

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 394/2013

DATE OF ORDER: 23-7-2013

**CORAM : HON'BLE MR. S.K. KAUSHIK, JUDICIAL MEMBER**

Hader Ali Naqvie S/o Shri Syed Rashid Ali Naqvie, aged about 40 years, R/o HUDCO Guest House, S-11, Ground Floor, Jyoti Nagar Ext., Jaipur-302005 - presently posted at Regional Office, HUDCO, Jaipur.

...Applicant

Mr. Virendra Lodha, senior advocate, assisted by  
Mr. Nitish Bagri, counsel for applicant.

**VERSUS**

1. Housing & Urban Development Corporation Ltd. A Government Company (Corporation) wholly owned and controlled by Government of India, incorporated in 1970 under the provisions of Companies Act, 1956 and having its registered office at HUDCO Bhawan, IHC, Lodhi Road, New Delhi - 110003 through its Chairman-cum-Managing Director.
2. Executive Director (HR), Housing & Urban Development Corporation Ltd. HUDCO Bhawan, IHC, Lodhi Road, New Delhi - 110003.
3. Regional Chief, Housing & Urban Development Corporation Ltd., Regional Office, Vidyut Marg, Jyoti Nagar, Jaipur.
4. Shri Surendra Prasad, Manager (Law) C/o Housing & Urban Development Corporation Ltd., Regional Office, Vidyut Marg, Jyoti Nagar, Jaipur.

...Respondents

Mr. R.N. Mathur, senior advocate, assisted by  
Mr. M.A. Khan, counsel for respondents.

**ORDER**

The applicant is aggrieved against the order of his transfer dated 17<sup>th</sup> of May, 2013 vide which he has been transferred from Regional Office, Jaipur to Regional Office, Ahmedabad with immediate effect.

2. The facts are to be noticed first. The applicant initially joined the respondent-department as Trainee Officer (Law) on regular basis on 24<sup>th</sup> of May, 1999 and joined at Regional Office, Jaipur. He continued here till 04<sup>th</sup> of December, 2002 when he was transferred to Regional Office, Bhopal where he continued upto 25<sup>th</sup> of December, 2004. He was thereafter transferred from Regional Office, Bhopal to Regional Office, Raipur where he remained till 23.9.2011. Again, he was posted at Regional Office, Bhopal from where he was transferred to Regional Office, Jaipur on 26<sup>th</sup> of February, 2013. He joined at Jaipur on 4.3.2013. It is the case of the applicant that respondent no. 4, Shri Surendra Prasad, who was posted as Manager (Law) in Law Wing, Corporate Office, Delhi was transferred to Regional Office, Ahmedabad and he was given time till 1.6.2013 to join there vide order dated 12<sup>th</sup> of April, 2013. Respondent no. 4 instead of complying with the order of his transfer dated 12<sup>th</sup> of April, 2013 to join at Regional Office, Ahmedabad got issued another order dated 17.5.2013 whereby

he was ordered to be transferred to Regional Office, Jaipur where the applicant is working and on the same very day, the applicant was transferred from Jaipur to Ahmedabad in public interest. Hence, the present Original Application.

3. Pursuant to notice, the respondents no.1 to 3 resisted the claim of the applicant by filing detailed written statement wherein the respondents have submitted that the applicant has been transferred from Jaipur to Ahmedabad in public interest and in exigency of service. It is submitted that the transfer policy upon which the applicant is relying upon is an administrative guidelines / policy approved by the Board of Directors of HUDCO and it will not confer any right upon any employee to continue at a particular station of his choice. Clause 3.6 and 7.10 of the Transfer Policy/Guidelines gives power to the Chairman & Managing Director of the respondent-Corporation to transfer any employee at any of HUDCO office and the decision of the CMD is final and binding on all the employees as per the transfer guidelines. It is also denied that the applicant has been transferred thrice within a period of 20 months. The allegations of pick and choose and discrimination has also been denied in para 1 (B) of the written statement. Relevant para 1 (A) and (B) reads as under: -

"A. That the Applicant has submitted that he has been frequently transferred thrice within a period of preceding twenty months viz., (i) Raipur to Bhopal, vide Order dated 24.06.2011, (ii) Bhopal to Jaipur, vide Order dated 26.02.2013 and (iii) Jaipur to Ahmedabad, vide Order dated 17.05.2013. It is pertinent to mention here that the Applicant had made request dated 11.07.2008 & 02.07.2009 for his transfer from Raipur to Bhopal. Thus the applicant was transferred from Raipur Regional Office to Bhopal Regional Office on his own request. Xerox copies of the request letter dated 11.07.2008 & 02.07.2009 of the applicant are annexed herewith and marked as Annexure R/1 & R/2 respectively. Therefore, the Applicant cannot blame the respondents for his transfer from Raipur to Bhopal. Mere two transfers cannot be termed as frequent transfers. Further, the service in HUDCO is transferrable in any of the offices of HUDCO throughout India and the answering respondents have right to transfer its officers in any of HUDCO's office to meet out administrative exigencies.

