we are persuaded to come to the conclusion that the respondent was fully aware of the orders of transfer and tried to evade the same by adopting all possible pretexts and continued to remain absent without discharging any duties. Mr. Ray, then contended that under the guidelines contained in the hand-book of Staff Matters, Volume I, paragraph 8.34(a) of Chapter VIII deals with a situation where an officer remains absent in an unauthorised manner. The very fact that the said procedure had not been adhered to in the case in hand, justifies the ultimate conclusion of the learned Single Judge of the High Court that the order of transfer had not been served nor the employee had been directed to join the office at Mumbai. We are unable to accept this contention inasmuch as merely because the bank authorities did not proceed against the respondent, as provided in paragraph 8.34(a), it cannot be held that the respondent did not absent himself from the duties without any authority. To us, it appears that even higher authorities of the bank at Calcutta were quite soft towards the respondent and it is possibly for that purpose, had not taken any action against him for all the lapses committed by him. On the materials on record, we are not in a position to agree with the conclusion of the learned Single Judge as well as the Division Bench of the Calcutta High Court that the order of transfer dated 14.6.86, transferring the respondent to the Central Office at Mumbai was in any way illegal and invalid and can be held to be null and void. On the other hand, a valid order of transfer had been issued and the employee concerned had been relieved of his duties but instead of joining the place of posting, the employee concerned went on representing the authorities and openly disobeyed the orders of transfer. We are also of the opinion that there was no infirmity with the order dated 8.8.1991, transferring the respondent to Siliguri and the High Court was totally in error in interfering with the said order on the hypothesis that until and unless the respondent get his emoluments for the entire period as well as promotion, question of transferring him out of Narkeldanga Branch does not arise. Such a conclusion is not permissible to be drawn on the fact situation and we, therefore, unhesitatingly set aside the same. We further hold that the order of transfer to Siliguri was also valid and the respondent did flout the same.

So far as the direction of the High Court regarding the salary and other pecuniary benefits are concerned, Mr. Ray, contended that for an employee of the bank in the absence of any rules, the principle of no work no pay can be made applicable and so long as the relationship of master and servant continues and the service has not come to an end, the employee is entitled to his salary. It is in this context, Mr. Ray relied upon two decisions of this Court, the case of Bank of India vs. T.S. Kelawala and Others, 1990(4) SCC 744 AND Syndicate Bank and Anr. vs. K. Umesh Nayak, 1994(5) SCC 572. The latter one is a Constitution Bench decision. In the first case, referred to by Mr. Ray, the question for consideration was if an employee takes recourse to strike or go slow or any other method, resulting in no work for the whole day or days, then whether the Management will be entitled to deduct pro rata or otherwise wages of the participating workmen notwithstanding absence of any stipulation in the contract of employment or any provision in the service rules, regulations or standing orders. Mr. Ray relied upon the observations made in the aforesaid judgment in paragraph 22, to the effect- Where the contract, Standing Orders or the service rules/regulations are silent on the subject, the management has the power to deduct wages for absence from duty when the absence is a concerted action on the part of the employees and the absence is not disputed. In the latter Constitution Bench decision also, the Court was considering whether workers having been on strike, whether wages could be paid or the theory of no work no

pay would apply. Mr. Ray contended that the ratio in the aforesaid case is that unless the rules permit, the respondent would be entitled to the salary. In the Constitution Bench decision, the Court has observed that to entitle the workmen to the wages for the strike period, the strike has to be held both legal and justified and whether the strike is legal or justified are questions of fact to be decided on the evidence on record. Applying the same to the facts of the present case, the order of transfer having been held by us to be valid and the employee having not obeyed the same, and not having discharged the duties, but yet continuing in service, how the period should be dealt with, will depend upon the relevant rules and regulations of the Bank. We are told that the State Bank of India Officers Service Rules deal with the said situation, and, therefore, the competent authority of the bank would deal with the same. But we have no hesitation in setting aside the directions of the High Court, directing the bank to pay the salary and other benefits to the respondent in the case in hand. In the aforesaid premises, we set aside the judgment of the learned Single Judge as well as that of the Division Bench of Calcutta High Court and allow this appeal. The writ petition filed by the respondent in the High Court stands dismissed.

Allahabad High Court

Param Singh And 4 Others vs State Of U.P. And 5 Others on 19 November, 2018

Bench: Pradeep Kumar Baghel, Salil Kumar Rai

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Court No. - 5

Case :- SPECIAL APPEAL No. - 1163 of 2018

Appellant :- Param Singh And 4 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Vijay Gautam, Vinod Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Pradeep Kumar Singh Baghel, J.

Hon'ble Salil Kumar Rai, J.

The present special appeal emanates from a judgment of the learned Single Judge dated 25.10.2018 whereby he has dismissed the writ petition filed by the appellants-petitioners challenging their transfer order dated 10.5.2018.

The relevant facts may briefly be stated:

The appellants are five in number. They had filed a writ petition being Writ-A No. 22839 of 2018 along with ten other petitioners. All the appellants are Constables in Traffic Police . They are Group-C State Government employees. Although the writ petition was filed by fifteen petitioners but only five petitioners have filed this appeal. In paragraph-4 of the writ petition it is stated that the petitioner no. 1 was appointed in the year 2006 in Police Department. There are no details regarding other petitioners. In fact, the pleadings of the writ petition are incomprehensible. The reliefs sought

by the appellants-petitioners in the writ petition read as under:

"I. Issue a writ, order or direction in the nature of Certiorari quashing the impugned transfer order dated 11.05.2018 and relieved order dated 21.08.2018 (12.09.2018) and consequential order dated 18.09.2018 (19.09.2018) and date fixed order dated 18.10.2018 (16.10.2018) and 02.10.2018 passed by respondent nos. 4, 5, 6 and 9 by which the petitioners have been transferred from District-Agra and other Districts to Traffic Police Lucknow, enclosed as Annexure No.1 to this writ petition.

II. Issue a writ, order or direction in the nature of Mandamus directing the respondent no. 3 and 4 to cancel the transfer of the petitioners in absence of own request and not transfer from District-Agra and other Districts to Traffic Police Lucknow."

The learned Single Judge on 25.10.2018 dismissed the writ petition by the following order:

"Heard learned counsel for the petitioners and the learned Standing Counsel for the State-respondents.

This petition calls in question an order of transfer dated 10 May 2018, in terms of which the fifteen petitioners have been transferred pursuant to the recommendations made by the Police Establishment Board. This order of transfer is not shown to fall foul of any statutory provision. The petitioners also do not dispute that they hold a transferable post.

On an overall conspectus of the aforesaid facts, this Court finds no merit in the prayer made by the petitioner.

The petition is consequently dismissed."

The appellant nos. 1, 2 & 3 are working as Constables at Rampur, whereas the appellant nos. 4 and 5 are posted at Agra and Moradabad respectively.

We have heard Sri Vijay Gautam, learned counsel for the appellants and the learned Standing Counsel.

Learned counsel for the appellants submits that the State Government has issued a Government Order dated 11.7.1986 laying down the policy regarding transfer of police personnel and also the period of posting in one District. The appellants have been transferred against the transfer policy. The transfer of the appellants has been made during the mid-academic session. Lastly, he urged that learned Single Judge has not given any reason and by a cryptic order the writ petition has been dismissed.

From the material on record it appears that respondent no. 3 vide an order dated 11.5.2018 had transferred 193 constables from various districts to District Lucknow on their own requests. Petitioners' names also figured in the said transfer list. The said order was amended on 19.5.2018, wherein it was mentioned that in the previous order dated 11.5.2018 inadvertently it was mentioned

that the transfer of the constables was made on their own requests. The said sentence was deleted and it was substituted that the transfer orders have been passed in public interest.

The aforesaid order dated 11.5.2018 was challenged by a large number of constables including the petitioners by means of Civil Misc. Writ Petition No. 12602 of 2018 (Rajneesh Kumar and others v. State of U.P. and others). The said writ petition was allowed on 6.7.2018. In the said writ petition the Court had summoned the original record and found that a note was put up before the Police Establishment Board for transfer of the constables on the ground of their own request. The Board on 10.5.2018 approved the proposal with the following order:

"Anukampa Ke Adhar Par Sthanantaran Chahne Wale Janpad Ka Naam."

