

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

Original Application No.207 of 2005
Lucknow, this the day of 3 July 2005.

HON'BLE SHRI K.B.S. RAJAN, MEMBER (I)

Pradeep Kumar Nigam aged about 45 years, son of Late RBL Nigam, resident of MDS-62 Sector G, LDA Colony, Lucknow, presently posted as Junior Engineer (QS&C) in the office of Garrison Engineer (West). 11, Sardar Patel Marg, Lucknow.

...Applicant.

By Advocate: Shri Sandeep Chandra.

Versus.

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Engineer-in-Chief, Army Headquarters, Kashmir House, Rajaji Marg, DHQ PO New Delhi-110001.
3. Chief Engineer, Headquarters Central Command, Lucknow-2.
4. Garrison Engineer (West), Lucknow.

...Respondents.

By Advocate: Shri. Deepak Shukla for Shri Prashant Kumar.

**Connected With
Original Application No.208 of 2005**

Radhey Shyam, aged about 47 years, son of Late Ram Asrey Verma, resident of 2/229, Vibhav Khand Gomti Nagar, Lucknow, presently posted as Junior Engineer (QS&C) in the office of Garrison Engineer (West) 11, Sardar Patel Marg, Lucknow.

On

...Applicant.

By Advocate: Shri Sandeep Chandra.

Versus.

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Engineer-in-Chief, Army Headquarters, Kashmir House, Rajaji Marg, DHQ PO New Delhi-110001.
3. Chief Engineer, Headquarters Central Command, Lucknow-2.
4. Garrison Engineer (West), Lucknow.

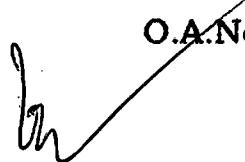
...Respondents.

By Advocate: Shri. Deepak Shukla for Shri Prashant Kumar.

O R D E R

BY SHRI K.B.S. RAJAN, MEMBER (J)

1. The above two applicants have filed two separate O.As. challenging the transfer order passed by the respondents, which is at Annexure-1 in both the O.As. As the order under challenge is a common order both being on administrative grounds, with reference to paragraph 53 of E-in-C's Branch, Army Headquarter Posting policy, the two O.As. are dealt with by a common order. For reference purposes O.A.No.207/2005 has been taken into account. The legal issue involved in this case is to apply to both the O.As. though factual position may slightly vary e.g. the applicant in O.A.No.207/2005 having been given appointment which



reference has been made in this order). But this variation does not hinder in a Common order having passed.

2. *The consistent view of the Apex Court on transfer matters, as could be seen right from the judgment in the case of B. Varadharao vs State of Karnataka (1986) 4 SCC 131 till the latest judgment of the Apex Court in the case of Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey, (2004) 12 SCC 299, as stated in the latter case is as under;*

"Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (see Abani Kanta Ray v. State of Orissa. Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it (see Union of India v. S.L. Abbas). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it."

In *Union of India v. Janardhan Debanath (2004) 4 SCC 245,*

it was observed as follows: (SCC p. 250, para 9)

"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 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, 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 Corp. Ltd. v. Shri Bhagwan.*"

3. While stating as above, the Apex Court has also administered a caution in the case of B. Varadha Rao, (Supra)

"5. It is no doubt true that if the power of transfer is abused, the exercise of the power is vitiated." (emphasis supplied)

4. The case under consideration has to be tested on the above golden rule.

5. A thumbnail sketch of the facts of the case with terse sufficiency would be appropriate at this juncture.

6. The applicant Shri P.K. Nigam, working as J.E (QS & C) at the office of G.E (West), Lucknow, had by order dated 2nd May, 2005 been subjected a transfer to C.E. Jabalpur Zone, vide impugned order at Annexure 1. This order has been passed by the authorities on "ADMINISTRATIVE GROUNDS" in terms of Para 53 of E-in-C's Branch, AHQ, New Delhi, Posting Policy and in the interest of state similarly applicant in O.A.No.208/2005 has been transferred from Lucknow to Bhopal.

