

Reserved
(On 11.10.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 13th day of November 2018

Original Application No. 330/00467 of 2018

Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member - J

Gulab Chand Verma, S/o Late Ram Naresh Verma, working as Accounts Officer (Sale/I.F.A.) in the office of Telecom District Manager, Ballia, District – Ballia.

. . . Applicant

By Adv: Shri Kirtikar Pande

V E R S U S

1. Bharat Sanchar Nigam Ltd., through its Chief General Manager, Telecom U.P. (East) Circle 2A Laplace, Rana Pratap Marg, Lucknow.
2. Chief Accounts Officer (Bkg), U.P. (East) Circle BSNL, Lucknow.
3. Telecom District Manager (B.S.N.L.), District – Ballia.
4. Sri Paras Nath Verma, S/o Late Ram Naresh Verma, R/o Village – Ahiraula, Post – Pur, District – Ballia.

. . . Respondents

By Adv: Shri Ajeet Kumar Singh

ORDER

By Hon'ble Mr. Gokul Chandra Pati, Member – A

This OA has been filed with the prayer for the following reliefs:-

- “a. quash and set aside the impugned transfer order dated 25.04.2018 passed by respondent no. 2.*
- b. Issue any other order or direction which may be deemed fit and proper in the circumstances of the case to meet the ends of justice.*
- c. Award the cost of the application to the applicant.”*

2. The facts in brief are that the applicant has a grievance since he has been transferred from the office of the respondent no. 3 in Ballia to Shahjahanpur, which is alleged to be without any justification and for political reasons. The applicant was appointed on 31.8.1982 as a postal

assistant in the Postal department and in 2005, he was transferred to the establishment of the respondents. On 18.5.2017, the applicant requested to be posted in the office of the respondent no. 3 in Ballia, in view of some personal difficulties. Accordingly, he was posted in Ballia vide order dated 31.5.2017 (Annexure A-4). It is stated in the OA that the elder brother of the applicant (respondent no. 4) sent a complaint dated 6.4.2018 (Annexure A-5 to the OA) and thereafter, the impugned order dated 25.4.2018, transferring the applicant to Shahjahanpur was issued by the respondents (Annexure A-1 to the OA), which has been impugned in this OA.

3. The grounds advanced by the applicant in this OA are that there is no public or administrative exigency for issuing the impugned transfer order and no reason has been cited in the order. It is stated that the order has been issued due to pressure of the respondent no. 4 who is the elder brother of the applicant on account of property disputes. The settled principle is that an employee cannot be transferred frequently. Further, the impugned transfer has been effected in a mid academic session, which is not permissible. The impugned order has been issued with malice, arbitrary and mala fide manner.

4. The case of the respondents is that the applicant's transfer is not due to the complaint of the respondent no. 4 and the same has been done in accordance with the policy and the respondents have nothing to do with the dispute between the applicant and the respondent no. 4. Earlier the applicant was transferred to Ballia as per his request and the requirement of the company.

5. Learned counsel for the applicant was heard by us. He stressed on the point that the real reason for transfer of the applicant was the complaint of the respondent no. 4 copy of which is annexed at Annexure A-5 of the OA. It was also argued that as per the guidelines of the respondents, Ballia station has been termed as a soft tenure where tenure will be two years, whereas the applicant has spent only one year after his posting at Ballia. Learned counsel for the respondents submitted that the

applicant's transfer is in accordance with the requirement of the respondents and it is not related to the complaint of the respondent no. 4.

6. We have considered the matter and referred to the pleadings on record. It was noted that the applicant had submitted a representation dated 28.4.2018 against the transfer order and the respondents were given liberty to dispose of the representation vide order dated 9.5.2018 of the Tribunal. After hearing on the prayer for interim relief, the Tribunal vide the order dated 30.5.2018, held as under:-

"5. There are a number of judgments of Hon'ble Supreme Court in different cases laying down the principle that the Courts should not normally interfere with the transfer order issued by the administrative authorities. Hence we do not find any justifications for granting the interim relief to stay the impugned transfer order dated 25.04.2018 at this stage. In case there is any difficulty on account of the impugned order, he should approach to the competent administrative authority. Accordingly, the applicant has submitted a representation dated 28.04.2018 before the competent authority which is pending till date."

5. As per the catena of judgments of Hon'ble Supreme Court, the transfer orders cannot be interfered with unless it is proved that it is malafide or punitive or issued in violation of the rules. In the case of **Rajendra Singh vs State of U.P. & Ors reported in [2009] INSC 1351**, Hon'ble Apex Court has made the following observations relating to the scope of review of transfers by the Courts:-

"6. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In the case of Shilpi Bose (Mrs.) & Ors. v. State of Bihar & Ors.1, this Court held :

"4. In our opinion, the courts should not interfere with a transfer order which is 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 mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

7. In N.K. Singh v. Union of India & Ors.2, this Court reiterated that the scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the

service or career prospects is very limited being confined only to the grounds of mala fides or violation of any specific provision.

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10.....The only question required to be seen was whether transfer of Respondent No. 5 was actuated with malafides or otherwise in violation of statutory rules. The transfer of Respondent No. 5 was not found to suffer from any of these vices. The High Court went into the competence and suitability of Respondent No. 5 for such posting. It is here that the High Court fell into a grave error.....”

6. In the case of **State of U.P. and others v. Gobardhan Lal, reported in (2004) 11 SCC 402**, Hon'ble Apex Court has held as under:-

“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 vitiated by mala fides or is made in violation of any statutory provision.

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 borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

7. In the case of **Sandeep Yadav vs State of U.P. & 4 others in Civil Writ-A No. 45473 of 2015**, Hon'ble Allahabd High Court has held as under:-

“The principle which can be discerned from above mentioned and other various decisions of the Supreme Court is that although the breach of guidelines does not give any legally enforceable right in favour of the employee but at the same time the guidelines/transfer policy/Government orders issued to deal with transfer of officers and employees cannot be ignored altogether by the competent authority. While transferring an officer, the broad guidelines mentioned in the transfer policy, executive orders or guidelines must be kept in the mind.

If in the administrative exigency or in public interest, transfer of an officer/employee is necessary, then the competent authority may record the reasons for departing/deviating from the policy or the guidelines. Recording of such reason in the files would facilitate the

superior officers to decide the representation of the officer concerned objectively. It is not necessary that while transferring an officer/employee, reasons should be communicated to the concerned officer/employee.

This Court in the case of Dharmendra Kumar Saxena v. State of U.P. & others, 2013 (7) ADJ 53 has held that the Government is bound by executive orders/policies, and the guidelines are made to follow it and not to breach it without any justifiable reasons. The Court also followed the view consistently taken by the Supreme Court. Relevant paragraph of the order read as under:

"24...the Government is bound by executive orders/policies. The guidelines are made to follow it and not to breach it without any justifiable reasons. Whenever the Government deviates from its policies/guidelines/ executive instructions, there must be cogent and strong reasons to justify the order; when transfer order is challenged by way of representation, there must be material on record to establish that the decision was in public interest and it does not violate any statutory provision, otherwise the order may be struck down as being arbitrary and violative of Article 14 of the Constitution. The authorities cannot justify their orders that breach of executive orders do not give legally enforceable right to aggrieved person. As observed by Justice Frankfurter "An executive agency must be rigorously held to the standards by which it professes its action to be judged".

8. It is a well recognized law that the transfer is a prerogative of the employer and court/Tribunal should not interfere unless it is alleged and proved that the transfer is an act of malice. Reliance in this behalf has been placed upon the judgment passed by the Apex Court in case of **Union of India and Ors. v. S.L. Abbas AIR 1993 SC 2444**, in which Hon'ble Apex Court has held that the transfer is an incident of service and in para-7 their Lordships held as under: -

"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."

Hon'ble Apex Court in case of **Union of India and others Vs. Janardhan Debanath and another, 2004 (4) Supreme Court Cases 245** has taken the view that transfer order should not be interfered unless same is in violation of statutory provisions or order passed is malafide.

9. In the case of **Moti Lal vs. State of U.P. through Secy. Panchayati Raj & another in service case No. 4124 of 2915**, Hon'ble Allahabad High Court has held as under:-

"Hon'ble the Apex Court in the case of Somesh Tiwari Vs. Union of India and others, 2009 (27) LCD 886, held as under:-

"Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered

with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

.....
General principles in respect to the transfer an employees that can be deducted from various judicial pronouncements and the statutory provisions are as follows: (i) that an employee cannot be transferred out of his cadre or establishment against his wish; (ii) that no transfer can be justified merely because the pay is not affected, when the appointment is made to a specified post or a specified group of posts; (iii) that the Government employee cannot be asked to perform duties which were never expected of him at the time of recruitment; and (iv) that the expectation of future promotion cannot be wiped off by moving a Government employee around.

But, the judicial review of order of transfer can be done, if the order of transfer suffers from the vice of mala fide exercise of power when the transfer is made not in public interest or administrative exigency, but simply to accommodate another employee without any justifiable reason. Unless the order of transfer is shown to be an outcome of mala fide exercise of power or violative of any statutory provision or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with by the courts as a matter of routine for every type of grievance sought to be made."

10. In view of the case laws as discussed above, there is a limited scope for this Tribunal to interfere in the transfer order which is the prerogative of the employer as per the rules. In this instant case, there is nothing on record to prove that the impugned transfer order has been issued as a punitive measure and there is nothing on record to show any connection between the complaint of the respondent no. 4 and the impugned transfer although learned counsel for the applicant has argued vehemently to that effect. The contentions of the respondents in the Counter Affidavit in this regard have not been contradicted by the applicant by furnishing documents which could have shown that the impugned transfer is on account of the complaint of the respondent no. 4.

11. Learned counsel for the applicant had furnished at the time of hearing a letter dated 30.6.2016 of the respondents which specified the tenure of the SSA's in Ballia would be two years. But the said letter does not mention if the employee cannot be transferred before completion of

two years. The said letter also states that after completion of tenure the executive would be entitled for a posting of his choice out of three choices subject to administrative exigencies.

12. In view of above discussions, we are unable to interfere in the impugned transfer order dated 25.4.2018 (Annexure A-1) and dispose of the OA with liberty to the applicant to submit a fresh representation indicating his preference for posting in accordance with the circular no. Staff/M-1-General Instruction/2011/1 dated 30.6.2016 issued by the Asstt. General Manager (Admn.) to the respondent no.2/competent authority within a week from the date of receipt of this order and if such a representation is submitted by the applicant, then the respondent no. 2/competent authority shall consider and dispose it of by passing a speaking order under intimation to the applicant within two months of receipt of the fresh representation from the applicant as stated above. The OA is disposed of accordingly. There will be no order as to costs.

(Rakesh Sagar Jain)
Member – J

(Gokul Chandra Pati)
Member – A

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