

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.100/927/2012

New Delhi this the 7th day of November, 2016

Hon'ble Mr. Justice M.S. Sullar, Member (J)

Hon'ble Mr. P.K. Basu, Member (A)

Shri P.S. Chauhan
S/o Shri Mangat Ram working as
Head Parcel Clerk,
Delhi Division
Presently posted at New Delhi,
Railway Station, New Delhi
R/o 659/1, Narela,
Delhi-110040. ...Applicant

(Argued by: Shri M.S. Reen, Advocate)

Versus

1. Union of India,
Through the Secretary
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway Headquarters,
Baroda House,
New Delhi.
3. Divisional Railway Manager,
State Entry Road,
New Delhi. ...Respondents

(By Advocate: Shri Sat Pal Singh)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The crux 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 emanating from the record, is that,

applicant, P.S. Chauhan, was working since long as Head Parcel Clerk (weighment seat) at Old Delhi Railway Station. On 07.11.2011, he was assigned the duty of the said post at New Delhi Railway Station. Subsequently, he was transferred from Delhi Division to Moradabad Division on administrative ground, vide impugned order dated 07.03.2012 (Annexure A-1), by the competent authority.

2. Aggrieved thereby, the applicant has preferred the instant OA, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

3. The case set-up by the applicant, in brief, insofar as relevant is that, in the wake of some complaint, a raid was conducted against him in violation of Indian Railway Vigilance Manual, which provides, that at least 2 Gazetted Officers are required to be independent witnesses in the raid, which has not been done in the present case. It was alleged, that on the one hand, the respondents have appointed the Enquiry Officer (EO) to enquire into the charges of misconduct, on the other hand, the applicant was sought to be transferred out of Delhi Division. Thus, he has been subjected to double jeopardy. The applicant has also claimed the party on the basis of judgment of Single Bench dated 16/18.12.1999 in **OA No.593/1999** titled as **R.S. Meena Vs. U.O.I. and Another** of this Tribunal (Annexure A-16). The impugned transfer order was stated to be mala fide, punitive in

nature, illegal, arbitrary and against the Railway Manual/Rules. On the strength of the aforesaid grounds, he seeks to quash the impugned transfer order (Annexure A-1), in the manner indicated hereinabove.

4. The respondents refuted the claim of the applicant and filed the reply, wherein it was pleaded, that applicant has been transferred from Delhi Division to Moradabad Division on administrative ground as per rules. However, it was admitted, that in the wake of complaint of complainant, Shri Yogender Sharma, alleging therein that applicant has demanded illegal bribe on duty in Outward Parcel Office, Delhi, in lieu of taking of his parcel package, a raid was conducted against the applicant. In pursuance thereof, he was also charged for a major penalty for his grave misconduct and enquiry has **already been completed.**

5. Instead of reproducing the entire contents of the reply and in order of avoid the repetition, suffice it to say that 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 OA and prayed for its dismissal.

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

7. After hearing the learned counsel for the parties, after going through the record with their valuable assistance, we are of the firm view that there is no merit in the instant OA and it deserves to be dismissed for the reasons mentioned hereinbelow.

8. Ex-facie the argument of the learned counsel for the applicant, that since he (applicant) was malafidely transferred on account of a complaint and departmental enquiry, so the impugned transfer order is punitive, and deserves to be set aside, is not only devoid of merit but misplaced as well.

9. As is evident from the records that the applicant was working since long at Old Delhi Railway Station, as Head Parcel Clerk (Weighment Seat). Thereafter, on 07.11.2011 he was assigned the duty as such at New Delhi Railway Station. He was ordered to be transferred on administrative grounds, vide impugned order dated 07.03.2012 (Annexure A-1). Instead of joining at transferee seat, he obtained the status quo order on 20.03.2012 from this Tribunal. Even all the personal grounds, such as education of VIIIth and XIIth class of his children, pleaded in the OA ceased to exist. As to whether the vigilance team has violated the procedures provided under Para 507 (v) the Indian Railway Vigilance Manual, procedure of raid conducted on the applicant was illegal, allegations in the complaint were false pleaded in the OA, inter alia, were the moot points, which

have already been decided during the course of separate departmental enquiry proceedings. Admittedly, regular departmental enquiry has already been completed. The mere fact that departmental proceedings were initiated against the applicant, ipso facto, is not a ground, much less cogent to term the impugned transfer order as mala fide, punitive, as urged on his behalf, particularly when perusal of the transfer order would reveal that it was simpliciter order of transfer of the applicant from Delhi Division to Moradabad Division along with the post on administrative ground.

10. Moreover, the applicant has miserably failed to plead and substantiate the specific allegation 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].

11. Meaning thereby, the competent authority has transferred the applicant on administrative ground 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.

12. 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.”

13. 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.

14. Sequelly, 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.

15. 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 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.

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.”

16. Therefore, once it is proved on record that the competent authority has transferred the applicant for exigency of administration and in public interest, in that eventuality, such transfer is not open to judicial review. 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.

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

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

(P.K. Basu)
Member (A)

(Justice M.S. Sullar)
Member (J)
07.11.2016

Rakesh