4. The applicant has challenged the above order mainly on the ground that the same has not been passed in accordance with the extant rules. He stated that the transfer order instead of being systematic is stigmatic.

5. According to him, for invoking the provisions of Para 53, certain prior conditions are required to be fulfilled which in



this case has not been fulfilled. The provision of Para 53 of the posting policy reads as under:-

"POSTING ON ADMINISTRATIVE GROUNDS"

53. *No individual will normally be posted to tenure stations/complexes from other normal stations/complexes on administrative grounds. Where it is considered that such a step is absolutely essential, following points will be complied before recommending postings on administrative grounds:-*

(a) In the first instance, disciplinary action will be initiated against the employee for his/her misconduct/guilt under CCS(CC&A) Rules 1965.

(b) In case posting out becomes inevitable due to repeated acts of indiscipline prior approval of Chief Engineer Command will be obtained along with a self contained statement of case justifying the necessity."

6. The contention of the applicant is that if at all his case could be covered; it could be under 53(b) and not 53(a) as no disciplinary action had been initiated before his transfer. And in so far as 53(b) is concerned, he not having been held to be indulged in "acts of indiscipline" in the past, there is no question of "repeated acts" of indiscipline, in the happening of which alone, he could have been transferred. The applicant has relied upon the following decisions of the Apex Court and this Tribunal.

(A). On the Scope of Judicial Review Procedural Imporpreity/Wednesbury Principle. 1994 (6) SCC 65 Paras 77 to 80.

(B). On the Binding nature of transfer Policy BoSo Minhas V. J.S.I. 1983 (4) SCC 582 .

(C). On Improvement of Impugned Order in The Counter Reply/Affidaivt Mohinder singh Gill V. The CoEoCo 1978 (1) SCC 405.

(D). On Rule 12 of the C.A.T. Procedure Rules A.B. Shukla V. U.O.I. 1989 (1) UPLBEC (TRI) Page-31.

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(E). On the Transfer order being stigmatic and punitive 1993 (II) LCD 355 and 1992 (10) LCD 84.

(F). On the issue of obliging the Boilder Lobby 1997 SCC (L&S) 1437 Arvind Dattatreya Dhande V. State of Maharashtra.

7. The respondents have contested O.A. It has been submitted on behalf of the respondents that the applicant was complained against by a Builders Association and the matter was taken up and preliminary inquiry conducted and on the basis of the report by the inquiry authority the Chief Engineer had ordered for the transfer and as such, 53 (b) is fully complied with. The respondents have produced the relevant records for perusal by the Tribunal. The respondents have relied upon the following judgments of the Apex Court:-

(a) *Union of India v. S.L. Abbas, (1993) 4 SCC 357, at page 359 :*

6. An order of transfer is an incident of Government service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". Fundamental Rule 15 says that "the President may transfer a Government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that the order of his transfer is vitiated by mala fides on the part of the authority making the order, — though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a setback some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force.

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by *mala fides* or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.

(b) *State Bank of India v. Anjan Sanyal*, (2001) 5 SCC 508, at page 514 :

3. On appeal being filed before the Division Bench, the performance of the Division Bench was no better. The learned Judges of the Division Bench reaffirmed the conclusion of the learned Single Judge that no formal order of transfer had been issued and served upon the respondent, transferring him from Narkeldanga Branch to the Central Office at Mumbai. The perversity of the approach of the Division Bench is apparent from the fact that the learned Judges did refer to the letter of the respondent dated 19-10-1986 and held that even though the respondent did not deny the existence of the order of transfer, but nowhere he had stated that he had seen or had been served with the order of transfer and there was no admission on the part of the respondent about the existence of the order of transfer. The High Court has totally lost sight of the fact that it was dealing with the legality of an order of transfer of an employee and not dealing with a criminal case, where the conviction had been maintained on the basis of a confessional statement. The further perversity of the Division Bench was that it came to hold that if in fact the respondent had been transferred from Calcutta to Mumbai, in that event, Calcutta office must have lost all control or jurisdiction over the service of the respondent and the respondent should be treated to be an officer under the administrative control of the Central Office, Mumbai, and therefore, the respondent could not have been posted by the Calcutta office temporarily at Muktaram Babu Street Branch of State Bank of India. To say the least, when the employer takes a sympathetic attitude and taking into account the fact that the employee was not going out of Calcutta for the last so many years, even if transferred and a posting is given to the employee, somewhere in Calcutta, that has been considered by the Court to hold that the earlier order

