

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.NO.060/00641/2018 & Orders pronounced on: 09.07.2018
 M.A.No.060/00901/2018 (Orders reserved on: 03.07.2018)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Suresh Kumar Kharab S/o

Sh. Balbir Singh, aged 58 years,

Chief General Manager,

National Buildings Construction Corporation Ltd.,

182-M.D.C. Setor-4, Panchkula,

Resident of House No. 2,

Sector-10, Panchkula. (Group-A).

Applicant

By: Mr. V.S. Bhardwaj, Advocate for Mr. R.P. Dangi, Advocate.

Versus

1. Union of India through its Secretary to Govt. of India, Ministry of Housing and Urban Affairs, Nirman Bhawan, New Delhi.
2. Chairman-cum-Managing Director, National Buildings Construction Corporation Ltd, NBCC Bhawan, Lodhi Road, New Delhi-110003.
3. Sh. Anoop Kumar Mittal (in person), Chairman-cum-Managing Director, National Buildings Construction Corporation Ltd, NBCC Bhawan, Lodhi Road, New Delhi-110003.

By: Mr. Girish Agnihotri, Sr. Advocate with Mr. Parvez Chugh,
 Counsel for Respondent No.2
 Mr. Ishaan Bhardwaj, Advocate, for Respondent No.3.

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Respondents

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of impugned order dated 1.5.2018 (Annexure A-1), vide which he has been transferred from Chandigarh to Agartala, to look after all the works at Tripura & Sikkim and order dated 25.5.2018 (Annexure A-2) vide which his representation against aforesaid transfer has been rejected by the competent authority.
2. The facts of the case, as projected by the applicant, are that he joined National Buildings Construction Corporation Ltd., New Delhi (NBCC), a Government of India Enterprise, as Assistant Engineer on 9.8.1985 and has been promoted from time to time and remained posted at different stations like New Delhi, Noida, Lucknow, Kaushambi, Patna, Chandigarh/J&K/Himachal etc. He had been transferred to Chandigarh from Patna in January, 2014 only. He was promoted as Chief General Manager on 1.10.2015 and was transferred to New Delhi vide order dated 5.11.2016, though same were kept in abeyance and have not been cancelled or withdrawn till date. He has done his job diligently efficiently, honestly and having unblemished career of more than 33 years. He has also attached letters appreciating his services. However, he has abruptly been transferred to Agartala (Tripura), vide impugned order, Annexure A-1, stated to be as a measure of punishment being a whistle blower and having filed a complaint against respondent no.3 to CBI and CVO and had also sought protection from CVO, by way of letter dated 4.11.2016. The representation filed by the applicant has also been rejected by the respondents vide order dated 25.5.2018 (Annexure A-2), hence the O.A.

3. On 28.5.2018, at the time of motion hearing, the Bench while issuing notice to the respondents, also granted stay on the operation of the impugned transfer order dated 1.5.2018 (Annexure A-1). Then respondent No.2 filed an M.A. No. 060/0901/2018 for vacation of stay dated 28.5.2018. This M.A. was listed for hearing on 13.6.2018, during vacations, and the Court directed issuance of notice to the other side, and case was to be listed on 2.7.2018. It being a Sunday, the case has come up for hearing today i.e. 3.7.2018. No reply to this M.A. has been filed by the applicant, whereas Respondent No.3 has filed a short reply. No formal reply has been filed by Respondent No.2, however, learned counsel for the said respondent made a statement at the bar that the stand of the respondents may be noticed on the basis of averments made in the M.A. for vacation of stay and he would address his arguments on the basis of the same. The learned counsel for the applicant raised no objection to it.

4. Respondent No.2 has pleaded that applicant was appointed as Assistant Engineer in respondent Company in 1985 and has been transferred to Strategic Business Group Office Chandigarh in January, 2014. Till date, he has served approximately 32 years with the respondent NBCC and out of these 32 years, he has remained posted in National Capital Region for 26 years and in Chandigarh since 2014. They have given a chart showing the posting of the applicant. They submit that posting of applicant to Agartala is not an abrupt transfer as he is currently at Seniority rank No.2 in the post of Chief General Manager (CGM), but does not qualify for the post of Executive Director till October, 2018. He was promoted as CGM in October, 2015 and would be eligible for further promotion only in October, 2018. There is no vacancy for the post of Executive Director which the applicant is

claiming as a matter of right and he obtained stay by pleading falsely that he is to retire within a period of one year from September, 2018, whereas he is going to superannuate on 31.5.2020 and transfer order had been passed before two years of completion of his service.

