

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 11th DAY OF May, 2011)

Hon'ble Mr. A.K.Bhardwaj, Member (J)

Original Application No.1493 of 2005

1. Gandhi Sharan, Tele Supervisor, Shri Jawahar Lal,
A/a 49 years, R/o C.S.B.O.S. working in Military Exchange
Station H.Q. Cell New Cant, Allahabad.
2. Jitendra Kumar Sharma
3. S.W. Hassan
4. Bhanu Pratap Singh
5. Jagadish Prasad
6. Birendra Prasad
7. Ram Bhawan
8. Raghu Raj Singh
9. Mr. Annamma Varghese
10. Vinod Kumar
11. Anil Kumar Srivastav
12. Mrs. Pratibha Singh
13. Mrs. Neena Agarwal
14. Daya Shankar
15. Birendra Singh

All CSBOs working in Military Exchange, Station HQ Cell,
New Cantt., Allahabad - 211 001.

..... **Applicants**

**Present for Applicant : Shri S. Mandhyan, Advocate
Shri Vinod Kumar, Advocate
Shri A.C.Srivastava, Advocate.**

Versus

1. Union of India through Secretary, Ministry of Defence
North Block, New Delhi.



2. Sub Area Commander, HQ, Allahabad Sub Area, Allahabad.
3. Station Commander, Station HQ Cell, Headquarters Allahabad, Sub area.
4. Commanding Officer, IVth Infantry Division, Signal Regiment, C/o 56 APO
5. General Officer Commanding (GOC) HQ Madhya Bharat Area (Signal), Jabalpur, M.P.
6. Officer Incharge Records (Signal), Jabalpur (M.P.)
7. Maj. Rajeev Chauhan, Officer Commanding 1 Coy, IVth Infantry Divisions, Signal Regiment C/o 56 APO

..... **Respondents**

Present for Respondents : Shri R.D.Tiwari, Advocate
Shri H. Singh, Advocate

ORDER

(Delivered by Hon. Mr. A. K. Bhardwaj, Member-J)

By way of present Original Application the applicant has assailed order dated 02.12.2005, passed by respondent No. 7, order dated 02.12.2005, passed by Station Commander and order dated 04.12.2005 passed by respondent No. 4. In terms of notice dated 02.12.2005 issued by Major Rajeev Chowhan, applicants were directed to report for duty at KLP Communication Complex Old Cantt w.e.f. 7 hours on 04.02.2005. In the said notice it was clarified that the trunk connectivity shall be shifted from New Cantt. Communication Complex to KLP Complex at Old Cantt on 3-

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4.12.2005. As far as order dated 02.12.2005 issued by Colonel R. K. Singh is concerned, in terms of the said order, with reference to application dated 29.11.2005 of applicant No. 1, he was informed that the Sub Area Military Telephone Exchange in Allahabad was under technical control of 4 Signal Regiment C/o 56 APO, thus they could have approached Commanding Officer 4th Infantry Division Signal Regiment for reply. In terms of order dated 04.12.2005, the representations dated 26.9.2005, 29.11.2005 and notice dated 2nd December, 2005 were dealt with. The said Communication dated 04.12.2005 reads as under:-

"SHIFTING OF CRBOs MEW CANTT ALLAHABAD TO
OLD CANTT ALLAHABAD

1. With ref to the your application sent on 26 Sep 05, letter No. 2180/Est. dt. 29. Nov 05 and our notice No. PC-1133/Sigs/Shifting/Comn dt. 02 Dec 05. Also ref Stn HQ letter No. 4010/CSBOs/ Rest dt 02 Dec 05.
2. Para wise comments on your contentions are elucidated as under:-
 - (a) Para 3. A permanent KLP building for Exchange and Sigcen has been constructed at Old Cantt wherein all the communication equipments are going to be installed. You will continue to work under permanent establishment of Station HQ, Allahabad as Old Cantt lies in the jurisdiction of the same Station HQ and is located in peace station.
 - (b) Para 4. As there was no KLP Signal Centre and Exchange building existing so far, hence the permanent complex was constructed at the Old Cantt.
 - (c) Para 5. Already replied vide Para 2 (a) above.
 - (d) Para 6. Your contention is not agreed to as even earlier you were working with the army personnel and you will be more secure working in the KLP complex.
3. In view of above you are hereby directed to report at Allahabad Military Exchange at Old Cantt for shift duty wef 05 Dec. 05.

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Any further queries should be resolved with higher HQs."