The case of the petitioners therein was that they had never moved any application for their transfer. It was evident that the Board approved the transfer of the Constables on 10.5.2018 on the basis of incorrect noting. The Court found that the Board was misled on facts by an incorrect information furnished by the Department. In view of the said facts, the Court has set aside the order of transfer and subsequent order dated 19.5.2018 was also set aside in which the inadvertent mistake was corrected by the respondents.

From the record it appears that in compliance of the order of this Court, the third respondent-the Deputy Superintendent of Police (Establishment) vide order dated 21.8.2018 cancelled the transfer order of 48 constables who were transferred from different districts to Lucknow Traffic Police. Later, on 18.9.2018 a fresh transfer order has been passed transferring the petitioners to District Lucknow. The said order has been passed in public interest with the approval of the Police Establishment Board.

The appellants are aggrieved by the order of their transfer dated 19.9.2018.

It is a trite law that transfer is a condition of service. A Government servant has no vested right to remain posted at the place of his/ her choice. The transfer order does not violate legal right of a person holding transferable post, if he is transferred from one place to another in public interest. The order of transfer is an administrative order. The Supreme Court in unbroken line of decisions has held that the scope of judicial review in the matter of transfer is very limited. The Courts should not interfere with transfer order which is made in the public interest and for administrative reasons, unless an order of transfer is shown to be outcome of malafide exercise or stated to be in violation of statutory provision prohibiting any such transfer.

In the case of Gujarat Electricity Board and another v. Atmaram Sungomal Poshani, (1989) 2 SCC 602, the Supreme Court has observed as under:

"4. Transfer of a government servant appointed to a particular cadre of transferable posts from one place to other is an incident of service. No government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to

other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification, or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other. "

In the case of *Shanti Kumari v. Regional Deputy Director, Health Services, Patna Division, Patna and others*, (1981) 2 SCC 72, the Supreme Court has held thus:

"2. Having heard learned counsel for the parties, we are of the opinion that the High Court rightly declined to interfere with the impugned order. Transfer of a Government servant may be due to exigencies of service or due to administrative reason. The courts cannot interfere in such matters. Shri Grover, learned Counsel for the appellant, however, contends that the impugned order was in breach of the Government instructions with regard to transfers in the Health Department. If that be so, the authorities will look into the matter and redress the grievance of the appellant."

The Supreme Court in the case of *Union of India and others v. S.L. Abbas*, (1993) 4 SCC 357, has held that the guideline in respect of transfer does not confer upon the Government employee a legally enforceable right. The relevant part of the judgment reads as under:

"7. 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."

In the case of *N.K. Singh v. Union of India and others*, (1994) 6 SCC 98, the Supreme Court after referring a large number of previous judgments has held as under:

"6. Shri Ram Jethmalani, learned counsel for the appellant did not dispute that the scope of judicial review in matters of transfer of a Government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision or guideline regulating such transfers amounting to arbitrariness. In reply, the learned Additional Solicitor General and the learned counsel for Respondent 2 did not dispute the above principle, but they urged that no such ground is made out; and there is no foundation to indicate any prejudice to public interest."

The Supreme Court in *Rajendra Singh and others v. State of Uttar Pradesh and others*, (2009) 15 SCC 178, has held that a Government servant has no right to remain posted at the place of his choice. Relevant part of the judgment reads thus:

"8. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires (see *State of U.P. v. Gobardhan Lal*, (2004) 11 SCC 402; 2005 SCC (L&S) 55, SCC p. 406, para 7)."

In the case of *S.C. Saxena v. Union of India and others*, (2006) 9 SCC 583, the Supreme Court has observed that a Government servant cannot disobey the transfer by not reporting at the place of posting. It is his duty to first report for work and if he has some difficulty / personal problem, he can make a representation after joining at his new place of posting. The Supreme Court has deprecated the practice of not reporting at the place of posting and indulging in litigation. The Court held as under:

"6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Apart therefrom, if the appellant really had some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted. We too decline to believe the story of his remaining sick. Assuming there was some sickness, we are not satisfied that it prevented him from joining duty either at Tezpur or at Amritsar. The medical certificate issued by Dr. Ram Monohar Lohia Hospital proves this point. In the circumstances, we too are of the opinion that the appellant was guilty of the misconduct of unauthorisedly remaining absent from duty."

Guided by the settled principles of law, referred above, we find that the appellants are members of a disciplined force, therefore, they are not expected to disobey the order of their transfer and if they have some personal problem or the transfer has been passed against the transfer policy, it is open to them to move a representation to the appropriate authority for redressal of their grievance. In case it is found that they have some personal problem, the authorities ought to consider their grievance and pass appropriate order and shall make an endeavour to address the same. In the cases of genuine problems the representations of the Government employees should not be rejected mechanically.

It is true that if a transfer order is passed in violation of administrative order/ transfer policy, it does not confer a vested right to the Government employee to challenge it but at the same time, as observed by the Supreme Court in the abovementioned cases, while transferring the Government

employee the authority concerned should keep in mind the transfer policy and the executive orders.

At this juncture, it is apposite to refer to a judgment of this Court in the case of Dharmendra Kumar Saxena v. State of U.P. and others, 2013(7) ADJ 53 wherein this Court has referred the judgments of the Supreme Court in respect of the effect of infraction of transfer policy and the executive instructions. The following passage is, in that regard, apposite:

"24. From the aforementioned cases, it is evident that the Government is bound by executive orders/policies. The guidelines are made to follow it and not to breach it without any justifiable reasons. Whenever the Government deviates from its policies/guidelines/ executive instructions, there must be cogent and strong reasons to justify the order; when transfer order is challenged by way of representation, there must be material on record to establish that the decision was in public interest and it does not violate any statutory provision, otherwise the order may be struck down as being arbitrary and violative of Article 14 of the Constitution. The authorities cannot justify their orders that breach of executive orders do not give legally enforceable right to aggrieved person. As observed by Justice Frankfurter "An executive agency must be rigorously held to the standards by which it professes its action to be judged".

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39. After careful consideration of the law laid down by the Supreme Court, I am of the view that this Court cannot interfere with the transfer matter as the Government servant has no vested right to continue at a place of his choice. The Government can transfer the officer/employee in the administrative exigency and in public interest. However, if a transfer is made against the executive instructions or transfer policy, the competent authority must record brief reason in the file for deviating from the transfer policy or executive instructions and the transfer must be necessary in the public interest or administrative exigency. If an officer/employee, who is aggrieved by his/her transfer, makes a representation to the competent authority, his/her representation must be decided objectively by a reasoned order. "

(emphasis supplied) We are in agreement with the said view. The object of framing the transfer policy/ guidelines is to ensure that the power of transfer should be exercised in public interest and for the efficiency in the service. It cannot be done for unauthorized purpose. We find that law laid down in Dharmendra Kumar Saxena (supra) is based on the principle laid down by the Supreme Court in a Constitution Bench judgment in the case of Ramana Daya Ram Shetty v. International Airport Authority of India and others, (1979) 3 SCC 489 and the other cases referred in the judgment.

