

* **HIGH COURT OF DELHI: NEW DELHI**

+ **Writ Petition (Civil) No. 10200/2009**

% Judgment reserved on: July 21, 2009
Judgment delivered on: July 23, 2009

Ram Kumar R. Petitioner

Through: Mr. D.S. Chaudhary with
Dr. L.S. Chaudhary, Advs.

Versus

Union of India & Ors. Respondents

Through: Mr. H.K. Gangwani, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

A.K. PATHAK, J.

1. The Petitioner joined Central Bureau of Investigation as Sub Inspector on 1st January, 2001 and was posted at Mumbai. Subsequently he was transferred to Delhi in the month of

January, 2006. Vide order dated 6th July, 2007 passed by the Respondent, he was again transferred to Agartala.

2. Aggrieved by his transfer from New Delhi to Agartala Petitioner filed an Original Application being O.A. No. 1194/2007 before the Central Administrative Tribunal, Principal Bench, New Delhi (for short hereinafter referred to as “the Tribunal”) challenging his transfer order on the ground that the same was clothed with malafide intention. Petitioner alleged that in a pending writ petition in this Court, he had written a letter to the Judges stating therein that incorrect data had been supplied by the CBI in the said case. He had also sought permission of the Respondent to bring the said matter to the notice of the media. On account of this, superior officers got antagonised against him and consequent thereof, the impugned transfer order was passed in order to victimise him.

3. Members of Bench of the Tribunal were divided on the issue. Member (Administrative) held that allegations of bias and malafide raised by the Petitioner had remained unsubstantiated. He further held that the Petitioner was liable to be posted anywhere in India so the transfer order was issued in public

interest and on administrative ground and could not have been interfered with unless strong circumstance shown to indicate that it was punitive. There was nothing to suggest that order was punitive. Reliance was placed on a judgement of the Supreme Court in the case of **Union of India versus S.L. Abbas** reported in **1993 (2) SLR 585 (SC)**. Member (Judicial) took a divergent view. According to him transfer order was not passed in the exigency of service. Petitioner was a whistle blower as he had sought permission from the Director of CBI to contact media to highlight the misleading facts and datas forwarded to the High Court by the CBI in a case of kidnapping of females. As per Member (Judicial) transfer was punitive in nature and O.A. was liable to be allowed.

4. In view of the divergent views taken by both the Members of the Bench, the matter was referred to Vice Chairman (Judicial). Vide order dated 2nd June, 2009 Vice Chairman (Judicial) concurred with the view of the Member (A) and held that there was nothing to indicate a link between the officer against whom the complaint had been filed and the authority who issued the transfer order. In the matter of transfer and posting,

administrative authority was the best judge. There was nothing to suggest that transfer order was punitive. Consequently O.A. was dismissed in view of the majority decisions.

5. Petitioner not being satisfied with the order dated 2nd June, 2009 passed in O.A. No. 1194/2007 has come before this Court by way of present writ petition praying therein that order dated 2nd June, 2009 passed by the Tribunal be set aside and the transfer order dated 6th July, 2007 be quashed and further that the Petitioner be treated on duty as from 31st July, 2007 till the date of his joining duty and arrears of salary from 1st July, 2007 be ordered to be released along with interest @ 12% per annum. He also claimed damages from the Respondent on the ground that his fundamental right (Right to Life) was breached.

6. We have heard the learned counsel for the Petitioner and we are not inclined to interfere with the impugned order which in our view is not erroneous. We are of the view that Tribunal has rightly held that the order of transfer had been passed in public interest and in the exigency of service. Officers working in CBI are liable to be posted in any part of the country. As per the Petitioner, the superior officers of the CBI were annoyed with him

as he had written a letter dated 31st May, 2007 to the Judges of High Court hearing writ petition (crl.) no. 869/1998. Order dated 25th September, 2006 passed by this Court in the said writ petition has been annexed (at page 81) and we find that no reference to the letter dated 31st May, 2007 has been made therein. The order of the transfer dated 6th July, 2007 has been passed by the Administrative Officer of the Respondent. Admittedly no reference of Administrative Officer has been made in the alleged letter dated 31st May, 2007. In our view Tribunal has rightly observed that there was nothing to indicate a link between the officer against whom the complaint had been made and the authority who had issued the transfer order. It is well settled that the Courts are not required to interfere with the order of transfer in exercise of its discretionary power unless it finds that the order was malafide or was against the service rules.

7. In **Mohd. Masood Ahmad versus State of U.P. and Ors.** reported in **(2007) 8 SCC 150** Hon'ble Supreme Court has held as under :-

“The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in *Rajendra Rao v . Union of India* AIR 1993 SC 1236, *National Hydroelectric Power*

Corporation Ltd. V. Shri Bhagwan AIR 2001 SC 3309, State Bank of India v. Anjan Sanyal AIR 2001 SC 1748. Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in Vijay Pal Singh v. State of U.P. (1997) 3 ESC 1668 :1998) All LJ 70 and Onkarnath Tiwari v. The Chief Engineer, Minor Irrigation Department, U.P. Lucknow (1997) 3 ESC 1866 : 1998 All LJ 245, has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders.”

8. In the present case the Petitioner has failed to show that the order of transfer was arbitrary or vitiated by malafide or infraction or any professed norm or principle governing the transfer.

9. We accordingly, do not find any merit in this writ petition. The same is dismissed.

A.K. PATHAK, J

MADAN B. LOKUR, J

July 23, 2009
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