2. As can be seen from communication/order dated 04.12.2005 it was made clear to applicants that the permanent KLP building for Exchange and Signal had been constructed at old Cantt., wherein all the Communication Equipment were going to be installed and the applicant would continue to work under permanent establishment of Station Headquarter, Allahabad, as old Cantt was in the jurisdiction of same Station Headquarters. It was also made clear that there was no KLP Signal Centre and Exchange Building existing so far thus permanent complex was constructed at Old Cantt. Applicants were also informed that even earlier also they had been working with Army Personnel and they would be more secure while working in the KLP Complex. The grounds stated by the applicant in their OA to challenge the aforementioned order dated 04.12.2005 are as under:-

- "(a) Because the impugned orders are ex-facie illegal, arbitrary whimsical and without jurisdiction.*
- (b) Because all the applicants are validly appointed as SCBOs by the Officer Incharge Records (Signal), Jabalpur who is their appointing authority*
- (c) Because all through their service career with the department there has been no complaint with regard to the work and worth of any of the applicants.*
- (d) Because all the applicants have been transferred to Allahabad from time to time and are at present working on the post as mentioned in the facts of the case and are still continuing.*
- (e) Because the Military Exchange Station HQ have been upgraded and inaugurated in July, 2002 after spending huge amount and has been totally modernized catering the needs of all without any problem whatsoever.*

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- (f) *Because inspite of the facts that Military Exchange Station HQ is working in full steam and without any thing wanting the Military authorities for the reasons best known to them which appeared to be more malafide got the new KLP Unit constructed in the Old Cantt.*
- (g) *Because there are more than one reason to prove that the said exchange was not at all required as even otherwise it only being war establishment houses only nits or division on movement and it cannot be termed to be a permanent establishment.*
- (h) *Because illegally the applicants are being compelled to shift to the very peace establishment to war establishment as is clear from the impugned orders which is absolutely uncalled for and orders itself are bad for want of proper jurisdiction over the matter.*
- (i) *Because no opportunity whatsoever has been accorded to the applicants to have their say in the matter, which is going to affect their service career and their normal routine, hence orders impugned are ex-facie illegal.*
- (j) *Because the appointing authority of the applicants is Officer Incharge Records (Signal), Jabalpur, whereas the impugned orders have been passed by Military authority of the Station HQ which are barred for want of jurisdiction, therefore, they are only liable to be set aside.*
- (k) *Because there is no reason assigned whatsoever justifying shifting of the exchange from Military Exchange to KLP Center, as such movement itself is not sustainable in the eye of law.*
- (l) *Because there is vast difference in the working conditions in the peace as well as war establishment, therefore, the applicants are being put to disadvantageous position without calling for their explanation as such the entire process is violative of principles of natural justice and liable to be quashed.*
- (m) *Because there is no assessment of financial implications of such act which more or less can be equated with shifting of*



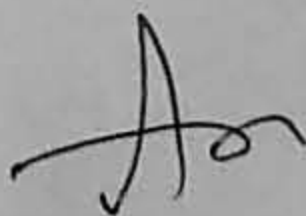
the Capital from Delhi to Daulatabad by the eccentric ruler Mohammad Bin Tuglaq.

- (n) Because apart from the lighter vein it may be stated that there is no justification for taking action of shifting the applicants from Military Exchange to KLP Center without any justification either on paper or even otherwise taking into consideration the financial implications or the convenience of the parties and the expense involved, therefore, the orders are not liable to be sustained in the eye of law.*
- (o) Because in any case the impugned orders betray manifest error of law as such are liable to be set aside."*

3. As can be seen from the grounds narrated by applicant in their OA, their main contention are as under:-

- (1) There is no reasons assigned whatsoever justifying shifting of the Exchange from Military Exchange to KLP Centre, the appointing authority of the applicant is Officer Exchange (Signal) Jabalpur, while the impugned order had been passed by Military Authority of the Station Headquarter, which was not permissible &*
- (2) Applicants were shifted from Peace Establishment to War Establishment resulting in to change of their service condition.*

4. Opposing the Original Application, respondents filed their counter reply, dated 21.12.2005 along with applications for taking the same on record, vacating the interim stay and dismissing the Original Application. Recording the statement made by Major Rajeev Chowhan that the apprehension of the applicant that they might have to move along with the regiment did not exist any longer, this Tribunal vacated the interim stay granted to applicants i.e. stay of operation of order



dated 02.12.2005 and 04.12.2005. The interlocutory order dated 23.12.2005, reads as under:-

"Heard the counsel for the parties on continuation of interim relief.

On the basis of the contention made by the applicants that the respondents are shifting the applicants from peace station to war station interim order dated 9.12.2005 was passed exparte. The respondents have today submitted that in so far as the applicants are concerned they will not be made to shift to any other station and they will be employed in the Static Communication Complex Units. Maj Rajiv Chauhan who is in the Court has made the above submissions. In view of the above the apprehension of the applicant that they might have to move along with the regiment no longer exists. As such the interim stay granted on 09.12.2005 is vacated. The applicants shall perform their duties as directed vide order dated 02.12.2005. This is however without any prejudice to the outcome of this OA."

5. In the counter reply filed by the respondents they have made detailed submissions. Broadly it is contended therein:-

"(1) The Exchange was running/Stationed in the temporary building at New Cantt location and the case was taken up for construction of the key location plan (KLP) as per Army policies at old Cantt location which formed a part of overall plan in the year, 2000.

