

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

+ **W.P (C) No. 4442 of 2008**

K. N. Bhardwaj Petitioner

Through: Mr. Jai Bansal, Adv.

Versus

Life Insurance Corporation of India & Ors. Respondents

Through: Mr. Ravinder Sethi, Sr. Adv.
with Mr. Kaushal Mehta and
Mr. Puneet Sharma, Adv.

Judgment reserved on: 09.09.2010

Judgment pronounced on: 03.12.2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking direction to quash the office order dated 8.5.2008 by virtue of which the petitioner was transferred to the city of Jodhpur, Rajasthan. Further directions are sought against the respondents to consider and decide the representation of the petitioner for revoking transfer order and to consider the case of petitioner under voluntary retirement scheme with pension and other consequential benefits.

2. The facts of the case leading upto the filing of the present writ

petition are that the petitioner was appointed by the LIC, respondent no.1 as an 'Assistant' in the year 1979 and in 2002 he was promoted to the post of "Administrative Officer'. He was working with respondent No. 3 as a 'Faculty Member' for imparting training to the various 'marketing officials' of respondent Nos. 1 & 2. The petitioner is in the grade of 'Administrative Officer' in the pay scale of Rs. 22030/-.

3. According to the petitioner in the last few years he developed ill health. In 1997 he had a heart attack and in the year 2000 he suffered from 'compression fracture in the 'spinal chord' due to which he could not sit for long duration. Then in 2004 he was operated for umbilical hernia. He is also suffering from 'chronic cervical problems'. Thus, he is a victim of extreme mental and physical hardship at the hand of the respondents.

4. It is alleged that in 2004 after his hernia operation he requested the respondents to transfer him to a place where he could work easily as he had been advised by the experts not to take tour and travel but his request was not allowed. Therefore he approached the Regional Manager with his problem who ordered the medical examination of the petitioner by a divisional medical referee. The divisional medical referee confirmed that the petitioner had been suffering from the above said problems and recommended him for soft posting.

5. The petitioner, was posted in the Sales Training Centre as a faculty member. Later on he was transferred to Surya Nagar Ghaziabad.

6. On 30.06.2007, the petitioner was issued a chargesheet

charging him for misbehaving with one of his colleagues and for violating the provisions of Regulations 21 & 24 read with 39 (1) of LIC of India (Staff) Regulations, 1960.

7. On 17.05.2008 the petitioner's son received a letter dated 08.05.2008 transferring the petitioner from Delhi to Jodhpur. According to the petitioner, the said transfer order is against the recommendation of the medical referee of the respondents and as the petitioner is also facing an inquiry his absence would adversely affect his case.

8. The petitioner has also submitted that he had later on made a representation dated 21.05.2008 for voluntary retirement on which no action has been taken by the respondents.

9. The respondents in their counter affidavit have stated that the job of the petitioner is a transferable one and as per Regulation 80 of the Life Insurance of India (Staff) Regulations 1960 the competent authority may transfer an employee from one department to the other in the same office or from one office to the another office of the corporation.

10. The respondents have further stated that the petitioner cannot avail voluntary retirement because he has not completed 55 years of age and also because there is a disciplinary enquiry pending against the petitioner. As far as medical condition of the petitioner is concerned, it was stated that in 2004 the petitioner sought permission from the respondents to pursue part time studies in evening Law College in Delhi University and attend classes which was granted to him. It clearly shows that the petitioner is in good health and he is trying to rely upon the said

medical condition only to avoid his transfer and that is why he consciously concealed this material fact in the petition.

11. Along with the present writ petition the petitioner filed two interim applications being CM No.8579/2008 for stay of transfer and thereafter the petitioner filed another CM No.8680/2008 to prepone the hearing of CM No.8579/2008, to stay the transfer, to initiate action against respondent No.3 i.e. Principal, Metro Sales Training Centre, LIC of India, for not accepting voluntary retirement notice and leave application and disallowing petitioner from joining duties with effect from 7.6.2008.

12. The CM. No. 8579/2008 was dismissed on 11.06.2008. The petitioner thereafter filed the appeal against the said order before the Division bench as LPA No.317/2008. The said appeal was dismissed as withdrawn before DB-1 on 1.7.2008 with liberty to approach the Single Bench.

13. Subsequently, the petitioner filed various CMs in the present matter being CM No.9001/2008 for release of salary and CM No.9973/2008 to consider the earlier CMs pending. Notice was issued vide order dated 23.7.2008. The petitioner again filed CM No.10418/2008 in disposed matter i.e. LPA No.317/2008 with prayer to post the petitioner to a commutable distance in Delhi and also direction to the respondents to decide the application for voluntary retirement and release of salary for June 2008. The said application was dismissed by the Division Bench vide order dated 29.7.2008.

