

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

C.W.P No. 20552 of 2015

Date of decision : 04.11.2015

Mool Chand Tewatia

.....Petitioner

Versus

Union of India and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr. Deepak Vashisht, Advocate
for Mr. Ajay Kumar Sharma, Advocate
for the petitioner.

DARSHAN SINGH, J.

The present civil writ petition under Article 226/227 of the Constitution of India has been filed for issuance of writ in the nature of certiorari for quashing the order dated 16.12.2013 (Annexure P-3) passed by respondent no.1 and also the order dated 04.09.2014 (Annexure P-5) passed by the learned Central Administrative Tribunal, Chandigarh Bench, whereby the Original Application No. 1658/HR/2013 has been dismissed. The writ in the nature of Mandamus has also been prayed directing the official respondents to decide his representation (Annexure P-6) in accordance with law.

2. The facts in brief are that petitioner was appointed as Electrician in the Central Ground Water Board under the

respondents and remained posted at Bhopal from 24.02.1988 to 23.01.1996. He was promoted as Assistant and was transferred to Jammu. He served there for near about seven years. Thereafter, he was transferred to Ambala and remained posted there from 01.07.2003 to 22.08.2006. The petitioner has completed the fixed tenure of two years in the North East Region and submitted the representation to respondent no.3 and prayed for his posting at the place of his choice at Faridabad. Finding no response to the said representation, he filed Original Application no. 177 of 2010, which was decided in his favour vide order dated 18.02.2011. The direction of learned Tribunal was not complied with. He moved a Contempt Petition No. 13 of 2011 and finally he was transferred vide order dated 10.08.2011 and he joined his duties at Ambala on 23.08.2011. He had hardly completed two years at Ambala. He was again transferred to Central Ground Water Board, Division-IX vide order dated 25.10.2013. He made the representation dated 25.10.2013 to the respondent no.3, but the same was not decided. The respondents were directed by the learned Tribunal to pass a reasoned and speaking order on the representation moved by the petitioner within a period of one month vide order dated 11.11.2013. This representation of the petitioner was dismissed vide impugned order dated 16.12.2013. He approached the learned Tribunal by filing Original Application No. 1658/HR of 2013.

The said Original Application filed by the petitioner was dismissed vide impugned order dated 04.09.2014. Hence this petition.

3. We have heard Mr. Deepak Vashisht, Advocate for Mr. Ajay Kumar Sharma, Advocate, learned counsel for the petitioner and have carefully gone through the paper book.

4. Initiating the arguments, learned counsel for the petitioner contended that the transfer order dated 25.10.2013 vide which the petitioner has been transferred from Ambala to Hyderabad is *mala fide*. He has not completed the tenure of three years at the time of passing this order. He further contended that various similarly situated employees are posted at one place for the last 20 to 30 years. Whereas, the petitioner is being harassed. Some of the employees had established their monopoly and they do not allow any other official to be posted at Ambala Division. The impugned order of transfer has been passed in the month of October, 2013. But, as per Policy of the Department, the transfer orders are to be passed in the month of June. Thus, he pleaded that the transfer order dated 25.10.2013 passed by the respondents, the order dated 16.12.2013 vide which his representation has been rejected and the order dated 04.09.2014 passed by the Tribunal are illegal.

5. We have duly considered the aforesaid contentions.

6. The petitioner is repeatedly approaching the Tribunal to agitate his transfer orders. Learned counsel for the

petitioner has assailed the transfer of the petitioner primarily on the ground that he had not completed three years term at Ambala. Secondly, the transfer order has been made in the month of October, which should have been made as per the Transfer Policy in the month of June and that the transfer order is *mala fide* as various other employees are continuing at one station for many years.

7. It is settled principle of law that in the administrative matters like transfer etc. the scope of judicial review is very limited. The Hon'ble Supreme Court in case **Mohd. Masood Ahmad Vs. State of U.P & Ors. 2007(4) S.C.T 397** has laid down as under:-

“7. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in **Rajendra Rao V. Union of India, 1993(2) SCT 65 : (1993)1 SCC 148: (AIR 1939(1993 ?) SC 1236), National Hydroelectric Power Corporation Ltd. V. Shri Bhagwan, 2002(1) SCT 236: (2001)8 SCC 574: (AIR 2001 SC 3309), State Bank of India V. Anjan Sanyal, 2001(2) SCT 817: (2001) 5 SCC 508: (AIR 2001 SC 1748).**

Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in **Vijay Pal Singh V. State of U.P., 1998(1) SCT 723: (1997)3 ESC 1668: (1998) AII LJ 70) and Onkarnath Tiwari V. The Chief Engineer, Minor Irrigation Department, U.P. Lucknow, (1997) 3 ESC 1866: (1998 AII LJ 245)**, has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is *mala fide* or that the service rules prohibit such transfer, or that the authorities who issued the orders, were

not competent to pass the orders.”

8. As per aforesaid ratio of law, the transfer order should not be interfered with by the Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is *mala fide* or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders. In the instant case, it is not disputed that the petitioner was holding the transferable post. So, the transfer was one of the condition of his service and it cannot be stated that his transfer was prohibited by the service rules. It is also not disputed that the impugned transfer order has been passed by the Competent Authority. The impugned transfer order cannot be stated to be *mala fide* simply on the ground that the petitioner has been transferred before completing the tenure of three years and some other employees are continued at a particular station for many years. The representation moved by the petitioner has been duly considered by the Competent Authority as per the directions given by the Tribunal by passing the detailed speaking order dated 16.12.2013. In the said order, it has been mentioned that it was felt necessary to shift the petitioner for smooth and fair investigation of the cases pending against him and to improve the working atmosphere of the Divisional Office at Ambala. Thus, it can be fairly stated that the impugned order was passed by the

Competent Authority in the public interest on administrative reasons and not due to any *mala fide* intention.

9. The Hon'ble Supreme Court in case **Union of India Vs. S.L.Abbas 1995(4) S.C.T 455**, has laid down that the guidelines issued by the Government for transfer of the Government employees do not confer any legal and enforceable right to challenge the transfer if the guidelines were not followed. The Court cannot interfere in the transfer order unless it is vitiated by *mala fide* or some statutory provisions are violated. In view of the aforesaid ratio of law laid down by the Hon'ble Apex Court, the guidelines issued by the respondents does not confer any legal and enforceable right upon the petitioner to challenge the transfer simply on the ground that those guidelines have been violated.

10. The Hon'ble Supreme Court in case **State of Punjab and others Vs. Joginder Singh Dhatt AIR 1993 S.C. 2486** has laid down as under:-

“3. We have heard learned counsel for the parties. This Court has time and again expressed its disapproval of the Courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the Constitution of India in a matter where, on the face of it, no injustice was caused.”

11. In view of the aforesaid consistent ratio of law laid down by the Hon'ble Apex Court, the transfer is an incident of service and the same is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by *mala fides*. These grounds are totally lacking in the instant case. An employee cannot claim as a matter of right to serve at a particular place. It is entirely for the employer to decide when, where and at what point of time a public servant is to be transferred and ordinarily the Courts will have no jurisdiction to interfere with the transfer orders.

12. Thus, keeping in view our aforesaid discussion, we do not find any illegality in the impugned order dated 16.12.2013 passed by respondent no.1 and order dated 04.09.2014 passed by the learned Tribunal.

13. Resultantly, the present writ petition has no merits and is hereby dismissed.

(M.JEYAPPAUL)
(JUDGE)

(DARSHAN SINGH)
JUDGE

November 04, 2015

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