

**HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

WRIT PETITION No. 41828 of 2015

DATED 28TH December, 2015

BETWEEN

Shishir Kumar

...Petitioner

And

The Union of India,
Rep. by its Secretary to Government,
Department of Atomic Energy,
New Delhi and ors

...Respondents

**HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

WRIT PETITION No. 41828 of 2015

ORDER: (Per Hon'ble Sri Justice U.DURGA PRASAD RAO)

We have heard the learned Senior counsel Sri P.Gangaiah Naidu appearing for the petitioner and learned Assistant Solicitor General of India appearing for the respondents. We gave our anxious consideration to the contentions advanced by the learned Counsel on either side.

This Writ Petition is filed aggrieved by the order dated 17.12.2015 whereby the Central Administrative Tribunal, Hyderabad Bench, at Hyderabad (for short 'the Tribunal')

dismissed the O.A.No.1363 of 2015 preferred by the petitioner questioning the order dated 10.10.2015 transferring him from Nuclear Fuel Complex (NFC) Hyderabad to Nuclear Recycle Board (NRB), BARC, Tarapur.

Facts necessary for disposal of this Writ Petition are stated in brief as follows: The petitioner while working in Heavy Water Plant, Manuguru, applied for transfer to Hyderabad in view of the medical attention required by his son who was suffering from mental retardation and pursuant to his request, he was transferred to Hyderabad where his son was undergoing treatment for mental retardation in the National Institute of Mentally Handicapped. It is stated that the Medical Board has certified that the illness of his son is permanent in nature and his IQ is only 20% and that his mental retardation is severe in nature. It is further stated that his son is now aged 28 years and is only a male member of his family and except himself, there is no other male member in his family to look after him. It is therefore stated that his presence is necessary at Hyderabad to look after his son and for taking him to Hospital regularly. It is his case that he made a complaint to the Prime Minister's Office against the Chief Executive with regard to allocating of works to the retired employees engaged on contract basis while keeping the many senior officers idle. When the said complaint was closed on the ground that it is not an individual grievance, he submitted a representation to the Secretary, Department of Atomic Energy with regard to the harassment meted out to him as his services were not utilized in a proper way even though he has always been commended for his excellent work and was awarded twice. However, no action has been taken. It is

therefore his grievance that keeping in view the above instances, the third respondent seems to have contacted the second respondent and got issued the order dated 10.10.2015 transferring him from the post of SO/H, AGM (Maint, SMP)/NFC/Hyderabad to Nuclear Recycle Board (NRB), BARC, Tarapur, which action is nothing but colourable exercise of powers and the said transfer is only with a view to harass him. Placing reliance on OM Dated 06.06.2014 of the Department of Personnel and Training, he states that a Government servant who is also a care giver of a disabled child, is exempted from the routine exercise of transfer/rotational transfer. It is also his case that no reasons, much less valid and substantial have been given in the order of transfer and it is only mentioned that the transfer is in public interest. It was the case of the petitioner before the Tribunal that before transferring him, no willingness/consent of his was called for. It was also his case that no comparison can be made between him and one A. Ramachandra Rao and that the order of transfer is clothed with malafides and the same has been issued only to harass him.

Denying the averments made in the OA, the respondents filed counter affidavit stating that on earlier occasion, the request of the petitioner for transfer to Hyderabad was considered sympathetically and he had been working as such for the last seventeen years at Hyderabad. It is stated that for operating the plants and the facilities under construction at Tarapur, the services of an expert Scientist with a background of Steam and Electrical System was required and therefore the Director, BARC, who is the Chairman of Nuclear Recycle Board, had requested vide his e-mail dated 29.5.2015 to

suggest suitable candidate for NFC for their consideration and pursuant to the same, the NFC had forwarded the name of the petitioner along with one A. Ramachandra Rao, SO/G, NFC. Considering the suitability and experience of the petitioner in Steam and Electrical System, the petitioner was given suitable posting in NRB, Tarapur after receiving the approval from the Department of Atomic Energy in public interest. It was further stated that the petitioner is holding the Group-A post, which is equivalent to that of Joint Secretary to Government of India and the same is all India transferable. It was also stated that the transfer of the petitioner is purely in public interest and exigency of services at Tarapur. The respondents denied that the transfer of the petitioner is in connection with the complaint made by him to the Prime Minister's officer and Secretary, Department of Atomic Energy. Accepting the averments made by the petitioner based on the DOPT OM dated 6.6.2014, it is however stated that transfer of the petitioner is requisitioned at Tarapur. It is further stated based on the medical records that the son of the petitioner is not regularly availing any treatment in the recognized hospitals and hence the ground of continuous treatment for his mentally retarded son is only an alibi to remain at Hyderabad. It is stated that medical facilities are provided by NFC under CHSS with empanelment of Super Specialty and Zonal Hospitals at Tarapur and therefore the petitioner can continue the treatment for his son at Tarapur.

The Tribunal having heard the learned Counsel on either side and gone through the material on record, through its elaborate order impugned in the Writ Petition dismissed the OA filed by the petitioner. Hence the present Writ Petition.

Reiterating the submissions advanced before the Tribunal, the learned Senior Counsel appearing for the petitioner submits that the order dated 10.10.2015 transferring the petitioner to Nuclear Recycle Board, BARC, Tarapur is totally contrary to the Memorandum dated 6.6.2014 issued by the Government of India. He submits that pursuant to the request made by him, the petitioner was transferred to Hyderabad from Manuguru to get treated his son at National Institute for Mentally Handicapped, Secunderabad and that there is no specialized medical institution at Tarapur to treat his disabled son. He further submits that on account of lodging complaint against the Chief Executive to the Prime Minister's Office and Secretary, DAE, the respondent authorities developed grudge against him and got transferred to Tarapur. The said transfer order is nothing but colourable exercise of powers. He further submits that the petitioner cannot be compared with one Ramachandra Rao who is lower in rank than the petitioner. Even the Tribunal went wrong in observing that there is no rule and further it is not mandatory or obligatory requirement for taking willingness of persons before making transfer.

On the other hand, the learned Assistant Solicitor General of India submits that the transfer order is passed in public interest and same is not passed with an intention to harass the petitioner. He further submits that there is a great demand of services of the petitioner at Tarapur and on account of the same only, he was transferred. He therefore submits that there are no valid and substantial grounds to interfere with the order of the Tribunal and prays for dismissal of the Writ Petition.

Perused the material on record.

Pertinent to see, no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. 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. Coming to the case on hand, it is manifest from the record that pursuant to the letter dated 29.5.2015 addressed by the Director, BARC asking to forward the name of a suitable candidate who is an expert Scientist with background of steam and electrical system for NRB, Tarapur, the respondents had forwarded the names of Ramachandra Rao and that of the petitioner. In the context of suitability and experience, the petitioner was found suitable and the order of transfer dated 10.10.2015 is passed in public interest and not on administrative grounds. It further emerges from the record that the process of identifying a suitable officer for NRB, Tarapur was initiated on 29.5.2015 which is much prior to the lodging of complaints by the petitioner and therefore it cannot be said that the petitioner was transferred only on account of making complaints and having developed grudge against him therefor. Further the respondents have not singled out the petitioner alone, but forwarded a panel of two names, out of which, the petitioner was found suitable and accordingly he was selected from the said panel.

Further it is manifest from the record that on account of medical need to his son, the petitioner is being continued at Hyderabad for the last seventeen years. The petitioner is holding Group-A post which is equivalent to Joint Secretary to the Government of India and the same is all India transferable post. The same is well known to the petitioner. For the Operating Plants and the Facilities under construction at Tarapur, NRB, they required the services of an expert scientist with the background of steam and electrical system. Considering the expertise of the petitioner, the authorities found the petitioner suitable and thereby in public interest, he was transferred to Tarapur. When there is need of such expertise at Tarapur, the petitioner having background of steam and electrical system, cannot oppose the transfer merely on the ground that his son needs medical treatment. When the Department has been considerate in transferring and retaining the petitioner in Hyderabad for the last seventeen years, it cannot be construed as a vested right to remain in the same station of his choice throughout his career when larger public interest is involved. A 70 bedded hospital with all medical facilities provided by NFC under CHSS with empanelment of Super Specialty Zonal Hospital is available at Tarapur and we hope the petitioner's son can be treated there.

It is well understood that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a Government servant is liable to be transferred to a similar post

in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. Such is not the case herein. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair.

The Tribunal through the order impugned in this Writ Petition considered all aspects of the matter in proper perspective and rightly come to the conclusion in upholding the transfer of the petitioner. Viewed from any angle of the matter, we do not, having due regard to the unique factual scenario obtaining in the present case, find any error or irregularity in the order impugned passed by the Tribunal, which we accordingly uphold.

The Writ Petition is dismissed. After dictating the judgment, the learned Counsel for the petitioner submits that the petitioner may be permitted to make a representation to the authorities seeking appropriate relief. It is made clear that, this order will not come in the way of the petitioner to make a representation to the authorities and if such a representation is made, the respondent authorities shall consider and dispose of the same uninfluenced by any of the observations made herein.

Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.

JUSTICE G.CHANDRAIAH

JUSTICE U.DURGA PRASAD RAO

DATED 28TH DECEMBER, 2015. .
Msnr_x