

(b) To direct the respondents to promote the petitioner for the two promotions to which the petitioner was eligible from March, 2002 (as per the commitment of the Selection Committee at the time of selection as selection package) onwards in accordance with the rules and regulations of the respondents and after the petitioner is promoted, all the dues payable in the promoted grade be also paid to the petitioner;

(c) To quash the impugned transfer order dated 31.03.2008 whereby the petitioner was transferred from the NOIDA office, STIP to Gandhi Nagar, Gurajat and further to direct the respondents not to implement the said transfer order in any manner whatsoever."

2 The brief facts of the case are as follows:-

The petitioner was invalidated out from military service on medical grounds while undergoing pre-commission training at IMA, Dehradun. He has not completed pre-commission training successfully and was not granted commission in the Army in rank of 'Lieutenant'. After the petitioner was invalidated out from military service, he joined the service with M/s Software Technology Parks of India (in short 'STPI') to the post of Member Technical Staff (MTS E-1) vide appointment letter dated 8.2.2001, which is annexure R-4 at page 332 of the paper book. The appointment of the petitioner with respondent No.2 was a contractual appointment for a period of three years. The petitioner had joined the service with respondent No.2 on 7.3.2001 on terms and

conditions mentioned in his appointment letter (Annexure R-4) at page 332 of the paper book. After the period of his contractual appointment including extensions was over, he was regularised in the service of respondent No.2 on 14.9.2005 with retrospective effect i.e. 7.3.2004, the date of completion of his 3 years contractual appointment.

3 The petitioner started making complaints of corruption and on matters relating to internal management against the Director and other functionaries of respondent No.2 since January, 2005. The complaint made by the petitioner against the functionaries of respondent No.2 are at page 66-132 of the paper book.

4 The petitioner was transferred to the statutory and policy related section of respondent No.2 at Noida on 6.1.2004. His said posting order dated 6.1.2004 is annexure R-11 at page 345 of the paper book. The problem with the petitioner started, when he was transferred from statutory and policy related section of respondent No.2 to the business development division on 4.1.2007. The business development division of respondent No.2 is also situated in the same building at Noida. At the time the petitioner was posted from statutory and policy related section to the business development division, he did not vacate the room occupied by him in the statutory and policy related section to enable the officer who was transferred in his place to occupy the said

room. The petitioner was, therefore, served with an office memorandum dated 15.2.2007, which is Annexure R-17 at page 352 of the paper book calling upon him to vacate the room occupied by him in the statutory and policy related section, so that it can be occupied by the incumbent, who was transferred in his place. The contents of the above OM dated 15.2.2007 are extracted herein below:-

“Sh. Manmohan Taneja, MTS E-I may please refer to this office's memorandum of even number dated 29.01.2007 a copy of which was sent to his house by speed post, but he had refused to accept both the letters. He has also not shifted to BD Group, where he has been posted and allotted a Room at Earth Station building. The officer who has been posted in his place is unable to sit and work due to non-vacating the Room he is occupying in Statutory Group. The action and behaviour in this matter attracts CCS(Conduct)Rules, 1964 and disciplinary action could be taken against him.

I am directed to advise Sh. Manmohan Taneja to take out all his belongings from the present Room and move immediately latest by 19.02.2007 to Room allotted to him in Earth Station Building, failing which appropriate action will be taken.

This issues with the approval of the Director.”

5 Since the petitioner did not vacate the room occupied by him in the statutory and policy related section despite service of above referred OM his room in the statutory and policy related section was

sealed by a Committee constituted by respondent No.2 for the purpose. The petitioner along with 16 other employees of respondent No.2 was transferred to various places vide impugned transfer order dated 31.3.2008, which is at page 134 of the paper book. All other employees of respondent No.2 except the petitioner, who have been transferred are stated to have joined their duties at the place they were transferred vide impugned transfer order.

6 The petitioner has filed this writ petition on 9.4.2008 and had obtained an ex parte stay order against his impugned transfer vide interim order passed by this Court on 11.4.2008. This stay order is continuing till date.