In the case of Dr. Amarjit Singh Ahluwalia v. The State of Punjab and others, (1975) 3 SCC 503 the Supreme Court applied the principle enunciated by Mr. Justice Frankfurter in William Vincent Vitarelli v. Fred A. Seaton, Secretary of Interior, et al., 359 U.S. 535 (1959): Manu/USSC/0176/1959 where the learned Judge said:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. See *Securities & Exchange Commission v. Chenery Corp.*, 318 U.S. 80, 318 U.S. 87-88. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. See *Service v. Dulles*, 354 U. S. 363. This judicially evolved rule of administrative law is now firmly established, and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword. "

In *Dr. Amarjit Singh Ahluwalia (supra)* the Supreme Court preferred the view taken by U.S. Supreme Court while interpreting the administrative instructions. The British Courts take rather conservative view on the administrative orders. The following discussion and conclusion are apt and relevant for our purposes:

"8. ...Now, it is true that clause (2) (ii) of the memorandum dated 25th October, 1965 was in the nature of administrative instruction, not having the force of law, but the State Government could not at its own sweet will depart from it without rational justification and fix an artificial date for commencing the length of continuous service in the case of some individual officers only for the purpose of giving them seniority in contravention of that clause. That would be clearly violative of Articles 14 and 16 of the Constitution. The sweep of Articles 14 and 16 is wide and pervasive. These two articles embody the principle of rationality and they are intended to strike against arbitrary and discriminatory action taken by the, 'State' Where the State Government departs from a principle of seniority laid down by it, albeit by administrative instructions, and the departure is without reason and arbitrary, it would directly infringe the guarantee of equality under articles 14 and 16. It is interesting to notice that in the United States it is now well settled that an executive agency must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. vide the judgment of Mr. Justice Frankfurter in *Vitaralli v. Seaton*, 359 US 535, 546-547 : 3 L Ed. 2nd 1012. This view is of course not based on the equality clause of the United State Constitution and it is evolved as a rule of administrative law. But the principle is the same, namely, that arbitrariness should be eliminated in State action."

It is trite that non-statutory direction is not enforceable in Court. The transfer policy framed by the Government is non-statutory guideline, therefore, it cannot be enforced. The legal position in this regard is too well settled to require any reiteration. But the Supreme Court in *Dr. Amarjit Singh Ahluwalia (supra)* has taken a middle path that administrative orders are binding on State and it cannot completely ignore the instructions issued by it.

In the case of *Home Secretary, U.T. of Chandigarh and another v. Darshjit Singh Grewal and others*, (1993) 4 SCC 25 one of the questions before the Supreme Court that fell for consideration was whether policy/ guideline issued by the Chandigarh Administration was binding on the Chandigarh Engineering College which is a constituent college of the Punjab University. Justice B.P. Jeevan Reddy (as His Lordship then was) speaking for the Bench made the following observation:

"14. It may be relevant to emphasise at this juncture that while the rules and regulations referred to above are statutory, the policy guidelines are relatable to the executive power of the Chandigarh Administration. It is axiomatic that having enunciated a policy of general application and having communicated to it all concerned including the Chandigarh Engineering College, the Administration is bound by it. It can, of course, change the policy but until that is done, it is bound to adhere to it."

A policy/ policy decision/ policy matter is made by Government after considering all the points from different angles, while framing the policy the Government also takes into consideration the administrative efficiency and other incidental matters. Once the Government takes a policy decision, it is obligatory on its officials to execute its policy in the right earnest and to achieve the objects of the policy. The rule of the law casts a duty on the administrative functionaries to act within the framework of the law, be it law made by the legislature, subordinate legislation or executive orders issued under Article 73 and 162 of the Constitution. They are also obliged to follow the circulars/ memos and instructions issued by the Government. In the matter of policy decision of the Government, it is trite that Courts, in exercise of their jurisdiction, will not transgress into the field of policy decision. Court's interference is called for only on limited grounds, when it suffers from unreasonableness, arbitrariness or it is beyond legislative power or is beyond constitutional limits or public policy or against statutory provision. If the Courts have treated the policy/ policy decision / policy matter on such a high pedestal then Government's own employees/ officials cannot be allowed to breach and ignore its order with impunity.

We are not anomalous of the fact that transfer policy does not have a statutory force but, as discussed above, the officials cannot ignore it. The State Government has framed transfer policy for 2018-19 to 2021-22, it has been issued vide Government order dated 29.3.2018. A perusal of the Government order clearly shows that it is applicable on all the departments except staff of Secretariat. In compliance of the Government order, the Police Department has issued consequential circulars in respect of transfer policy.

In our view, the Government is bound by its policy. However, if for some reasons due to administrative exigency or public interest it becomes necessary to deviate from it then proper course is to record brief reasons at best on the file to justify the deviation from the policy. Earlier, the traditional view in England was that executive is not answerable where its action was attributed to administrative functions. Lord Denning MR in *Breen V Amalgamated Engineering Union (now Amalgamated Engineering and Foundry Workers Union) and others*; (1971) 1 All ER 1148, observed thus:

"The giving of reasons is one of the fundamentals of good administration."

In India also the thin line between quasi-judicial and administrative order has almost obliterated. The Supreme Court in an unbroken line of decisions has held that reasons are heart and soul of a decision. The Constitution Bench of the Supreme Court in the case of *S.N. Mukherjee v. Union of India*, (1990) 4 SCC 594 has elaborately considered the importance of recording reasons by a quasi-judicial and administrative body/ authority. The necessity of recording reasons is too well settled to need any further reiteration.

In this context reference may be made to the following decisions: S.N. Mukherjee v. Union of India, (1990) 4 SCC 594; Union of India v. Mohan Lal Capoor and others, (1973) 2 SCC 836; Institute of Chartered Accountants of India v. L.K. Ratna and others, (1986) 4 SCC 537; Ravi Yashwant Bhoir v. District Collector, Raigard and others, (2012) 4 SCC 407; Sant Lal Gupta and others v. Modern Cooperative Group Housing Society Limited and others, (2010) 13 SCC 336; Kranti Associates Private Limited Vs. Masood Ahmed Khan, (2010) 9 SCC 496; J. Ashoka v. University of Agricultural Science and others, (2017) 2 SCC 609.

In the light of above discussion, it is demonstrably clear that even if a transfer order is found to be in violation of executive instructions or orders, Courts ordinarily should not interfere instead the affected party may approach higher authorities in the department. But if a transfer order is passed in administrative exigency or public interest and is in violation of transfer policy of the Government, then the competent authority must record brief reasons in the file for deviation from transfer policy. It is not necessary to mention said reason in transfer order. The recording of reason shall check arbitrary exercise of power and will help the judicial process and by superior administrative heads if the order is challenged by affected person.

As regards the submission of learned counsel for the appellants that in the mid academic session the transfer cannot be made, this issue was considered by the Supreme Court in the case of Director of School Education, Madras and others v. O. Karuppa Thevan and another, 1994 Supp (2) SCC 666 and held as under:

"2. The tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs."

In the abovenoted case the Supreme Court has made it clear that there is no rule if the respondent's children are studying in the school, he should not have been transferred during mid-academic term. While transferring an employee the fact that his children are studying may be one of the considerations but in those cases where the exigency of the service is not urgent. It has been rightly pointed out by learned Standing Counsel that the appellants are members of disciplined force, where the considerations for transfer are different from other Class-III & Class-IV Government employees.

The judgment of the Supreme Court has been considered by a Coordinate Bench of this Court at Lucknow Bench in the case of Dr. S.P. Jindal v. State of U.P. and others, (2002) 1 AWC 306 (2), wherein this Court has observed that the Supreme Court in the case of Director of School Education, Madras v. O. Karuppa Thevan, 1994 Supp (2) SCC 666 does not lay down any principle of law. The relevant part of the judgment reads as under:

"2. The petitioner has been transferred from Meerut to Ghaziabad. Learned counsel for the petitioner has relied on the decision of the Supreme Court in Director of School Education, Madras v. O. Karuppa Thevan, 1994 Supp (2) SCC 666, and has urged that in view of this decision, the petitioner could not be transferred in the mid-term of his children studying in school. In our opinion, the aforesaid decision of the Supreme Court does not lay down any principle of law that a Government employee, whose children are studying in school, cannot be transferred during the mid-term of his children studying in school. The aforesaid decision is mere a direction of the Supreme Court without laying any principle of law. Such direction without laying down any principle of law is not a precedent.

3. A writ lies where there is any error of law apparent on the face of the record and not merely because there is some hardship to the petitioner. Most of the Government employees have children and if it is held that they cannot be transferred in mid-term of their children studying in school, there could hardly be any transfer. The aforesaid decision of the Supreme Court does not lay down any principle of law. Transfer is an exigency of service. Hence, we cannot interfere with the impugned transfer order dated 31.10.2001. However, the petitioner may make a representation to the higher authority who will decide the same preferably within a month thereafter in accordance with law. The petition is disposed of."