of transfer to Mumbai never existed. We also do not find any justification for the Division Bench of the Calcutta High Court to go into the question about the admissibility of drawing traveling allowance and daily allowance and then come to a conclusion that things have been dealt with in a cavalier fashion and there was no order of transfer to Mumbai. The Court ultimately came to hold that there is no question of going into the validity of the transfer, which was neither issued nor conveyed to the person concerned and which had no actual or factual existence at all but was only a myth. This conclusion of the Division Bench with utmost respect must be held to be a conclusion on surmises and conjectures and we really fail to understand how the Division Bench of the High Court has come to the aforesaid conclusion, in view of the series of correspondence, which we will refer to later. It is also further surprising that the fact that while posting the respondent at Muktaram Babu Street Branch, the order had not indicated about the cancellation of the earlier order of posting at Mumbai and it would be possible for any court of law to come to a conclusion that there had been no order of transfer as such. The Court then holds the employer liable and guilty of lapses and on that score, allows the salary and emoluments as well as other service benefits from 17-12-1986. The Court also records a conclusion that the employee should not suffer because of deliberate lapses and negligence on the part of the Bank and the Bank cannot take advantage of its own wrong done to the employee for so many years. It is curious to note that an employee serving in an all-India organisation, where the service is transferable, could be allowed to flout the orders of transfer on the so-called pretext that the order of transfer had not been served upon him and then would be allowed to draw his emoluments on an erroneous finding that the Bank was negligent in not serving the orders of transfer. This case is a glaring instance where the Court in its anxiety to help an employee, recorded the conclusions contrary to the relevant materials and arrived at findings on surmises and conjectures, even in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India.

© State Bank of India v. Anjan Sanyal, (2001) 5 SCC 508, at page 515 :

4. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the

authorities, who issued the order, had not the competence to pass the order. The Central Board of State Bank of India in exercise of powers conferred under sub-section (1) of Section 43 of the State Bank of India Act, 1955, has framed a set of Rules called the State Bank of India Officers' Service Rules. Rule 47 thereof, unequivocally provides that every officer is liable for transfer to any office or branch of the Bank or to any place or deputation to any other organisation in India. Rule 49 of the said Rules, stipulates the joining time, which an employee is entitled to when he is transferred to a new place from his old post. Rule 50 casts an obligation on the employee to comply with and obey all lawful and reasonable orders and directions, which may from time to time be given to him. Rule 50(1) may be quoted herein below in extenso:

"50. (1) Every officer shall conform to and abide by these Rules and shall observe, comply with and obey all lawful and reasonable orders and directions which may from time to time be given to him by any person under whose jurisdiction, superintendence or control he may for the time being be placed."

Any violation of the aforesaid Rules, constitutes a misconduct under Rule 66 and becomes punishable under Rule 67. With this background, when we consider the legality of an order of transfer, alleged to have been passed on 14-6-1986, after the employee had continued in Calcutta for more than a decade and the said order has not been held by the High Court either to be mala fide or that the competent authority had not passed the order, it is indeed difficult to come to a conclusion that the said order had not been passed nor had been communicated to the employee concerned. Mr H.N. Salve, the learned Solicitor General appearing for State Bank of India, invited our attention to the letter of the respondent addressed to the General Manager (Operations), State Bank of India, Calcutta Local Head Office, where under the respondent had requested to defer his transfer up to June 1987 and in that letter in the very first para, the respondent in no uncertain terms had indicated that the Branch Manager of State Bank of India, Narkeldanga Branch, had addressed him by his letter dated 9-10-1986, which he is alleged to have received on 16-10-1986, informing him about his transfer to the Central Office at Mumbai. In the teeth of the aforesaid letter of the respondent, we are little surprised to find the conclusion of the learned Judges of the Calcutta High Court, both the Single Judge as well as the Division Bench in entering into an arena of conjecture and coming to a conclusion that there had been no existence of an order of transfer nor had the same been communicated to the respondent. The Branch

Manager of Narkeldanga Branch had addressed a letter to the respondent on 8-1-1987, intimating him that he had been relieved of his duties from the said Branch. The respondent again in his letter dated 5-12-1987 addressed to the Chief General Manager, State Bank of India, categorically stated that he had been informed by the Branch Manager, State Bank of India, Narkeldanga Branch, about his transfer to Central Office at Mumbai and he prayed for cancellation of the said posting and considering the desirability of posting him at a suitable place in Calcutta. State Bank of India, Calcutta Branch, immediately replied to the aforesaid letter of the respondent, informing him that as per the records, he had been relieved from Narkeldanga Branch at the close of business on 6-12-1986, with instructions to report to the Chief Officer, Central Office, Mumbai by their letter dated 14-12-1987, to which the respondent replied by his letter dated 12-1-1988. Even in that letter, the respondent stated that even though he has been relieved from the Narkeldanga Branch w.e.f. 6-12-1986, but he had not been instructed to report to the Chief Officer (Personnel Administration), Central Office, Mumbai, would itself indicate the frivolous pretext of the employee, as in all earlier letters he had been candid enough to state that he had been transferred to the Central Office at Mumbai. In view of the aforesaid correspondence between the employee and the employer, we are indeed surprised, how the High Court could rely upon a sentence in the letter of 30-4-1991, wherein a mention had been made that the officer concerned was not advised in writing by the Branch at the material time and it is on the basis of this sentence, the High Court jumped to the conclusion that neither there existed an order of transfer nor had it been communicated to the respondent. The bank authorities, on the other hand, have been repeatedly intimating the respondent that he is remaining absent without joining at the place to which he was transferred but yet the employee concerned did not comply with the order in question. Having been desperate in their attempt to give effect to a lawful order of transfer, when the authorities took a sympathetic attitude and posted the respondent temporarily to M.B. Street, Calcutta on 19-7-1991 and then transferred him to Siliguri on 8-8-1991, the High Court finds fault with the same, on the ground that he having been already transferred to Mumbai, could not have been posted to M.B. Street, Calcutta without cancellation of the earlier order and further could not have been transferred to Siliguri. This, in our view, is an entirely erroneous approach of the High Court in dealing with the legality of an order of transfer. The entire fact situation unerringly points out to one fact, namely, that the respondent flouted the orders of

transfer, did not join the place of posting, did not apply for or take leave for his absence, did not discharge his duties, and yet the High Court in exercise of its discretionary jurisdiction, not only set aside the order of transfer on a pretext which does not appeal to us with regard to the non-communication of the orders of transfer and even directed that the respondent would be entitled to his salary, increment, promotion and then only could be considered for further transfer to anywhere else. To us, it appears that the High Court has granted premium to an errant officer, who did not obey the orders of transfer and did not discharge any duty for which conduct of his, he could have been proceeded with, in a departmental proceeding on the charge of gross misconduct and could have been punished.

d. **Public Services Tribunal Bar Assn. v. State of U.P.,(2003) 4 SCC 104**, at page 123 :

37. 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 taking 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.

(e) **State of Rajasthan v. Anand Prakash Solanki,(2003) 7 SCC 403**, at page 408 :

