

**Order on Interim Relief Reserved on 21.06.2021.**

**Pronounced on : 12.07.2021**

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
ALLAHABAD BENCH, ALLAHABAD**

Present:

**Hon'ble Mrs. Justice Vijay Lakshmi, Member-J**

**Hon'ble Mr. Devendra Chaudhry, Member-A**

**Original Application No. 330/00384/2021**

*(U/S 19, Administrative Tribunal Act, 1985)*

Sachinder Singh, P. No. 28742, aged about 54 years, S/o Peetam Singh, R/o Village & Post Jarua Ka Katra, Agra, District Agra, U.P 282001 and presently posted as LHF, Central Ordinance Depot (COD), Agra C/o 56 APO

**.....Applicant.**

By Advocates – Shri A.D. Singh

**V E R S U S**

1. Union of India through its Secretary, Ministry of Defence New Delhi.
2. Commandant, Central Ordinance Depot, Depot (COD), Agra Pin No. 908820 C/o 56 APO.
3. Senior Record Officer for OIC Record, Sikandarabad Pin No. 900453 C/o 56 APO.
4. Chief Record Officer for OIC Record, Sikandarabad, Pin No. 900453 C/o 56 APO.

**.....Respondents.**

By Advocate: Shri Chakrapani Vatsyayan

**ORDER ON INTERIM RELIEF****Delivered By Hon'ble Devendra Chaudhry, A.M.**

By means of the present O.A. the applicant has challenged the transfer order dated 08.03.2021 by which he has been transferred from LHF COD Agra to LHF 118 3 inf. Bde. GP OMC.

2. *Per* Applicant the facts in brief are that the applicant was initially appointed as Fireman at COD Agra in 1987 and has sought stay and quashing of the impugned order on the following grounds: (i) as one Shri Hari Govind has been promoted earlier to him viz on 01.10.2009 at Agra and is therefore senior to the applicant who has been promoted only on 01.01.2019. Therefore, it is Shri Hargobind who is liable for transfer as per transfer policy/guidelines and not the applicant; (ii) non-compliance and non-consideration of the letter of the Chief Record Officer dated 26.09.2020, (iii) that the impugned transfer is punitive in nature, (iv) the transfer has been done in a biased and arbitrary manner against the applicant as a choice posting has been given to the employee who has been transferred to the applicant's place namely Shri Ramesh Chandra Meena which is an

indication of pick and choose policy;(v) the applicant has suffered fracture injury in his legs and an iron rod has been placed internally to help restore normal movement which would make the Applicant unable to work in the hill station at the transferred place. The applicant has finally submitted that he has made a representation for cancellation of the impugned transfer order but no action has been taken thereupon. Therefore, it is prayed that the impugned transfer order be quashed / stayed and the O.A. be allowed.

**3.** Per contra, the Id counsel for the respondent has argued at the admission stage that the transfer has been made by the competent authority and there is no violation of any policy or guideline as asserted by the applicant in respect of seniority or choice etc. That as per a catena of rulings of the Hon Apex Court any allegation of malafide has to be specific and has to be against a person as there can be no malafide against the whole organisation. As regards bias also the Hon Apex Court has observed on several occasions that there has to be a concrete tangible proof of bias and arbitrariness without which any statement made merely alleging the same cannot stand the scrutiny of law.

4. We have heard the learned counsel for the parties at length and perused the pleadings filed carefully.

5. The key issue is whether the impugned order is malafide, biased, arbitrary, against policy/guideline or not passed by a competent authority. As regards the applicant's allegation that one Hargovind who is senior to him should be the one who is to be transferred as per guidelines, the same has not been substantiated by any set of guidelines regarding seniority rule adherence for any transfer. In any case SjrHargovind is not a party and this Tribunal can in no way interfere with his order by any direction to the respondents without having Shri Hargovind arrayed as a party. As regards the said letter concerning the request of choice qua an officer to be posted at the disputed station, we find that the final transfer order is issued by a competent authority and there is no challenge to the same.

6. It is reasonable to presume that the transferring authority would have taken reasonable factors into consideration while issuing the impugned transfer order and in the absence of any concrete evidence contrary to

the same, we find it difficult to go along with the sparse logic of bias given by the applicant. Bias in order to be accepted has to clearly stand out and not reproachable as to its weight in assessing of evidence. We do not find any such clear evidence and so this part of the argument of the applicant is difficult to accept.

**7.** The Id respondent counsel has asserted that there is no bias and the transfer is purely administrative and is compliant as per policy. We thus find that the allegations of arbitrariness, bias, malafide or violation of policy are not supported by cogent and undeniable evidence. Hence it is not possible to accept the plea of the applicant merely on the face of it.

**8.** Hon Apex Court has been quite unwavering in its stand on mandatory compliance of transfer orders in public interest. Some key factors deliberated upon include: (i) nature of Transfer (ii) competent authority issuing the order (iii) rights of the concerned public servant or employee against a said transfer (iv) transfer as being exigencies of service, (v) transfer on grounds of malafide / by way of punishment / victimization/ with malice etc., (vi) representations challenging transfers (vii)

issues of natural justice (viii) protection under Article 14 and 16 of the Constitution (ix) nature and force of transfer Guidelines/Instructions (x) Consequences of non-compliance with transfer order and (xi) interferences of the Courts in the matter of transfers.

