

OA No. 291/74/2021

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/74/2021

Order reserved on 15.03.2021

DATE OF ORDER: 25.03.2021

CORAM

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER

Upendra Mishra Son of Shri Harindra Mishra, aged about 46 years, Resident of F-461, Sector-9, Chitrakoot, Jaipur-302021. M-9799330300 Office Add. Regional Office (Rajasthan) F & A Unit, F120 Janpath, Shyam Nagar Jaipur-302019.

....Applicant

Shri Prahlad Singh, counsel for applicant.

VERSUS

1. The National Highways Authority of India (Ministry of Road Transport & Highways), G-5 & 6, Sector-10, Dwarka, New Delhi – 110075, through its Chairman.
2. The Member (Administration), National Highways Authority of India, (Ministry of Road Transport & Highways), G-5 & 6, Sector-10, Dwarka, New Delhi-110075.
3. The Chief General Manager, Regional Office (Rajasthan), F.&A. Unit, F-120, Janpath, Shyam Nagar, Jaipur-302019.

.... Respondents

Shri Pawan Kumar Sharma, counsel for respondents.

ORDER**Per: Hina P. Shah, Judicial Member**

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 against the impugned transfer order dated 17.02.2021 (Annexure A/1) as well as relieving order dated 17.02.2021 (Annexure A/2) for quashing and setting aside the same and that the respondents be directed to transfer the applicant back to RO, Jaipur from Headquarter, Delhi.

2. The brief facts of the case, as stated by the applicant, are that he was appointed as Accountant on contract basis on 20.05.2000 and was posted in the office of P.I.U. (Project Implementation Unit), Jaipur. He was promoted as Junior Accounts Officer on 01.01.2010. He was thereafter transferred from Jaipur to Bharatpur P.I.U vide order dated 10.09.2013 (Annexure A/3), which was subsequently made as P.I.U. Dausa. Thereafter, as per order dated 07.03.2019, he was transferred from P.I.U. Dausa to P.I.U. Sikar. He is the senior-most JAO in Rajasthan and he was posted in F. & A. Unit, Regional Office, Jaipur vide order dated 12.06.2020 and he joined the

said office on 15.06.2020. Thereafter, he was immediately transferred again to N.H.A.I., Headquarter, New Delhi from R.O., Jaipur as per order dated 17.02.2021 (Annexure A/1). It is the case of the applicant that there are no Rules in N.H.A.I. for transfer of its employees though a policy was framed on 12.04.2013, (Annexure A/8), which provides that the duration of officers working on a post will be of five years. He further stated that as he has not completed five years in Jaipur and that he has been transferred from Sikar only on 15.06.2020 and, therefore, his transfer within eight months to New Delhi is illegal, arbitrary and unreasonable and the same is also in violation of Articles 14 and 16 of the Constitution of India. The applicant further states that a disciplinary proceeding was initiated against the applicant along with two others and the same enquiry has already been completed in November, 2019. The Inquiry Officer submitted his report to the Disciplinary Authority. The Disciplinary Authority i.e. Member (Admn.), respondent No. 2, had given personal hearing to the applicant on 22.01.2021 at Delhi and he was also personally heard on 15.02.2021. It is the contention of the applicant that immediately after the

personal hearing, as per the impugned order dated 17.02.2021, he was transferred to Headquarter, New Delhi, which shows the malafide attitude of the respondents and the same proves that the impugned order has been passed in colourable exercise of powers as the transfer order is neither in public interest nor for any administrative exigency, therefore, the impugned order deserves to be quashed and set aside and he may be permitted to work in Jaipur itself as he is also having his domestic and medical problems.

3. The respondents vide their reply state that the present Original Application is not maintainable as the person against whom the applicant apprehends malafide, has not been impleaded as party respondent. The respondents further state that the National Highways Authority of India is a nodal agency of the Ministry of Road Transport and Highways in India and is an autonomous organization, which looks after the management of the complete network of National Highways in the country. The respondents also state that transfers and postings are incidence of service and the same is in accordance with the

contract between employer and the employee, which cannot be challenged before the Hon'ble Court. The respondents state that the applicant has been appointed in 2000 and since 2000 to 2013, he is posted in Jaipur itself. As per Annexure A/8, Transfer Policy dated 12.04.2013, the same is concerned with the duration for rotation of officers under transfer policy. It is not connected to the transfer policy as the present impugned order has nothing to do with the rotation of officers. Therefore, the say of the applicant that he has not completed five years at a particular post, has no meaning and, therefore, since the applicant is on contract and it is for the administration to decide as to who should be posted and at which place, therefore, the submission of the applicant that he cannot be transferred to New Delhi, cannot be a ground to quash and set aside the transfer order. It is the case of the respondents that because of the pending disciplinary matter, the respondents vide order dated 25.01.2021 (Annexure A/7) have clearly mentioned that on the approval of the competent authority, the applicant shall not be assigned any work till finalization of disciplinary proceedings for major penalty pending against the applicant and that he

shall be kept in compulsory wait under R.O., Jaipur until further orders. Therefore, the respondents state that the present transfer order has been issued keeping in view the organizational interest and that the same has been acknowledged at the end of the current academic session.