B. That the Applicant submitted that Sh. Sanjeev Chopra, Assistant General Manager (Law), is posted at Regional Office, Jaipur for a period more than six years. It is submitted that the said statement is totally false. Sh. Sanjeev Chopra joined Regional Office, Jaipur on 15.09.2008 as Manager (Law) and thereafter promoted and posted as Senior Manager (Law) vide Office Order No. 245/2010 dated 23.04.2010 in Jaipur RO itself. Sh. Sanjeev Chopra was promoted as Assistant General Manager (Law) vide Office Order No. 967/2012 dated 26.10.2012 and thus Sh. Sanjeev Chopra till date has completed only 4 years and 8 months approx. at Jaipur Regional Office and not a period more than six years as has been wrongly alleged by the applicant in the present Original Application. Prior to his posting at Jaipur Sh. Sanjeev Chopra has been posted at Jammu (i.e. hard posting) as well as Delhi Offices.

Original Application of the Applicant is not only liable to be rejected on the grounds of aforesaid misrepresentations of the material facts but the Applicant is also liable to be prosecuted for deliberately misleading this Hon'ble Tribunal by giving bunch of false and incorrect facts for getting favorable orders in his favour."

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4. The private respondent no. 4 has also filed separate written statement on the same lines as filed by the official respondents.
5. The applicant filed rejoinder affidavit contradicting the averments made by the respondents in the written statements.
6. I have heard Shri Virendra Lodha, senior advocate, assisted by Shri Nitish Bagri, appearing on behalf of the applicant and Shri R.N. Mathur, senior advocate, assisted by Shri M.A. Khan, appearing on behalf of the respondents.
7. Shri Lodha, learned senior counsel appearing for the applicant vehemently argued that the impugned order dated 17<sup>th</sup> of May, 2013 transferring the applicant from Regional Office, Jaipur to Regional Office, Ahmedabad with immediate effect is colourable exercise of power and also smacks favouritism to accommodate respondent no. 4, as such, the impugned transfer order is liable to be set aside.
8. To elaborate his arguments, the learned senior counsel for the applicant submitted that the applicant was

transferred to Regional Office Jaipur vide order dated 26.2.2013 and he joined at Jaipur on 04<sup>th</sup> of March, 2013 and in less than three months, the applicant was again transferred to Regional Office Ahmedabad in public interest just to accommodate respondent no. 4, who was earlier transferred to Ahmedabad, and managed his transfer against the applicant. He also drawn attention of this Court to transfer order dated 12<sup>th</sup> of April, 2013 vide which respondent no. 4 was transferred and he was allowed two months' time to join at Regional Office Ahmedabad. He argued that this fact proves that respondent no. 4 is a blue eyed of the respondents and it is to accommodate respondent no. 4 at Jaipur. The applicant has been transferred by submitting that his transfer is in public interest without indicating the public interest or exigency in service. He then urged that even the impugned transfer order is without jurisdiction because as per transfer policy Annexure A/5, the competent authority to transfer the applicant is CMD and that too with the recommendations of HoD. In the case of the applicant, his HoD had never recommended his case for transfer. Rather; the applicant has been transferred on a note prepared by one Shri R.S. Gunawat, RC, Jaipur, Camp, Delhi on 17<sup>th</sup> of May, 2013 and upon this the impugned transfer order has been passed, therefore, the impugned order is without jurisdiction as the same has been passed by General Manager

(HR/Trg), thus, the same is liable to be set aside. He then urged that even the applicant has been given step-mother treatment by not transferring a person of longer stay and the applicant has been transferred, who had completed only three months, therefore also the impugned transfer order is liable to be set aside.