14. Even thereafter the petitioner filed various applications being CM No.14915/2008 and CM No.1216/2009 for stay of operation of transfer order. However, no interim order was granted. Simultaneously, the petitioner also filed the Special Leave Petition against the order passed by the Division Bench dated 1.7.2008 and 29.7.2008 in LPA No.317/2008 being SLP No.22105/2008. The Special Leave Petition was dismissed by order dated 20.4.2009. After the dismissal of the Special Leave Petition, the petitioner again started filing fresh application for the similar relief being CM Nos.6087/2009, 6457/2009, 8127/2009, 12432/2009 and 11957/2009 in the present matter with the prayers in addition to the prayer for quashing the transfer order and release of salary. However, no relief was granted to the petitioner.

15. Instead of hearing of multiple miscellaneous applications, with the consent of the parties, the main writ petition was heard by this Court. The learned counsel for both the parties have made their submissions.

16. The main thrust of the argument of the petitioner is that the impugned order dated 6.5.2008 to transfer him to Jodhpur, Rajasthan, is illegal and contrary to the circular No.Per:Admn/D/64 dated 03.11.99 reference is invited to the provisions of the Circular No.ZD/939/ASP/99 dated 17.09.99 whereby, inter alia, powers relating to the postings of officers in the cadre of Administrative Officers (AO)/Branch Managers (BM) which were vested in the Zonal Manager in Charge (ZM) have been decentralized to Divisional Manager in charge (S/DM-I/C). According to the petitioner, the above mentioned circular makes it clear that the

concerned person, who is Zonal Manager was having no powers to transfer the petitioner.

17. Second submission of the petitioner is that, there are several medical problems to the petitioner, thus there was no exigencies/valid reasons assigned by the respondents for his transfer. The representation made by the petitioner on 20.5.2008 in this regard was not disposed of as per rules.

18. In the rejoinder filed by the petitioner, it was pleaded that the transfer order is in violation of guidelines of transfer as when the inquiry is pending against the employee, he should not have been transferred during the pendency of the inquiry. The said action of the respondents is to be taken as an irregularity of the enquiry proceedings and no transfer can be made during enquiry proceedings. Further challenge has been made that the said transfer order ought to have been made as per transfer guidelines which provide that whosoever has worked for than one year prior to the year 2000 cannot be transferred. “Zones to transfer in the Cadre of AOs, who have worked for more than 7 years (date of joining earlier than 01.01.2000) at a particular station to some other department or office other than the one in which he is currently within the same city or otherwise.” The petitioner has referred the following judgment in support of his submissions:

1. ***Novartis India Ltd. vs. State of W.B.***; (2009) 3 SCC 124

wherein it has been observed:

“34. There cannot be any doubt whatsoever that ordinarily an employee who has been transferred should, subject to

just exceptions, joint at his transferred place. Ordinarily in an industrial undertaking indiscipline should not be encouraged. This Court in *SBI v. Anjan Sanyal* observed that the conduct of an employee in a transfer case is material as he cannot get a premium for his disobedience. There are, however, certain exceptional situations in this case. Admittedly the respondents were challenging the right of the employer to order transfer of the employee particularly when they hold some posts in the association. The dispute was sub judice. They were in their late fifties. They had served the company for a period of more than 25 years. It is true that they did not join at their transferred posts within a reasonable time. It may also in an ordinary situation be held that seven months is too long a period to join at the transferred place. There cannot furthermore be any doubt that the transfer is an incidence of service. Unless an order of transfer is passed contrary to the provisions of the statutory rule or settlement, the same should not be interfered with.”

19. Next submission of the petitioner is that since this transfer order is illegal, therefore, the petitioner is entitled for salary since June 2008 as Regulations 74 and 72 of LIC Staff Regulations, 1960 are applicable only after being relieved which is denied to the petitioner. Since the entry of the petitioner was denied by the respondents at workplace in June 2008, therefore, the petitioner is entitled for the salary in view of circular dated 15.5.1979. He has referred to the case of ***Somesh Tiwari vs. Union of India (UOI) and Ors.***; AIR 2009 SC 1399 in support of his submissions. It was observed:

“We are conscious and mindful that even in absence of statutory provision, normal rule is ‘no work no pay’. In appropriate cases, however, a Court of Law may, must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the Authority to grant him all benefits considering ‘as if he had worked’. It, therefore, cannot be contended as an absolute proposition of law that no

direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected.”
The impugned judgment of the High Court is modified to the aforesaid extent. The appeal is allowed to the aforementioned extent. Respondents shall bear the cost of the appellant counsel’s fee assessed at Rs.50,000/-.”

20. The last submission of the petitioner is that the petitioner be granted voluntary retirement pension. During the course of the hearing the respondents have informed the Court that the necessary orders for voluntary retirement have been passed on 21.09.2010, the petitioner has not disputed the aid fact.

21. The respondents’ main contentions are as follows:

- A. The employment of the petitioner was a transferable job as per Regulation 80 under the statutory Life Insurance of India (Staff) Regulations, 1960 and the competent authority may transfer an employee from one department to the other in the same office or office of the corporation to another office.
- B. In view thereof, the petitioner was bound by the statutory regulation and ought to have joined the transferee office within six days of his transfer. According to the respondents, it has more than 2000 offices all over India and at least more than one lac employees working with it. The transfer in LIC is a routine matter and every year the transfer lists are issued accordingly.
- C. By Zonal Office Order P & IR/Desk-1/PO-08 dated 6.5.2008 for promotion/de rotation/ transfer in the cadre of administrative officer

was issued and pursuant thereto on 8.5.2008, the office order approving the postings was duly issued by the Senior Divisional Manager, Jodhpur Division. The petitioner by the order was directed to take the charge of new assignment with immediate effect. The petitioner through the letter dated 8.5.2008 was personally informed in writing of his transfer to Jodhpur Division vide zonal office order dated 6.5.2008.

