

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE MRS. JUSTICE ANIS
WRIT PETITION No. 22986 OF 2015**

ORDER: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The petitioner herein, who is working as a Lower Division Clerk (LDC) at the Regional Passport Office, Hyderabad, is aggrieved by the orders of transfer passed by the Ministry of External Affairs, Government of India, New Delhi on 24.11.2014 transferring and posting him, on administrative grounds, at the Passport Office, Raipur, Chattisgarh State with immediate effect. He approached the Central Administrative Tribunal, Hyderabad Bench by instituting O.A.No. 21/1422 of 2014. That O.A. was dismissed by the Tribunal on 07.07.2015. Calling in question the correctness of the said order, the present Writ Petition has been filed.

Heard Sri G. Ravi Mohan, learned counsel for the petitioner for considerable length of time.

Sri Ravi Mohan would submit that the petitioner has been subjected to a transfer contrary to the well-laid out policy decision of the Government of India covering all aspects relating to transfer of Group-C servants of the government. The learned counsel for the petitioner would urge that the revised transfer policy of 2009 dealing with Group-C staff, like that of the petitioner, has clearly spelt out that transfer of LDCs and UDCs shall be avoided except in cases of bifurcation of the office or in case of re-distribution of posts done with the result of sanction of additional posts. Further, it is also pointed out by the learned counsel that on the basis of the departmental proceedings, if it is established that the official concerned has been found guilty of serious irregularities and his/her continuance in that office is likely to be detrimental to the public interest, then alone, a transfer order can be issued. It is the case of the petitioner that no such departmental proceedings have been initiated or conducted against him and hence, the question of finding the petitioner to be

guilty of having committed any serious irregularities would not arise and his continuance at the Passport Office, Hyderabad can never be described as detrimental to the public interest. Sri Ravi Mohan would further urge that as per the revised transfer policy of 2009, all transfers shall be ordered strictly within the main zones or overlapping zones, which have been specified in the said policy. The main zone prescribed is Bangalore-Hyderabad-Visakhapatnam-Chennai. Therefore, the petitioner should have been transferred either to Bangalore or Chennai or Visakhapatnam. Alternatively, the overlapping zone prescribed is Mumbai-Hyderabad-Visakhapatnam. Therefore, the petitioner should have been transferred either to Mumbai or Visakhapatnam. Contrary to this policy, the petitioner has been transferred to an altogether different and difficult terrain, namely Raipur. Hence, the impugned order is unsustainable.

It must be stated in all fairness to the petitioner and the learned counsel that the petitioner has set out at the very beginning that F.I.R.No. 197 of 2014 dated 21.10.2014 has been registered by the Market Police Station of Hyderabad City against him, based upon a complaint lodged by one Sri Purwal Mahaveer Prasad and that he was apprehended by the police and produced before the X Additional Chief Metropolitan Magistrate, Secunderabad, who initially sent him to judicial custody. Subsequently, when a bail application, Crl.M.P.No. 1826 of 2014 was filed, the petitioner was enlarged on 29.10.2014 by the Court subject to the condition that he shall appear before the Station House Officer, P.S. Market twice in a day between 07.00 and 08.00 a.m. and 07.00 and 08.00 p.m. till further orders. Taking the case of involvement of the petitioner in the criminal case, the impugned order has been triggered. Hence, the order of transfer of the petitioner to Raipur is urged to be an unsustainable order.

We have bestowed our attention to the revised transfer policy of 2009 framed by the Government of India. The transfer policy has, no doubt, spelt out that transfer of LDCs and UDCs shall be avoided in

normal circumstances and that only where a departmental proceeding establishes that the official concerned is found guilty of serious irregularities, he might be transferred to a different place. However, the policy has cautiously used another rider that in case the continuance in that office of an employee is likely to be detrimental to the public interest, he shall be transferred. It is also, no doubt, true that the conjunction 'and' was used in paragraph 2 of the revised transfer policy of 2009 dealing with the transferability of Group-C staff, but the policy being purely administrative in nature and content, the expression 'and' shall be understood as 'or'. The reason is very simple. If an individual has been found guilty of a serious irregularity committed by him, in a departmental proceeding, it is more likely that it would result in imposition of a punishment. Transfer from one office to another not being a punishment, that would not be contemplated. Therefore, the question of transferring an individual on administrative grounds is more likely to be examined in the context of public interest. When an employee is facing serious allegations involving his own integrity and in the process, the reputation of the government establishment itself, then, continuing such an individual in that very office would be contrary to the public interest. The image of the government would suffer a great deal by continuing an employee, who is facing as serious allegations as demanding of bribe, as in the present case. Therefore, question of continuing in service of an employee against whom serious allegations of corruption are attributed, is not conducive to public interest and hence, we are of the opinion that the petitioner has been rightly transferred from out of the Passport Office, Hyderabad.

This apart, the petitioner is not going to suffer any serious consequences by virtue of his transfer. He will continue to be treated as a Group-C employee of the Government of India and he would be extended all other benefits befitting the status occupied by him. He will not suffer any disadvantage excepting that he has to relocate himself

at Raipur. In fact, the Court also has relaxed the conditions imposed by it relating to frequent appearance before the police.

Sofar as the transferability within the zones and overlapping zones is concerned, when extraordinary situations have to be dealt with, the normal standards cannot be employed. Perhaps, the Ministry of External Affairs could not have found a vacancy lying in any other office, falling within the main zone or in the overlapping zone. Therefore, not to cause any dislocation to the petitioner, they have transferred him to a vacancy, which is available at Raipur, Chattisgarh State. Therefore, we do not find any legal infirmity in the order passed by the Ministry of External Affairs and hence, we dismiss this Writ Petition.

Before we part with this case, we must also necessarily observe that while an employee is facing serious allegations touching upon his integrity, such as demanding illegal gratification for doing an official favour, the question of continuing such an employee at the same station would not arise at all. If a network has been established by him, through which illegal gratification is sought for, it takes time for the institutions to trace out the roots of the network and deal with it. Otherwise, the malice of corruption amongst public servants cannot be rooted out at all. Therefore, in cases where the integrity of an employee is in serious doubt, harsher options are bound to be explored, so that a message will percolate amongst the rest of the employees to maintain integrity and consequently not to face any such perilous conditions.

The miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

ANIS, J

24th July 2015

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