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- (2) *The Infantry Division Signal Regiment was given the responsibility of handling the communications of entire Allahabad Army Cantt and the entire Army Communication set up in Allahabad had been upgraded by procurement of art equipment and installation of same in new Communication Complex.*
- (3) *The existing space in the Old Communication Complex at New Cantt. (temporary accommodation) was grossly inadequate to operate the additional hardware proposed to be procured and installed.*
- (4) *The shifting of the Complex was with a view of efficiency, as it could be closely monitored by officers which was not possible earlier due to the distance involved.*
- (5) *The shifting was done with a view to save the time of the Army Personnel who were required to perform various sincere duties apart from manning the Exchange.*

6. It is the case of the respondents that it was not so that applicants were transferred, as they had only shifted the functioning of Exchange from one building in New Cantt to another building in old Cantt with a view to improve the functioning of Exchange. The respondents have also clarified that the New Cantt as well as the old Cantt (Allahabad) lie under jurisdiction of Station HQ Allahabad.

7. Denying the contention of the applicant that their service conditions are changed and they are shifted to War Establishment, Respondents have submitted that the applicants had earlier being working in the premise of Army building along with Army Personnel and there had been no change in the working atmosphere for them. In Counter reply filed by the respondents it is categorically stated that the CSBOS are employee to work in static exchange providing

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communication to the entire, Allahabad Station and it would remain at the same place permanently irrespective of the move of unit for technical training/operational training. The contention of the applicant that they are transferred by the incompetent authority, respondents have stated that they have not transferred the applicant, but have shifted the premise of the Exchange and shifting of applicant is also incidental to shifting of exchange.

8. Rebutting the contention of the applicant that there is no reason for shifting the exchange, the respondents have narrated the reason in detail. I have heard counsel for the parties and perused the record. On perusal of record, I find that it is not so that there was no reason or justification of shifting of the exchange from Military Exchange to KLP Centre.

9. Number of communication projects had been planned by the respondents for improving the speech quality as well as for providing data connectivity to all subscribers in Allahabad Cantt including old Cantt, New Cantt., OD Fort and COD Chowki. In fact, Allahabad Cantt is divided into four major Hubs, where the Army is present namely old Cantt, New Cantt, OD Fort and COD Chowki.

10. There is exchange at each of said locations for communication for the subscriber. The exchange where applicants were working was stationed in a temporary building, thus the respondents had decided to construct a new building as per Key Location Plan, in terms of Army policy which formed a part of over all plan in the year 2000.



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11. The entire communication set up at Allahabad had been upgraded and since the upgradation involved the installation of advance equipments and technology, the old Complex was not considered sufficient for the purpose. Respondents had planned a number of communication projects to improving the speech quality as well as providing data connectivity. And the existing space in old communication Complex at New Cantt was considered by them as gross inadequate to handle the additional hard ware proposed to be procured and installed. In view of the interest and upgradation of functioning of exchange, the shifting of exchange where applicants were working to KLP was approved by Ministry of Defense. Shifting of exchange was not only in the interest of upgradation of its functioning but was also considered ideal to save the time of Army Personnel who could perform their essential duties along with manning of exchange with shifting of the same to KLP. While operating the exchange from old place, burden was caused on Public Exchequer by incurrence of expenditure on transport as the same had to carry the Army Personnel between old Cantt to New Cantt twice a day. On account of shifting the exchange to new building, the speech quality had improved, which was appreciated by the subscribers also. Quick rectification of faults and repairing of a hub could also be facilitated by shifting of exchange to KLP.

12. Moreover, shifting of office or establishment from one premise to another for betterment of the same is a policy decision taken by the government and the same cannot be interfered by the Court. As far as the contention of the applicant that the order of transfer of applicants has been issued by the authority not competent to do so is



concerned, it is noticed that the present case is not the case of transfer but is of shifting of office/establishment from one Complex to another Complex. 4 Infantry Division Signal Regiment was given the responsibility of handling the communication of entire Allahabad Army Cantt. Thus in the process of discharge of said responsibility of operation of Communication Complex, the said regiment was involved in shifting the trunk connectivity from New Cantt. Communication Complex to KLP Complex at old cantt. It was in shifting process only, that 4 infantry Division, signal regiment had required the staff to discharge their duties at KLP Complex in their earlier position and had not issued order of transfer. An employee can be said to be transferred only when he shifted from one office to another or from his existing position to different position. In the present case it was not so that the applicants were transferred from one office to another or they were required to work in different position. Here an establishment in the interest of upgradation and efficiency of the same was shifted from one Complex to another Complex at the same station i.e. from New Cantt. to old Cantt (Allahabad). The contention of the applicant that the shifting of Trunk connectivity from the new Cantt Communication Complex the KLP Complex and direction to them to work at KLP Communication Complex amounts to their transfer by incompetent authority is mis-conceived and rejected. However, as stated by respondent in Para 8 of the counter reply, adequate strength of staff is left behind in the location to maintain communication for all the four hubs of Allahabad, it is always open for competent authority to utilize the services of CSBOs at either of old location or new location in the interest and efficiency of functioning of exchange.



