

GAHC010163622024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4124/2024

1. The Central Board of Secondary Education, through its
Chairman, 2 Community Centre, Preet Vihar, Delhi –
110092

2. Secretary, Central Board of Secondary Education, 2
Community Centre, Preet Vihar, Delhi – 110092

3. Sri Himanshu Gupta,
Secretary, Central Board of Secondary Education, 2
Community Centre, Preet Vihar, Delhi – 110092

.....Petitioners

-Versus-

1. Sh. Jagadish Barman,
S/o- Lt. Rupcharan Barman,
Joint Secretary and Head Central Excellence, CBSE,
Panjabari, Guwahati-781037,
R/o- Janjog Path, Khanapara,
Guwahati, Pin-791022

.....Respondent

2. The Union of India,
Through Secretary, Central Board of Secondary
Education (Ministry of Human Resource & Development,
Govt. of India), 2 Community Centre, Preet Vihar,
Delhi – 110092

3. Sri Arbind Kumar Mishra,
Under Secretary, Regional Officer (In-Charge),
CBSE Regional Office, Patna, Ambika Complex, Bailey

Road, Raja Bazar, Sheikhpura, Patna,
Bihar- 800014**Proforma Respondents**

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI

HON'BLE MR. JUSTICE SUMAN SHYAM

For the petitioners : Mr. M.A. Niyazi,
Mr. M.K. Das,
Ms. B. Chetry, Advocates
For the respondents : Mr. K.N. Choudhury, Sr. Advocate
Assisted by Dr. G.J. Sharma,
Advocate for respondent No.1

Date of hearing : 03.09.2024

Date of Judgment : 09.09.2024

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, C.J.)

1. This writ petition is filed by the petitioners being aggrieved with the order dated 30.07.2024 passed by the Central Administrative Tribunal (hereinafter to be referred as 'Tribunal'), Guwahati Bench in O.A. No.163/2024 and Misc. Application No.81/2024 whereby the Tribunal has allowed the O.A. filed on behalf of the respondent No.1 herein (hereinafter referred to be as the private respondent) and has interfered with the transfer order of 02.07.2024 *qua* the private respondent and has directed the petitioners to allow the private respondent to continue in his current posting as Joint Secretary (Head, Centre of Excellence) CBSE, Guwahati.
2. The relevant brief facts of the case are that the private respondent was working

as Assistant in the Assam University since 1994. However, he joined All-India Service of Central Board of Secondary Education (hereinafter to be referred as "CBSE") in the year 2002 on the post of Section Officer. Later on, he was promoted as Assistant Secretary, Group A on 14.02.2011 and he was further promoted on 23.02.2018 to the post of Deputy Secretary (Regional Officer) at the Regional Office, Patna. It is to be noticed that since his joining as Section Officer in the CBSE, the private respondent remained posted in Guwahati till February, 2018 when he was promoted to the post of Deputy Secretary (Regional Officer). On his promotion as Deputy Secretary (Regional Officer), the private respondent was posted at Regional Office, CBSE Patna. From February, 2018 to August, 2022, the private respondent remained posted in Patna though in between he was promoted to the post of Joint Secretary vide order dated 04.08.2022. On 17.10.2022, the private respondent was transferred as Head, Centre of Excellence at Guwahati and pursuant to that he joined on the said post on 09.11.2022. Thereafter, vide order dated 02.07.2024 issued by the CBSE, the private respondent was transferred from Guwahati to Thiruvananthapuram as Head CoE.

3. Being aggrieved with the same, the private respondent has approached the Tribunal challenging his transfer to Thiruvananthapuram on various grounds which have been noted by the Tribunal in paragraph 4 of the impugned order dated 30.07.2024. The CBSE has contested the challenge made by the private respondent to his transfer before the Tribunal. During the course of pendency of the O.A. before the Tribunal, affidavits and counter affidavits were filed on behalf of the respective parties and the same were placed on record. After taking into consideration the submissions made on behalf of the parties, the Tribunal has concluded that as per the settled principles of law, transfer of an employee can be interfered with only on the following three grounds;

- (i) transfer order issued by an incompetent authority with no *locus standi*;
- (ii) transfer order made in contravention of the extant statutory orders, rules

and transfer policy;

(iii) transfer made on *mala fide* grounds.

