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O.A. No. 109 OF 2005

Order dated 14-08-2006.

Applicant a Goods Guard having faced the order of transfer from Paradeep to Palasa under Annexure-2 dated 17-03-2005 has filed this Original Application under Section 19 of the Administrative Tribunals Act,1985 praying for the following relief:-

“A. The Original Application may be allowed;
B. The order under Annexure-2 may be quashed;
C. The Respondents ay be directed to allow the Applicant to continue at Paradeep or the order at Annexure-2 may be modified by giving a posting to the Applicant at Khurda Road.”

2. Respondents have filed their counter denying the contentions of the Applicant and praying that since the order of transfer has been made on administrative grounds, interference of this Tribunal is uncalled for.

3. Before dealing with the contentions raised by the Learned Counsel appearing for the parties, it is worthwhile to note that interference in the matter of transfer has been generalized by the Hon'ble Apex Court in various cases and it has been held that unless the order of transfer is proved to be made in gross violation of the Statutory Rule, is an out come of mala fide and/or is made by an authority who is not competent to do so, the courts/tribunals should not interference in the said order of

transfer. It has further been made clear by the Hon'ble Apex Court that transfer is an incident of service and who should be posted where is a matter to be decided by the employer and the administration should move smoothly. In this connection, some of the judgments of the Apex Court are referred herein below:-

1. **MRS.SHILPI BOSE AND OTHERS vrs. STATE OF BIHAR AND OTHERS**-AIR 1991 SC 532
2. **UNION OF INDIA vrs. N.P.THOMAS**-AIR 1993 SC 1605.
3. **UNION OF INDIA vrs. S.L.ABAS** -AIR 1993 SC 2444;
4. **STATE OF MADHYA PRADESH vrs. SHRI ARJUN SINGH** - AIR 1993 SC 1239;
5. **ABANI KANTA RAY vrs. STATE OF ORISSA** - 1995 (Suppl.) 4 SCC 169;
6. **UNION OF INDIA vrs. H.N.KIRTANIA** - (1989 (3) SCC 445), & in the case of **Gujurat Electricity Board vrs. Atmaram Sungomall Pashani** - AIR 1989 SC 1433;
7. **STATE OF ORISSA vrs. KISHORE CHANDRA SAMAL**- 1992 (2) Scale page-251;
8. **DR.N.S.SRIKANTA vrs. SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WELFARE SERVICES** -2005(I) ATJ – 331.

Relevant portion of some of the cases decided by the Hon'ble Apex Court are also quoted herein below:-

A. **H.STATE OF MADHYA PRADESH vrs. S.S.KOURAV**- AIR 1995 SC 1056 it has been observed that **courts or Tribunals is not the Appellate Authority to decide on transfer of the officers on administrative grounds. The wheels of the administration should be allowed to run smoothly and the courts or tribunals are**

not expected to interdict/interfere the working of the administration system.

(emphasis supplied)

B. **STATE OF UP & OTHERS vrs. GOBARDHAN LAL AND D.B.SINGH vrs. D.K.SHUKLA AND OTHERS** -2005 SCC (L&S)55 it has been held as under:

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

vitated by mala fide or is made in violation of any statutory provision.”

“8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the Administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration bore out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer”.

(emphasis supplied)

C. STATE OF U.P. & ORS. Vrs. SIVA RAM & ANR.-
2005(I) AISLJ 54 it has been held as under:

“....No Government servant or employee of a public undertaking has any legal right to be posted for ever 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 malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the Appellate Authorities substituting their own decision for that of the

employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this court in National Hydroelectric Power Corporation Ltd. vrs. Shri Bhagwan and Anr -2001(8) SCC 574=2002(I) SLJ 86 (SC)".

(emphasis supplied)

4. Mr. Dash, Learned Counsel for the Applicant has submitted that since the impugned order of transfer has been issued with mala-fide intention and by way of punishment without giving any opportunity to him, the order of transfer needs to be quashed. In this connection, he has drawn my attention to the averments made in the counter by the Respondents to the extent that "the Applicant is a most obstructive, indisciplined and opportunistic worker". He has also submitted that the present transfer is not only made by way of punishment, but also he was subject to disciplinary proceedings. He has also pointed out that the transfer was effected on the basis of the report of DTI who had no occasion to supervise the work of the Applicant and the said report was also prepared at the behest of the Respondent No.3 only to justify his illegal action taken against the Applicant. It has been submitted that since the present order of transfer has been passed with mala fide intention that too, in the sake of punishment, the same needs to be quashed. In this connection he has also relied upon the judgment of the Division Bench of the CAT, New Delhi

rendered in the case of K.K.Jindal vrs. General Manager, Northern Railways-ATR 1986 (1) CAT 304 wherein the order of the transfer was quashed; for the same having made other than administrative grounds. On the other hand learned Standing Counsel appearing for the Respondents has submitted that for the smooth functioning of the administrative, it was thought prudent to transfer the Applicant from Paradeep to Palasa. It has further been submitted that there was no mala fide intention as against the Applicant and these are all conjecture and surmises. He has submitted that the Applicant was punished with stoppage of increment on 18-08-1999 and 16-03-2000 which were much before the order of transfer. He has further submitted that the Respondent No.4 has only communicated the order of transfer of the Applicant on 17-03-2005 which has already circulated on 15-03-2005. He has also submitted that before transferring an employee for inefficiency or misbehaviour no notice is required to be given to the employee concerned. In this connection he has also relied on the decision of the Apex Court rendered in the case of UNION OF INDIA & OTHERS vrs. JANARDHAN DEBANATH AND ANOTHER-2004 SCC (L & S)

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I have gone through the rival contentions of the parties and the citations relied on by them. I do not find any substance on the

allegation of mala fide as raised by the Applicant. The disciplinary proceedings has nothing to do with regard to transfer of the Applicant. If this is taken as a ground for interfering the order of transfer, then no official/officer against whom proceedings are drawn up/concluded can be transferred. Therefore this plea of the Applicant is over ruled. As regards the other aspect of argument that before ordering transfer no notice was put to the Applicant, it is mentioned that it is not necessary to put any notice to the Applicant. For smooth administration, the employer has a right to transfer an employee from one place to other. That apart the duties of Goods Driver is the paramount consideration. Question as to whether a transfer can be resorted to remove suspected officials spreading indiscipline and in doing so, is not transfer resorted to as a mode of punishment was under consideration before the **FULL BENCH** of this Tribunal in OA Nos. **674/95, 672/95 & 673/95** disposed of on 4th May, 1998. After taking into consideration various judge-made-laws the Full Bench of this Tribunal have held as under:

“A transfer can be resorted to to remove officials suspected of creating indiscipline and such transfer on such basis cannot be said to be punitive in nature”.

Further more in the case of **Janardhan** (supra) it has been held by the Hon’ble Apex Court as under:

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"5....As the transfer was not a punitive one but was a measure of enforcing discipline, in public interest and in the exigencies of administration, there was no scope for the High Court to entertain the writ petitions and grant relief.

...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 another is not only an incident, but a condition of service, necessary to in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned.

..Transfers unless they involved any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration. "

In view of the judgments rendered by the Hon'ble Apex Court as well as by the Full Bench of this Tribunal, the decision relied

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on by the Learned Counsel for the Applicant is of no consequence. The Applicant on whom such onus lies has not been able to prove to the hilt that the transfer order is mala fide.

Lastly by filing an affidavit dated 08-08-2006 it has been submitted by Learned Counsel appearing for the Applicant that although there are vacancies at Khurda Road and although two employees namely P.S. Suri and P.V.S.K. Rao, Goods Guard are willing to go on transfer to the place where the Applicant has been posted, the Respondents did not respond favourably to such request. He has, therefore, prayed for a direction to the Respondents to consider such grievance. Since there is no scope for interference by Tribunal as far as this request is concerned, it is for the Applicant to approach the appropriate authority who, it is hoped, shall consider his case on merit.

In conclusion, I find no merit in his OA; which is accordingly rejected by leaving the parties to bear their own costs.

B.B.Mishra
(B.B.MISHRA)
MEMBER(ADMN.)

Copy of Order
dt 14.8.06
be given to both
Counsel.

14.8.06

*14/8/06
S.O (J)*