For all the reasons mentioned above and having considered the submissions advanced by learned counsel for the appellants, we are satisfied that the learned Single Judge has rightly declined to interfere in the matter. However, having due regard to the facts of the case we leave it open to the appellants to make a representation to the appropriate authority after joining at their new place of posting. In the event any such representation is made, the authority concerned shall pass appropriate order in accordance with law expeditiously, preferably within six weeks from the date of communication of this order.

The special appeal is, accordingly, disposed of.

No order as to costs.

Order Date :- 19.11.2018 IB/Digamber

Madras High Court**S.Thomsson vs The Director General Of Police on 19 July, 2012**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2012

Coram

THE HON BLE MR. JUSTICE VINOD K.SHARMA

W.P.No.20274 of 2011

and MP.Nos.1 & 2 of 2011

S.Thomsson .. Petitioner

.. Vs ..

1.The Director General of Police,
Mylapore, Chennai 600 004.2.The Commissioner of Police,
Chennai City,Egmore,
Chennai 600 008.3.The Inspector of Police,
Central Zone, Trichy District. ... Respondents

Prayer:- Writ Petition filed under [Article 226](#) of the Constitution of India praying for the issuance of a Writ of Certiorari, to quash the order bearing Ref.No.Estt.1(2)/1207/2011 dated 25.06.2011 issued by the second respondent and order dated 19.08.2011 bearing Reg.No.Rc.No.888/MGB.V(1)/P-27/2011 issued by the first respondent in so far as Sl.No.5 in Ex.-A is concerned as being arbitrary and illegal with consequential prayer to direct the respondents to retain the petitioner in Chennai City Police.

For Petitioner : Mr.N.G.R.Prasad
for M/s.Row and ReddyFor respondents : Mr.R.Vijayakumar, AGP

O R D E R

The petitioner has approached this court with a prayer for issuance of a writ in the nature of Certiorari, for quashing the order in Ref.No.Estt.1(2)/1207/2011, dated 25.06.2011, and also the consequential order dated 19.08.2011, vide which the petitioner has been transferred from Chennai to Trichy.

2 The petitioner joined Tamil Nadu Police Subordinate Services as Sub Inspector on 28.09.1987 and was posted at Trichy in the year 2002. The petitioner thereafter was posted in Special Protection Group of Prime Minister Security Wing, New Delhi on 19.02.2002 and promoted as Inspector of Police and posted to Ramanad. In the career of 24 years, the petitioner has suffered number of transfers.

3 It is the submission of the petitioner that after his promotion as Inspector of Police in the year 2002, the petitioner has been transferred 22 times to various places in Tamil Nadu, i.e. to Ramnad, Vellore, Chengalput, Kancheepuram and then again to Ramnad. Even at Chennai, the petitioner was posted to different ranges.

4 On 25.06.2011, the petitioner was transferred within from H8 Thiruvottiyur PS (Crime) and kept in compulsory wait, for further posting. The petitioner was under the impression that he will be posted

within Chennai, considering his family difficulties, but vide impugned order, the petitioner has been transferred from Chief Office, Chennai to Central Zone, Trichy.

5 The petitioner submits that he has family problems, as his twelve years old son is physically handicapped suffering from no free movement of hands and legs for which, he is getting treatment at Chennai. The wife of the petitioner is bedridden, who is now stated to have died. The daughter of the petitioner is studying in XII standard at St. Johns Higher Secondary School, Chennai. It was on account of family circumstances that the petitioner filed a representation, for cancellation of his transfer but, no action was taken on the representations of the petitioner.

6 Learned counsel for the petitioner contends, that the impugned order of transfer, cannot be sustained as the petitioner has been transferred many times after his promotion as Inspector. In support of this contention, learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in [B.Varadha Rao vs. State of Karnataka and others](#), (1986(4) SCC 131) wherein, the Honourable Supreme Court observed that, if transfer order is malafide and not made in public interest but for collateral purpose, and oblique motives in colourable exercise of power then, it stands vitiated being abuse of power. In such a case, transfer is open to challenge before the Court being wholly illegal and void.

7 This judgment has no application to the facts of the present case as transfer order for the petitioner cannot said to be malafide, as there is no allegation of motive against any officer. The petitioner has not impleaded any officer against whom any malafide is alleged.

8 Learned counsel for the petitioner also placed reliance on the judgment of the Supreme Court in [Director of School Education, Madras and Others vs. O.Karupa Thevan and another](#) (1994 Supp(2) SCC 666) wherein, it is observed that in the absence of urgency, the transfer during academic year should normally not be adhered to. This judgment has been cited in support of the contention that the daughter of the petitioner has been studying in 12th standard and therefore, the mid-term transfer was not permissible.

9 Reliance from this judgment is also misconceived, as this judgment cannot be treated to be the precedent to hold no mid-term transfer can be ordered. On the other hand, the settled law is that instructions with regard to transfer only for the department to be followed, but do not give any enforceable legal right to the petitioner to challenge the order of transfer.

10 Finally, the reliance was placed on the judgment of this court in [M.Kandasami vs. Tamil Nadu Electricity Board, and others](#) (1996(I) CTC 364) wherein, it was held that frequent transfers, without sufficient cause amounts to malafide transfer which case inference can be drawn of malafide.

11 This judgment cannot advance the case of the petitioner, as admittedly, the petitioner was transferred after three years stay at Chennai therefore, it is not a case of frequent transfers.

12 On consideration, I find no force in this writ petition. In the affidavit or grounds, there is no whisper of any malafide against any officer. Even with reference to professed transfers, there were no specific details except wild allegations that the petitioner has been subjected to repeated transfers.

13 The pleadings in the writ petition shows, that the petitioner was posted to Chennai on 19.09.2008 and it is after three years, that he has been transferred out of Chennai. It is well settled law that transfer is incident of service, therefore, employee cannot have any grievance to the transfer.

14 The transfer can be challenged only on the ground of malafide or it being against the statutory provisions of law and not otherwise. There are no allegations of malafide, nor it is stated which statutory rule is violated on account of transfer.

15 The observation of the Supreme Court in the case of [Director of School Education, Madras and Others vs. O.Karupa Thevan and another](#) (supra) cannot said to be laid down that no mid-term transfer is permissible. It is well settled law that instructions regarding mid-term transfer do not give any

enforceable right to an employee to challenge the transfer made in adumbrative reasons and public interest.

16 The contention of the learned counsel for the petitioner that similarly situated persons had been dealt with departmentally is also without merit as no particular details are forthcoming in support of this contention. Even otherwise, there cannot be similarity in transfer of employees, as it is employer to see as to what would be in public interest and administrative exigency of service as to where an employee can be transferred. This Court cannot go into the question of transfer in absence of allegation of malafide, violation of statutory rules or regulations.

No merit. Dismissed.

No costs. Consequently, connected Miscellaneous petitions are closed.

19.07.2012 Index: Yes/No Internet:Yes/No vaan To

1.The Director General of Police, Mylapore, Chennai 600 004.

2.The Commissioner of Police, Chennai City,Egmore, Chennai 8. 3.The Inspector of Police, Central Zone, Trichy District.

VINOD K.SHARMA, J.

vaan W.P.No.20274 of 2011 and MP.Nos.1 & 2 of 2011 Dated: 19.07.2012

Gauhati High Court

State Of Assam vs Dilip Kumar Sarma And Ors on 1 September, 2011

Bench: The, Amitava Roy The, B D Agarwal

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA: MANIPUR:
TRIPURA: MIZORAM AND ARUNACHAL PRADESH)

Writ Appeal No. 238 of 2011

The State of Assam

- Appellant

-Versus-

Shri Dilip Kumar Sarma & Ors.

- Respondent

Advocates for the appellant : Sri KN Choudhury , Addl.Advocate General, Sri. J Patowary, Advocate.

Advocates for the respondent: Sri MK Choudury, Senior Advocate, Sri DK Das, Advocate Sri S. C. Shyam, Advocate Writ Petition (C) No. 3528 of 2011 Shri Dilip Kumar Sarma & Ors.

- Petitioner

-Versus-

The State of Assam & Ors.

- Respondents

Advocates for the Petitioner : Sri DK Das, Advocate, Smti L Gogoi, Advocate.

Writ Appeal No. 238 of 2011 Advocates for the respondent: Sri KN Choudhury , Addl.Advocate General, Sri M Bhagabati, SC, WRD Sri M Mahanta, Advocate Sri S. C. Shyam, Advocate PRESENT THE HON'BLE SRI JUSTICE AMITAVA ROY THE HON'BLE SRI JUSTICE B D AGARWAL Date of hearing : 17.08.2011 & 23.08.2011.

Date of Judgment : 01.09.2011.

JUDGEMENT AND ORDER (CAV) B D AGARWAL J The State is in appeal against the order dated 09.08.2011 passed by a learned Single Judge of this Court in WP (C) No. 3528 of 2011.

2. By the aforesaid impugned order, the learned Single Judge has stayed the implementation of the order dated 11.07.2011 passed by the Secretary to the Government of Assam, Water Resource

Department, transferring the writ petitioner (respondent No.1) from the office of Guwahati East, Water Resource Department to the office of Superintendent Engineer, Monitoring Evaluation Cell, Guwahati.

3. In view of the urgency of the matter and as agreed by the learned counsel for both the sides, the writ appeal is being disposed of at the admission stage itself. Since the arguments were addressed on merit of the cases, this judgment will also dispose of the writ petition.

Writ Appeal No. 238 of 2011

4. The gist of the case is that the writ petitioner/ respondent No.1 is the Executive Engineer in the Water Resource Department. In the recent past, in the month of October, 2008 the writ petitioner was posted as Executive Engineer in the Office of the Superintendent Engineer, Monitoring Evaluation Cell. Thereafter, in the month of February, 2009, i.e. within a period of five months he was transferred to Nagaon Division. Vide order dated 25.01.2011, i.e. within a period of less than two years, the writ petitioner was again brought from Nagaon Division to Guwahati East Division. While the writ petitioner/ respondent No.1 was working as Executive Engineer in Guwahati East, Water Resource Department, he has again been shifted to Monitoring and Evaluation Cell, Guwahati, where he was serving in the year 2008. Being aggrieved with the order of transfer within a period of six months, the respondent No.1 has filed the writ petition. Upon hearing the learned counsel for both the sides, the learned Single Judge has stayed the operation of the transfer order, giving rise to the filing of this writ appeal by the State.

5. We have heard Sri KN Choudhury, learned Additional Advocate General for the appellant and Sri MK Choudhury, learned Senior Counsel for the respondent No.1/ writ petitioner. The transferee officer (respondent No.4) has been represented by Sri S Shyam, learned counsel. We were also taken to the pleadings of the parties and various authorities by the learned counsel for both the sides. The learned Additional Advocate General had also produced the relevant file during the course of hearing.

6. Since, we are also disposing of the writ petition; we would first address the contentions and submissions of the learned counsel for the writ petitioner. Sri MK Choudhury, learned counsel for the writ petitioner submitted that the transfer of the writ petitioner is illegal, arbitrary and malafide in as much as the transferring authorities have not assigned any Writ Appeal No. 238 of 2011 reason to transfer the writ petitioner from one office to another within a period of six months. According to the learned counsel, as per the government policy, laid down under Office Memorandum dated 04.02.2002, the normal tenure of the government officer at a particular station is three years and if a transfer is effected earlier to the normal tenure, there should be proper justification and the ground should be recorded and assigned in the order. Learned counsel for the writ petitioner also prayed to interfere in the impugned transfer order on the ground that the same has been issued at the behest of a minister and not in public interest.

7 Sri MK Choudhury, learned senior counsel for the writ petitioner further urged that the concerned Minister of State (respondent No. 3) himself had issued an order on 20.06.2011 prohibiting transfer

of officers with a view that the implementation of the ongoing projects may not be hampered in the flood season. However, within a month of the said Order, the respondent No.3 himself deviated from the above dictate and recommended the writ petitioner's premature transfer.

8. Per contra, the learned Addl. Advocate General submitted that recording of reasons is not mandatory if an officer is transferred and accommodated in another office at the same station. In support of this submission, the learned Addl. Advocate General referred to the Judgment of this Court rendered in the case of State of Assam-Vs- Ranjit Chandra Barman, reported in 2008 (2) GLT 786. The learned State counsel also submitted that there is no illegality if a transfer is effected at the instance of a minister, who is in-charge of the concerned department and to re-inforce this submission, learned State counsel cited the authority of this court rendered in the case of State of Assam-Vs- Dilip Kumar Das, 2003 (1) GLT

530. The learned Addl. Advocate General also contended that the transfer was necessary to bring a more efficient officer in the Water Resource Department to handle the problems of artificial flood in the Guwahati city Writ Appeal No. 238 of 2011 during rainy season and there was no malafide in effecting transfers. The learned State counsel also argued that if a transfer order is issued at the intervention and on the basis of suggestion of a concerned minister, it would, ipso facto, cannot be termed as a malafide action.

8.1 With regard to the Minister's order dated 20.06.2011, prohibiting transfer of officers in his department, the learned Addl. AG submitted that the aforesaid Order was a general advisory which cannot subservient to the needs of the administration. The learned Addl. AG further contended that the order dated 20.06.2011 had no application in the present case in as much as the respondent No.4 was not directly connected with execution of any flood related project and instead he was attached to a technical branch. The learned Addl. AG also submitted that since the impugned transfer order was issued after obtaining due approval from the Hon'ble Chief Minister, it should be construed as superseding the Minister's advisory dated 20.06.2011.

9. While adopting the submission of learned Addl.AG, Sri Shyam , learned counsel for respondent No.4 submitted that the writ petitioner has not alleged any malafide against the official respondents nor any such allegation was made in the representation submitted by the writ petitioner to the appellant on 12.07.2011. Sri Shyam also reiterated that since the transfer order was approved by the highest authority of the State there can neither be any malice in law nor malice on facts. The learned counsel also submitted that the Minister's order dated 20.06.2011 cannot be interpreted as a total ban to effect transfers in public interest and also in public exigency. Sri Shyam further made a statement that before the interim stay order of the High Court, the respondent No.4 had already taken charge in the transferred office. In fact, the file noting also indicate that the respondent No.4 had Writ Appeal No. 238 of 2011 joined the post of Executive Engineer, Guwahati East, Water Resource Development on 15.07.2011.

9.1. At this stage, it may be put on record that Hon'ble State Minister of Water Resource Department has also been impleaded in the writ proceeding as respondent No.3 and as a proforma respondent in the writ appeal. As per the order dated 03.08.2011 of the learned Single Judge, the Hon'ble minister

has also filed an individual affidavit justifying the transfer and for vacating the stay order.

10. To appreciate the rival contentions, it would be apposite to reproduce some of the averments made in the writ petition relating to legality of the impugned order, which runs as below:

".....The petitioner being surprised by serving with the impugned notification of transfer dated 11.07.2011 started to make enquiry regarding such an impugned action adopted by the respondents behind his back. The petitioner was shocked to find out that the respondent No.3 who is the concerned Minister of Water Resources Department recorded an impugned noting in File No.WR (E) 184/ 2007 to the effect that the petitioner should be transferred from his present place of posting and same was send for approval of the Chief Minister. The said impugned noting of the respondent No.3 was not supported with any valid and cogent reason. The petitioner could not manage to lay his hands on the impugned noting recorded by the respondent No.3.

Therefore, the petitioner prays before this Hon'ble Court to direct the respondents to produce the relevant file at Writ Appeal No. 238 of 2011 the time of hearing of the instant case. The Chief Minister without assigning any reasonable justification approved the impugned noting recorded by the respondent No.3. The respondent No.1 in turn by mortgaging his own discretion and decision making authority at the behest of respondent No.3 which has no sanctity in the eyes of law issued the impugned notification dated 11.07.2011 transferring the petitioner to the office of respondent No.2 in Monitoring and Evaluation Cell. However, the said impugned notification has not been given effect to till date and the petitioner is presently serving as Executive Engineer, Guwahati East Water Resources Department. It is an admitted fact that although the posts are same and equivalent, however, the duties and responsibilities of the new post is much less than the post the petitioner is presently holding."

