

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 2nd June, 2011**
Date of decision: 3rd June, 2011

+ **W.P.(C) No.2435/2011**

Udai Vir Singh Rathi (ACP) ... Petitioner
Through: Mr. Sandeep Sethi, Sr. Advocate
with Mr. Arun Bhardwaj, Advocate.
Versus

Union of India & Ors. ... Respondents
Through: Mr. Gaurang Kanth, Advocate for
Respondent No.1/UOI.
Mr. Nirbhay Sharma, Advocate for
Mr. Anjum Javed, Advocate for
Respondent No.3/Delhi Police

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

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

DIPAK MISRA, CJ

The present writ petition has been preferred under Articles 226 and 227 of the Constitution of India assailing the legal pregnability of the order dated 11.3.2011 in OA No.2785/2010 passed by the Central Administrative Tribunal, Principal Bench (for short 'the tribunal') whereby the tribunal has declined to interfere with the order of transfer dated

18.8.2010 transferring the petitioner – applicant from Delhi to Andaman and Nicobar Islands on the basis of a request made by the Chief Secretary of the said Administration. The petitioner, as is manifest, had assailed the order of transfer initially in OA No.2451/2010 before the tribunal which was disposed of on 30.7.2010 requiring him to make a representation. The representation was rejected vide order dated 18.8.2010 and the order of transfer was reiterated. It was contended before the tribunal that the petitioner has an impeccable record and many laurels to his credit and had functioned extremely well in many sensitive posts in Delhi Police and, therefore, there was no justification to transfer him to Andaman & Nicobar Islands. It was also urged that the vacancies of ACP levels exist at both Delhi and its outlying segments and, hence, he should not have been transferred. It was also urged that he is going to retire on 31.12.2013 and, therefore, there was no warrant to send him to the said place. Apart from that various other personal difficulties were highlighted.

2. The tribunal placing reliance on the decisions of the Apex Court rendered in *Mysore Paper Mills Ltd., Bangalore v. Mysore Paper Mills Officer Association, Bhadravati and another*, 1999 6 SLR 77, *B. Varadha Rao v. State of Karnataka*, AIR 1986 SC 1955, *Shilpi Bose v. State of Bihar*, AIR 1991 SC 532, *Union of India v. S.L. Abbas*, AIR

1993 SC 2444 and *Airport Authority of India v. Rajeev Ratan Pandey*, JT

2009 (10) SC 472, *Rajendra Singh v. State of UP and others*, 2010 1

SLR 632 and *Masood Ahmad v. State of U.P.*, 2007 STPL (LE) 39042

SC came to hold as follows:

“27. Further, a close and careful analysis of the order dated 18.8.2010, I find the Respondents have considered the grounds taken by the Applicant in his representation appropriately to arrive at the conclusion of rejecting the same. Respondents have to balance the public interest and administrative exigencies on the one hand and the personal and family problems the Applicant has posed due to his transfer on the other hand. They find that institutional need is of paramount importance over the family compulsions of the Applicant. I am in full agreement with the views of the Respondents. The order dated 18.8.2010 is a speaking and reasoned one and by no stretch of imagination the same can be termed as non-application of mind.

28. Applicant has taken the route of family problems to buttress his claim to stay at Delhi. This is unfortunate on the part of the Applicant to bring in his family problem like (i) daughter's estranged married life along with associated litigations; and (ii) brother's criminal appeal in a murder case before the Hon'ble Supreme Court. Though, learned counsel for the Applicant dwelt on these two family issues of the Applicant in the most part of his arguments and even voluminous documents on both issues have been annexed to the OA to impress that Applicant's presence at Delhi is absolutely necessity, I take note of para 10 of the impugned order and find that the Respondents have properly addressed those issues and rejected the Applicant's request. It is noted that every Government employee will have some family / domestic / personal problems to cling on to one place

but the administrative exigencies and public interest are more important for the executives to decide on the transfer. In the present case, in the order passed in OA No.2451/2010 Applicant's family problems were posed before the Respondents to consider in this case. They did consider and rejected the Applicant's such plea. I do not find any infirmity in the said decision conveyed to him vide order dated 18.8.2010."

3. Being of this view, the tribunal dismissed the original application. It is worth noting that this Court on 26.5.2011 had passed the following order:

"Learned counsel for the respondent shall obtain instructions whether the petitioner can be accommodated at Delhi or some other place.
Call on 2nd June, 2011."

4. In pursuance of the aforesaid order Mr. Gaurang Kanth, learned counsel for the Union of India has produced a communication sent to him which we think it appropriate to reproduce:

"I am directed to refer to your letter No. K&A/UOI/SG/26/05/11/2375 dated 26.5.2011 and to say that DANIPS officers can be posted in either of these Union Territories – Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli. However, DANIPS officers cannot be posted in other adjoining States or Union Territories.

2. It is further informed that the Chief Secretary, Andaman & Nicobar Island Administration vide his letter dated 22nd June, 2010 requested for the posting of 6 more Dy. SP/ACP level officers against vacant posts, including posts of 4 Dy. SP/ACP created for Traffic, Security and Immigration offices. Subsequently, vide order dated 18.8.2010, the

petitioner was transferred to the Andaman and Nicobar Island. These facts are already incorporated in the reply affidavit filed on behalf of the Ministry.”

5. We have heard Mr. Sandeep Sethi, learned senior counsel along with Mr. Arun Bhardwaj, learned counsel for the petitioner, Mr. Gaurang Kanth, learned counsel for the respondent no.1 – Union of India and Mr. Nirbhay Sharma, learned counsel for Mr. Anjum Javed, learned counsel for the respondent no.3 – Delhi Police

6. On a perusal of the pleadings before the tribunal and the delineation of the issue by the tribunal, it is manifest nothing was put forth that the order of transfer was violative of any statutory mandatory rule or is malafide. In the case of *Shilpi Bose* (supra), it has been held as follows:

“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.”

7. In *National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan*, (2001) 8 SCC 574, it has been held thus:

“No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned.”

8. In *State of U.P. v. Siya Ram*, (2004) 7 SCC 405, a two-Judge Bench of the Apex Court has opined that unless an order of transfer is shown to be malafide or is in violation of statutory provisions it is not open to interference by court.

9. In *State of U.P. v. Gobardhan Lal*, (2004) 11 SCC 402, their Lordships opined that transfer is prerogative of the authorities concerned and court should not normally interfere therewith, except when an order of

transfer is shown to be vitiated by malafides, or is in violation of any statutory provision, or has been passed by an authority not competent to pass such an order.

10. In *Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey*, (2004) 12 SCC 299, it has been held thus:

“Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer [see *Abani Kanta Ray v. State of Orissa*, 1995 Supp (4) SCC 169]. Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it (see *Union of India v. S.L. Abbas*, AIR 1993 SC 2444). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it.”

11. In *Tushar D. Bhatt v. State of Gujarat*, (2009) 11 SCC 678 it has been ruled that transfer of an employee is an incidence of service and is made due to exigencies of service and the court would not interfere particularly unless when no malafides are shown.

12. In view of the aforesaid enunciation of law, we are of the considered opinion that the order of transfer cannot be lanced by exercise of judicial review. It is obligatory on the part of the petitioner to join at the place of

transfer. In this context, we may profitably reproduce a passage from *Gujarat Electricity Board v. Atmaram Sungomal Poshani*, (1989) 2 SCC 602, it has been held thus:

“4. ...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 public servant concerned 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.”

13. Similar principle was reiterated in *Mithilesh Singh v. Union of India*, (2003) 3 SCC 309.

14. In this regard, we may also refer with profit to the decision in (2009) 3 SCC 124 wherein it has been held thus:

“34. There cannot be any doubt whatsoever that ordinarily an employee who has been transferred should, subject to just exceptions, join at his transferred place. Ordinarily in an industrial undertaking indiscipline should not be encouraged. This Court in *SBI v. Anjan Sanyal*, (2001) 5 SCC 508 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.”

15. We have referred to the aforesaid decisions as the petitioner, despite the order of transfer, has been knocking at the doors of the court without success and not joining at the transferred place is under the legal obligation to join at the transfer place. Regard being had to the plight that has been put forth by the petitioner, we are inclined to extend the period of joining till 30.6.2011. When we have extended the period, it would only mean that no disciplinary action shall be initiated against him because of late joining. That apart, we have not expressed any opinion with regard to his salary

component or any other aspect.

16. With the aforesaid observations, the writ petition stands dismissed leaving the parties to bear their respective costs.

CHIEF JUSTICE

SANJIV KHANNA, J.

JUNE 3, 2011

dk