9. It is true that there is no cadre as such of the Presidents and the members of the District Fora contemplated by the Act and this is the principal consideration which has prevailed with the High Court for holding that the President and members of District Fora are not liable to be transferred inasmuch as there is no single cadre of such persons in the State. We cannot subscribe to that view. The existence of one cadre is not essential and is not the sine qua non to make available the power of transfer. As District Fora, more than one, are constituted within the State, there is nothing wrong in the President or members of one District Forum being appointed by transfer to another District Forum, subject to the requirement of sub-section (1-A) of Section 10 being satisfied. Such appointment by transfer shall be made by the State Government but only on the recommendation of the Committee consisting of the President of the State Commission and two Secretaries i.e. the Committee composed as per sub-section (1-A) of Section 10. Such appointment by transfer cannot be a frequent or routine feature. The power is there but is meant to be exercised sparingly and only in public interest or in such exigencies of administration as would satisfy the

purpose of constituting the District Forum. The broader concept of "transfer" is a change of the place of employment within an organization. Transfer is an incidence of public service and the power to transfer is available to be exercised by the employer unless an express bar or restraint on the exercise of such power can be spelt out. The power, like all other administrative powers, has to be exercised bona fide.

(f) *Union of India v. Janardhan Debanath, (2004) 4 SCC 245, at page 250 :*

1. 7. As Rule 37 and FR 15 form the foundation of the claim of the respondents, it would be appropriate to quote them. Rule 37 reads as follows:

2. "All officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Transfers should not, however, be ordered except when advisable in the interests of the public service. Postmen, village postmen and Class IV servants should not, except for very special reasons, be transferred from one district to another. All transfers must be subject to the conditions laid down in Fundamental Rules 15 and 22."

3. 8. FR 15 reads as follows:

4. "15. (a) The President may transfer a government servant from one post to another; provided that except—

5. (1) on account of inefficiency or misbehavior, or

6. (2) on his written request,

7. a government servant shall not be transferred to, or except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien."

8. 9. A bare reading of Rule 37 shows that officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Transfers were not to be ordered except when advisable in the interests of public service. The transfers can be made subject to conditions laid down in FRs 15 and 22. The appellant has indicated as to why and under what circumstances the transfers were thought proper in the interests of public service. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon the peculiar facts and circumstances of the case concerned. 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 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, 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 Corpn. Ltd. v. Shri Bhagwan*¹.

(g) *Union of India v. Janardhan Debanath*, (2004) 4 SCC 245, at page 251 :

11. A bare reading of FR 15 makes it clear that except in cases where the transfer is (a) on account of inefficiency or misbehavior, or (b) on a written request the government servant cannot be transferred or except in a case covered by Rule 49 appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien. The clear intention of the prescription is that except the two categories indicated above, in all other cases the pay to be paid on transfer shall not be less than of the post on which he holds a lien. Exception is made in case of a transfer where it is on account of inefficiency or misbehavior. In a case where transfer is on account of inefficiency or misbehavior, the same can be made to a post carrying less pay than the pay of the post on which he holds a lien. Similar is the position where a transfer is made on a written request. Where the transfer is otherwise than for inefficiency or misbehavior or on a written request made by the transferred employee, the protection of pay is ensured. The High Court seems to have completely misconstrued the rule as if there cannot be any transfer in terms of FR 15 on account of inefficiency or misbehavior. The view is clearly contrary to the pronounced intention of FR 15.

12. That brings us to the other question as to whether the use of the expression "undesirable" warranted an enquiry before the transfer. Strong reliance was placed by learned counsel for the respondents on a decision of this Court in *Jagdish Mitter v. Union of India*² (AIR p. 456, para 21) to contend that whenever there is a use of the word "undesirable" it casts a stigma and it cannot be done without holding a

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regular enquiry. The submission is clearly without substance. The said case relates to use of the expression "undesirable" in an order affecting the continuance in service by way of discharge. The decision has therefore no application to the facts of the present case. The manner, nature and extent of exercise to be undertaken by courts/tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions — status, service prospects financially — and the same yardstick, norms or standards cannot be applied to all categories of cases. Transfers unless they involve 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.

(h) *Union of India v. Janardhan Debanath, (2004) 4 SCC 245, at page 252 :*

13. Additionally, it was pointed out by learned counsel for the Union of India that as indicated in the special leave petition itself there was no question of any loss of seniority or promotional prospects. These are the aspects which can be gone into in an appropriate proceeding, if at all there is any adverse order in the matter of seniority or promotion. It was also submitted that transfer was within the same circle i.e. the North-Eastern Circle and, therefore, the question of any seniority getting affected by the transfer *prima facie* does not arise.