".....The respondents even do not bother to consider the contents of the OM dated 04.02.2002 which laying down policies of transfer of government officials. In the said OM it has categorically laid down that if any government official has to be transferred from his present place of posting even before completion of three years, proper justification and ground may be recorded in writing....."

".....Moreover, it is a well established principle that a statutory authority vested with jurisdiction must exercise it according to its own discretion and such discretion exercised under the instruction of some higher authority Writ Appeal No. 238 of 2011 which does not have any sanctity in the eyes of law is amounting to failure to exercise discretion all together."

11. The admitted fact is that though the writ petitioner has been transferred from one office to another within a short period of six months but at the same time there is no change of station. Both the offices are situated in the Guwahati city. Besides this, the writ petitioner has further admitted the fact that both the posts, which he was occupying prior to the transfer and the transferred post are equivalent, except the nature of the duties and responsibility. The other admitted fact is that

when the writ petitioner was transferred from Nagaon to Guwahati within a period of five months, no eye-brows were raised by the writ petitioner. In other words, the writ petitioner readily accepted his transfer to a prime posting at Guwahati. On the basis of this conduct of the writ petitioner, the learned Addl. AG contended that the writ petitioner cannot be allowed to approbate and reprobate simultaneously.

12. It is the settled position of law that an order of transfer of a government officer is no doubt justiciable but such transfer order(s) can be interfered/interdicted in writ jurisdiction in rare and exceptional cases. Broadly, a transfer order can be interfered with - (i) if such order has been issued by an authority not competent to do so; (ii) if there is violation of any statutory rule; (iii) if there is gross discrimination between the writ petitioner vis-à-vis similarly situated officers/employees and (iv) if the transfer order is actuated by any malafide.

13. In the case before us, neither is there any challenge to the competency of the appellant to issue the transfer order nor is there any Writ Appeal No. 238 of 2011 allegation of violation of statutory rule. There is also no allegation of discrimination between the petitioner and similarly placed officers. Precisely, the impugned transfer order has been assailed only on the ground of non-adherence to the O.M. dated 04.02.2002, which stipulates 3 years as the normal tenure of an officer/employee at a particular station. It has also been pleaded by the writ petitioner that no reason has been assigned to transfer the writ petitioner from one office to another within a short period of six months. The other ground to challenge the transfer order is that the same has been issued at the behest of respondent No. 3 (Minister of the department) and as such, it amounts to malafide action.

14. An identical issue of transfer of an officer from one office to another in the same station at Guwahati and that too before the normal tenure of three years came up for consideration before this Court in the case of Ranjit Chandra Barman (Supra). In the said judgment, a Division Bench of this Court has held that "when the transfer is to another office in the same place or station, judicial intervention may not be justified to such transfer order for alleged breach of the prescribed norms of recording justification". In this judgment, the Division Bench had also taken into consideration the observations made by the Hon'ble Apex Court in the case of Union of India - Vs- S.L. Abbas; reported in (1993) 4 SCC 357 that there is no obligation for an employer to justify through reasons an order of transfer and interference of the Court in the transfer order on the ground of lack of assigning reasons would be unjustified. In this case also, the Hon'ble Supreme Court was considering the transfer of an officer in violation of government guidelines, which provided posting of husband and wife at the same place as far as possible. Their Lordships observed that while ordering a transfer, there is no doubt, the authority must keep in mind the guidelines issued by the government on the subject. However, the guidelines do not confer upon the government employees a legal enforceable right.

Writ Appeal No. 238 of 2011

15. The learned counsel for the writ petitioner/respondent No.1 failed to overrule the ratio laid down in the case of Ranjit Ch. Barman (Supra) by any other authority. However, the learned counsel for

the writ petitioner submitted that in the aforesaid authority, there was no challenge to the transfer order on the ground of malafide, which has been raised in the present case. We make it clear that the aforesaid authority is being relied upon by us only to answer the question of necessity of supplying reasons in an order of a transfer in the same station.

16. In the case of State of UP -vs- Govardhan Lal the Hon'ble Supreme Court; reported in (2004)11 SCC 402: AIR 2004 SC 2165, the Hon'ble Supreme Court was confronted to examine a transfer order de-hors to the government's Order laying down norms and principles for regulating transfers and observed as below:

"7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a malafide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made.

Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a Writ Appeal No. 238 of 2011 particular officer/ servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision" "8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of malafides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

17. With regard to the judicial review of the impugned transfer order on the ground of malafide, we find that no specific malice has been attributed against any State respondents. It has been pleaded in the writ petition that since the order has been issued at the instance of a minister, the transfer order is in the nature of colourable exercise of powers in the name of public interest and it amounts

to malafide transfer.

18. As noted earlier, the respondent No.3 is the Minister of State of Water Resource Department etc and as such he is not a person who can not be said to have no concern to interfere in the functioning of the petitioner's department. In the case of Mohd. Masood Ahmad -Vs- State of U.P.;

Writ Appeal No. 238 of 2011 reported in (2007) 8 SCC 150, the Hon'ble Supreme Court has held that if an officer is transferred at the instance of an MLA that by itself would not vitiate the transfer order. The limited scope of interference in such transfer order under writ jurisdiction was stated by the Apex Court in the following words:

"7. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in *Rajendra Roy v. Union of India*, *National Hydroelectric Power Corpn, Ltd.v.Shri Bhagwan*, *State Bank of India v. Anjan Sanyal*. Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in *Vijay Pal Singh v. State of U.P.* and *Onkar Nath Tiwari v. Chief Engineer, Minor Irrigation Deptt.* has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under Article 226 unless the court finds that either the order is malafide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders.

8. Learned counsel for the appellant submitted that the impugned transfer order of the appellant from Muzaffarnagar to Mawana, District Meerut was made at the instance of an MLA. On the other hand, it has been stated in the counter-affidavit filed on behalf of Respondents No.1 and 2 that the appellant has been transferred due to complaints against him. In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official the State Government is certainly within its jurisdiction to transfer such an employee. There can be no hard-and-fast rule that every transfer at the instance of an MP or MLA would be vitiated. It all depends on the facts and circumstances of an individual case. In the present case, we see no infirmity in the impugned transfer order."

19. In a series of judicial pronouncements, it has been held that transfer is an incident of service and the scope of judicial review of transfer order under Article 226 of the Constitution of India is very limited. In the case *State of Writ Appeal No. 238 of 2011 Haryana v. Kashmir Singh*, (2010) 13 SCC 306, the apex court has observed that transfer ordinarily is an incidence of service, and the courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. Their Lordships further held that administrative exigency can not be judged by judicial authorities in the following words:

"14. In our opinion, the High Court has taken a totally impractical view of the matter. If the view of the High Court is to prevail, great difficulties will be created for the State administration since it will not be able to transfer/deploy its police force from one place where there may be relative peace to another district or region/range in the State where there may be disturbed law and order situation and hence requirement of more police. Courts should not, in our opinion, interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal right of the citizen. After all, the State administration cannot function with its hands tied by judiciary behind its back. As Holmes, J. of the US Supreme Court pointed out, there must be some free play of the joints provided to the executive authorities."

20. The judgment of Gauhati High Court given in the case of Toheli Sumi- Vs-State of Nagaland: 2009(2) GLT 956 relied upon by the learned counsel for the writ petitioner is distinguishable of facts. In the said case a transfer was effected at the behest of the Parliamentary Secretary, Industries and Commerce Department, who was unconnected with the Education Department, wherein the transfers were effected.

21. Coming to the impugned stay order of the learned Single Judge, we find that implementation of the transfer order has been stayed by the learned Single Judge basically on the ground that the reply of the respondent No.3 with regard to non-recording of the justification for transfer in terms of the O.M. dated 04.02.2002 is not on oath but based on information. In our considered opinion, though it would have been proper for the State respondent to assert on oath that the transfer was effected in larger public interest and also about the objective for bringing the respondent No. 4 to the post of writ petitioner because of his efficiency to handle flood and Writ Appeal No. 238 of 2011 drainage management projects and supplement it from certain materials on record, the deficiency in the affidavit of respondent Nos. 1, 2 and 3 militates in the backdrop of absence of any evidence of malafide and also in view of non-requirement of assigning any reason in the same station transfer. On these grounds, the shortcomings in the affidavits can be safely ignored, since it will not vitiate the transfer order.

