

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

...

O.A.No.060/01362/2017**November 15, 2017**

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**CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

...

N. Kumar aged 49 years, son of Sh. P. Narayana Swamy, resident of D-541, Neelam Ajrona Road, Sector 15-A, Faridabad (Group-C).

....APPLICANT

(Argued by: Shri Vikas Thakur, Advocate)

VERSUS

1. Union of India, Ministry of Water Resources, River Development and Ganga Rejuvenation through its Secretary, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. The Chairman, Central Ground Water Board, Bhujal Bhawan, NH-IV, Faridaad-121001.
3. The Director (Admn.), Central Ground Water Board, Bhujal Bhawan, NH-IV, Faridabad-121001.
4. The Administrative Officer, Central Ground Water Board, Bhujal Bhawan, NH-IV, Faridabad-121001.

....RESPONDENTS

ORDER (oral)**JUSTICE M.S. SULLAR, MEMBER (J)**

1. 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 exposted from the record, is that applicant, N. Kumar son of P. Narayana Swamy, was initially appointed as Technical Officer (Drilling) on 29.2.1988, at Chennai. He was promoted and remained posted

there as Assistant Driller-cum-Mechanic (ADCM) w.e.f. 19.5.2010. He continued his service for 28 years, from 29.2.1988 to 28.2.2016, at his home town Chennai, from where he was transferred to Central Ground Water Board, CHQ Faridabad, along with the post with immediate effect, with the approval of the competent authority, vide order dated 1.3.2016 (Annexure A-1). Since the services of ADCMs were required in the Drilling Unit of Divisional Office at Jammu, so the applicant was transferred there, as such, vide impugned order dated 5.7.2017 (Annexure A-2). He filed a representation dated 10.7.2017 (Annexure A-3) for retention at Faridabad, which was not decided.

2. In the wake of an order dated 21.9.2017 (Annexure A-6) rendered in O.A.No. 060/01126/2017 by this Tribunal, the representation filed by the applicant, was considered and rejected by the competent authority, vide impugned order dated 12/13.10.2017 (Annexure A-7).

3. Aggrieved thereby, the applicant has preferred the instant OA challenging the impugned orders dated 5.7.2017 (Annexure A-2) and dated 12/13.10.2017 (Annexure A-7), on the following grounds :-

(a) That the impugned orders issued by the respondents are illegal and against the law. As per their own transfer norms, the applicant cannot be transferred before three years of posting from one place, whereas in the present case, the respondents have transferred the applicant within fifteen months.

(b) That since the applicant is Secretary General of the Service Association and as per the Transfer norms of the respondents, OM dated 19.8.1988 is applicable. The said OM mandates that the Union Functionaries should not be transferred out of the Head Office, whereas the same has been done dehors the said OM. On this score alone, the impugned order deserves to be set-aside.

© That the appellant's family would suffer irreparably as the only child of the appellant would have shifted in the middle of the academic session which would hamper his studies.

(d) That the respondents have acted in a totally illegal manner, by throwing their own rules and regulations in the air, by transferring the appellant from Faridabad to Jammu.

(e) That the applicant has been transferred out without any justifiable cause or reason but for the reason that he being the Secretary General of the service association has been pursuing the welfare of the 2300 employees of the association.

(f) That the impugned order is totally illegal and has been passed without considering the true facts on record, hence the same is illegal and liable to be set-aside.

(g) That the impugned speaking order is patently illegal, non-speaking and does not consider the representation and the grounds taken therein. Even the OM dated 19.8.1988 (Annexure A-5) has not been considered properly.

(h) That a bare perusal of Annexure A-11 also shows that a rider has been put by the Ministry with regard to issuance of transfer orders. Still, respondent no.3 in a wholly illegal, arbitrary and de hors the Rules and Instructions, passed the impugned order of transfer giving a complete go-bye to the instructions issued by the competent authority.

(i) That the conduct of the respondents can be gauzed from the fact that the basic and primary contention as raised by the applicant with regard to non-adherence to the OM (Annexure A-5) has been ignored. The respondents cannot bye-pass or overrule the said OM, as it is the mandate which has been fastened upon the respondents to pass a transfer order strictly within the four corners of the said OM.

4. On the strength of aforesaid grounds, the applicant seeks to quash the impugned orders in the manner, indicated herein above.

5. Having heard the learned counsel for the applicant, having gone through the record with his valuable assistance 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 for the reasons mentioned herein below.

6. Ex-facie, the main contentions of the learned counsel, that since the applicant was elected as Secretary General of the Employees' Union, and his son aged 8 years is student of 3rd standard at Faridabad, so the impugned transfer orders are

arbitrary and against the transfer guidelines, are not only devoid of merit, but mis-placed as well.