7 The respondent No.2 has filed its counter affidavit to the petition in which it has taken a plea that the petitioner has procured ex parte stay order against his impugned transfer by concealment of material fact. It is contended that the petitioner vide his letter dated 4.4.2008 had accepted the impugned transfer and had expressed his willingness to join at the place of his transfer, subject to payment of his salary since March, 2007. It is further alleged in the counter affidavit that the petitioner had not only expressed his willingness to join at the place of his transfer but had also handed over the charge to the concerned authorities at Noida on 9.4.2008. It is contended that the petitioner has

concealed from the Court that he has already handed over the charge on 09.04.2008 and had accepted the transfer order and succeeded in procuring an ex parte stay order by concealment of these material facts. On merits the respondent No.2 has taken a stand that the transfer of the petitioner from Noida to Gandhi Nagar in Gujarat is in terms of administrative policy of respondent No.2 institute coupled with the conditions of his appointment contained in his appointment letter according to which he is liable to be posted anywhere in India. Reference is made to clause 3 of the appointment letter of the petitioner, which is at page 332 of the paper book.

8 Mr. Aneja, learned counsel appearing on behalf of the petitioner has vehemently argued that the impugned transfer of the petitioner from Noida to Gandhi Nagar in Gujarat is motivated and is actuated in *mala fides* because the petitioner had made complaints of corruption against the functionaries of respondent No.2 since January, 2005. Mr. Aneja had contended that all those who have been making complaints against the functionaries of respondent No.2 were targeted for their transfer by respondent No.2. Mr. Aneja has attacked the impugned transfer of the petitioner mainly on four grounds and they are as follows:-

1) *There is no transfer policy in respondent No.2 institute;*

- 2) *The transfer of the petitioner is based on pick and choose policy;*
- 3) *The impugned transfer of the petitioner is the outburst of the legal notice dated 29.4.2007 sent by the petitioner coupled with his complaints against corruption in respondent No.2 institute and;*
- 4) *All those who had made complaints against the functionaries of respondent No.2 have been targeted in the impugned transfer order for their transfer at various places.*

9 I have carefully scanned all the contentions urged and advanced on behalf of the petitioner but I could not persuade myself to agree with any one of them. On going through the complaints made by the petitioner against the functionaries of respondent No.2 Institute, it appears that the petitioner has adopted black-mailing and arm-twisting tactics against the concerned authorities in order to settle his own score. It shall be significant to refer to the threat extended by the petitioner to his employer through legal notice dated 29.4.2007, which is at page 372 of the paper book. The relevant portion of the legal notice is extracted below:-

“ I have been told by Dr. Rai and also advised vide para 3 of this office letter dated 25th April, 2007 to apply for my transfer against threat apprehension to my life from the officer against whose corrupt activities, which had transpired into certain audit observations on office record

also, I had been attempting several complaints. Instead of transfer I subscribe following declaration:-

That if I happen to meet same fate as happened with late Dr. Trilok Nath, Senior Deputy Director, STPI, Noida then it may kindly be taken as my dying declaration that Dr. Sunil Kumar Aggarwal (presently working as Director STPI Noida), Sh. Ravi Nagpal (presently working as SAO with STPI HQ) and their associates are responsible and if any accident or indecent happens to my family member then it would be my FIR under Sections 120A, 302, 307 against same person and his associate."

10 The plain reading of the above contents would show the extent to which the petitioner could go. He did not spare his employer in extending threats by saying that the legal notice may be treated as dying declaration and in case something happens either to him or to any of his family members, then it should be treated as FIR under Sections 120A, 302, 307 IPC against the persons named in the notice. Such threats are not expected from a responsible officer like the petitioner.

11 The contention of the petitioner, that there is no transfer policy in respondent No.2 institute, seems to be without any merit. From the record, it appears that the petitioner himself had been transferred from one section to another section before he was transferred from Noida to Gandhi Nagar in Gujarat vide impugned transfer order. The transfer

order was passed not only against the petitioner but against several other employees of the organisation from time to time. Vide impugned transfer order, transfer has been effected on 16 more persons besides the petitioner. All those sixteen employees of respondent No. 2 have admittedly joined the place of their transfer.

12 I also do not find any force or merit in the contention of the petitioner that all those who had been making complaints of corruption against the functionaries of respondent no.2 have been targeted vide impugned transfer order. Mr. Aneja, learned counsel appearing on behalf of petitioner has taken me through a complaint lodged by five persons, namely, Mr. Rajesh Mittal, Mr. S.N. Maurya, Mr. Parveen Misra, Mr. Manjeet Nayak & Mr. Ajay P.Srivastava against Director General of respondent no.2 institute. This complaint is at page 467-472 of the paper book and the same is undated. The impugned transfer order is at page 134 of the paper book. On a perusal of the impugned transfer order, it may be seen that out of the five persons, who have made complaints only three of them are there in the transfer list and they all three have joined the place of their transfer without any protest or murmur. The petitioner has not given any reason much less a cogent reason as to why the thirteen persons who did not make any complaint have been transferred vide the impugned transfer order.

13 Over and above to what has been mentioned above, this Court also cannot ignore the concealment of material facts by the petitioner in procuring ex parte stay order against his impugned transfer on 11.4.2008. The petitioner had expressed his willingness to join at the place of his transfer vide letter dated 4.4.2008, which is at page 136 of the paper book. Not only that he has also handed over the charge at Noida on 9.4.2008 and this all happened before he succeeded in obtaining ex parte stay order against his impugned transfer on 11.4.2008. The petitioner is, therefore, otherwise not entitled to any discretionary relief in exercise of writ jurisdiction of this Court under Article 226 of the Constitution on account of concealment of material facts with regard to his handing over of charge on 09.04.2008 pursuant to the impugned transfer order dated 31.03.2008. Reliance is placed upon a judgment of the Supreme Court in ***Raj Kumar Soni and Anr. vs. State of U.P and Anr. (2007) 10 SCC 635.***

14 This Court is of the opinion that the transfer is made by the employer in exigencies of service in exercise of administrative discretion vested with it. The Court should not interfere in the matter of transfer unless the transfer is found to be motivated with *mala fides*. I do not find any *mala fide* in the present case in transferring the

petitioner vide impugned transfer order. The challenge of the petitioner to the impugned transfer is, therefore, found to be devoid of any merit.

15 As far as the prayer made by the petitioner regarding his promotion, it may be noted that the petitioner has already been considered for his promotion by the duly constituted DPC in 2006 but he was not found fit for promotion. The recommendations of the DPC held in 2006 are annexure R-9 at page 343 of the paper book. Hence no mandamus can be issued by this Court directing the respondents to grant him promotion and that too from March, 2002. At this stage, it may be noted that the petitioner had joined the service with respondent No.2 on 7.3.2001. He claims promotion w.e.f. March, 2002 i.e. just after about one year of his service. The appointment of the petitioner with respondent No.2 in 2001 was a contractual appointment for three years. A contractual appointee, in the opinion of this Court, is not entitled to any promotion till the time he is regularised in the service either before or after completion of his contractual tenure. Under the circumstances, the prayer of the petitioner for directing the respondents to grant him two promotions to which he was eligible w.e.f March, 2002 is found to be devoid of any merit and is, therefore, rejected. However, the respondent No.2 may consider the petitioner for his promotion as

and when he is found due for such promotion in terms of its promotion policy.

16 With regard to the prayer made by the petitioner for directions to the respondents to release his salary w.e.f. 1.3.2007 onwards, it may be noted that the respondent No.2 has tendered an amount of Rs.3,15,741/- to the petitioner in Court on 30.5.2008 towards his salary for the period from 29.4.2007 onwards. The salary for the period from 1.3.2007 to 29.4.2007 was not released because the petitioner was remained unauthorisedly absent from duty during the said period. At this stage, Mr. Aneja, learned counsel appearing on behalf of the petitioner says that the petitioner has received two amounts (one of Rs.3,15,741/- and the second of Rs.17,000/-) from respondent No.2 recently on 6.8.2008 without prejudice to his rights and contentions. Mr. J.P.Sharma, learned counsel appearing on behalf of the respondent No.2 says that the salary for the period from 1.3.2007 to 29.04.2007 shall be released to the petitioner subject to the final outcome of the inquiry pending against him. This completely addresses the grievance of the petitioner with regard to release of his salary mentioned in prayer (1) of the prayer clause of the petition.

17 In view of the above and having regard to the facts and circumstances of the case, this writ petition is found to be devoid of any

merit and therefore fails and is hereby dismissed with costs quantified at Rs.25,000/-. The stay order against the impugned transfer granted by this Court on 11th April, 2008 is hereby vacated.

August 13, 2008
mw

(S.N. AGGARWAL)
JUDGE