22. It is true that unwarranted transfer of an efficient and independent officer is against good governance. At the same time bringing more efficient and competent officer to man a particular post and for particular exigency is also a part of administrative management and good governance. The role of judiciary in such matters is very limited. The legal principles in this regard have already been discussed in this judgment. In the case at hand, although the record does not reveal any special proficiency of the respondent No.4 to bring him in the place of the writ petitioner, but as noted earlier the executive is more proper authority to make the assessment as to which officer is suitable for which post and more particularly at given point of time. Hence, the doctrine of "two views" will be applicable in favour of the State authorities and not in favour of the transferee and the transferred officers.

23. For the reasons, stated herein above, we are reluctant to interfere with the impugned transfer order. Consequently, the writ appeal stands allowed. The writ petition stands dismissed. The stay

order stands vacated.

JUDGE

JUDGE

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Writ Appeal No. 238 of 2011

Writ Appeal No. 238 of 2011

Chattisgarh High Court

Donger Singh Thakur vs State Of Chhattisgarh 57 ... on 13 March, 2019

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HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Appeal No. 803 of 2018

{Arising out of Order dated 09.10.2018 passed in Writ Petition (S) No. 6720 of 20
the learned Single Judge}

Donger Singh Thakur son of Shri Nohar Singh Thakur, aged about 60 years,
Occupation Service, Presently posted as Senior Cooperative Inspector,
Joint Registrar, Cooperative Society, Durg.

Versus

1. State of Chhattisgarh, Through the Secretary, Ministry of Cooperative Secretariat, Mahanadi Bhawan, Naya Raipur, District Raipur.
2. The Registrar, Cooperative Societies, Indravati Bhawan, Atal Nagar, Raipur.

For Appellant : Shri B.P.Sharma and Ms. Trishna Das, Advocates. For Respondents/State : Shri Siddharth Dubey, Deputy Government Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice Hon'ble Shri Parth Prateem Sahu, Judge Judgment on Board Per Ajay Kumar Tripathi, Chief Justice 13/03/2019

1. Heard learned counsel for the Appellant and the Respondents.

2. The appeal arises out of order dated 09.10.2018 passed by the learned Single Judge who dismissed the writ application refusing to interfere with the order of transfer passed against the present Appellant on the basis of a complaint filed before the Hon'ble Chief Minister by certain residents of the area.

3. The Appellant was working as a Senior Cooperative Inspector at Durg. Vide order dated 29.09.2018, a copy of which is Annexure P/1 to the writ application, he was transferred to the office of Deputy Registrar, Cooperative Societies, Surajpur. The Appellant chose to assail the said order under the facts and circumstances which has emerged from the pleadings as well as the evidence brought on record in the preliminary objection of the State filed before this Court as also some evidence brought before us in this appeal in the rejoinder.

4. Argument of the Appellant was that the order of transfer is not for administrative reason but is a punitive order passed by the authorities at the instance of certain vested interest and the direction issued from the superior authorities for compliance.

5. The learned Single Judge took a view that since transfer is an incidence of service, therefore, the Courts are not required to intervene with such decisions and he chose to rely on such principles laid down by the Hon'ble Apex Court holding that such transfer at times are done for efficiency in public administration.

6. The sequence of events leading to the order of transfer coupled with a report dated 30.08.2018 issued under the signature of the Joint Registrar, Cooperative Societies, which is available, indicate that the complaint which led to the transfer of the present Appellant was in fact a motivated complaint and the Appellant in fact had no role to play in relation to the allegation that he had been trying to help a Computer Operator namely Shri Nageshwar Shandilya who was said to be involved in various omissions and commissions.

7. The background under which the order of transfer has come to be passed does support the contentions of the Petitioner/Appellant that there was more to the decision making than what meets the eyes, which led to issuance of the order of transfer. The sequence of events are now more or less complete by the documents available and therefore, it cannot be treated to be a case of routine transfer for administrative exigencies. The origin was in the complaint filed by certain vested interest which culminated into the decision of transfer.

8. In the given facts, therefore, and keeping in mind that even within the Department, the allegations made against the Appellant was not found to be correct as such, the order of transfer ought to be interfered if for nothing else the interest of fair and good administration as also for the reason that no Government servant should feel that he has been victimized for a wrong reason.

9. The writ appeal stands allowed. The order of the learned Single Judge dated 09.10.2018 is set aside because the entirety of the sequence has not been taken note of by the learned Single Judge which culminated into issuance of the order of transfer.

10. Because of the above, even the order of transfer dated 29.09.2018 stands quashed. Since an order of status quo was passed and the Appellant has continued to be in the place of posting from where he was transferred, he will not be disturbed unless the Government decides to take a decision actually for administrative reasons.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE

Amit

Central Administrative Tribunal - Delhi

Dimple Chandel vs Cabinet Secretariat on 17 August, 2018

Bench: Nita Chowdhury

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.3047 of 2018

Orders reserved on : 13.08.2018

Orders pronounced on : 17.08.2018

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

Dimple Chandel, Personal Assistant, Group B,
Aged about 39 years,
w/o Sh. Davender Chandel,
R/o 25 Vijay Nagar, Single Story Market,
Delhi-110009.

....Applicant

(By Advocate : Shri M.K. Bhardwaj)

VERSUS

1. Union of India,
Through Cabinet Secretary,
Cabinet Secretariat,
Govt. of India, North Block,
New Delhi.
2. The Secretary (R)
Cabinet Secretariat,
Govt. of India,
Room No.1001, B-1 Wing, 10th Floor,
Pandit Deen Dayal Antyodaya Bhawan,
CGO Complex, Lodhi Road, New Delhi.
3. The Spl. Secretary (Pers.)
Cabinet Secretariat,
Govt. of India,
Room No.1001, B-1 Wing, 10th Floor,
Pandit Deen Dayal Antyodaya Bhawan,
CGO Complex, Lodhi Road, New Delhi.
4. The Joint Secretary (Pers.)
Cabinet Secretariat,
Govt. of India,
Room No.1001, B-1 Wing, 10th Floor,
Pandit Deen Dayal Antyodaya Bhawan,
CGO Complex, Lodhi Road, New Delhi.

.....Respondents

(By Advocate : Shri Ranjan Tyagi)

ORDER

Ms. Nita Chowdhury, Member (A):

Heard Shri M.K. Bhardwaj, the learned counsel for the applicant and Shri Ranjan Tyagi, the learned counsel appeared on behalf of the respondents on receipt of advance notice.

2. The applicant has filed this OA seeking the following reliefs:-

"(i) To quash and set aside the impugned transfer order dated 19.04.2018, order dated 04.06.2018, 05.07.2018 as well as 25.07.2018 and direct the respondents to continue the applicant in Delhi as per their own transfer policy and till the transfer of all longest stayees.

(ii) To declare the action of respondents in transferring the applicant to Kolkata before maturing her turn on the principle of longest stayee as illegal and accordingly set aside the impugned transfer order dated 19.04.2018 and consequential orders.

(iii) to allow the OA with costs.

(iv) To pass any such other order as this Honble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. Facts in brief are that the applicant, a Personal Assistant in the Cabinet Secretariat, filed this O.A. questioning the Office Order No.125/Pers.8/2018 dated 19.04.2018 (Annexure A-1) whereunder the applicant was transferred from New Delhi to Kolkata along with some others as also order dated 04.06.2018, 05.07.2018 as well as 25.07.2018, on various grounds.