9. Per contra, Shri Mathur, learned senior advocate appearing for the respondents started his arguments with the sentence that the present Original Application be dismissed as the applicant has been transferred in public interest and in the exigency of service and this Court has no jurisdiction to interfere with the transfer order. He submitted that transfer is a prerogative of the authority and no employee has a right to seek his posting at a particular place because the transfer is an incident of service. He then urged that Jaipur being hub of industry, they need responsible officer and since the applicant is not regular in attendance at office, therefore, the higher authority of the respondent-department transferred the applicant from Regional Office Jaipur to Regional Office Ahmedabad for the smooth running of the office at Jaipur. He submitted that since there is no allegation of malafide against a particular person, therefore, the allegations of favouritism levelled against the

respondents cannot be accepted in absence of a particular authority or a person since the allegations are general and vague; therefore also the Original Application deserves to be dismissed. To buttress his submissions, he placed reliance upon the following judgments: -

- (i). Union of India and Others vs. Janardhan Debanath and another – (2004) 4 Supreme Court Cases 245.
- (ii). Tushar D. Bhatt vs. State of Gujarat and Another – 2009 (4) SLR 39.
- (iii) State of U.P & Ors. vs. Gobardhan Lal – Appeal (Civil) No. 408/2004, date of judgment 23.03.2004.

10. The matter came up for preliminary hearing on 24<sup>th</sup> of May, 2013 when this court issued notice to the respondents and have also stayed the operation of the impugned order dated 17.05.2013 (Annexure A/1), which is continuing. When the arguments were heard on 04<sup>th</sup> of July, 2013, the respondents were directed to produce the complete leave record. On 09.07.2013, the learned senior counsel for the respondents filed an additional affidavit of Shri Sunil Gupta S/o Shri R.S. Gupta, Senior Manager (IT), Housing and Urban Development Corporation Ltd., (HUDCO), Jaipur along with the performance register of the applicant starting from 01<sup>st</sup> March, 2013 to 31<sup>st</sup> May, 2013. The applicant has also filed reply to additional affidavit. Both are taken on record.

11. I have considered the rival submissions of the respective parties and have gone through the pleadings and records and have also perused the judgment cited by the learned senior counsel for the respective parties with their able assistance.

12. There is no quarrel with the proposition advanced by the learned senior counsel appearing for the respondents that the transfer is a prerogative of the authority, no Government servant 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 a class or category of transferable post from one post to another is not only an incident but a condition of service, necessary too in public interest and efficiency in the public administration. It is also equally held by the Lordships of the Hon'ble Supreme Court that though the Courts or the Tribunal cannot interfere with the transfer order but they have used word 'normally'. The term 'normally' gives a right to the Courts and Tribunal to examine the legality of the transfer order and if the Courts come to the conclusion that the transfer order is colourable exercise of power and smacks favouritism which resulted in use of power in arbitrary manner and to prejudice the interest of other

employee, then it is in violation of Article 14 of the Constitution of India.

The word bias in popular English parlance stands included within the attributes and broader purview of the word 'malice' which in common acceptation means implies spite or 'ill-will' and it is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice. Ordinarily the general rule is that the onus of proving his case falls on the person who challenges the action of the administration. The reason is that there is a presumption that an administrative act is valid. Therefore, if a person says that a particular administrative decision or action is vitiated because of some flaw in the decision making process, then it is for him to establish the flaw to the satisfaction of the court. It is equally truth that for an employee, it is difficult to give the reason given by the State by taking an administrative action which is challenge in the court of law because it is not easy for him to have the access to government file and the administration does not usually give reasons for its decisions. In these circumstances, it may be

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quite difficult for the employee before the court to discharge the onus of proving his case against the administration. Therefore, the theory of malice on facts has to be invoked and court in his wisdom call for record and to satisfy himself what are the reasons waited the mind of the administration to pass the impugned order which has been challenged being arbitrary and violative of Article 14 of the Constitution of India. Even in the absence of any malicious intention; the principle of malice in law can be invoked as held by the Hon'ble Supreme Court in the case of **R.S.Garg versus State of U.P.** ( 2006 (6) S.C.C. Page 430).

13. In above back drop of the matter, now, I proceed to examine the facts of the instant case. The applicant was transferred to Regional Office Jaipur vide order dated 26.2.2013. He joined at Regional Office, Jaipur on 04.03.2013. Respondent no. 4 was transferred from Law Wing, Corporate Office, Delhi to Regional Office, Ahmedabad vide order dated 12.4.2013. The order dated 12.4.2013 (Annexure A/3) shows that he has been given joining time till 1.6.2013. By order dated 17<sup>th</sup> of May, 2013 (Annexure A/4), respondent no. 4 was transferred to Regional Office, Jaipur instead of Regional Office, Ahmedabad and on the same very day, by order dated 17<sup>th</sup> of

May, 2013 (Annexure A/1), the applicant has been transferred from Regional Office, Jaipur to Regional Office Ahmedabad with immediate effect. The relevant portion of both the said orders, reads as under: -

"F.11(155)/2010-HRMA

17<sup>th</sup> May, 2013

Office Order No. 112/2013

1. In partial modification of Office Order No. 28 dated 12.4.2013, it has now been decided to transfer Shri Surendra Prasad, Manager (Law) from Law Wing to Regional Office Jaipur instead of Regional Office Ahmedabad.
2. Shri Surendra Prasad will be entitled for transfer benefits as per transfer policy guidelines.
3. This issues with the approval of the Competent Authority

( J. Prem Nawaz)  
General Manager (HR-Trg)"

"F.11(155)/2010-HRMA

17<sup>th</sup> May, 2013

Office Order No. 113/2013

1. It has been decided to transfer Shri Haider Ali Naqvie, Sr. Manager (Law) from Regional Office Jaipur to Regional Office Ahmedabad with immediate effect.
2. Shri Haider Ali Naqvie will be entitled for transfer benefits as per transfer policy guidelines.
3. This issues with the approval of the Competent Authority.

Sd/-  
(J.Prem Nawaz)"

From the perusal of above two orders make it clear that the respondents are following the transfer guidelines. As per

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clause 3.5, Authority and Tenure of transfer of transfer policy and Transfer Benefits Guidelines, the applicant falls in category-III: E-3 & E-4 level, where competent authority is, undoubtedly, CMD with recommendation of HoD. The perusal of annexure R/3, the note-sheet dated 17.5.2013 prepared by Shri R.S. Gunawat, RC, Jaipur, Camp, Delhi, suggests that a complaint has been made at Delhi itself which was approved on the same very day i.e. 17<sup>th</sup> of May, 2013 and the applicant has been transferred to Regional Office Ahmedabad and respondent no. 4 has been ordered to be transferred at Regional Office Jaipur. The relevant portion of note-sheet dated 17.05.2013 reads as under: -

"Sub.: Request for Staff.

Reference to the subject, it is informed that Shri Haider Ali Naqvi, Senior Manager (Law), Jaipur Regional Office is not regular in attendance because of which the official working of the Regional Office is suffering. Accordingly, in the interest of work at Jaipur, RO it is requested that some other Law officer be posted at Jaipur Regional Office in place of Shri Haider Ali Naqvi, SM (Law). This may be treated as urgent in the interest of work, please.

Sd/-  
R.S. Gunawat  
RC, Jaipur  
17.05.2013  
Camp, Delhi

ED (HRMA)

Sd/-  
17/05/2013

GM (HR) Trg.

Pl. put up.

Sd/-  
17/5/

AGM (HR)PM

A note-sheet was also prepared by AGM (HR) on the same very day i.e. 17.05.2013, which though was approved by CMD. They also noted that 'Shri Haider Ali Naqvie, SM (Law) posted at RO, Jaipur is not regular in attendance'. Upon this, the applicant has been transferred to Regional Office Ahmedabad. The relevant portion of the same is also reads as under: -

"1. RC, Jaipur vide his note has informed that Shri Haider Ali Naqvie, SM (Law) posted at RO, Jaipur is not regular in attendance because of which the official working of the Regional Office is suffering. He has requested for posting of another Law Executive to Jaipur in place of Shri Haider Ali Naqvie. The matter was discussed with CMD and it was suggested to transfer Shri Surendra Prasad, Manager (Law) to RO, Jaipur. (P-249/c).

2. Shri Surendra Prasad, Manager (Law), CO has been transferred to RO, Ahmedabad vide Office Order No. 28 dated 12.04.2003. In terms of the Order he is required to report at RO, Ahmedabad on or before 01.06.2013. Presently he is posted at Law Wing, CO as he is yet to be relieved by Law Wing.
3. In view of the above, Shri Surendra Prasad, Manager (Law) may now be transferred to RO, Jaipur and Shri Haider Ali Naqvie, SM (Law) may be transferred to RO, Ahmedabad. The officers will be entitled for transfer benefits as per transfer policy guidelines.

Submitted for approval of para (3) please,

Sd/-  
17/5/13  
AGM (HR)

<u>GM (HR-Trg.)</u>	Sd/- 17/5
<u>EDH</u>	Sd/- 17/05/13
<u>DCP</u>	on tour
<u>CMD</u>	Approved – Sd/- 17/5
<u>EDH</u>	Sd/- 17/05/13
<u>GM (HR)-Trg</u>	00112/113

1234/GM-HR  
17-5-2013

CMD Office –  
D.No. 690 –  
IN 17/5 OUT 17/5"

A perusal of the above makes it clear that on a note prepared by Shri R.S. Gunawat, RC, Jaipur, Camp, Delhi, approval has been granted for transferring the applicant by the CMD on the same very day.