4. Heard learned counsels for the parties and perused the material available on record including the judgments relied by the parties.

5. Besides reiterating the facts, the applicant has relied upon several judgments to justify his stand and a few are mentioned as under:-

- a) Dr. Nagorao Shivaji Chavan vs. Dr. Sunil Purushottam Bhamre and Ors., reported in (2019)13 SCC 788.
- b) Abani Kanta Ray vs. State of Orissa and Ors., reported in (1995) Supp (4) SCC 169.
- c) Champa Lal Parihar vs. State of Rajasthan & Ors., reported in 2006 (1) WLC (Raj.) 212.
- d) State of Karnataka & Another vs. Krishna Kumar & Ors., reported in (2019)15 SCC 282.
- e) Union of India & Another vs. Ashok Kumar Aggarwal, reported in (2013) 16 SCC 147.

- f) Director of School Education, Madras & Ors. vs. O. Karuppa Thevan & Another, reported in (1994) Supp (2) SCC 666.

6. The respondents, on the other hand, have also reiterated their stand taken earlier and have also relied upon several judgments to justify their stand and a few are mentioned below:-

- a) Union of India & Ors. vs. S. L. Abbas, reported in AIR 1993 SC 2444).
- b) National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan & another, reported in (2001) 8 SCC 574.
- c) State of Madhya Pradesh & Ors. vs. S.S. Kourav & Ors., reported in 1995 SCC (3) 270.
- d) Rajneesh Khajuria vs. M/s. Wockhardt Ltd. & Anr., Civil Appeal No. 8989 of 2019), decided on 15th January, 2020 by the Hon'ble Supreme Court of India.
- e) State of U.P. & Ors. vs. Gobardhan Lal, reported in AIR 2004 SC 2165.
- f) Ratnagiri Gas & Power Pvt. Ltd. vs. Rds. Projects Ltd. & Ors., reported in (2013) 1 SCC 524.

7. The factual matrix of the case is that the applicant has been transferred from RO-Jaipur to NHAI-HQ, Delhi vide Order dated 17.02.2021 (Annexure A/1) and was also relieved vide order dated 17.02.2021

(Annexure A/2) with immediate effect. It is his claim that he was transferred from P.I.U, Dausa to P.I.U, Sikar vide order dated 07.03.2019 and has joined in Jaipur on his transfer from Sikar on 15.06.2020 and immediately within 08 months, he has been transferred by the present impugned order. As per the Policy dated 12.04.2013, the duration of officers working on a post will be 05 years and as he has not completed 05 years in Jaipur, he cannot be transferred. His transfer is by way of punishment pending inquiry, while the inquiry has been completed. Also it is COVID-19 Pandemic time and so transfer is not normally required to be made. He is diabetic patient and is required continuous treatment in Jaipur. He has two adolescent daughters who are studying in College at Jaipur and, therefore, in mid-academic session, applicant cannot be transferred. Also if he is transferred to Delhi, he will have to arrange for separate establishments in meager salary, particularly in COVID-19 Pandemic time. Therefore, as transfer is neither in public interest nor in administrative exigency and as there is no cogent or valid reason for transferring the applicant, the transfer

order dated 17.02.2021 be quashed and that he be transferred back to RO-Jaipur.

8. As seen, the present transfer order dated 17.02.2021 in challenge has been passed upon the approval of the competent authority in organizational interest. It is seen that there were problems felt by the Organization to keep the applicant in Jaipur and, therefore, the respondents as per office order dated 25.01.2021 (Annexure A/7) consequent upon approval of the competent authority had clarified that the applicant who was working as JAO (on contract) shall not be assigned any work till the finalization of disciplinary proceedings for major penalty pending against him and shall be kept under compulsory wait under RO-Jaipur until further orders. Therefore, it is clear that the Department has thought it fit to transfer the applicant to NHAI-HO-Delhi. It is within the exclusive domain of the employer to decide who should work at particular place and who is to be transferred to another place in the interest of the establishment. The applicant never made any representation nor any request pointing out his difficulties to the Department on the receipt of the

said transfer order but immediately approached the Court without exhausting departmental remedies.

9. Pertaining to the ground raised by the applicant that during COVID-19 Pandemic time the transfers cannot be effected cannot be accepted as now more than a year has lapsed for COVID-19 Pandemic and the transfer is not during COVID period as the same is of 17.02.2021. Pertaining to the ground raised by the applicant that he cannot be transferred as he has not completed 05 years of service at particular post cannot be accepted as the same is a mere guideline, which does not have any statutory force, also when the transfer is in organizational interest, the transfer can be effected even before completion of the said period. Therefore, there is no merit in the said ground raised by the applicant

10. Pertaining to the ground of malice raised by the applicant, the judgment relied by the respondents in the case of **Rajneesh Khajuria vs. M/s. Wockhardt Ltd. & Anr.** (supra), covers the entire controversy, and the relevant para 14 of the order is reproduced as under:-

"14. The act of transfer can be unfair labour practice if the transfer is actuated by mala fide. The allegations of mala fide have two facets – one malice in law and the other being malice in fact. The challenge to the transfer is based upon malice in fact as it is an action taken by the employer on account of two officers present in Conference. In a judgment reported as [State of Bihar & Anr. v. P.P. Sharma, IAS & Anr.](#), 1992 Supp (1) SCC 222, this Court held that mala fide means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power. As far as second aspect is concerned, there is a power of transfer vested in the employer in terms of letter of appointment. Even in terms of the provisions of the Act, the transfer by itself cannot be said to be an act of unfair labour practice unless it is actuated by mala fide. Therefore, to sustain a plea of mala fide, there has to be an element of personal bias or an oblique motive. This Court held as under:

"50. Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an

oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

51. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.

XX XX XX

59. Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power. Malice in law is not established from the omission to consider some documents said to be relevant to the accused. Equally reporting the commission of a crime to the Station House Officer, cannot be held to be a colourable exercise of power with bad faith or fraud on power. It may be honest and bona fide exercise of power. There are no grounds made out or shown to us that the first information report was not lodged in good faith. [State of Haryana v. Ch. Bhajan Lal](#) [1992 Supp (1) SCC 335 : JT 1990 (4) SC 650] is an authority for the proposition that existence of deep seated political vendetta is not a ground to quash the FIR. Therein despite the attempt by the respondent to prove by affidavit evidence corroborated by documents of the mala fides and even on facts as alleged no offence was committed, this Court declined to go into those allegations and relegated the dispute for investigation. Unhesitatingly I hold that the findings of the High Court that FIR gets vitiated by the mala fides of

the Administrator and the charge-sheets are the results of the mala fides of the informant or investigator, to say the least, is fantastic and obvious gross error of law.”

Thus, it is clear that when malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all, it is malice in legal sense, it can be described as an act which is taken with an oblique or indirect object. (emphasis supplied).

11. Pertaining to the ground of transfer in mid-session as well as domestic and medical problems, it is clear that the transfer has been ordered towards the end of the current academic session. Also there are several good colleges and hospitals at the place of posting. Personal difficulties are bound to take place in transfer but when administrative exigencies are there then a person transferred has to obey the said orders. Also when an employee has accepted All India Transfer Liability at the time of joining service, then he has to comply with the orders and join the place of posting first. In case of genuine difficulty, it was open to the applicant to make a representation to the competent authority and point out difficulties to them who can

then take a decision on the same by either modifying the transfer order or cancelling the same. But the applicant has not thought it fit not to convey his difficulties to the Department who were kept in dark but approached the Tribunal instead for quashing and setting aside the transfer order dated 17.02.2021.

12. After going through the judgments cited by the applicant, the same are not applicable to the facts and circumstances of the present case as each case depends on its own facts. On the other hand, as held in the case of **L.B. Shahdarpuri vs. Union of India & Ors.**, 1992 (2) ATJ Page 582, Mumbai Bench of this Tribunal ruled that even in order to have a proper and congenial atmosphere and in public interest and to avoid inconvenience to public, the respondent could transfer an official and it could not be called as a punitive transfer. In the case of **Chaman Lal vs. Union of India & Ors.**, 1996 (1) ATJ CAT (Chandigarh) 226, this Tribunal viewed that the transfer of an employee, when he is being proceeded in departmental proceedings, cannot be called punitive.

13. The controversy in the present matter has set to rest in view of several judgments of the Hon'ble Apex Court, which are clear that Courts/Tribunals should not normally interfere in transfer matters 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 as he is liable to be transferred from one place to the other. Transfer Orders issued by competent authority do not violate any of the legal rights. If the Courts/Tribunals try to interfere in Transfer Orders, then there will be complete chaos in the administration which would not be conducive to public interest. The Hon'ble Apex Court in the case of **Union of India & Ors. vs. S.L. Abbas** (supra) has observed that an order of transfer is not only an incident but a condition of service. Who should be transferred where is a matter for the appropriate authority to decide.

14. Under these circumstances, we do not think that there is any justification to interfere with the

OA No. 291/74/2021

impugned transfer order in challenge dated 17.02.2021 (Annexure A/1) as the same is just and proper. We find that the Original Application is devoid of merits and the same is, therefore, dismissed with no order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat