

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.100/1589/2016

New Delhi this the 13th day of January, 2017

**Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

Guru Narayan Mishra,
S/o Late Lalta Prasad Mishra,
Aged about 54 years
R/o 23/7, Sector 1,
Pushp Vihar,
New Delhi-17.

-Applicant

(Argued by: Shri Lokesh Kumar, Advocate)

Versus

1. The Director General (Works),
Central Public Works Department,
Nirman Bhawan,
New Delhi.
2. The Special Director General (NR)
Central Public Works Department,
Sewa Bhawan, R.K. Puram,
New Delhi.
3. The Dy. Director General (Coord.) NR,
East Block-1, Level-7,
R.K. Puram, New Delhi-66.

-Respondents

(By Advocate: Shri Ashish Nischal with Shri Rajinder Nischal)

ORDER (Oral)

Justice M.S. Sullar, Member (J)

The matrix of the facts and material, which needs a necessary mention for the limited purpose of deciding the core controversy involved in the instant Original Application (OA), and exposit from the record, is that, the applicant Guru Narayan Mishra, was working on sensitive post of Junior Engineer (JE) (Civil) in Sub-Division P-6, CPWD at Technology

Bhawan, New Delhi. He was transferred from AE Central Secretariat Division, New Delhi to AE(P), NDZ-VIII, New Delhi, vide impugned order dated 25.04.2016 (Annexure A-1) along with 17 other employees.

2. Aggrieved thereby, he has preferred the instant OA, challenging the impugned transfer order (Annexure A-1), mainly on the ground that his transfer is punitive in nature and his tenure has been cut-short only for the reason, that Respondent No.1 has granted sanction to prosecute him in gross violation of settled principle of law. It was alleged, that Respondent No.1 has already accepted the Inquiry Report of Commissioner for Departmental Inquiries, Central Vigilance Commission, New Delhi, exonerating the applicant and for the identical charge, as levelled in the criminal prosecution, and as such on identical charge, no sanction for prosecution can be granted. The applicant is stated to have challenged the order granting sanction to prosecute him in the Hon'ble Delhi High Court.

3. Levelling a variety of allegations and narrating the sequence of events, in detail, in all, according to the applicant, that although he was exonerated, vide report dated 29.04.1994 (Annexure A-2), by Commissioner for Departmental Inquiries and Director General (Works) has revoked the order of suspension, vide order dated 22.11.1995 (Annexure A-3), so sanction to prosecute the applicant granted by R-1 is illegal and he cannot be transferred on that count. The applicant has termed the impugned transfer order as arbitrary, punitive and illegal. On the strength of aforesaid grounds, the applicant seeks to challenge the impugned transfer order in the manner indicated hereinabove.

4. Sequelly, the respondents refuted the claim of the applicant, and filed the reply, wherein it was pleaded that his name was put in the list of officers with 'doubtful integrity' for the year 2016, which was approved by the competent authority, as per the guidelines dated 28.10.1969 issued by Ministry of Home Affairs. According to the respondents, that as per instructions/letter bearing No.371/20/2003-AVD-III dated 31.12.2003 of DoP&T, the officers under the 'doubtful integrity' list are not to be posted on the sensitive posts. If such employees are posted on sensitive posts, then they are to be transferred to non-sensitive posts. It was further provided therein that even additional charge of sensitive post should not be given to such employees of 'doubtful integrity' and if it has already been given, should be taken back from him. Since the applicant was holding a sensitive post and his name was included in the list of officers with 'doubtful integrity', so he was rightly transferred from the sensitive post of AE in Central Secretariat Division, New Delhi itself. Hence, no prejudice has been caused to him in any manner by his transfer from one office to other office of respondents situated in Delhi, which was not tainted with any *mala fide* in any manner.

5. Virtually acknowledging the factual matrix and reiterating the validity of the impugned transfer order, the respondents have stoutly denied all other allegations and grounds contained in the O.A., and prayed for its dismissal.

6. Controverting the allegations in reply of the respondents and reiterating the grounds contained in the OA, the applicant filed the rejoinder. That is how, we are seized of the matter.

7. Having heard the learned counsel for the parties, having gone through the record with their valuable help, and after considering the entire matter, we are of the firm view that there is no merit and the instant OA deserves to be dismissed in the manner, and for the reasons mentioned hereinbelow.

8. Ex-facie the argument of the learned counsel, that since the transfer of the applicant was on the basis of order of sanction to prosecute him in criminal case by the competent authority, which has already been challenged in the Hon'ble High Court of Delhi, so the impugned transfer order is punitive in nature, is neither tenable nor the observations of the Hon'ble Apex Court in **Radheshyam Kejriwal vs. State of West Bengal and Another (2011) 3 SCC 581**, and the Hon'ble Madras High Court in case **S. Sivalingam vs. Principal Commissioner and Commissioner of Surveys and Settlement, Chennai-600 005 and Others (2014) 2 MLJ 425**, are at all applicable on the facts of the present case, wherein it was held that in a case of exoneration on merits in such adjudication proceedings, where the allegations are found to be not sustainable at all and person concerned is held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue. Similarly, in **S. Sivalingam's** case (supra) while interpreting the Rule 20(a) of the Tamil Nadu Ministerial Service Rules, it was observed that an employee can be transferred in a special case on the ground of administrative necessity with the mutual consent of the concerned appointing authorities and the ground of transfer (therein) was held not to be in special case.

9. Possibly no one can dispute with regard to the aforesaid observations, but the same would not come to the rescue of the applicant in the present controversy.

10. What cannot possibly be disputed here is, that the applicant has already challenged the validity of the order of sanction to prosecute him in the Hon'ble High Court and in other litigations. Therefore, its validity cannot be decided by this Tribunal. Similarly, no such Rule has been brought to our notice which provides, that only in special case and on the ground of administrative necessity with the mutual consent of the concerned employee he can be transferred by the competent authority.

11. On the contrary, the specific case set up by the respondents, is that, the applicant was working as JE on sensitive post and since his name was included in the list of persons with doubtful integrity, so he was rightly transferred from sensitive post to non-sensitive post in the office of the same department as per DoP&T instructions dated 31.12.2003. In that eventuality, it cannot possibly be said that the impugned transfer order is punitive in nature. Moreover, the applicant was transferred from one post to the other post of the same department located at Delhi on administrative ground along with other 17 persons, vide impugned order, so he cannot be said to be aggrieved by his transfer in any manner, particularly when now it is well settled principle of law that Courts have very very limited jurisdiction to interfere in transfer matters. Such transfer orders issued in pursuance of the indicated instructions by the competent authority, in administration of exigency and in public interest (as in the present case), cannot legally be set aside unless it is smeared with malice, which is totally lacking in this OA.

12. In the instant case, the applicant has miserably failed to plead and substantiate the specific allegations of malice against any individual. It is now well settled principle of law that *mala fide* is very easy to allege but difficult to prove as the onus to prove *mala fide* lies on the person who alleges it. The Hon'ble Apex Court in case **State of Punjab & Anr. Vs. Gurdial Singh & Ors. (1980) 2 SCC 471** has ruled as under:-

“9. The question then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power- sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfaction - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated. "I repeat..... that all power is a trust- that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power of extraneous to the statute, enter the verdict or impels the action mala fides on fraud on power vitiates the acquisition or other official act.”

The same view was reiterated by this Tribunal in **T.M. Sampath Vs. Union of India**, [OA No. 188/2012 decided on 30.08.2013] and **Naresh Wadhwa Vs. Union of India** [OA No. 810/2013 decided on 29.10.2013].

13. Meaning thereby, the competent authority has transferred the applicant on administrative grounds and in public interest. Indeed such transfer order cannot and should not be interfered with by the courts. A Government servant holding a transferable post is liable to

be transferred and he has no right to remain posted at one place or the other. Such transfer orders issued by the competent authority do not violate any legal right. If the courts continue to interfere with day-to-day transfer orders issued by Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to the public interest. This matter is no more res integra and is now well settled.

14. An identical question came to be decided by Hon'ble Supreme Court in case ***Shilpi Bose Vs. State of Bihar AIR 1991 SC 532***. Having considered the scope of judicial interference in transfer matter, the Apex Court has observed as under:-

“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.”

15. In the same manner, it was also held by Hon'ble Supreme Court in case ***Union of India V. S.L. Abbas 1993 (4) SCC 357*** that 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.

16. Similarly, a three-Judge Bench of Hon'ble Supreme Court in cases ***Major General J.K. Bansal Vs. Union of India & Ors. (2005) 7 SCC 227*** and in another case ***State of M.P. and Another Vs. S.S.***

Kourav and Others (1995) 3 SCC 20 has observed that the Courts or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. In case **S.C. Saxena Vs. U.O.I. & Others (2206) 9 SCC 583** it was held by Hon'ble Apex Court that a Government servant cannot disobey a transfer order by not reporting back at the place of posting and then go to a court to ventilate his grievances. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.

17. Again the same view was reiterated by Hon'ble Supreme Court **State of U.P. Vs. Gobardhan Lal (2004) 11 SCC 402** wherein it was ruled 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 off 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 grievances sought to be made. Even administrative guidelines for regulating transfer 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 thee 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.

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

18. Therefore, once it is proved on record that the competent authority has transferred the applicant in view of the indicated DoP&T instructions, and for exigency of administration, and in public interest from one post to other post of the same Department situated in Delhi itself, then such transfer is not open to judicial review in the obtaining circumstances of the case. Thus the contrary arguments of the learned counsel for the applicant, *stricto sensu* deserves to be and are hereby repelled. The ratio of law laid down in the indicated judgments is *mutatis mutandis* applicable to the present controversy and is a complete answer to the problem in hand.

19. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

20. In the light of the aforesaid reasons, as there is no merit, the instant OA is hereby dismissed, as such. However, the parties are left to bear their own costs.

(P.K. Basu)
Member (A)

cc.

(Justice M.S. Sullar)
Member (J)
13.01.2017