14. To get the confidence with regard to the arguments raised by the respondents about 'not regular in attendance' of the applicant in office, I have perused the additional affidavit along with the attendance sheet submitted by the respondents along with official file. Perusal of both do not suggest that the applicant is not regular. Annexure R/6 (colly) makes it clear that in the month of March, 2013 i.e. from 01.03.2013 to 31.03.2013, the applicant was on leave for 02 days only. In the month of April, 2013 i.e. from 01.04.2013 to 30.04.2013, the applicant remained on leave for 06 days, and in the month of May, 2013, the applicant was proceeded on leave but has been recorded as absent for 05 days.

15. In paras 4 and 6 of the additional affidavit filed by Shri Sunil Gupta, Senior Manager (IT), HUDCO, Jaipur suggest that from the date of joining at Regional Office Jaipur on

04.03.2013 till he was transferred on 17.5.2013 to Regional Office Ahmedabad, there came to 75 days, and the applicant did not perform his duties at Regional Office Jaipur for 16 days in the month of March, 2013, 15 days in the month of April, 2013 and 09 days in the month of May, 2013, and in total 40 days. It is surprising that the officer who has filed this additional affidavit also included the public holidays, Saturdays and Sundays in total 40 days. Public holidays, Saturdays and Sundays cannot be included in holidays except when a special order has been passed to work on these days by CMD. This shows that the respondents are bent upon to prejudice the mind of this Court because it is their own record which shows that the applicant was on leave for 02 days in the month of March, 2013, 06 days in the month of April, 2013 and was treated as absent for 05 days in the month of May, 2013. It is not suggested by the respondents in this additional affidavit that all other officers at Regional Office, Jaipur worked on public holidays, on Saturdays and Sundays. The relevant paras 4, 5 & 6 of the additional affidavit reads as under: -

"4. That the total tenure of the Applicant at Regional Office, Jaipur from 04.03.2013 (i.e. date of his joining at Jaipur Regional Office) to 17.05.2013 (i.e. date of his impugned Transfer Order No. 113/2013 dated 17.05.2013 of his transfer to Ahmedabad Regional Office) comes to 75 day, inclusive of Saturday, Sunday and public holidays. The Applicant did not perform duties at Regional Officer, Jaipur for 16 days in the month of March, 2013, 15 days in the month of April, 2013 and 9 days in the month of May, 2013 (i.e.

upto 17.05.2013), in total 40 days, including public holidays, Saturday, Sunday etc.

5. That out of 75 days' tenure of the applicant, if Saturday, Sunday and holidays are exclude, total number of working days comes to 52 days.

6. That out of total 52 working days, the applicant has worked at Regional Office, Jaipur only for 35 days (12 days in March, 2013, 15 days in April, 2013 and 8 days upto 17<sup>th</sup> May, 2013). As such the applicant has not worked at Regional Office, Jaipur for 17 days. Computerized Attendance sheets record indicating his attendance, leave and other details are annexed herewith and marked as Annexure R/6."

16. The objection of the respondents that the allegation of malafide cannot be looked in the absence of those persons to be impleaded as a party against whom the malafide has been alleged cannot be accepted for the reason as stated above. For repetition, it may be mentioned herein that the facts of this case shows that colourable exercise of power has been exercised by the respondents at writ large. No satisfactory explanation has been given by the respondents for transferring the applicant from Jaipur to Ahmedabad and by retaining the persons of longer stay and also for transferring the applicant in a day by getting orders from the highest authority. Even the respondents have flouted their own policy which mandate that a person be transferred on the recommendations of his immediate bose. No other document has been shown which compel the Court to take other view that the applicant as suggested by the respondents is not attending the office regularly. The respondents also failed

to show any previous record which also gives inference that the applicant is not a good employee. Merely by using word in transfer order i.e. 'administrative exigency' does not absolve the respondents for giving reason when the order is challenged under the Court of law.

17. In the aforementioned background, I am of the considered view that the impugned transfer order of the applicant dated 17<sup>th</sup> of May, 2013 cannot sustain in the eye of law. Accordingly, the same is quashed and set aside.

18. In the above term, the Original Application is allowed accordingly. No order as to costs.



(S.K. KAUSHIK)  
JUDICIAL MEMBER

kumawat