2.1. Earlier also the applicant has challenged the said order dated 19.4.2018 by filing OA No.2513/2018 and this Tribunal vide Order dated 10.7.2018 by observing that "Admittedly, the impugned order itself provides for making a representation against the transfer and also a further appeal, if the said representation is not considered in favour of the applicant. Though the representation of the applicant was rejected, but the subsequent appeal filed by the applicant is said to have been pending. It is also a fact that the applicant is already relieved on 05.07.2018", disposed of the said OA at the admission stage itself, without going into the merits of the case, by directing the respondents to consider the Annexure A-6 appeal, dated 07.06.2018, of the applicant, if the said appeal has not yet been disposed of already, and to pass an appropriate speaking and reasoned orders thereon, in accordance with law. The joining of the applicant at the new place of posting is without prejudice to her rights. Further, if the applicant joins at the new place of posting and applies for any kind of admissible leave, the respondents shall consider the same sympathetically, in

accordance with rules and law. 2.2. In compliance of the aforesaid Order of this Tribunal, the respondents have passed order dated 25.07.2018 as under:-

"6. Her aforesaid request dated 07.06.2008 was considered at appropriate level but could not be acceded to. Her father also met with Secretary on 14.6.2018 in connection with her transfer posting. She was suitably apprised about the decision of the Department with regard to her transfer to EZ, Kolkata by DS (Pers.II) in a meeting held in his office on 19.6.2018. Thereafter, vide her representation dated 20.6.2018, she requested for personal audience with Secretary. Her representation was considered at appropriate level and not accorded to, and she was stand relieved for transfer to EZ, Kolkata vide order dated 5.7.2018.

...

8. The representation of Ms. Dimple Chandel has been considered by the undersigned in the light of her earlier representation dated 25.04.2018, her service condition, functional requirement of the department and other connected documents of the case. Ms. Dimple Chandel was prematurely transferred from CEC, Mumbai to Hqrs, New Delhi for posting on special assignment, which she refused by citing family reasons. The special assignment posting which is mandatory in nature is not of personal choice. It cannot be opted to be withdrawn prematurely during service period, except in the extreme genuine conditions, with the approval of the competent authority.

9. As per Para 5 of Transfer Policy dated 01.06.2005, all employees of R&AW, in terms of their conditions of service are liable for transfer anywhere in India subject to the exigencies of service. Further, Rule 11 of Transfer Policy states that all the principles laid down below are subject to operational/administrative requirements of the Organisation. This will outweigh all other considerations. The transfer of Ms. Dimple Chandel, PA to Eastern Zone, Kolkata was ordered purely based on operational/administrative requirement of the Organisation.

11. Ms. Dimple Chandel was accorded every opportunity to represent against the orders. She was also allowed to submit appeals as permissible under the existing rules and regulations of Department. In addition, her father also met with Secretary regarding cancellation of her transfer and thus she tried to bring outside influence in her transfer/posting matter, which is violation of Rule 20 of CCS (Conduct) Rules, 1964.

12. Now, after considering all facts connected to the case administrative requirement of the office, the undersigned does not find any reason to interfere with the transfer order dated 19.04.2018 issued by Joint Secretary (Pers.). The request of Ms. Dimple Chandel, Personal Assistant for cancellation of her transfer from Hqrs, New Delhi to EZ, Kolkata, therefore, is rejected." 2.3 Feeling aggrieved by the said orders, the applicant has filed this OA challenging on various grounds.

3. Counsel for the applicant submitted that impugned transfer order as well as order dated 25.7.2018 has been passed in violation of transfer policy; the respondents have rejected the representation/appeal of the applicant against the transfer order by taking a stand regarding

operational/administrative requirement which is not correct as the applicant was transferred from Kolkata to Hqrs. New Delhi prematurely; the action of the respondents is discriminatory and arbitrary; the respondents have failed to consider that applicants 12 years old daughter is studying in class 8th and the applicant has the responsibility of ailing grandmother-in-law who is suffering from Urinary Bladder Cancer and undergoing multiple Chemotherapy sessions and has also undergone Angioplasty.

3.1 Counsel for the applicant further submitted that her earlier request for transfer from Kolkata to Delhi had been rejected by the respondents. However, the respondents on their own transferred the applicant to Delhi from Amritsar in November 2008 and from Mumbai to Delhi in April 2017 and now they have not allowed the applicant to complete tenure even in Delhi. If the respondents did not want the applicant in Delhi, they should not have transferred the applicant to Delhi in April 2017.

3.2 Reliance has also been placed on the judgment of the Honble Supreme Court in the case of Directorate of School Education Madras and others vs. O. Karuppa Thevan & Ors. (1994) Supplementary (2) SCC 666 that the transfer should not be made effective during academic session and children of an employee studying should be given due weight while effecting transfer. Counsel further submitted that principles of natural justice have not been followed by the respondents

4. Counsel for the respondents submitted that the Organisation, in which the applicant is working, is a very important organisation in the security of the nation and after considering all the administrative exigencies and public interest only, the orders of transfer have been passed and also that, not only the applicant, certain others were also transferred under the same transfer order, keeping in view the public interest at large. He further submitted that no public servant is having any Indefeasible right to continue in a particular place for a particular period and the transfer being an incident of service, this Tribunal cannot interfere with the impugned transfer order.

5. We have perused the impugned orders and we have already quoted the relevant paras of the order dated 22.7.2018, which was passed by the respondents in pursuance of the directions of this Tribunal in OA No.2511/2018 dated 10.7.2018. We find that the applicant was transferred from Mumbai to Delhi vide Office Order No.133/Pers/8/2017 issued under endorsement No.24/04/2017/Pers.8 dated 10.3.2017 for further posting on special assignment, which was mandatory in nature and pursuant to this order, the applicant was relieved from Mumbai and joined at Delhi on 24.4.2017. However, after becoming aware of her place of posting, she submitted representation dated 8.5.2017, expressing her inability to move on special assignment, citing family reasons. Her representation was considered at appropriate level and it was decided to revert her to general strength immediately. Since, she was transferred from Mumbai to New Delhi prematurely, which was necessitated on account of her selection for special assignment posting, which she refused after learned about her place of posting, it was decided to transfer her out of Delhi during next-DTAC. Accordingly, she was transferred from New Delhi to Chennai vide order dated 19.4.2018.

6. We further find that all the grounds raised by the applicant in his representation/appeal have been duly considered by the respondents and so far as the plea of the applicant that the respondents

have violated the provisions of transfer policy is concerned, it is admitted fact that applicant had been transferred from Mumbai to Delhi by the respondents on account of her selection for special assignment posting prematurely. However, after joining at Delhi, the applicant made representation against the said special assignment posting citing her personal difficulties, which was duly considered by the respondents and it was decided at that point of time to transfer her out of Delhi during next-DTAC. We do not find any arbitrary or mala fide action on the part of the respondents while issuing the impugned orders.

7. In the case of *Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey & Ors.*, as reported in (2004) 12 SCC 299, the Apex Court held that unless an order is clearly arbitrary or vitiated by mala fide or infraction of any prescribed norms of principles governing the transfer, such transfer order must not be interfered with. The Apex Court in an earlier case between *State Bank of India Vs. Anjan Sanyal & Ors.*, as reported in (2001) 5 SCC 508, observed that unless mala fide, or prohibited by service rules, or passed by an incompetent authority, the order of transfer should not be lightly interfered with in exercise of a Court's discretionary jurisdiction. In the case of *Shilpi Bose Vs. State of Bihar*, as reported in AIR 1991 SC 532, it was held that 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. In the case of *Union of India Vs. S.L. Abbas*, as reported in AIR 1993 SC 2444, the Apex Court observed that 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. It was further observed that the departmental guidelines cannot even confer upon the government employee a legally enforceable right.

8. Further in the case of *S.C. Saxena Vs. Union of India & Ors.*, as reported in (2006) 9 SCC 583, submitted that a government servant cannot disobey a transfer order by not reporting at the place of posting. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems.

9. It is further relevant to mention that while deciding the earlier OA 2511/2018 filed by the applicant, this Tribunal specifically observed that if the applicant joins at the new place of posting and applied for any kind of admissible leave, the respondents shall consider the same sympathetically, in accordance with rules and law. Since the applicant has approached this Tribunal immediately after disposal of her appeal and chosen not to join at the place of transfer, we do not incline to interfere in the matter.

10. So far as judgment relied upon by the applicant in the case of *Directorate of School Education Madras and others vs. O. Karuppa Thevan & Ors.* (supra) is concerned, the same is not applicable in the present case as transfer order has been passed on 19.4.2018 and the applicant knew very well that as per the decision of the respondents, she would be transferred in next-DTAC.

11. In the result, for the reasons stated above, the present OA being devoid of merit is dismissed at the admission stage itself. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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