After observing these, the Tribunal has recorded its finding that so far as the transfer of the private respondent from Guwahati to Thiruvananthapuram as Head CeO is concerned, the same was issued by the competent authority and therefore, the said order is not liable to be interfered with on that count.

However, on the other two grounds, the Tribunal has concluded that since the transfer order dated 02.07.2024 was issued in violation of para 2.1 of the transfer policy, the same is liable to be interfered with. The Tribunal has opined that as per para 2.1 of the transfer policy, an officer is required to be retained on a posting for at least three years ordinarily. Since the private respondent has not completed three years at Guwahati, his transfer order is illegal. The Tribunal has also opined that the transfer of the private respondent is also in violation of DoPT's transfer guidelines which provides that as far as possible the husband and wife should be posted together and the private respondent's wife is teaching in Assam Textile Institute, Guwahati and his daughter is studying in Class-VIII in a school at Guwahati.

4. So far as the third ground, i.e. *mala fide* is concerned, the Tribunal has concluded that the *mala fide* also appears to be proved in the case as it is seen in the impugned transfer order that there are many officers who continue to be posted in Delhi (transferred from one place to another post in Delhi itself) or transferred to nearby places of their old posting for e.g. Delhi to Noida or Chandigarh to Panchkula/Mohali. It is also observed by the Tribunal that the place of posting of the private respondent, i.e. Thiruvananthapuram is very far from Guwahati, thus, there appears to be hostile discrimination and violation of Article 14 of the Constitution of India in the case. On the above parameters, the Tribunal has allowed the O.A. filed on behalf of the private respondent and has modified the transfer order dated 02.07.2024 *qua* the private respondent and directed the respondents/writ petitioners herein to

allow the applicant/private respondent to continue in his current posting at Guwahati.

5. Assailing the impugned order, Mr. M.A. Niyazi, learned counsel for the petitioners has vehemently submitted that the Tribunal has erred in observing that the transfer order made in contravention of the transfer policy is liable to be interfered with. It is settled proposition of law that transfer of an employee cannot be interfered with on the ground that it is in contravention of the provisions of the transfer policy. Learned counsel for the petitioner has submitted that the case of the petitioners before the Tribunal was that the transfer of the private respondent as Head, CoE from Guwahati to Thiruvananthapuram is not in violation of the transfer policy but was very much in consonance of the transfer policy. It is contended that para 2.1 of the transfer guidelines in vogue stipulates that the tenure of Regional Officer/Head of CoE shall normally be for a continuous period of three years term from the date of his/her posting/transfer to a Regional Office/CoE as Regional Officer/Head of CoE except for administrative reasons in public interest. It is submitted that the transfer of the private respondent from Guwahati to Thiruvananthapuram was done due to administrative exigencies and not for any other consideration or *mala fide*. It is contended that the Tribunal has grossly erred in observing that there appears to be no administrative exigency or public interest in transferring the private respondent from Guwahati to Thiruvananthapuram. Learned counsel for the petitioners has submitted that though the petitioners were not obliged to disclose the administrative exigencies or reasons for transfer of the private respondent from Guwahati to Thiruvananthapuram but, on instruction, the reasons and the administrative exigencies were disclosed before the Tribunal by the petitioners. However, the Tribunal, without even considering the said justification furnished by the petitioners, in a very casual manner, has recorded the findings that there appears to be no administrative exigency or public interest in transferring the private respondent.

6. Learned counsel for the petitioners has further submitted that the claim of an employee for posting him/her at the place of posting of his/her spouse (government

employee) cannot be a determining factor in each and every transfer. It is contended that the Hon'ble Supreme Court in so many cases has categorically held that no employee can claim his posting, at the place where his or her spouse is serving, as a matter of right. Learned counsel for the petitioners has, therefore, argued that in the above facts and circumstances of the case, it is clear that the Tribunal has erred in interfering with the transfer order of the private respondent on the ground of violation of transfer policy.