Regarding apprehension of applicants that they were shifted to war establishment, as stated by respondents in Para 8 of their counter reply, same is baseless. It can be seen from said Para of the reply that the applicant had earlier been working in the premise of Army building along with Army Personnel and their had been no change in the working atmosphere. In Para 20 of the reply it is again stated that the CSBOS are employed to work in static exchange, providing communication to the Allahabad Station and it will remain at the place permanently irrespective of the move of the unit technically for training/ operational training.

Averments of Para 18 and 20 of the reply read as under:-

18. *That, the contents stated in paragraph 4.17 of the Original Application are not admitted in the form they stand. In reply thereto it is submitted that there has been no sudden spurt of action to shift the CSBOs. In fact, the entire planning for construction of KLP etc has commenced way back in 2000 and it was only after the construction of new communication complex building and thereafter the procurement and installation of the communication equipments, which the CSBOs and other army personnel were ordered to shift. Even these were conveyed well in advance. The apprehension of the CSBOs regarding the confinement are totally baseless. They have earlier been working in the premises of army building along with army personnel and there has been no change in the working atmosphere. The very submissions made under Para reference are based on surmises and conjuncture and in any view of the matter cannot be substantiated by the applicants.*

20. *That the contents stated in paragraph 4.20 of the Original Application are not admitted in the form they stand. In reply thereto it is submitted that CSBOs are*



employed to work in static exchange, providing communication to the entire Allahabad Station and it will remain at the place permanently irrespective of the move of unit for technical training/operational training.

13. In view of the aforementioned averments stand of the respondents in their reply the contention raised by the applicants to question the impugned orders on the ground that their service condition has changed is devoid of merits and is rejected. Moreover, the shifting of Complex in which military exchange has to function is the policy decision of competent authority. It is not open for the Court or Tribunal to interfere such policy decision. In the case of State of Punjab Vs. Ram Lubhaya Bagga AIR 1998 Supreme Court 1703, it has been ruled that when government frame its policy, it is based on number of circumstances on facts, law, constrains based on its resources and on expert opinion, thus it would be dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. Relevant portion of said judgment read as under:-

"When government forms its policy, it is based on number of circumstances on facts, law, including constrains based on its resources and on expert opinion. It would be beneficial effect of the policy or its appraisal would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new reimbursement on account of its financial constraints."

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14. Although, it is not so in the present case, but even if it could be, the transfer of an employee is not only an incident of service but is inherent term of appointment.

15. In view of the judgment of Hon'ble Supreme Court in the case of State of Madhya Pradesh and Anr. Vs. Shri S. S. Kourav & Ors. (supra), it would be open for the administration for consider the facts of given case and to take a view on justification of an order of transfer. In detailed judgment delivered by Hon'ble High Court in the case of Satish Pal Vs. State of U.P. and Ors (Supra), Hon'ble High Court has ruled as under:-

"20. Initially, in E. P. Royappa Vs. State of Tamilnadu AIR 1974 SC 555 the Apex Court said that it is an accepted principle that in a public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in this matter. The Government is the best judge to decide how to distribute and utilize the services of its employees.

21. Thereafter, dealing with the transfer of the Hon'ble Judges of High Court, in Union of India Vs. Sankalchand Himatlal Sheth 1977 (4) SCC 193 the Apex Court observed that transfer is an incident of service. It was further held that once a person has entered service he is bound by the conditions imposed either by the Service Rules or the Constitutional provisions. No person after having joined the service can be heard to say that he shall not be transferred from one place to another in the same service without his consent. Having accepted the service, the functionary has no choice left in the administrative action that can be taken by empowered authorities namely, transfer from one place to another, assignment of work and likewise.

22. In B. Varadha Rao Vs. Vs. State of Karnataka JT 1986 (1) SC 249 the Court said that it is now well settled that a Government servant

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is liable to be transferred to a similar post in the same cadre. It is a normal feature and incident of Government service. No Government servant can claim to remain at a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post.

23. In B. Varadha Rao (supra) an attempt was made to argue that since in E. P. Royappa (supra) it was held that the transfer is an implied condition of service, therefore, the transfer affecting the petitioner must be treated to have altered the service conditions to his disadvantage and such an order would be deemed to be an adverse order appealable under the provisions applicable in the rules pertaining to disciplinary action, but was rejected by the Court observing that transfer is always understood and construed as an incident of service. It does not result in alteration of any of the conditions of service to the disadvantage of the employee concerned. In the reference of E. P. Royappa (supra) with respect to observation "an implied condition of service" the Apex Court in B. Varadha Rao (supra) held as "just an observation in passing" and it was held that it cannot be relied upon in support of the contention that an order of transfer ipso facto varies to the disadvantage of a Government servant, any of his conditions of service making the impugned order appealable.

24. In Gujarat Electricity Board Vs. Atmaram Sungomal Poshani AIR 1989 SC 1433, the Apex Court further said that transfer from one place to another 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 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.

25. In *Shilpi Bose & Vs. State of Bihar* AIR 1991 SC 532, it was held "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."

26. In the said judgment of *Shilpi Bose* the Hon'ble Apex Court also held that a transfer order, even if, is issued to accommodate a public servant to avoid hardship, the same can not and should not be interfered by the Court merely because transfer orders were passed on the request of the concerned employees. No person has a vested right to remain posted to a particular place, and unless the transfer order is passed in violation of any mandatory rule, the High Court had no jurisdiction to interfere with the transfer orders. Relevant extract is quoted as under:

"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. "

(Para-3)



27. In *Rajendra Roy Vs. Union of India & another* JT 1992 (6) SC 732, it was said "in a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department."

28. In *Rajendra Rai Vs. Union of India* 1993 (1) SCC 148 and *Union of India Vs. N.P. Thomas* 1993 Suppl. (1) SCC 704 it was said that the Court should not interfere with the transfer orders unless there is a violation of some statutory rule or where the transfer order was mala fide.

29. In *N.K. Singh Vs. Union of India* JT 1994 (5) SC 298, the Court said, "Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinising all transfers....."

30. In *Abani Kanta Ray Vs. State of Orissa & others* 1995 suppl. (4) SCC 169 the Court observed "It is settled law that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer."

31. In *National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan* 2001 (8) SCC 574, the Apex Court held that 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.

32. In *Public Service Tribunal Bar Association Vs. State of U.P. & another* 2003 (4) SCC 104 the Court said, "Transfer is an incident of service and is made in administrative exigencies. Normally it is not to be interfered with by the Courts. This Court consistently has been taken a view that orders of transfer should not be interfered with except in rare cases where the transfer has been made in a vindictive manner."

33. In *State of U. P. Vs. Gobardhan Lal* 2004 (11) SCC 402, the Court said "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."

34. In *Union of India VS. Janardhan Debanath JT* 2004 (2) SC 371, the Apex Court said, "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...."

35. Thus, the scope of judicial review in the matter of transfer is restricted inasmuch if an order of transfer is challenged on the ground of violation of statutory provision or lack of competence of person who has passed the order or mala fide, only then the Court should interfere otherwise it is not liable to be interfered in judicial review. The reason for such a view taken by the Courts repeatedly is that no Government servant has a right to be posted in a particular post or position once appointed in service. He cannot claim that he should continue at same place as long as he desire.

36. Noticing distinction in respect to the transgression of civilian employee or those working in public sector undertakings and those of disciplined forces, in *Major General J.K. Bansal Vs. Union of India* 2005 (7) SCC 227, the Apex Court said "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."

37. Considering *J.K. Bansal (supra)*, a Division Bench of this Court in Special Appeal No. 1296 of 2005 (*Guljar Singh Vs. State of U.P. & others*) decided on 7.11.2005 in respect to member of police force observed as under :

"The present case, if not strictly identical to the case of Major General J.K.Bansal Versus Union of India and others (Supra), is quite nearer to the same. The petitioner-appellant in the present case is a member of a discipline force, namely, U.P. Police. His requirement and urgency as well as the exigency regarding posting would be totally different than other civil employees. There may be numerous factors on account whereof the competent authority has to post a particular member of Police Force at a particular place and unless and until a case of mala fide is made out or there is violation of statutory provision, there would be no occasion for this Court to interfere in the case of transfer of a member of a Police Force. The scope of judicial interference would definitely be limited and narrow in case of a disciplined Force comparing to scope available in the case of other civil servants. It is not the case of the petitioner-appellant that the impugned order of transfer is in contravention of any statutory mandatory provision."

38. In *Prabir Banerjee Vs. Union of India* 2007 (8) SCC 793, transfer of a member of central service, namely, Central Excise, from one zone to another zone was challenged on the ground that inter zonal transfer was prohibited in the department of Central Excise and Customs pursuant to the circular dated 19.2.2004 issued by the department of Revenue, Ministry of Finance,

Government of India. The Court held that it is no doubt true that transfer is an incident of service in all India service under the Central Service Rules, but in the absence of any direct rule relating to transfer between the two collectorates, the field may be covered by the administrative instructions.

39. In *Mohd. Masood Ahmad Vs. State of U.P. & others JT 2007 (12) SC 467*, the Apex Court said "Transfer is an exigency of service and is an administrative decision. Interference by the Courts with transfer order should only be in very rare cases." It further held "This Court has time and again expressed its disapproval of the Courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer."

40. In *Prasar Bharti Vs. Amarjeet Singh 2007 (9) SCC 539*, the Court said that an order of transfer is an administrative order. There cannot be any doubt that the transfer being an incident of service should not be interfered except some cases where, *inter alia*, mala fide on the part of the authorities is proved.

41. In *Union of India & another Vs. Murlidhar Menon & others 2009 (11) SCALE 416* the Court observed that even if the conditions of service are not governed by the statutory rules, yet the transfer being an incident of service, an employee can be transferred which may be governed by the administrative instruction since an employee has no right to be posted at a particular place.

42. Recently, in *Rajendra Singh & others Vs. State of U.P. & others JT 2009 (10) SC 187*, the Court observed that a Government servant holding a transferable post has no vested right to remain posted at one place or other, he is liable to be transferred from one place to other.



43. The Court in *Rajendra Singh (supra)* also observed that the transfer orders issued by the competent authority do not violate any of the legal rights of the concerned employee. If a transfer order is passed in violation of an executive instruction or order, the Court ordinarily should not interfere with the order and the affected party should approach the higher authority in the department.

44. Thus, from the above it is evident that since an employee holding a transferable post has no right to continue at a particular place or position, an order of transfer does not violate any of his legal right whatsoever. That being so, an order of transfer cannot be interfered except of the contingency of mala fide, violation of Rule and competence since it cannot be said to be an order affecting the legal rights of an employee. The limited scope of interference in a judicial review, therefore, has been left to the cases where the order is either violative of statutory provision or is vitiated on account of mala fide or has been issued by a person incompetent. The transgression of administrative guidelines at the best provide an opportunity to the employee concerned to approach the higher authorities for redressal but its consequences would not go to the extent to vitiate the order of transfer. The question as to whether violation of transfer policy or guide lines relating to transfer contained in an executive order or executive instructions or policy for a particular period laid down by the Government would result in vitiating the order of transfer has also been considered repeatedly in past by Apex Court as well as this Court.

45. The enforceability of a guideline laid down for transfer specifically came to be considered by the Apex Court in *Shilpi Bose (supra)* and it was held that even if transfer order is passed in violation of the executive instructions or orders, the Courts ordinarily should not interfere with the order and instead affected party should approach the higher authorities in the Department.

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46. Again in *Union of India & others Vs. S.L. Abbas* AIR 1993 SC 2444 a similar argument was considered and in para 7 of the judgment the Court said, "The said guidelines, however, does not confer upon the Government employee a legally enforceable right."

47. Referring its earlier judgment in *Bank of India Vs. Jagjit Singh Mehta* 1992 (1) SCC 306 the Apex Court in *S.L. Abbas (supra)* observed as under :

"The said observations in fact tend to negative the respondents 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 Tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can it be characterized as mala fide for that reason. To reiterate, the order of transfer can be questioned in a Court or Tribunal only where it is passed mala fide or where it is made in violation of the statutory provisions."

48. Same thing has been reiterated by the Apex Court in *Gobardhan Lal (supra)* in the following words :

"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."

49. Besides the judgments of the Apex Court, this Court has also considered the same time and again and has reiterated that the order of transfer made even in transgression of administrative

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guidelines cannot 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. Some of such authorities are as under.

50. In Rajendra Prasad Vs. Union of India 2005 (2) ESC 1224, a Division Bench observed, "Transfer policy does not create legal right justiciable in the Court of law."

51. In Division Bench of this Court in Civil Misc. Writ Petition No. 52249 of 2000 (Dr. Krishna Chandra Dubey Vs. Union of India & others) decided on 5.9.2009 said, "It is clear that transfer policy does not create any legal right in favour of the employee. It is well settled law that a writ petition under article 226 of the Constitution is maintainable for enforcing the statutory or legal right or when there is a complaint by an employee that there is a breach of statutory duty on the part of the employer."

52. In Gulab Singh (supra) and Ram Niwas Pandey & others Vs. Union of India & others (Special Appeal No. 769 of 2005) decided on 29.11.2005 also this Court held that transgression of transfer policy or executive instructions does not give a legally enforceable right to challenge an order of transfer.

53. In Civil Misc. Writ Petition No. 243 (SB) of 2007 Uma Shankar Rai Vs. State of U.P. & others decided on 31.7.2007 this Court observed as under:

"Dr L.P. Misra, learned counsel for the petitioner seriously contended that though the transfer of Government servant is made in exigencies of service, yet where transfer policy has been framed, the same is expected to be adhered to and cannot be defied in a discriminatory and selective manner. Any action of the authorities, even in respect of the matter of transfer, if is inconsistent to such policy would vitiate the order of transfer since it would render the same arbitrary and illegal. Referring to para 2 and 3 of the transfer policy dated 11.5.2006, he contended that the respondent no. 4 having completed his tenure of six

years in the District and ten years in the Commissionery even at Mirzapur yet he has again been sought to be posted at Mirzapur to accommodate him and the petitioner has been transferred to Varanasi, therefore, the impugned order is patently illegal. In support of the submission that order of transfer, if has been issued in violation of transfer policy, the same can be assailed since the transfer policy was laid down to adhere to and not to violate, reliance has been placed on the apex Court's decision in Home Secretary, U.T. of Chandigarh and another Vs. Darshjit Singh Grewal & others (1993) 4 SCC-25; N.K. Singh vs. Union of India and others (1994) 6 SCC- 98; R. vs. Secretary of State (1985) 1 All. ER 40; and a Division Bench decision of this Court in Smt. Gyatri Devi vs. State of U.P. and others (1998 (16) LCD- 17). In other words the learned counsel for the petitioner contends that even through the order of transfer may not be challenged on the ground of mere violation of transfer policy, yet such order can be interfered with if the authorities who are supposed to adhere with the guidelines, have failed to do so. In our view the submission is mutually destructive and self contradictory. What the petitioner in fact has sought to argue is that the Executive once has laid down certain standards for guidance in its functioning, it must adhere to and any deviation thereof would vitiate the consequential action, which may be challenged in writ jurisdiction. The argument though attracting but in the matter of transfer, however, in our view, the same has no application. Transfer of Govt. servants in the State of U.P. is governed by the provisions contained in Fundamental Rule- 15, which reads as under :-

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It is not disputed that the post held by the petitioner is transferable and he is liable to be transferred from one place to another. The employer once possess right to transfer an employee from one place to another, in our view, there is no legal or otherwise corresponding obligation upon him to inform his employee as to why and in what circumstance an employee is being transferred from one place to another. Shifting and transferring of the employee from one place to another involves more than thousand reasons and it is difficult to identify all of

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them in black and white. The commonest reason may be a periodical shifting of person from one place to another, which does not require any special purpose; the other reasons include necessity of a particular officer at a particular place; avoidance of disturbance or inconvenience in working of the officer on account of a person at a particular place; unconfirmed complaints and to avoid any multiplication thereof; transfer may be resorted to and so on. These are all illustrations. The question as to whether in any of the circumstances when a person is transferred from one place to another without casting any stigma on him, does it infringe, in any manner, any right of such employee which may cause corresponding obligation or duty upon the employer to do something in such a reasonable manner which may spell out either from its action or from the record and when challenged in a Court of law, he is supposed to explain the same, In our view, the answer is emphatic no."

54. It further held :

"In view of the aforesaid well settled principles governing the matter of transfer, the consistent opinion of the Courts in the matter of judicial review of the transfer orders has been that the order of transfer is open for judicial review on very limited grounds; namely if it is in violation of any statutory provisions or vitiated by mala-fides or passed by an authority holding no jurisdiction. Since the power of transfer in the hierarchical system of the Government can be exercised at different level, sometimes for the guidance of the authorities for exercise of power of transfer, certain executive instructions containing guidelines are issued by the Government so that they may be taken into account while exercising power of transfer. At times orders of transfer have been assailed before the Court on the ground that they have been issued in breach of the conditions of such guidelines or in transgression of administrative guidelines. Looking to the very nature of the power of transfer, the Courts have not allowed interference in the order of transfer on the ground of violation of administrative guidelines and still judicial review on such ground is impermissible unless it falls within the realm of malice in law. The reason behind appears to be that the order of transfer does

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not violate any right of the employee and the employer has no corresponding obligation to explain his employee as to why he is being transferred from one place to another."

55. The Division Bench judgment in Uma Shanker Rai (supra) has been followed in another Division bench of this Court in Jitendra Singh Vs. State of U.P. & another 2009 (4) ALJ 372.

56. Learned counsel for the petitioner placed reliance on the Apex Court decision in JT 1993 (4) SC Home Secretary, U.T. of Chandigarh & another Vs. Darshjit Singh Grewal & others and certain judgments of this Court in Akash Sharma Vs. State of U.P. & others 2007 (3) ESC 1730 (All); Mohd. Zeeshan Vs. State of U.P. & others 2008 (3) UPLBEC 2290; Writ Petition No. 4405 (SS) of 2008 Satya Dev Pandey Vs. State of U.P. & others decided on 6.8.2009 and W.P. No. 35254 of 2009 Gulab Singh Vs. State of U.P. & others decided on 16.7.2009 in support of the submission that the transfer in violation of executive instructions can be challenged since the authorities cannot ignore the executive instructions or the policy laid down by themselves and must observe the same. Disregard of the transfer policy without any proper justification would render the order of transfer arbitrary. Once the guidelines have been laid down by the Government in the form of transfer policy, they are bound to follow and observe the same in words and spirit and in any case in substantial manner.

57. This Court finds that in Darshjit Singh Grewal (supra), the case before the Apex Court was not of transfer of Government servant but transfer of students from one affiliated College to another. In order to govern migration of students from one college to another, certain rules were framed by Syndicate of Punjab University in exercise of its power under Section 20 of the Punjab University Act, 1947. Similarly for migration of students in various technical/ profession college under the control of Chandigarh Administration, since Chandigarh Administration provides finance to the engineering colleges within the union



territory of Chandigarh, it has issued a policy vide letter dated 6.9.1991 governing such migration. It was found that said guideline was not inconsistent with the Rules and Regulations made under the Punjab University Act, 1947 but contains similar provisions. The students for Medical Colleges are normally not liable to be transferred from one College to another during the Course they are studying in particular College and in a particular discipline since it has various repercussions. Students while seeking admission in Medical Colleges are entitled to give their option for admission against a seat in a particular Medical College and allotment is normally made on the basis of the merit of the students concerned. Migration, if allowed in a routine course, would be destructive to the said scheme where the students are given admission in a particular Medical College based on their merit position and their option etc. The rules, regulations and scheme for migration, thus, were bound to affect the right of the concerned students of one or the other Medical College or those students who were seeking admission in a particular Medical College, but may not get due to migration allowed by the authorities concerned to that College. The rules and regulations, therefore, had the effect of directly effecting the rights of the students community undergoing medical education in the State of Punjab or otherwise. Thus, in the absence of any otherwise right of seeking transfer to some extent the same was allowed by the rules and regulations which were found statutory and the policy guidelines issued by the Chandigarh Administration, which, therefore, conferred a limited right upon a student studying in a particular College to seek migration in given certain circumstances and following the conditions laid down therein. Thus, here was a case where the executive instructions conferred though limited but a right upon the student community and in these context, the executive order was held to be binding upon the administration. It is in these circumstances, the Court held that the policy of general application having been enunciated and communicated to all, the administration was bound by it and until changed, it is bound to adhere to it. Thereafter, considering the validity of the order of transfer i.e. migration of the students from

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one college to another, the Court found the same to be contrary to the statutory rules and, therefore, judgment in *Darshjit Singh Grewal (supra)*, in my view, has no application at all to the cases of the transfer of Government servants. In the matter of transfer of Government servant, since they have no legal right whatsoever to seek their posting at a particular place. The order of transfer does not affect their legal rights, this question does not arise at all. The executive orders and guidelines which were available in the case of *Darshjit Singh Grewal (supra)* cannot be placed at par with the guidelines pertaining to transfer of Government servants issued by the State Government though by an executive order. When the Government Servant has no right in the matter of posting etc. the guidelines cannot create something which was not already existed and, therefore, will not result in creating a better right to the Government servant which otherwise is not there even though the matter of transfer is governed by the statutory rules.

58. In *Mohd. Zeeshan (supra)*, the Court found that the order of transfer vitiated since it was passed at the instance of politicians who were not representative of the people at the relevant time. I do not find it as a proposition of law that this Court nowhere in the above judgment held that the transfer policy, if not followed, would confer a legally enforceable right to challenge an order of transfer.

59. Similarly, in *Akash Sharma (supra)*, the Court after analysing the facts of a particular case found that the petitioner Akash Sharma within a short span of time was frequently transferred and sometimes the order of transfer was changed within few days. Further not being satisfied with the stand taken by the Government the Court perused the record of the State Government and based on the facts recorded the following finding :

"The transfer orders has been amended, cancelled at the whims of the local politician who did not want the government employee to be transferred. The cancellation,

modification or amendment in the transfer orders was not in public interest or on administrative grounds, but on account of personal interest of the politician or of the government employee itself."

60. It is, therefore, in the particular facts and circumstances of the case, the Court directed the Government to abide by its policy of transfer of the employees who have completed a particular period at a particular place, but it has not been said anywhere that a mere non compliance of observations of transfer policy would vitiate the order of transfer.

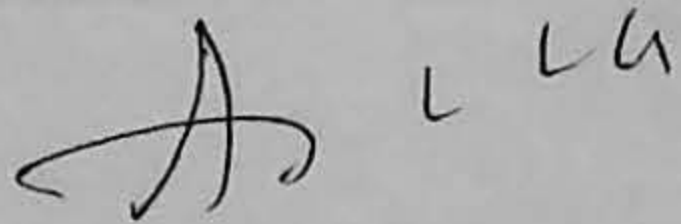
61. In *Satya Dev Pandey (supra)* again the Court found that the decision of transfer was not taken in public interest or administrative exigencies and though by the Government Order dated 10.6.2008 clerical cadre, paramedical cadre and nurse cadre were exempted from transfer, though were transferred without looking into the said order. In the said judgment also, I do not find any proposition of law laid down by the Hon'ble Single Judge that an order of transfer would be vitiated in law and cannot be changed unless on the ground that it has violated the transfer policy.

62. In *Gulab Singh (supra)* without referring to any binding precedent or authority of the Apex Court or this Court the Hon'ble Single Judge disposed of the writ petition by keeping the order of transfer suspended till prior approval as provided in the policy decision dated 6.6.2009 of the Chief Minister is obtained. In the absence of any discussion on the question as to whether the policy decision is enforceable in law, the above augment cannot be said to be a binding precedent on the subject. On the contrary, as already discussed, the Apex Court as well as several Division Bench of this Court have clearly held that an order of transfer is not assailable in a Court of law only on the ground that it is in transgression of an transfer policy. Learned counsel for the petitioner could not place any other authority, wherein a different view has been taken and which is binding on this Court. In any

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being so even on facts in the present case, the impugned order cannot be said to be violative of the Government Order dated 6.6.2009".

15. In the aforementioned facts and discussion, I am not inclined to interfere with the orders assailed in the present O.A. Same is accordingly dismissed. No order as to costs.



(A.K.Bhardwaj)

Member (J)

Shashi