- D. Despite of receiving the letter the petitioner absented himself from the office and came to the office only on 19.5.2008 and left the office to visit the zonal office and on 21.5.2008 the petitioner again left the office without meeting the person in charge of the office and without his permission. The petitioner also did not join the office on 22.5.2008 to comply with the transfer orders and the respondents were constrained to relieve the petitioner from his assignment at the close of office hours and he was advised to join new assignment immediately. An information in this regard was given.
- E. According to the respondents, the petitioner was hale and hearty as he himself applied for permission to pursue part time studies in the year 2004 but he was just avoiding to join the transferee office on medical ground. The rules in this regard state that for all intents and purposes when the employee is transferred, the employer of the transferor office loses jurisdiction over the employee and whatever the employee intends to do, he has to approach the transferee office

alone. Admittedly the petitioner did not submit any leave application to the transferee office as the entire record and documents of the petitioner were sent to the transferee office. It is contended that the petitioner has violated the Rule 74 of the Staff Regulations of the Corporation by not joining his post within the joining time allowed to the petitioner. Therefore, the petitioner is not entitled for any pay or leave salary after the end of the joining time and the same has to be treated as breach of this Regulation for the purpose of Regulation 39 which prescribes penalty including compulsory retirement, removal from service or dismissal.

F. The said absence would also attract Regulation 30(2) of the Staff Regulation of the Corporation which clearly and categorically states it has to be ground for initiating disciplinary measures. As the petitioner had not completed the age of 55 years on the date of application, therefore, the petitioner was not entitled to take the benefit of voluntary retirement, hence no order was passed in this regard.

22. In view of the submissions made by the parties, let me discuss relevant section and regulations relating to transfer of petitioner which are as follows:

“**Section 23** of Life Insurance Corporation of India Act, 1956 provides that an employee is liable to be transferred anywhere in India.

Regulation 80 of LIC (Staff) Regulations, 1960 provides that an employee may be transferred from one department to other or from one office of the corporation to other.

Regulation 20 of LIC (Staff) Regulations, 1960 provides that an employee shall serve at such place as is directed from time

to time.”

23. The relevant clauses of the appointment letter issued by the respondents to their employees including the petitioner are as follows:

“**Clause 10** of appointment letter issued under LIC recruitment (Class III and Class IV Staff) Instructions, 1979 which provides that an employee is liable to be transferred anywhere in India.

Clause 13 of appointment letter issued under LIC recruitment (Class III and Class IV Staff) Instructions, 1993, provides that an employee is liable to be transferred anywhere in India.

24. The LIC recruitment (Class III and Class IV Staff) Instructions, 1979 came up for consideration before the Apex Court in *LIC of India vs. A.R. Amdekar & Anr.*; 1994(2) SCC 718, wherein it held that the said recruitment instructions are statutory in nature and cannot be ignored.

25. In view of the relevant Section, regulations of the respondents coupled with the Clause 10 and 18 of the appointment letter, it is evident that the transfer order dated 8.5.2008 was a routine transfer/office order in respect of 21 Administrative Officers, by virtue of which nine other Administrative Officers including petitioner were transferred to the city of Jodhpur, Rajasthan. It is relevant to note that though the petitioner avers that he is suffering from life threatening and debilitating medical complications as is evident from a few letters written by petitioner and in applications for interim stay, yet he had in December, 2003 applied for appointment to the post of Secretary in Inland Waterways Authority of India. Similarly, despite his alleged critical medical condition, the petitioner successfully completed his LLB course from University of

Delhi. Further, after passing of the order of his transfer, on 5.7.2008 he applied for voluntary retirement on the ground that he wanted to get himself enrolled with the Bar Council of India and pursue a career in law.

26. In any case it is settled law that transfer being an incidence of service and an employee so transferred has to join his place of transfer and dispute if any can be raised and agitated even after joining the transferee office. Reference in this regard is made to the following judgments:

i.) In ***Management, Addisons Paints & Chemicals Ltd. v. Workmen, Addisons Paints & Chemicals Ltd.***; 2001 (88) FLR 536, it was observed:

“5. In our view, there is no infirmity either in the Award or in the judgment of the Single Judge or in the judgment of the Division Bench. The employee Nagarajan had refused to accept the transfer order and refused to report for duty after his transfer. We see no substance in the contention that he was entitled not to join. In our view, the dispute could have been raised and agitated even after joining. There was no justification for not reporting for duty. In spite of Nagarajan not having worked he has been awarded 25% of back-wages. This was within the discretion of the court and we see no reason to interfere. At the request of the appellants in C.A. No.392 of 1997, they are granted time of eight weeks from today to pay 25% of the back-wages.”