7. Learned counsel for the petitioner CBSE has further argued that the Tribunal grossly erred in concluding that in the instant case *mala fide* also appeared to be proved. Learned counsel for the petitioners has submitted that the reason given by the Tribunal for recording the said finding is only that some of the officers remained posted in Delhi on different posts or some of the officers are transferred to nearby places of their old posting whereas the private respondent has been transferred to a faraway place from Guwahati. Learned counsel for the petitioners has submitted that even if it is assumed that some of the officers are retained at their place of posting on another post or some of the employees have been transferred to a nearby place of their old posting then also that cannot be termed as *mala fide* on any count. It is contended that *mala fides* are to be proved by the person who alleges it by producing concrete evidence or by naming the person who acted *mala fidely*. It is contended that no such proof has been furnished by the private respondent and therefore, the finding recorded by the tribunal regarding *mala fide*, is perverse and is liable to be set aside.

8. It is further contended by the learned counsel for the petitioners that during the pendency of the O.A. before the Tribunal, at the insistence of the Tribunal, the respondent CBSE reconsidered the transfer of the private respondent to Thiruvananthapuram and gave a proposal to transfer him at Ajmer on the post of Joint Secretary, CoE and in relation to that an additional affidavit has also been filed. However, the Tribunal has disapproved the said exercise of the CBSE while stating that

Ajmer is also very far from Guwahati.

9. Learned counsel for the petitioners has submitted that on any count, the impugned order passed by the Tribunal is not sustainable in the eye of law and therefore, the same is liable to be set aside. Learned counsel for the petitioners has placed reliance on various decisions of the Hon'ble Supreme Court in support of his contention that the transfer of an employee is not liable to be interfered with solely on the ground that the same is in violation of the transfer policy.

10. *Per contra*, Mr. K.N. Choudhury, learned senior counsel appearing for the private respondent has argued that the Tribunal has not committed any illegality in interfering with the transfer order issued by the CBSE transferring the private respondent from Guwahati to Thiruvananthapuram. Learned senior counsel for the private respondent has tried to convince this Court that the transfer of a government employee can also be interfered with if the same is in violation of the transfer policy and where there is no administrative exigency. It is contended that the Hon'ble Supreme Court in ***T.S.R. Subramanian & Ors. Vs. Union of India & Ors.***, reported in **2013 (15) SCC 732** has emphasized upon the Union and the State Governments regarding stability of tenure in the case of civil servants. Learned senior counsel for the private respondent has further submitted that the Division Bench of this Court in ***Duken Kato vs. The State of Arunachal Pradesh and ors. (WA 219/2023)*** while relying on the decision of the Hon'ble Apex Court rendered in ***Ms. X vs. Registrar General of High Court of Madhya Pradesh***, reported in **MANU/SC/0171/2022**, has interfered with the transfer order of an employee which was made in violation of the transfer policy. Learned senior counsel for the private respondent has further emphasized that as per the transfer policy in vogue only those employees of the CBSE, who are holding sensational posts, are liable to be compulsorily transferred after completion of three years which means that the employees who are not holding any sensational post in the CBSE can be retained at a particular place even after completion of three years of tenure. Learned counsel for

the private respondent has submitted that in the present case, admittedly, the private respondent has been working in Guwahati since November, 2022 only and has not completed the tenure of three years. Therefore, the action of the petitioners of transferring him to Thiruvananthapuram from Guwahati is bad in the eye of law and the same has rightly been interfered with by the Tribunal.

Learned senior counsel Mr. K.N. Choudhury has further contended that the Tribunal has rightly concluded that the transfer order of the private respondent suffers from *mala fide*. It is contended that the petitioners have transferred the private respondent from Guwahati to Thiruvananthapuram, which is a very far off place from Guwahati but have retained some of the officers of the CBSE at the same place where they have been working from years together. It is further contended that some of the officers of the CBSE were transferred at very nearby places from the place of their posting. It is submitted that this fact itself demonstrates that the petitioners have transferred the private respondent *mala fide* and as such, the Tribunal has rightly interfered with the transfer order treating the same as suffering from *mala fide*.

Learned senior counsel for the private respondent has, therefore, prayed that the writ petition filed by the petitioners is devoid of merit and the same is liable to be dismissed.

11. Heard learned counsel appearing for the parties and perused the material available on record.

12. As noticed earlier, the private respondent has joined All-India Service in the CBSE in the year 2002 on the post of Section Officer and prior to that he was working as Assistant in the Assam University since 1994. The service under the CBSE is All-India Service and it can be presumed that while joining the CBSE, the private respondent was aware that he can be transferred anywhere in India.

13. Be that as it may, since his joining as Section Officer in the CBSE, i.e. from 2002 up to 2018, the private respondent remained posted in Guwahati, initially on the post

of Section Officer and thereafter, as Deputy Secretary (Regional Officer). He was promoted to the post of Deputy Secretary (Regional Officer) vide order dated 23.02.2018 and was posted in the office of Regional Office, CBSE at Patna. While working on the said post, the private respondent was again promoted on 04.08.2022 to the post of Joint Secretary in the CBSE and remained at Patna till he was transferred on his own request to Guwahati as Head, CoE in November, 2022.

14. Taking into consideration the said facts, we are in agreement with the counsel for the petitioners that factually the transfer of the private respondent outside Guwahati to Thiruvananthapuram, vide order dated 02.07.2024 is his first transfer order issued by CBSE during his service period, i.e. from 2002 to 2024. The posting of the private respondent as Deputy Secretary (Regional Officer) at Patna was a promotional posting and in strict sense cannot be termed as a transfer. The posting of the private respondent as Head, CoE at Guwahati in November, 2022 was made on his own request and in such circumstances also, it can be concluded that the CBSE has transferred the private respondent for the first time vide order dated 02.07.2024 in the administrative exigency.

15. The Tribunal has interfered with the transfer order on two counts; firstly- the same is in violation of the transfer policy and secondly, it suffers from *mala fide*.

The law is well settled that transfer of an employee cannot be interfered with on the ground that the same is in violation of the transfer policy. The Hon'ble Supreme Court in the case of ***Sri Pubi Lombi vs. The State of Arunachal Pradesh & ors. (Civil Appeal No.4129/2024)***, after revisiting its earlier decision has held as under:

“10. In view of the foregoing enunciation of law by judicial decisions of this Court, it is clear that in absence of (i) pleadings regarding malafide, (ii) non-joining the person against whom allegation are made, (iii) violation of any statutory provision (iv) the allegation of the transfer being detrimental to the employee who is holding a transferable post, judicial interference is not warranted. In the sequel of the said settled norms, the scope of judicial review

is not permissible by the Courts in exercising of the jurisdiction under Article 226 of the Constitution of India.”

16. In ***Punjab and Sind Bank & Ors. vs. Mrs. Durgesh Kuwar***, reported in (2020) 19 SCC 46, the Hon’ble Supreme Court has held as under:

“17. We must begin our analysis of the rival submissions by adverting to the settled principle that transfer is an exigency of service. An employee cannot have a choice of postings. Administrative circulars and guidelines are indicators of the manner in which the transfer policy has to be implemented. However, an administrative circular may not in itself confer a vested right which can be enforceable by a writ of mandamus. Unless an order of transfer is established to be mala fide or contrary to a statutory provision or has been issued by an authority not competent to order transfer, the Court in exercise of judicial review would not be inclined to interfere. These principles emerge from the judgments which have been relied upon by the appellants in support of their submissions and to which we have already made a reference above. There can be no dispute about the position in law.”

17. Further, the Hon’ble Supreme Court in ***SK. Nausad Rahaman & Ors. vs. Union of India & Ors.***, reported in **(2022) 12 SCC 1** has observed as under:

“D. Analysis

23. While analysing the rival submissions, certain basic precepts of service jurisprudence must be borne in mind.

24. First and foremost, transfer in an all-India Service is an incident of service. Whether, and if so where, an employee should be posted are matters which are governed by the exigencies of service. An employee has no fundamental right or, for that matter, a vested right to claim a transfer or posting of their choice.

25. Second, executive instructions and administrative directions concerning transfers and postings do not confer an indefeasible right to

claim a transfer or posting. Individual convenience of persons who are employed in the service is subject to the overarching needs of the administration.

26. *Third, policies which stipulate that the posting of spouses should be preferably, and to the extent practicable, at the same station are subject to the requirement of the administration. In this context, J.S. Verma, J. (as the learned Chief Justice then was) speaking for a three-Judge Bench of this Court in Bank of India v. Jagjit Singh Mehta [Bank of India v. Jagjit Singh Mehta, (1992) 1 SCC 306 : 1992 SCC (L&S) 268] held : (SCC pp. 308-09, para 5)*

“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. ... 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.”