7. As is evident from the record that having completed 28 years of his service at his home town at Chennai, the applicant was transferred as ADCM to Faridabad vide order dated 1.3.2016 (Annexure A-1). Subsequently, considering the volume of work and in the public interest, he was transferred, as such, from Faridabad to Jammu, with the approval of the competent authority vide impugned order dated 5.7.2017 (Annexure A-2).

8. That means, the applicant was transferred to Jammu, in exigency of service, on administrative grounds and in public interest. The mere fact that he is Secretary General of the Employees' Union or his son is student of 3rd standard at Faridabad, ***ipso facto***, are no grounds, much less cogent, to quash the transfer orders of the applicant, made in public interest.

9. Sequel, the next contention of the learned counsel that applicant was transferred with the malafide intentions, by the competent authority, cannot be accepted, as such, in the absence of any cogent material on record, in this regard. The bald allegations of malafide, as sought to be alleged by the applicant, are as vague, as anything. He has neither impleaded any particular person nor pleaded any specific instance pertaining to any specified person and failed to substantiate the allegations of malafide against any individual. It is now well settled principle of law that malafide 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 the case **State of Punjab & Another Vs. Gurdial Singh &**

Others (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.”

10. The same view was reiterated by C.A.T. Principal Bench, New Delhi, in **T.M. Sampath Vs. Union of India**, [OA No. 188/2012 decided on 30.08.2013], **Naresh Wadhwa Vs. Union of India** [OA No. 810/2013 decided on 29.10.2013] and by this Tribunal in **Bhagwant Kaur Vs. Union of India etc.** [O.A.No. 060/00800/2016 decided on 16.2.2017].

11. In the instant case, the Competent Authority has transferred the applicant from Faridabad to Jammu on administrative grounds, and in public interest, after considering the volume of work and

other relevant factors. 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 a 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. Also, 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 **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. Not only that, 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. There is yet another aspect of the matter, which can be viewed entirely from a different angle. As mentioned hereinabove, that in the wake of order, Annexure A-6 of this Tribunal, the competent authority has duly considered and decided the representation, Annexure A-3 of the applicant vide impugned order dated 12.13.10.2017 (Annexure A-7), which in substance is as under :-

“In compliance of the above judgment / order, the representation obtained dated 10.07.2017 of Sh. N. Kumar, ADCM has been examined / considered by the Respondent No.3 and the factual position in this regard is detailed as under :-

1. The representation dated 10.07.17 submitted by Sh. N. Kumar, ADCM has already been considered and reply sent at his permanent and present address vide CHQ letter No.4-5967/10-Engg.(Estt.)-434 dated 12.07.17 (copy enclosed). Now as per direction of Hon'ble CAT his

representation dated 10.7.17 has been again re-considered but could not be acceded to due to the organizational interest.

2. Shri N. Kumar was initially posted at Div. IV, Chennai on 29.02.88. He continued his service for 28 years from 29.02.88 to 21.03.2016 at his home town i.e. Chennai. There are lot of vacancies of ADCM in the Board at other places where less employees are posted due to which the drilling work is suffering badly. The service of Sh. N. Kumar, ADCM is required in the drilling units of the Divisional Office at Jammu. In the present place of posting i.e. CHD, Faridabad the ADCM post is not required as there is no drilling unit established.
3. As regard the grievances of employees, there is a grievances re-redressal Cell at CHQ, Faridabad, so staff grievances would not effect and their service mater will not be jeopardized.
4. It is intimated that WP Nos. 20042/47 filed by Sh. N. Kumar in Hon'ble High Court, Chandigarh has been dismissed on 03 October, 2017 (copy attached). A detailed show cause notice has been issued (Copy attached) asking for explanation to large number of anomalies and violation of Govt. rules for last so many years".

In the light of the above, the representations of Sh. N. Kumar is disposed off accordingly and he is advised to report duty at CGWB, Div. III, Jammu immediately.

This issues with the approval of Competent Authority".

17. Meaning thereby, the applicant was transferred to Jammu keeping in view the volume of work and in the public interest. The competent authority has examined the matter in the right perspective and legally justified his transfer to Jammu, in public interest. Therefore, we do not find any reason, much less cogent to interfere with the impugned orders, in exercise of our limited jurisdiction in transfer matter, in the obtaining circumstances of the case.

18. No other point worth consideration has either been urged or pressed for by learned counsel for the applicant.

19. In the light of the aforesaid prismatic reasons, as there is no merit, so the instant OA is hereby dismissed, as such, with no order as to costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 15.11.2017

‘HC’