5. They submit that earlier, works for States of Tripura and Sikkim were supervised by the NBCC, Regional Business Group (RBG) Office at Guwahati but lately in May, 2018, separate RBG and Zonal Office has been established at Agartala, for the States of Tripura and Sikkim. Applicant was currently posted at Chandigarh, before posting of transfer order dated 1.5.2018, holding the position of CGM (E) and supervising the work for the States of Punjab, J&K, U.T. Chandigarh and Haryana. The total amount of allotted work to the NBCC for the States is for Rs.415 Crore approximately, whereas the amount of work allotted to NBCC for SBG for Tripura and Sikkim is for Rs.550 Cr approximately. The applicant is a Civil Engineer and the works of Agartala are related to Civil Engineering. The other official Mr. Alok Ranjan, who is only official ranking higher than the applicant in CGM (E), has already served and posted at North East for considerable period of time. So, a senior officer like applicant is required there and as such he has been transferred. They have given detail of project work which is in progress at Agartala. However, due to passing of stay order, the post is lying vacant and project worth Rs.550 Crore are stated have been stalled and thus public interest is suffering.

6. It is further averred that since volume of work was going to increase in the RBG Tripura and Sikkim, after separation of Guwahati office, so applicant as per his expertise and experience was transferred to Agartala to look after the works at Tripura and Sikkim vide order dated 1.5.2018. Four higher/equal/lower rank officials have also been

transferred. They deny that the applicant has been transferred at the behest of respondent no.3. It is a routine transfer keeping in exigency of service. Transfer guidelines in respondent Company are based on functional requirement. In commercial organization like NBCC, performance / skill of Engineers plays crucial role. The applicant was given independent charge at Agartala. Most of Engineers in company are posted most of the time, out of their domicile state, as per requirement and they can be posted all over India. The memorandum / guidelines of DOPT dated 2.7.2015 are not applicable to the respondent Company. In the light of the nature of Construction industry and projects, the tenure of posting in sensitive posts is extendable from 2 to 3 years, and applicant has already remained posted at Chandigarh for more than 4 years. They say that applicant appears to have developed some vested interest at Chandigarh.

7. Respondent no.3 has filed a short reply denying the allegations of malafide levelled against him by the applicant. He submits that applicant has never been a whistle blower, as per Whistle Blower Policy of Company, which requires certain procedures and norms to be followed and Chief Vigilance Officer declares one as a whistle blower after following such procedure. The authority to investigate any matter concerned respondent no.3 lies with administrative ministry/CVC, since it is a board level post. The applicant falls under category of sensitive posts and he has rightly been posted out. There is no substance in his allegations. NBCC being a PSU follows the rotational policy on sensitive posts, as notified by circular dated 21.4.2014.

8. We have heard learned counsel for the parties at length and examined the material on the file.

9. The interference in transfer matters at the hands by the courts of law has been well crystallized by now and it can be interferred only in certain circumstances like where the order is in violation of some statutory guidelines and is malafide or is ordered as a measure of punishment. If these elements are missing, then a Tribunal or court of law cannot interfere in transfer orders of the officials.

10. 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."

11. 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.

12. In the instant case, the Competent Authority has transferred the applicant from Chandigarh to Agartala, 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 interferred 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.

13. 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."

14. 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.

15. 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.

16. In the case of **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. 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."

18. However, Learned counsel for applicant vehemently argued that the applicant has been transferred to Agartala (Tripura) at the age of 58 years, without his consent, which is in violation of guidelines issued by the Government of India, Ministry of Personnel, PG & Pensions, Department of Personnel & Training, on 2nd July, 2015 (Annexure A-3). It is claimed to be in the nature of punishment to the applicant who is due for promotion in near future. He argues that the order is also in violation of the Clause 23 of Chapter 22 "NBCC Standing Orders", of Section V, which provides that where a workman is transferred from one job to another, which he is capable of doing and provided also that where the transfer involves from moving one state to another state, such transfer shall take place, either with the consent of workman or

where there is a specific provision to that effect, then after issuance of a notice etc. He claims that neither consent of applicant was taken nor any notice was given to him. He claims that all the officers /employees of Company are workmen as NBCC is an industry as per Section 2 (j) of the Industrial Disputes Act, 1947. He argues, that the Guidelines dated 21.4.2014 are being implemented honestly and pick and choose policy is being adopted by the administrative authorities. In fact, this letter has been kept hidden under carpet and only favourites are being posted on sensitive posts. He has also given names of some individuals, who managed their plum posting on sensitive posts. Despite issuance of direction in OM dated 2.7.2015, the respondent Company has not framed any transfer guidelines. It is argued that shifting of applicant, just few months before his intended promotion and two years before his retirement is illegal and arbitrary. The applicant has only been punished as he happens to be Whistle Blower. He has been shifted to an area, where there is only nominal work load. Respondent No.3 has got undeserved and undue one year extension in service and it is on his instance, that the applicant has been transferred. The order has caused him emotional disturbance, mental agony, harassment, hardship and loss of reputation and it is a punishment at the fag end of his career.

19. On the other hand, learned counsel for the respondents reiterated the pleadings taken by them in M.A./short reply stating that the applicant has been transferred in public interest and he is making false pleas to create a ground to pose a challenge to the impugned orders. The competent authority has considered his representation against transfer order, which has been dismissed as per rules and law and he cannot get any benefit. The applicant is placing reliance on wrong policy

instructions and enjoying benefit of stay. They pray for dismissal of the O.A.

20. We have considered the respective submissions made on behalf of the parties minutely and given our thoughtful consideration to the entire matter.

21. On a perusal of the pleadings on file and arguments addressed by both the sides, it is not in dispute that the applicant has remained posted for a substantial time in or around National Capital Territory Region and is posted for the last more than 4 years at Chandigarh. The respondents have created separate RBG Office at Agartala, for Tripura and Sikkim. Huge budget for different developmental works has been allotted for work that region and staff is immediately warranted there and as such applicant along with others has been posted there. We do not find any material to doubt the stand of the respondents that the applicant has been chosen for transfer to Agartala, considering his expertise and experience in Civil Engineering. Now it is for the competent authority to choose, amongst its officers, as to whom it wishes to post at Agartala and in its wisdom if the applicant has been chosen for transfer to Agartala, we cannot find any fault with this exercise of power by the competent authority. The impugned orders would indicate that the applicant has been transferred to Agartala in public interest and exigencies and not as a measure of punishment.

22. The plea that the applicant has been transferred out at the instance of respondent no.3, does not appear to be convincing at all. Mere submission of a complaint by the applicant against any officer, would not mean that such officer has become prejudiced against the applicant. The applicant has not been able to give any evidence which

may convince us to take a view that the applicant has been transferred out on account of malafide intention of respondent no.3.

23. The plea that the transfer of the applicant is in violation of Office Memorandum dated 2.7.2015, Annexure A-3, can also not be accepted and has to be rejected for more than one reason. First of all, it is a policy framed by the Ministry of Personnel, PG & Pensions, DOPT, New Delhi, framing transfer policy for Group A, B & C for CSS. This policy is not applicable to respondent Company, unless it is adopted by them. It is specifically denied that the policy is applicable to the Company. In any case, the policy under the heading "Rotation Transfer" provides that "Posting out on completion of the prescribed tenure, however, officers within two years of superannuation and officers likely to be promoted within one year are not rotated". The applicant was transferred on 1.5.2018 and is not even eligible at this stage for promotion as he would be completing eligibility in October, 2018 only. Secondly, he is going to retire on 31.5.2020. So, the plea that he has been shifted out two years prior to his retirement is also not true and has to be rejected on the face of it. Admittedly, the respondents are having only two individuals and the other officer has already served his tenure in North East reason and as such one cannot, at all, find any fault with choice of respondents to post the applicant at Agartala. In so far as Policy applicable for Workmen is concerned, apparently, applicant is a high ranking officer and in Managerial capacity, thus, the said policy would not apply to him at all.,

24. Additionally, the respondents have followed their own tenure policy on sensitive posts and applicant has already completed more than 4 years on a sensitive post at Chandigarh. Thus, he cannot be allowed to question his shifting to Agartala, in view of the relevant guidelines.

25. The claim of the applicant that the respondents should be directed to frame transfer guidelines, in pursuance of guidelines, Annexure A-3, of the DoPT is also not tenable, as that would border upon framing of a policy and this Court cannot direct the respondents to frame such a policy, when they themselves say that those guidelines do not apply to them.

26. Besides, the applicant had raised his grievances through representation which on direction of this Court has been examined and rejected by a speaking order and we see no grounds, at all, made out to interfere with the said order.

27. In the backdrop of the aforesaid discussion and legal proposition, this O.A. is turns out to be devoid of any merit and is dismissed.

28. The interim order dated 28.5.2018 is vacated and M.A. No. 060/00901/2018 also stands allowed and disposed of accordingly.

29. The parties are, however, left to bear their own costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(P. GOPINATH)
MEMBER (A)**

Place: Chandigarh
Dated: 09.07.2018

HC*