

Court No. - 4

Case :- WRIT - A No. - 9142 of 2025

Petitioner :- Shambhoo Nath Kushwaha

Respondent :- State Of Up, And 5 Others

Counsel for Petitioner :- Siddharth Khare

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Learned Standing Counsel has obtained instruction in the matter which is taken on record, copy whereof has been supplied to learned counsel for the petitioner.

2. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Himanshu Singh, Advocate holding brief of Sri Siddharth Khare, learned counsel for the petitioner and learned Standing Counsel.

3. By means of this petition filed under Article 226 of the Constitution of India, petitioner has assailed the order dated 13.06.2025, whereby, he has been transferred from Siddharth Nagar to Ayodhya to be stigmatic in nature and hence punitive.

4. It Is submitted that very recitals contained in the order show that petitioner has been subjected to transfer by way of disciplinary action for alleged violation or non-compliance of the directives issued by the higher authorities, which was claimed to have amounted to an alleged misconduct. Learned counsel for the

petitioner submits that transfer is bad for two obvious reasons: firstly, petitioner being office bearer of the Employees' Union ought not to have been transferred in the first instance in view of the relevant Clause 12 of the Transfer Policy dated 06.05.2025 that carves out union leaders to be exceptional cases; and secondly, transfer cannot be done by way of a punitive action.

5. In support of his above second submission, learned counsel for the petitioner has placed reliance upon the judgment of the Supreme Court in the case of **Somesh Tiwari vs. Union of India and Ors. AIR 2009 Supreme Court 1399.**

6. Learned Standing Counsel has obtained instructions in the matter and as per the instructions, petitioner has been subjected to transfer in full compliance of the provisions contained in the Clause 12 of the Transfer Policy dated 06.05.2025, according to which, if there are complaints against the office bearers and if they are found to be involved in an activity resulting in indiscipline and which affects the performance of duty and is also indication of misconduct, in such cases the office bearers can also be transferred. He has placed Clause 12 of the Transfer Policy dated 06.05.2025 before the court, which runs as under:

"12. सरकारी कर्मचारियों के मान्यता प्राप्त सेवा संघों के पदाधिकारियों के स्थानान्तरण:-

सरकारी सेवकों के मान्यता प्राप्त सेवा संघों के प्रदेश / मण्डल / जिला स्तर के अध्यक्ष एवं

सचिव के स्थानान्तरण उनके द्वारा संगठन में पदधारित करने की तिथि से 2 वर्ष तक न किये जायें। किन्तु उक्त पदाधिकारियों को यह सुविधा देने का अर्थ यह नहीं है कि जनहित के विरुद्ध कार्य करने, कदाचार अथवा भ्रष्ट आचरण करने पर भी उनका स्थानान्तरण नहीं किया जा सकता।

लापरवाही, भ्रष्टाचार व आपराधिक कृत्य, अनुशासनहीनता व दुराचरण में लिप्त होने के पुष्टिकारक तथ्य लाये जाने पर या ऐसे मामलों में अनुशासनिक कार्यवाही प्रारम्भ होने पर निम्न प्रक्रिया का पालन करते हुये उक्त पदाधिकारियों को पूरे सत्र में कभी भी स्थानान्तरण किया जा सकेगा:-

i. जनपद में तैनात सेवा संघों के पदाधिकारियों का स्थानान्तरण संबंधित जिलाधिकारी एवं मण्डल में कार्यरत पदाधिकारी का स्थानान्तरण मण्डलायुक्त की संस्तुति पर सक्षम स्तर से किये जा सकेंगे।

ii. मुख्यालय स्तर पर सेवा संघों के पदाधिकारियों का स्थानान्तरण विभागाध्यक्ष की संस्तुति के उपरांत शासन स्तर से किया जा सकेगा।

उपरोक्त के अतिरिक्त सेवा संघों के उक्त पदाधिकारियों का शासनादेश दिनांक 13 मई, 2022 के अनुसार पटल / क्षेत्र परिवर्तन अवश्य किया जायेगा तथा इसकी संपूर्ण जिम्मेदारी नियंत्रक प्राधिकारी की होगी।”

(emphasis added)

7. From the instructions it further transpires that some work was allotted to the petitioner under the order of a higher authority dated 19.03.2025 for the purposes to construct a dam but instead of complying with the directives issued by the higher authority, petitioner wrote back to authority that such double duties and attachment orders have already been held to be not permissible and hence he cannot be forced to discharge duties as per the directives

issued. Upon this letter being written the Executive Engineer took seriously and as an exception and required the petitioner to submit his explanation to which the petitioner states that he had offered his explanation by letter dated 29.05.2025 but that remained unanswered and, instead of holding meeting and cooperating with the employees, the authorities proceeded to recommend transfer of the petitioner.

8. It is thus contended that if the petitioner was to be transferred by way of punitive action then show cause notice was a must, inasmuch as the transfer can not be made by way of action as a result of some departmental proceedings. Paragraph 19 and 20 of the judgment that has been relied upon in the case of **Someshwar Tiwari (Supra)** is reproduced hereinunder:

"....19. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law.

20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of

punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

(emphasis added)

9. Having heard learned counsel for the respective parties and having perused the record, pleadings raised in the writ petition and the instructions placed before the court, I find that it is because of certain correspondence that had taken place between the petitioner and respondent authorities in the District that spelled off the controversy leading to alleged indiscipline or misconduct on the part of the petitioner, moreso in the circumstances when he was office bearer of the Employees' Union. Ultimately instead of holding talks and peacefully resolving the issues, the authority proceeded to get rid of the office bearer and hence passed an order of transfer giving a reason therein that petitioner was guilty of gross indiscipline.

10. From the observations made by the Supreme Court as quoted above, there can be no doubt about this legal position that an action adverse to an employee as a result of authority forming a view qua such an employee to have committed misconduct, to transfer him, would render such an exercise of administrative power to be vitiated for malice in law. In the present case action to transfer taken appears to be clearly by way of punishment as the authorities being assigned reason of indiscipline and for violating

directives of the higher authorities by the petitioner.

11. In the circumstances, therefore, the order of transfer would definitely fall within the mischief of principle of law laid down by the Supreme Court in the case of Somesh Tiwari and hence liable to be held unsustainable.

12. However, it is always open for the respondent authorities to transfer an employee in administrative exigency if they find such an employee has become a nuisance value but for this, only simple transfer order should be passed transferring an employee in administrative exigency. In such cases, therefore, even the office bearers of the Employees' Union would not fall in exception clause of the transfer policy and so they can also subjected to transfer taking the recourse to the Clause 12 of the Transfer Policy dated 06.05.2025.

13. In the circumstances, writ petition succeeds and is allowed.

14. Order dated 13.06.2025 is hereby quashed.

15. However, it will remain open for the authorities to pass transfer order in administrative exigency if it so desire in the next session 2026-2027.

Order Date :- 31.7.2025
S.A.