14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehavior is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehavior or conduct unbecoming of an employee is unnecessary and what is needed is the *prima facie* satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an

employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct.

(g) *State of U.P. v. Siya Ram, (2004) 7 SCC 405, at page 407 :*

3. The said order of transfer of Respondent 1 having been quashed by a Division Bench of the Allahabad High Court, the State of U.P. is in appeal. The respondent filed a writ petition in the Allahabad High Court questioning the order of transfer. The primary stand taken in the writ application was that the order of transfer was as a measure of punishment. An enquiry in departmental proceedings had been initiated. Without affording him an opportunity of being heard, the transfer was done as a measure of punishment. The disciplinary action which was taken against Respondent 1 pursuant to the enquiry conducted was referred to the Uttar Pradesh Public Service Commission for approval. But it was not approved. The present appellant State filed a counter-affidavit taking the stand that the transfer of the writ petitioner was on administrative grounds and merely because the writ petitioner was transferred to a non-working post, that did not in any way vitiate the order of transfer.

4. The writ petition was allowed by the impugned judgment dated 5-11-2003 holding that the order of transfer was punitive in nature and had been passed by the State Government without awaiting the decision in the disciplinary proceedings.

5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. 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,

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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 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 Corp. Ltd. v. Shri Bhagwan¹.

6. The above position was recently highlighted in Union of India v. Janardhan Debanath². It has to be noted that the High Court proceeded on the basis as if the transfer was connected with the departmental proceedings. There was not an iota of material to arrive at the conclusion. No mala fides could be attributed as the order was purely on administrative grounds and in public interest.

8. A vignette of the complaint in question and the action taken in that regard is as under:-

(a) On 15-12-2004 the proprietor of a building contractor firm with the chairman of the MES Builders Association of India came to the office of the applicant and requested him to clear the RAR bills pending with him, to which the applicant gave only a rude reply.

(b) On 16-12-2004, the applicant being hurt by the behavior of the aforesaid proprietor, made a written submission to the Garrison Engineer, Lucknow about the previous day's incidence with the request to look into the matter and "*to instruct the contractors not to repeat such type of happing to safeguard the self respect of workers employed in the Division*".

©The MES Builders Association India had, by letter dated 20th December, 2004 addressed to the Chief Engineer, Headquarters, Central Command, Lucknow, made certain allegations against the applicant relating to undue delay in clearing of certain RAR bills.

(d) The respondents have called for the comments of the applicant and after investigation by one Shri M.G.

Gupta, EE DCWE (Contracts), the following findings and recommendations were made:-

"Findings: On perusal of Appx 'B' documents held on GE (West) Office it is noticed that there is laxity in clearing of RARs Fbs on the part of executives. FB RARs are processed from sub division much after the completion of work. Monitoring system of GE office is also poor. Also there is reasonable delay in E8 section for technical checks of bills and the responsibility for such delay rest with GE, AGE (Contracts) and dealing JE(QS &C).

Recommendation: To avoid such delays in clearing the RARs Fbs, monitoring system in E8 section should be improved and GE should have regular conference with concerned AGE and AGE (Contracts) to clear the outstanding Fbs RARs. It is also recommended that vintage of RARS Fbs shall be monitored closely i.e. as far as possible the principle of 1st in and 1st out in respect of RARs Fbs shall be followed."

9. On the basis of the above, the Chief Engineer Lucknow Zone had recorded his own remarks on 9th March, 2005 as under:-

"On perusal of the case it is seen that RAR/Final Bills are not being cleared timely. Some of the bills have been cleared on the same day, whereas some bills were cleared very late without assigning any reasons. Proper records for monitoring the payment of RAR/final bills are also not being kept, hence bills of M/s J.S. Construction has also been delayed. In view of above, it is recommended to give performance counseling to AGE (Contract) and JE(QS&C) of GE (W) Lucknow for not clearing final Bills/RAR in time and also not maintaining proper record on a register."

10. On 29th March, 2005 the applicant was also given appointment by Chief Engineer, HQ, Central Command, Lucknow when "he has pleaded innocence and stated that there has been no undue delay by him in checking of RARs/Final Bills."

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11. The HQ, Central Command, Lucknow, requested the Chief Engineer Lucknow Zone to submit revised recommendations of Zonal CE, vide letter dated 30th March, 2005. The Chief Engineer, Lucknow Zone replied stating that the earlier inquiry report may stand. It was thereafter that on 12th April, 2005 a separate note was put up to the Chief Engineer by Director Contracts, who had recorded as under in Para 4 of the said note:-

"It is evident from the Appx B of investigation report that the payment is not being cleared/released from E 8 Section by concerned JE (QS&C) on the complaint envisaged. Comments of JE (AS&C) are evasive and since the fact is that contractors do make liaison at that level, he should have firstly cleared the RAR and secondly given polite reply.

In view of the circumstances, it is opined that concerned JE (QS & C) may be posted out on adm. Ground and direction may be given to E-1 Con suitably."

12. On the above recommendations, the Chief Engineer had on 19th April, 2005 ordered for the posting out of the applicant and another individual. On 29th April, 2005, however, the Chief Engineer, HQ, Central Command, Lucknow, through the Director (Pers) caused an order issued to the Chief Engineer, Lucknow Zone, stating,

"The complete case has been gone into details at this HQ and decided to issue performance counseling to the following officials:-

(a) Shri A.K. Gupta, AGE (Contract)

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(b) *Shri P.K. Nigam JE (QS&C).*

In view of the above and recommendations of CE LZ, please issue performance counseling to the above named officials immediately and forward a copy of each of the same for our records."

13. **The core question:** *Does the above episode fill the bill of Para 53 (b) of the Transfer Policy or is there any infraction of the professed norms of transfer policy, which makes the transfer illegal?*
14. Before going into that question, it would be curious to note that the recommendation of the Inquiry authority as well as the Chief Engineer Lucknow Zone were going in tandem and the same had not been taken into consideration by the Director (Contracts) at the Headquarters while submitting his recommendations to the Chief Engineer, Headquarters, Lucknow. Again, on 29th April, 2005 the decision of the Headquarters was "to issue performance counseling to the applicant and Shri A.K. Gupta AGE (Contract.)" This decision being that of the Chief Engineer, Headquarters, Central Command, the decision taken by him on the file i.e. transferring the individuals out of Lucknow on an earlier date, gets eclipsed and the later decision, which had been duly communicated stands.
15. Even independent of the above position, if it is examined whether the act of the applicant is covered by the requirement of Para 53 (b) of Transfer Policy to enable the Chief Engineer to consider transfer on administrative ground, the answer has to

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be "NO". For, such a transfer on administrative ground should be only on "repeated acts of indiscipline". A single or isolated incidence would not qualify itself to be held to be "repeated acts of indiscipline, much less when the finding was only to the extent of delay in clearing of the RAR/FB bills and recommendations and decisions were to the extent of only counseling. Thus, the act in question is nowhere near fulfilling the requirement of Para 53 (b) of the Transfer policy.

16. The decisions cited by the respondents' counsel while affirming the employer's prerogative to effect transfers, also in equal dose of emphasis specify that an order of transfer can be interfered with if it is accentuated by acts of malafide or if **there is any infraction of professed norms** (Three Judges Bench Judgment State of U.P. Vs. Ashok Kumar Saxena & Others (1998) 3 SCC-303.
17. In the instant case, undoubtedly, the pre requisite for invoking the provisions of para 53(b) being conspicuously absent, the transfer is in violation of the professed norms and as such, the same cannot stand judicial scrutiny.
18. In the result, both the O.As. Succeed. The impugned order dated 02-05-2005 is quashed and set aside. It is made clear that on the alleged incident on the basis of which the transfer order was issued, no view is expressed by this Tribunal.
19. Under the above circumstances, no orders as to costs.



(KB.S. RAJAN)

MEMBER (J)