9. We are wont to quote the following citations:

(i) Thus with respect to the nature of transfer, it is laid down again and again that the transfer is always understood and construed as incident of service **(B.Varadha Rao v. State of Karnataka, 1986 (4) SCC 624**. That, transfer is not a change in the conditions of service and it is to be well understood that the transfer of a government servant who is appointed at a particular cadre of transferable posts from one place to other place is an ordinary incident of service and therefore, does not result in any alternation of any of the condition of service to government servant's disadvantage.

(ii) Similarly, in the matter of **Gujrat Electricity Board v. AtamaramSungomalPoshani, 1989 (2) SCC 602**, it has been held that

*".....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** (emphasis supplied), 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.."*

(iii) On the issue of transfer violating Constitutional rights under Article 14 and 16, it has also been held in the matter of **E.P. Royappa v. State of Tamil Nadu, 1974 (4) SCC 3** that so long as the transfer has been made on account of exigencies of administration it would not be open to attract under Article 14 and 16. In fact, in the matter of **Sreedam Chandra Ghosh v State of Assam, 1996 (10) SCC 567**, it has been held that when the Government views non-compliance of the transfer order as a serious indiscipline on the part of the erring officers and when the person complains of the non-compliance to the court, **the court necessarily have to give effect to the order and give directions from enforcement thereof** (emphasis supplied). Even dismissal on account of refusal to join at the place of transfer has been held valid as **State of Punjab v Baldev Singh, Conductor, 1998 (9) SCC 325**(emphasis supplied).

(iv) As regards interference of the Courts in the matter of transfer, it is trite to observe that the Hon Apex Court has consistently frowned often on stays granted by lower courts. Here also there is a bunch of rulings on the matter such as in the matter of **Shanti Kumari v Regional Deputy Director, Health Services, Patna, 1981 SCC (L & S) 285, Union of India v. H.N. Kirtania, 1989 (3) SCC 447 etc.** In fact to go a step further, the courts have been advised not interfere with the matter of transfer **even in the writ jurisdiction - State of Punjab v. Joginder Singh Dhatt, AIR 1993 SC 2486 and also on administrative grounds as in the matter of State of M.P. v. S SKourav, 1995 (3) SCC 270, Union of India v. Ganesh Dass Singh, 1995 SCC (L&S) 1142 etc.**

(v) Then again in the matter of **K.A. Nagamani v. Indian Airlines, 2009 (5) SCC 550** in which it has been held that

*"....mere administrative rules are not legislation of any kind. They are in the nature of statements of policy and the practice of government departments, statutory authorities, whether published or otherwise. Statutory rules, which are made under the provisions of any enactment and regulations, subject to Parliamentary approval stand on entirely different footing. The administrative rules are always considered and have repeatedly been held to be rules of administrative practice merely, not rules of law and not delegated legislation*



*and they have no statutory force. Mere description of such rules of administrative practice as "rules" does not make them to be statutory rules. Such administrative rules can be modified, amended or consolidated by the authorities without following any particular procedure*(emphasis supplied). *There are no legal restrictions to do so as long as they do not offend the provisions of the Constitution or statutes or statutory rules as the case may be.,,"*

(vi) In fact, it has also been held quite clearly in the matter of **Ajaya Kumar Das v. State of Orissa, 2011**

**(11) SCC 136** that whatever may be the efficacy of the executive orders or circulars or instructions, statutory rules cannot be altered or amended by executive orders or circulars or instructions nor can they replace the statutory rules. Such being the distinction between rules and executive instructions, it is quite clear that the impugned transfer orders are at best by way of executive instructions, which can be amended from time to time by competent executive authority who need not to refer the legislature for framing Transfer Policy or any such authority which concerns Rule making power required under the Constitution such as w.r.t. conditions of the service of the applicant. Thus, the plea that the impugned transfer orders are statutory rules and regulations to be followed at the pain of disregard to the Constitution or the Legislature or such Rule making body

is not tenable. In fact, the transfer orders are executive instructions and source of guidance only in view of the several Apex court rulings as we analyse herein below. This position is further buttressed by another bunch of rulings concerning the transfer as an exigency of service. These include: **T.D. Subramanian v. Union of India, 1981 (4) SCC 150** and **Laxmi Narain Mehar v. Union of India, AIR 1997 SC 1347.**

**10.** The above citations encourage us to quote the famous **Sir H.J. Kania (1890-1951), the 4<sup>th</sup> Chief Justice of the Federal Court of India** which functioned as the highest court of the land till the Supreme Court was established on 28<sup>th</sup> January 1950 wherein he continued as the first CJI. He has said that **“No man is above the law. And no man below it; nor do we ask any man’s permission when we ask him to obey it..”**

**11.** In conclusion therefore and in light of the facts and circumstances discussed above there is nothing which is able to convince us to accede to the request of Interim relief prayed for. In the event, therefore, the application for IR is liable to be dismissed and is dismissed. However,

given the fact that the applicant has had a leg orthopaedic procedure involving embedding of some metal support for proper functioning, and since the cold climate in the hill station may cause trouble in a cold climate, hence we recommend that the respondents may consider posting the applicant at a location other than a hill station.

**12.** Let counter affidavit be filed within four weeks and rejoinder if any in two weeks thereafter. List on **15<sup>th</sup> September, 2021** for completion of pleadings before registrar. IR is disposed accordingly.

(DEVENDRA  
CHAUDHRY)  
MEMBER  
(A)

(JUSTICE VIJAY LAKSHMI)  
MEMBER  
(J)

/Shakuntala/