ii) In ***Gujarat Electricity Board v. Atmaram Sungomal Poshani***; (1989) 2 SCC 602, it was observed:

“4. Transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to

other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other.”

iii) In ***Y.P. Sarabhai v. Union Bank of India***; 2006(5)

SCC 377, it was observed:

“8. We are of the opinion that the appellant is not entitled to any relief in these proceedings. The appellant remained absent from his duty for a very long time i.e. from 3-6-1997 to 23-11-1997 without any reasonable cause and justification in spite of the respondent’s requests to join the duty and in spite of the respondent’s granting him further time to join the duty. The conduct of the appellant in remaining absent for such a long time shows that he was bent upon to evade the transfer order in any possible manner. The grounds of ailment were taken as a ruse to avoid transfer which is amply proved by the conduct of the appellant, when he had unauthorisedly remained absent on the ground that he was unable to attend the duty due to illness for such a long time but he was quite capable of attending the court proceedings on the various days and was also capable of coming to Delhi to file a petition before this Court. The concurrent finding of the enquiry is that he has been shifting stands because initially on the very day of the service of the transfer order he gave a representation mentioning illness of his wife and the studies of his son for the purpose of deferment of the transfer to Chennai from Mumbai. But in the other representation to other officer of the Bank, which he has produced to the

Bank, he has stated the reason of his illness as an excuse. Thus, the conduct of the appellant in trotting out all these defences show that he was trying to avoid transfer to Chennai through all possible means. The reason for deferment of transfer given by him before the High Court and this Court in the writ petition and the appeal filed by him against the transfer order was a simple ruse to avoid the transfer. It has been affirmed by the Court in that proceeding that the transfer was done as per exigencies of the Bank. The transfer of the appellant was effected to a large city, namely, Chennai, which as per his own admission has very good medical facilities which are comparable to those in Mumbai. The service of specialist officers and for that matter all officers in the Bank are transferable on all-India basis and they are liable to be posted anywhere in India subject to the personnel and manpower requirement and exigencies of the Bank.”

iv) In ***Tushar D. Bhatt vs. State of Gujarat & Another***; JT 2009 (2) SC 474, it was observed:

“15. The legal position has been crystallized in number of judgments that transfer is an incidence of service and transfers are made according to administrative exigencies. In the instant case, in the entire tenure of more than 18 years, the appellant was only transferred twice. The appellant’s transfer order cannot be termed as mala fide. The appellant was not justified in defying the transfer order and to level allegations against his superiors and remaining unauthorisedly absent from official duties from 11.10.1999 to 27.4.2000 i.e. more than six months. In the interest of discipline of any institution or organization such an approach and attitude of the employees cannot be countenanced.”

v) In ***Govt. of A.P. v. G. Venkata Ratnam***; 2008 (9) SCC 345, it was observed:

“6. The High Court judgment is wholly untenable and, we regret to say, it is rather unusual and strange. The judgment was apparently delivered in anger. The anger might have been caused by the Government Pleader or the Director (the second respondent before the High Court) but as a result the Court not only lost the judicial poise and restraint but also arrived at completely unfounded conclusions. The judgment quotes a passage from William Dalrymple’s book, *The Last*

Mughal about how the Red Fort at Delhi was vandalised by the British and how the damages of the colonial times are perpetuated by the Archaeological Survey of India. One fails to see how the Red Fort, the maintenance of which the Government of Andhra Pradesh is not even remotely connected with, comes into all this.

8. The Court seems to have been completely taken in by the ipse dixit of the respondent and his tall claims about his own ability and virtually allowed him to choose his own place of posting. The judgment at its beginning recounts the respondent's qualifications that include two Master's degrees, one in Sanskrit and the other in Archaeology, a BEd degree in Sanskrit and the degree of Sahitya Shiromani from Sri Venkateswara University. The judgment then proceeds to observe as follows:

“The petitioner as it appears from the pleadings is a highly qualified man. The confidence with which he made assertion in the affidavit dated 13-3-2006 to the effect that ‘*if any other employee has my skill, knowledge, expertise and experience I forego my job*’ makes this Court examine this matter in depth and not treat the impugned order as a mere order of transfer in the course of administration.”
(emphasis supplied)

It further observes as follows:

“The petitioner asserted in his affidavit dated 13-3-2006 that he has expertise in deciphering early rock and stone and copper plate inscriptions in Brahmi, early Telugu and Kannada, Nagari, Tamil and Tamil Grandha. *He further asserted that other than the petitioner that (sic there is) no other employee in the entire Archaeology Department with the expertise, knowledge or experience in these matters and that his services are required more at the head office.*” (emphasis supplied)

The Court then purports to remind itself that transfer is an incidence of service and is not to be lightly interfered with. It proceeds to elaborate that this judicial policy is based on two reasons, one the continuance of an employee of the State Government at one particular place for a long time is likely to create undesirable consequences like creation of vested interests and misuse of the power that comes with the employment under the State and the other being the exigencies of the administration requiring the service of a particular person at a particular place. It then proceeds to

explain away that the first reason, that is, the undesirability of stay at any one place for a long time should not apply to the case of the respondent because in Archaeology, in any event one worked in ancient times and dealt with “the dry bones of history”.

9. The Court then went on to hold that the respondent’s transfer was also not made in administrative exigencies. For arriving at this finding the Court refers to the catalogues of manuscripts, in different languages that are kept in Hyderabad and in Kakinada and accepts the petitioner’s assertion that with his knowledge and ability he is most suited to work at the head office in Hyderabad than in any other place in the State. The Court refers to the respondent’s assertion in his affidavit that in the entire Archaeology Department there is no other employee equalling him in expertise, knowledge and experience in these matters and that his services are required more at the head office and points out that in the counter-affidavit filed by the Director there was no express contradiction of the assertion. It is observed as follows:

“She is conspicuously silent about the nature of the work that is required to be carried at the State Museum at Hyderabad *and also whether there is any other person who is qualified to carry on the said work.*”(emphasis supplied)

10. Lastly, the Court finds that in the original proposal for transfer made by the Director the respondent’s place of posting was shown as Kurnool. The Court observes that there was no explanation why the respondent was finally transferred to Kakinada in place of Kurnool. On these materials, the Court came to the conclusion that the transfer of the respondent was clearly not bona fide, to say the least.

11. We are surprised to see the High Court castigating the respondent’s transfer order as lacking in bona fides on such flimsy and fanciful pleas advanced by the respondent. We are more than satisfied that the High Court’s finding regarding lack of bona fides in the matter on the part of the State Government is completely unfounded and untenable. The legal position regarding interference by courts in the matter of transfer is too well established to be repeated here. The respondent’s transfer neither suffers from violation of any statutory rules nor can it be described as mala fide by any stretch of imagination. We are, accordingly, unable to sustain the High Court’s order. In the result this appeal is allowed, the order coming under challenge is set aside and the writ petition filed by the respondent in the High Court is

dismissed.

12. At the conclusion of the hearing of the case, counsel for the respondent stated that the Government had reconsidered the matter. It was willing to bring back the respondent to Hyderabad and an order to that effect was likely to be issued. We have got nothing to say in the matter.”

27. The petitioner in the present case has impugned his transfer order for the first time after more than a year by relying on certain guidelines though the plea of the same was not taken in the writ petition. The petitioner referred the circulars and guidelines at a later stage.

28. It is well settled by a catena of judgments that administrative guidelines for regulating transfer may at best afford an opportunity to the employee to approach his higher authorities for redress but cannot have the effect of denying the competent authority the right to transfer an employee, so much so an order of transfer made in transgression of such guidelines cannot be interfered with as they do not confer a legally enforceable right on an employee. The following judgments have been referred by the respondents:

a) In ***State of U.P. and Others vs. Gobardhan Lal;***

2004 (11) SCC 402, it was observed:

“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 conjectors or

surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

9. The very questions involved, as found noticed by the High Court in these cases, being disputed questions of facts, there was hardly any scope for the High Court to generalise the situations based on its own appreciation and understanding of the prevailing circumstances as disclosed from some write-ups in journals or newspaper reports. Conditions of service or rights, which are personal to the parties concerned, are to be governed by rules as also the inbuilt powers of supervision and control in the hierarchy of the administration of State or any authority as well as the basic concepts and well-recognised powers and jurisdiction inherent in the various authorities in the hierarchy. All that cannot be obliterated by sweeping observations and directions unmindful of the anarchy which it may create in ensuring an effective supervision and control and running of administration merely on certain assumed notions of orderliness expected from the authorities affecting transfers. Even as the position stands, avenues are open for being availed of by anyone aggrieved, with the authorities concerned, the courts and tribunals, as the case may be, to seek relief even in relation to an order of transfer or appointment or promotion or any order passed in disciplinary proceedings on certain well-settled and recognized grounds or “reasons, when properly approached and sought to be vindicated in the manner known to and in accordance with law. No such generalized directions as have been given by the High court could ever be given leaving room for an inevitable impression that the courts are attempting to take over the reigns of executive administration. Attempting to undertake an exercise of the nature could even be assailed as an onslaught and encroachment on the respective fields or areas of jurisdiction earmarked for the various limbs of the State. Giving room for such an impression should be avoided with utmost care and seriously and zealously courts endeavour to safeguard the rights of parties.”

b) In ***Union of India and Ors. vs. S.L. Abbas***; 1993

(4) SCC 357, it was observed:

“An order of transfer is an incident of Government service. Fundamental Rule 11 says that “the whole time of a Government servant is at the disposal of the Government

which pays him and he may be employed in any manner required by proper authority”. Fundamental Rule 15 says that “the President may transfer a Government servant from one post to another”. That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that the order of his transfer is vitiated by mala fides on the part of the authority making the order, -- though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed “mischief” to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a setback some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force. (*emphasis added*)

7. 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. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right. (*emphasis added*)

8. The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service matters. This is evidence from a perusal of Article 323-A of the Constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Article 323-A. (We find it all the more surprising that the learned Single Member who passed the impugned order is a former Judge of the High Court and is thus aware of the norms and constraints of the writ jurisdiction.) The Administrative Tribunal is not an appellate authority sitting in judgment over the orders of transfer. It cannot substitute its own

judgment for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if it were sitting in appeal over the order of transfer made by the Senior Administrative Officer (competent authority).”

c) In **Anil Dhall vs. Union of India & Ors.**; 81

(1999) DLT 501, it was observed:

“7. Before dealing with the aforesaid contention it may be stated that law relating to transfers is now well settled by catena of judgments pronounced by Supreme Court. Transfer is an administrative function. An employer is the best judge about the requirement and posting of its employees. Courts are not to interfere with the discretion of the employer in such matters. Scope of judicial review is very limited and the transfer can be challenged only under two circumstances namely, (a) when their transfer is an act of mala fides on the part of the respondents; (b) when it is made in violation of statutory provision.

13. In view of this position arguments of the petitioner that he has right to stay at Delhi for 3-5 years, based on these guidelines, has no merit. In the case of Union of India Vs. S.L. Abbas (supra) it was held that such guidelines/instructions do not confer any right on the employee to challenge the transfer order on the ground of violation thereof, merely because the guidelines are violated is not sufficient to quash the order as being mala fide. Order of transfer on an administrative grounds can still be passed even if it is in violation of such guidelines which have no statutory force and administrative exigencies have to give way to these guide-lines. In the case of Bank of India Vs. Jagjit Singh Mehta; reported in (1992) 1 SCC 306=1(1992) BC 191 (SC)=AIR 1992 SC 519 dealing with the case of posting of husband and wife at one station as per government guidelines, it was held by Supreme Court, that such guidelines would not confer any right on the employee to remain at same place. The only requirement is that departmental authority should consider this aspect alongwith exigencies of administration. In the present case it is mentioned in guidelines itself that they would not confer any

right on the officers to represent against posting quoting these orders. Therefore petitioner cannot, as of right, state that he should be allowed to remain in Delhi for a period of 3-5 years as per these guidelines. As no such right can be claimed by the petitioner, it is not open to the petitioner to allege the violation of these guidelines and make the same as basis to challenge transfer.” (*emphasis added*)

d) In ***Bank of India Vs. Jagjit Singh Mehta***; 1992

(1) SCC 306 it was observed:

“5. There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other’s posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all-India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of all-India service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. In addition, in the present case, the respondent voluntarily gave an undertaking that he was prepared to be posted at any place in India and on that basis got promotion from the clerical cadre to the officers’ grade and thereafter he seeks to be relieved of that necessary incident of all-India service on the ground that his wife has to remain at Chandigarh. No doubt the guidelines require the two

spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees.”

e) In the case of **A.V.V. Satyanarayana Vs. Syndicate Bank, Hyderabad & Ors.**, 1999 (83) FLR 634 it was held :

“2. He submits that, after twenty years petitioner has been transferred on administrative grounds and he has been posted within the same district and therefore there would not be much inconvenience to him. Many judgments of this Court have been pressed into service, but this Court need not refer to those judgments in view of the judgment of the Supreme Court reported in *Union of India Vs. S.L. Abbas*. The facts of the case before the Supreme Court were similar to the facts of the case on hand. The employees who had been transferred approached the Central Administrative Tribunal for cancellation of the transfer on the ground that his wife was employed at Shillong wherefrom he had been transferred, his children were also studying at Shillong. He had himself suffered back bone fracture injuries some time ago and he submitted that guidelines contained in Government of India O.M. dated 3.4.1986 had not been kept in mind while ordering his transfer. The guidelines had prescribed that, as far possible husband and wife must be posted at the same place. The Supreme Court found that these guidelines do not confer upon a Government servant a legally enforceable right. The Court found that these guidelines should be kept in mind whenever an order of transfer is passed by the employer but once an order is passed the employee cannot complain and cannot seek a direction from the Court for enforcement of these guidelines.”

f) In the case of **Samay Singh & Anr. Vs. State of U.P. & Ors.**, 2008 (119) FLR 721 it was held as under :

“2. The impugned order is assailed on the ground that it has been passed on wrong assertions; the petitioners had orally informed the University authorities that that farm land of the university is being grabbed by certain persons; that impugned transfer is against the guidelines contained in Government transfer policy dated 14.4.1998 wherein it is provided that “SAMUH GHA KARMIO KO UNKE GRIH JANPAD MAIN HEE TAINAAT KIYA JAYEGA”.

Counsel for the petitioners has relied upon paragraph No.15 of Division Bench judgment of this Court rendered in *Rajendra Prasad v. Union of India and others*, which is as under :

“Therefore, in view of the above, the law stands summarized that in a case of class IV or low paid employees, the power of transfer should be used sparingly when required in administrative exigency and not in a routine manner. More so, the power is to be exercised in good faith not arbitrarily and the employer should try to accommodate at a nearby place as his transfer at a far distance may cause him great financial hardship and may make his survival difficult.”

In the same judgment, it has also been held that transfer is an incident of service and an employee cannot claim a right to be posted at a particular place, it is choice of the employer to determine as on what place and for how long services of an employee are required. It has further been held that power of transfer should be used sparingly when required in administrative exigency and not in a routine manner.

2. In the present case, transfer of the petitioners is not in routine manner as appears from impugned order which shows that petitioner have also admitted before the authority that agricultural farm land of the university is being grabbed by others and that they are unable to prevent it.

So far as question of transfer at a distant place is concerned, it may be stated that University can only post the petitioners at a place it has agricultural farm land where the petitioners' services can be utilised.

3. Next decision relied upon by the Counsel for petitioner is *Bhagwan Verma v. Secretary, Board of High School and Intermediate Education. U.P. Allahabad*. In that case, the

Court was considering transfer of class IV employee to a distant place on the basis of a complaint that he remained absent without permission and the Court found that from the language used in the order it is evident that the transfer order is punitive and had been passed without a preliminary enquiry and therefore quashed the order.

7. In my considered view, the authorities cited and relied upon by the Counsel for petitioner are clearly distinguishable and have no application to the facts and circumstances of the present case.”

g) In ***Rajendra Singh v. State of U.P.***; 2009 (15)

SCC 178 it was observed:

“8. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. 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 contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires (see *State of U.P. v. Gobardhan Lal*, SCC p. 406, para 7).

9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In *Shilpi Bose v. State of Bihar* this Court held: (SCC p. 661, para 4)

“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. If the courts continue to interfere with day-to-day transfer orders issued by the government and its

subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.”

10. In *N.K. Singh v. Union of India* this Court reiterated that: (SCC p. 103, para 6)

“6. ... the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision....”

13. It is difficult to fathom why the High Court went into the comparative conduct and integrity of the petitioner and Respondent 5 while dealing with a transfer matter. The High Court should have appreciated the true extent of scrutiny into a matter of transfer and the limited scope of judicial review. Respondent 5 being a Sub-Registrar, it is for the State Government or for that matter the Inspector General of Registration to decide about his place of posting. As to at what place Respondent 5 should be posted is an exclusive prerogative of the State Government and in exercise of that prerogative, Respondent 5 was transferred from Hapur II to Ghaziabad IV keeping in view administrative exigencies.

14. We are pained to observe that the High Court seriously erred in deciding as to whether Respondent 5 was a competent person to be posted at Ghaziabad IV as Sub-Registrar. The exercise undertaken by the High Court did not fall within its domain and was rather uncalled for. We are unable to approve the direction issued to the State Government and the Inspector General of Registration to transfer a competent officer at Ghaziabad IV as Sub-Registrar after holding that Respondent 5 cannot be said to be an officer having a better conduct and integrity in comparison to the petitioner justifying his posting at Ghaziabad IV. The High Court entered into an arena which did not belong to it and thereby committed serious error of law.”

29. In view of the settled law on the subject, the decisions referred by the petitioner have no application on the issue involved in the matter as the facts in the present case are materially different in the light of the

specific provisions, regulations of the respondents. The transfer order dated 8.5.2008 is, therefore, held to be valid and the order passed cannot be interfered with.

30. Let me now discuss the issue of release of Salary since the month of June, 2008 as claimed by the petitioner. The following are the regulations referred by the respondents on the question of release of salary claimed:

1. Regulation 74 of LIC (Staff) Regulations, 1960, mandate that an employee who does not join his post within the joining time allowed to him shall not be entitled to any pay or leave salary after the end of joining time and willful absence from duty after the expiry of joining time may be treated as breach of staff regulations for the purposes of regulation 39.
2. As per Regulation 72(2)(a)(ii) joining time for a transfer involving change of station is six days for preparation and one day for the time taken in travel.
3. Regulation 39 deals with penalties to be imposed on employees who commits the breach of the regulations or displays negligence, inefficiency indolence and knowingly does anything detrimental to the interest of the corporation constituting breach of discipline.

31. The petitioner it appears was reluctant to join his transferee office therefore in violation of service discipline he has proceeded against in a disciplinary action whereby a chargesheet was issued to him at the

transferee office at Jodhpur.

32. The circular dated 15.5.1979 clearly mandates that an employee who is relieved by the transferor office in order to enable him to join the transferee office shall be treated for all purposes as an employee of transferee office. By order dated 11.06.2008, this court in CM. No. 8680/2008 specifically passed the direction to the effect that the petitioner already stand relieved by the transferor office in terms of the standing instructions of the respondents, therefore, he is left with no alternative except to join at the transferee office and to submit his leave application and voluntary retirement notice. But the petitioner did not do so. Thus, he shall not be entitled to any pay after willful absence. The relief claimed by the petitioner is rejected.

33. The next point for consideration is that of Voluntary Retirement with Pensionary Benefits as claimed by the petitioner. The respondents have considered and decided the representation of the petitioner for grant of voluntary retirement with pensionary benefits and vide letter dated 15.11.2008 rejected the said representation for the following reasons:

- i. Petitioner has not completed the age of 55 years as is mandated by rule 19(2)(A)(a).
- ii. A disciplinary enquiry is pending against the petitioner.
Therefore permission to voluntary retirement cannot be granted during the pendency of the enquiry.
- iii. Since the petitioner has not opted to be governed by LIC of

India (employees) Pension Rules, 1955 but have opted for Employees Contribution to Provident Fund, therefore, he is not eligible to receive pension as rule 4(2) of Pension Rules, 1955 provides that option once exercised shall be final, thus the petitioner after having once opted for employees' contribution to provident fund cannot seek pensionary benefits. In support of the same, the respondents referred the following decisions:

a. In ***Maya Devi (Ms.) Vs. Government of NCT of Delhi & Ors.***; 2009 (8) AD (Del) 9 it was observed:

“1. This is a writ petition filed by the petitioner praying for quashing of order dated 23rd July, 2005 issued by respondent No.3 by virtue of which the petitioner's case for being shifted from Contributory Provident Fund Scheme was rejected by the Deputy Director (education, District North, Lucknow Road, Delhi. The petitioner has also prayed for issuance of an appropriate order for direction to consider the option of the petitioner for a change given on 8th February, 2000 for reverting to the Pension Scheme from Contributory Provident Fund.

7. I have heard the learned counsel for the parties and perused the record. The short question which arises for consideration in the instant case is as to whether the petitioner can be permitted to switch over from the Contributory Provident Fund Scheme to the Pension Scheme. The Government of India on 1st May, 1987 issued a notification and gave an option to the employees to take the advantage of the Pension Scheme by observing that all the employees at a given point of time, i.e. on 01.05.1987, will be deemed to have switched over from Contributory Provident Fund Scheme to the Pension Scheme automatically unless and until they specifically exercise their option to be governed by the Contributory Provident Fund Scheme. The case of the petitioner is that the petitioner may have signed

some document mistakenly exercising her option to be continued to be governed by the Contributory Provident Fund Scheme, but that was totally unintentional. The petitioner admittedly in the instant case has exercised an option in the year 1987 also after issuance of OM dated 1st May, 1987 that she would like to be governed by the Contributory Provident Fund Scheme and thereafter there could not be an automatic switch over from Contributory Provident Fund Scheme to Pension Scheme in the case of the petitioner. It is only in February, 2000 for the first time that she had expressed her desire when she was on the verge of the retirement that she would like to switch over from Contributory Provident Fund Scheme to the Pension Scheme. This clearly fortifies the fact that the petitioner was aware of the fact that she was being governed by the Contributory Provident Fund Scheme as she had exercised an option in this regard. Therefore in the case of the petitioner, there was an automatic switch over from Contributory Provident Fund Scheme to the Pension Scheme as was envisaged in the OM.”

b) In *Amiya Pada Chatterjee vs. State of*

West Bengal; 2010 LIC 1564, it was observed:

“8. After hearing the contention of the learned Counsels and considering the written notes of argument we feel the point which has fallen for consideration of this Court is whether the learned Trial Judge has rightly dismissed the claim of the appellants for payment gratuity at an enhanced rate and further bringing them within the pension scheme after their retirement. The learned Trial Judge has found on fact the appellants/writ petitioners were temporary employee prior to their absorption in Respondent No.6 Company and in terms of the absorption scheme they opted to be absorbed as regular employee of the Respondent No.6 as such they were to be governed by the terms and conditions formulated in the Standing Order which were from time to time amended and/or modified. It was further findings of the learned Trial Judge they and each of them enjoyed such terms and conditions and benefits which were not less advantageous to those which they were enjoying as a temporary Government employee. It was also found by the

learned Trial Judge that the appellants and each of them on Pension Scheme being introduced in 1971 by the Respondent No.6 did not opt for being covered by the Pension Scheme rather chose to accept the Contributory Provident Fund. As such on acceptance of the Contributory Provident Fund they are not entitled to get any further benefit. As far as their claim of gratuity at enhanced rate is concerned it was observed by the learned Trial Judge the gratuity amount was paid in accordance with the norms adopted adhering to the provision of the law which was in vogue at the time of the respective dates of retirement.

16. ... Under such circumstances we do not find any scope to find fault in dealing with these appellants. Naturally we do not think that the learned Trial Judge in refusing the claim and contention of the appellants/writ petitioners had fallen in error, as such no interference is called for. We affirm the same while dismissing the appeal. There will be no order as to cost. However we desire that appropriate department of Government will look into the issue sympathetically to evolve scheme.”

34. The submissions made by the respondents on this issue have not been disputed by the petitioner during the course of hearing nor any decision contrary to the judgments have been referred by him. Thus as far as the prayer of voluntary retirement of the petitioner with pensionary reliefs is concerned, the respondents have although accepted the request of the petitioner for voluntary retirement with effect from September, 2010 but this court accept the request of the petitioner and direct the respondents to accept the representation of the petitioner for voluntary retirement from the date when he attained the age of 55 years. Further, he would be having the benefits of voluntary retirement, as per their rules and regulations.

35. No further directions are required in the present writ petition.

The writ petition is accordingly dismissed with no order as to costs.

MANMOHAN SINGH, J.

December 03, 2010

jk/dp