

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE**

ORIGINAL APPLICATION No. 170/001081/2019

TODAY, THIS THE 22nd DAY OF OCTOBER, 2019

**HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V SANKAR, ADMINISTRATIVE MEMBER**

T.R. Suresh, IPS
Aged about 59 years,
Working as Managing Director,
Karnataka State Electronic Development Corporation,
Bengaluru : 560 027

.... Applicant

(By Advocate Shri K. Puttegowda)

Vs.

1. Union of India,
Represented by its Secretary,
Department of Personnel & Training,
New Delhi – 110 001
2. The State of Karnataka,
Represented by its Principal Secretary,
Department of Public and Administrative
Reforms (Services),
Vidhana Soudha, Bangalore : 500 001
3. Anita Lakshmi,
KAS, Senior Scale
(Waiting for posting)
4. The State of Karnataka,
Represented by its Under Secretary,
Department of Information Technology,
Biotechnology & Science & Technology,
6th floor, 5th Stage, M.S. Buildings,
Bangalore : 560 001 ... Respondents.

(By Shri R.B. Satyanarayana Singh, Addl. Govt. Advocate for R2 & R4 and
M/s. Subba Rao & Co., Advocates for R3).

ORDER**HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER**

While entertaining this application, we had on 4.10.2019 passed the following order :

“Heard. Issue notice by dasti to the respondents. Applicant to issue additional notice to the learned Advocate General of Karnataka and the learned Government Advocate Shri Satyanarayana Singh.

Let the applicant continue as it is as Managing Director, KEONICS for the time being. Post for further hearing on 10.10.2019. In the meantime, government to file a reply and produce the file.”

2. But when we heard the matter, it appears that, contrary to what was said at the time of admission and while we granted the interim order, the party respondent had already taken charge as the Managing Director, KEONICS. We have issued the interim order believing the words of the applicant that he was continuing as such and, therefore, allowed his further continuance. We do not want to say anything more on the subject as the applicant has to retire in 10 months time.

3 The applicant relies on the judgement of the Hon'ble Apex court in **Varadarao vs. State of Karnataka** reported in 1986 (4) SCC 131, which reads as follows :

“The power of transfer must be exercised honestly, bonafide and reasonable. If the exercise of power is based on extraneous consideration, the order of transfer is liable to be quashed.”

There cannot be any doubt of correctness of this proposition. But then if mala fides, unreasonableness and dishonesty is to be alleged, it has to be specifically alleged and the persons behind the elements of consideration must be brought out in the party array itself and we should allow a chance to defend for this person as otherwise, the rules of natural justice in so far it relates to them, will not be satisfied. Apparently the applicant had not involved any such person in the party array. No other person who may have had an extraneous consideration in it other than the party respondent. The party respondent being a Government servant is eligible and bound to obey the dictate of her employer. Therefore, no kind of extraneous consideration can be attracted to her. Therefore, an obvious explanation of the Hon'ble Apex Court judgement would be that if there is specific allegation of bias, mala fides, dishonesty or unreasonableness and if such persons who were made this in practice are in the party array and able to defend themselves then the stand taken by the applicant would be complete. But in the case of such incompleteness, a contrary view is also to be taken.

4. The Annexures produced by the applicant relating to Annexure A-5 does not carry any weight as it was just a proposal which was apparently returned by the Government and, therefore, having no credibility or value. The matter seems to be covered by some other judgements of the Hon'ble Supreme Court, which we quote.

5. In **State of Madhya Pradesh and Another vs. S.S. Kaurav and Others**, 1995 (1) S.C. Services Law Judgements 350, Hon'ble Supreme Court held :

“The court or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or Tribunals are not expected to interdict the working of the administration system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by malafides or by extraneous consideration without factual background. foundation.”

Therefore, without factual elucidation of extraneous consideration and malafides and without engaging those people in the party array and giving them a chance to defend themselves, no such matter can be entertained by any Court or Tribunal.

6. Hon'ble Apex Court in the case of **National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan and Shiv Prakash**, 2001 (2) S.C Services Law Judgements 396, held :

“No Government servant or employee of Public Undertaking has any right to be posted forever at any one particular place. Transfer of an employee appointed against a transferrable post is not only an incident of an order of transfer unless such an order is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer. In fact High Court was not right in quashing the transfer order on the ground that it is against the seniority rules.”

Therefore, without even attempting to explain and elucidate on the malafide and extraneous powers that ruled the roost, the applicant cannot be allowed to contend that there seems to be an infraction on the part of the Government. Anybody who makes an allegation must be willing to explain it and at least *prima facie* prove it. No one can be allowed to make vague assertions and get away with this.

7. In the case of **Rajendra Singh and Others vs. State of Uttar Pradesh and Others**, (2010) 1 SCC (L&S) 503, Hon'ble Apex Court relying on the earlier judgement in **Shilpi Bose vs. State of Bihar**, 1991 Supp (2) SCC 659, held :

" 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."

In this case, other than making a vague assertion, no specificity is attributed by the applicant to any persons or any set of events. We have already seen that Annexure A5 is a non-existent document as it is

already returned by the Government and at the very best, was only a proposal by the Board of KEONICS.

8. In **Shri N.K. Singh vs. Union of India**, (1994) 6 SCC 98, the Hon'ble Apex Court stated that :

“6. 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 malafides and violation of any specific provision...”

There is no statutory provision which was being overridden by the Government in ordering the transfer of the applicant. There cannot be any question of malafides also to be considered, in the circumstances of the case, as no specific allegation has been made against anybody and no such person is made party to it. Without such an element being available for consideration, no judicial interference can be justified.

9. In **Government of Andhra Pradesh vs. G. Venkata Ratnam**, (2008) 2 SCC (L&S) 900, Hon'ble Apex Court held :

“The Hon'ble High Court was guided by its own notion of what would be in the Department's overall interest, and where respondent would be more suited. This was not accepted by the Hon'ble Supreme Court. It held that respondents could not be allowed to choose his own place of posting. The Hon'ble Supreme Court allowing the appeal held that "the High Court judgment is wholly untenable and rather unusual and strange. The judgment was apparently delivered in anger which might have been caused by the Government Pleader or the Director (the second respondent before the High Court). The Court not only lost judicial poise and restraint but also arrived at completely unfounded conclusions. The High court seems to have been completely taken in by ipse dixit of the respondent

and his tall claims about his own ability, and virtually allowed him to choose his own place of posting. It is surprising that High Court castigated the respondent's transfer as lacking bona fides on flimsy and fanciful pleas. The High Court's finding is unfounded and untenable. The legal position regarding interference by court in the matter of transfer is too well established. The respondent's transfer neither suffers from violation of any statutory rules nor can it be described as mala fide".

Therefore, it is crystal clear that the applicant may not have any case to rely on. The party respondent on the other hand stated that her children are studying and she had been transferred from another entity of the Government, also without completing a reasonable period there. The view of the Government seems to be that they considered the party respondent to be a better Administrator than the applicant. We do not want to go into the relative merit as an Administrator between the applicant and party respondent. We will leave It to the wisdom of the Government to decide on the sovereign function, as they deem fit, provided they act within four corners of the law. As if the party respondent says that her children are studying and she has other domestic compulsion it appears to us that she may come under the ambit of the Hon'ble Apex Court judgement, which will prevent transfer during the mid academic session. The fact that she had taken charge on 23.09.2019 was available to the applicant. But we regret to note that we had no opportunity to know about it on 4.10.2019 when we granted interim order of continuation. However, the applicant is ten months away from his retirement. At the fag end of the person's career he should be

able at least to choose the geographical location of his posting.

Therefore, we issue the following orders :

- 1, The party respondent would be considered as joined as Managing Director, KEONICS on 23.09.2019 onwards and will continue as such;
2. Despite of our interim order, it will be considered that the applicant is waiting for posting and further declare that the applicant is eligible for posting in Bangalore as he is to retire in ten months' time. We take this view on the basis of geographical preference indicated by the applicant.
3. During this period, the applicant will be treated as waiting for posting on compulsory waiting.

As the applicant has not given any specific reason to quash the transfer order, we uphold the Annexure A-4 transfer order so far as it relates to the parties herein and dismiss the O.A. No order as to costs.

(C.V. Sankar)
Administrative Member

(Dr. K.B. Suresh)
Judicial Member

Cvr.

Annexures referred to by the Applicant in OA No.170/01081/2019

Annexure A1: Copy of the Order dated 16.07.2018

Annexure A2: Copy of the Movement Order dated 17.07.2019

Annexure A3: Copy of the CTC dated 17.07.2019

Annexure A4: Copy of the impugned order dated 20.09.2019

Annexure A5: Copy of the Cadre & Recruitment Rules of the KEONICS

Annexures referred to by the Respondents

Annexure R1: Copy of the letter dated 23.09.2019 from the Government to the Managing Director, Keonics

Annexure R2: Copy of the Annexure-3 to the Cadre & Recruitment Rules of Keonics