27. *The above principle was cited with approval in Union of India v. S.L. Abbas [Union of India v. S.L. Abbas, (1993) 4 SCC 357 : 1994 SCC (L&S) 230] wherein the Court held that transfer is an incident of service : (SCC p. 359, para 7)*

“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.”

18. From the above decisions of the Hon'ble Supreme Court, it is settled that a transfer of a government employee cannot be interfered with solely on the ground that the same is in violation of the transfer policy. In such circumstances, we are of the view that the interference by the Tribunal in the transfer order of the private respondent on the ground that the same is in violation of the transfer policy, is not liable to be sustained.

19. Coming to the other ground on which the Tribunal has interfered with the transfer order of the private respondent i.e. in respect of the *mala fide*, the Tribunal has opined that the transfer of the private respondent from Guwahati to Thiruvananthapuram suffers from *mala fide* because many officers posted in Delhi have been transferred from one post to another post in Delhi itself and some employees have been transferred to nearby places of their old posting. We are of the

view that to prove the element of *mala fide*, it is not sufficient to take into consideration the fact that some of the employees have been retained at their place of posting or have been transferred to nearby places of their old postings. The Tribunal, while concluding that the transfer of the private respondent suffers from *mala fide*, has failed to take into consideration the fact that vide order dated 02.07.2024 as many as 72 employees have been transferred and out of which 9 employees are Joint Secretaries, the post equal to the post held by the private respondent. It is also to be noticed that out of those 9 Joint Secretaries, 3 Joint Secretaries, including the private respondent have been posted in the cities of South India. It is also to be taken into account that out of 72 employees, 19 employees have been transferred vide order dated 02.07.2024 before completion of 3 years of tenure. In response to the allegation of the private respondent that he has been targeted for being a Scheduled Tribe, the CBSE has pleaded that other 5 officials belonging to the same category have also been transferred vide order dated 02.07.2024. The above facts have been gathered from the facts contended by the petitioners in their writ petition as well as in the response to the O.A. filed by the petitioners before the Tribunal and the same have not been disputed by the private respondent.

20. So far as the decision of the Division Bench of this Court rendered in *Duken Kato* (supra) is concerned, in that case the Division Bench has found that the affected employee was transferred to adjust another employee at the behest of the P.A. to the concerned Minister and in that case, the Court has interfered with the transfer order. However, in the present case, the same is not the situation. Hence, the above-referred judgment of the Division Bench is of no help to the private respondent.

21. It is also to be noticed that though the petitioners were not obliged to disclose the reasons and administrative exigencies which led to transfer of the private respondent from Guwahati to Thiruvananthapuram, at the insistence of the Tribunal, the petitioners have disclosed the same by filing an additional affidavit in the O.A. However, the Tribunal has not taken into consideration the same. The CBSE has also

reconsidered the proposal of transfer of the private respondent from Guwahati to Thiruvananthapuram at the instance of the Tribunal, which is not disputed by the private respondent and the petitioners have filed an additional affidavit to the effect that the CBSE proposed to transfer the private respondent to Ajmer on the post of Joint Secretary, CoE instead of Thiruvananthapuram. It appears that the Tribunal has not taken into consideration the said fact and the private respondent has also not accepted the said proposal offered by the CBSE.

22. Having considered the above facts and circumstances of the case, we are of the opinion that the Tribunal has grossly erred in interfering with the transfer of the private respondent from Guwahati to Thiruvananthapuram on the grounds of violation of transfer policy and *mala fide* and the same cannot be sustained. Hence, the impugned order passed by the Tribunal is set aside. Resultantly, the O.A. filed on behalf of the private respondent before the Tribunal is dismissed.

23. Before parting, we observe that if the private respondent moves a representation before the petitioner CBSE with the prayer to post him as Joint Secretary, CoE at Ajmer, the petitioner CBSE may consider the same in view of the additional affidavit filed by it before the Tribunal and pass necessary order if the post of Joint Secretary at the Regional Office of CBSE at Ajmer has, in the meantime, not been filled up till date by another incumbent.

24. With these observations and direction, this writ petition is disposed of. The interim application, if any, pending is also disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant

