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*** IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 6726/2015**

Date of judgment: 25th August, 2015

UNION OF INDIA AND ORS. Petitioners
Through : Ms. Mrinalini S. Gupta, Advocate.

Versus

YOGENDER MITTAL Respondent
Through : None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J.

1. The present writ petition under Article 226 of the Constitution of India has been preferred by the petitioners for quashing of the orders and judgment dated 10.02.2014 passed by the Central Administrative Tribunal, Principal Bench in O.A. No. 1868/2013.
2. Briefly stated, facts of the case as unfolded are that the respondent is an Indian Revenue Service Officer having All India Transfer Liability and was appointed in the year 2006 by the petitioners. After successful completion of his training, he was posted in CCIT (CCA), Delhi. Vide a common order No. 86/2013 dated 24.05.2013, respondent was transferred to Chennai (CCA TN). After complying with the said order, the respondent made a representation dated 27.05.2013 against the said transfer order. His representation was considered by the placement committee in its meeting held on 14.06.2013. The representation made by the respondent was disposed of vide Board's letter dated 04.07.2013. The

respondent preferred OA No. 1868/2013 against his transfer order before the learned Tribunal which was allowed vide order dated 10.02.2014.

3. Ms. Mrinalini S. Gupta, learned counsel for the petitioner submits that the Tribunal has exceeded their jurisdiction of judicial review while passing the impugned order and in the light of the abovementioned submission the order passed by the Tribunal is bad in law.
4. Counsel for the petitioners strenuously urged that the transfer of respondent from Delhi to Chennai was on administrative grounds and was permissible under the provisions of ***Transfer & Placement Guidelines-2010***. Counsel for the petitioners further clarified that the respondent was holding a transferable post and under the conditions applicable to his services; he was liable to be transferred and had no legal or statutory right to insist to work at particular place of his choice.
5. Counsel for the petitioners further urged that transfer is an incidence of service and it is the absolute prerogative of the employer to transfer his employees at any point of time at any work station and the Courts/Tribunal have no jurisdiction to interfere with the same. The impugned transfer order has been passed for administrative exigencies and therefore, the same should not be interfered by this Court invoking the extra ordinary jurisdiction under Article 226 of Constitution of India. To substantiate her contention, counsel for the petitioners relied upon the judgment of the Apex Court ***Shilpi Bose v. State of Bihar, AIR 1991 SC 532*** in which the Apex Court observed as under:-

"The Courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. An employee holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place

to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order, instead of affected party should approach the higher authorities in the department."

The counsel for the petitioners vehemently argued that in the light of the above judgment the Court should not interfere with the order of transfer even if it is evident that the executive instructions were not followed. The counsel for the petitioners also relied on ***Union of India and others v. S.L. Abbas, AIR 1993 SC 2444*** and ***S.C. Saxena v. UOI & Anr., 2006 SCC (L&S) 1890***.

6. It is the case of the respondent before the CAT that he was transferred from Delhi to Chennai under the garb of administrative grounds and the said transfer has been challenged on the grounds of arbitrariness, discrimination besides allegations of malafide. The respondent has alleged that the petitioners adopted a pick and choose policy while making transfers and there is clear violation of ***Transfer & Placement Guidelines-2010*** in exercise of his transfer from Delhi to Chennai.
7. The issue involved in the present writ petition can be summarised as under:
Whether the action of the petitioners in transferring Shri Yogender Mittal from Delhi CCA to Chennai CCA was fair and justified?
8. In view of the above factual backdrop of the case in hand, it is to be considered as to whether this Court can exercise power under Article 226 of the Constitution of India and can interfere with the order of transfer passed by the authority.
9. In any service when the relationship is that of employer and employee; transfer, retirement, promotion etc. are incidents of service. Usually the

employer has full power to transfer his employee whenever he wants because transfer is ordered looking to the character and quality of work, the employee does. Thus, if the employer is of the opinion that a particular employee is required at a particular place for a particular duty, the employer has a right to transfer such an employee from one place to another. However, this power of the employer is not absolute and should not be exercised capriciously. At the same time, the employer should avoid to transfer his employee simply to accommodate the other favoured employee. Furthermore, an order of transfer of an employee should be passed in public interest or in the interest of the institution itself where the employee serves. Exigencies of administrative purpose also sometimes persuade the employer to transfer the employee from one place to another.

10. The object of framing a Transfer/Placement Policy is to increase transparency and also to provide better opportunities to officers for excellence and a more planned approach to cadre planning. The Transfer Policy is a vital ingredient. Such Transfer Policy has been formulated to address the needs of the department as well as Human Resource Development aspects and Career Management of officers as a whole. A high power Committee has to consider the parameters contained in the Transfer Policy while effecting the transfer. The provisions in the Transfer Policy should be the actual basis of transfer of the employees. As such, the Placement Committee is required to apply the same yardstick meticulously and in uniform manner in respect of all the officers. The whole object of framing such Transfer Policy in a welfare state is to eliminate the possibility of any arbitrary or discriminatory approach by the authorities in effecting such transfer. The underlying idea in laying down such an exhaustive and detailed policy is to exclude not only arbitrariness but also bias or malafide in any manner whatsoever. There

could not be any dispute with regard to the said proposition of law that the administration is the sole authority to decide the posting and transfers of officers. The scope of judicial review in transfer matter is also circumscribed as to fair exercise of power, absence of malafide and violation of statutory provisions as well as deviation from the professed norms or guidelines.

11. Effective utilization of the service of an employee is in the very core of administrative exigency. It is an accepted position in law that even if a service is transferable, an employee in public employment cannot be transferred on mere ipse dixit of the superior authority having power to make an order of transfer. The administrative exigency and/or public interest must be fulfilled before passing the order of transfer against an employee. A transfer is a very important incidence of service and often the order of transfer which may appear innocuous causes serious hardship to the concerned employee. It should be noted in this connection that how the best service of an employee can be utilized and must be left to the wisdom of the employer for that purpose. Furthermore, the employer shall also consider that whether the service of an employee can be better utilized in some other place is not a justifiable issue in a court of law. It will be sufficient to sustain an order of transfer if it can be shown that the service is a transferable one and by the impugned order of transfer, no condition of service or the norm laid down for such transfer has been violated and that a proper consideration of administrative exigency and/or public interest has been made by the concerned authority and on being satisfied of such administrative exigency and/or public interest, the order of transfer has been made.

12. Referring to *Shilpi Bose case* (supra) and *Gujarat Electricity Board v. Atmaram Sungomal Poshani*, 1989 (2) SLR 684 (SC), it was held that a

judicial review of an administrative action is of course permissible, but orders of transfer are interfered when:-

- “(a) *the transfer is malafide or arbitrary or perverse;*
- (b) when it adversely alters the service conditions in terms of rank, pay and emoluments;*
- (c) when guidelines laid down by the department are infringed;*
- (d) when it is frequently done and lastly;*
- (e) if there is a statutory infraction.”*

Therefore, whenever a public servant is transferred, he must comply with the order but if there be any genuine difficulty in the proceeding of transfer, it is open to him to make representation to the competent authority for modification or cancellation of the transfer order.

The said view has been reiterated in *UOI vs. S.L. Abbas, AIR 1993 SC 2444*, *State of Punjab and others vs. Joginder Singh Dhatt, AIR 1993 SC 2486* and *State of U.P. and Ors. vs. Gobardhan Lal, AIR 2004 SC 2165*.

13. In *Union of India and Others vs. S.L. Abbas (1993) 4 SCC 357*, the Supreme Court, after considering a challenge to the transfer of a Government employee, inter alia, observed as under:-

“...Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated of by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it”

14. In *Home Secretary, U.T. of Chandigarh and Anr. vs. Darshjit Singh Grewal and Ors. (1993) 4 SCC 25*, the Hon'ble Supreme Court held that the policy guidelines are relatable to the executive powers of the administration and having enunciated a policy of general application and

having communicated to all concerned, the administration was bound by it till such time as the policy was changed.

15. The Hon'ble Supreme Court in the case of ***Sarvesh Kumar Awasthi v. V.P. Jal Nigam and Others, SLP (C) No. 2523 of 2001***, decided on September 4, 2001 held that:

“....transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned.”

16. From the proposition of law as settled by the Hon'ble Apex Court it would appear that normally the Court will not interfere with the order of transfer which is an incidence of service unless it is shown to be clearly unjustified, arbitrary or vitiated by malafide or infraction of any professed norms or principles governing the transfer. Therefore, the Hon'ble Supreme Court consistently held that if an order is passed in infraction of any professed norms or principles governing the transfer, which alone could be scrutinized judicially, the Tribunal or Court may interfere with such orders unless a strong case of administrative need is made out for deviation from the professed norms and/or policy. Such interference may be made only when a judicially manageable and permissible ground is made out.

17. In this case, the petitioner was initially appointed as an Assistant Commissioner of Income Tax by the Central Board of Direct Taxes(“CBDT”) for short) in the year 2006. On completion of training, he was posted in Delhi vide order dated 28.04.2008 and joined the office of Chief Commissioner of (CCA) on 16.05.2008. Now, vide the impugned order dated 24.5.2013 he was transferred to the office of Chief
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Commissioner Chennai(CCA) on administrative ground. On receipt of the aforesaid order, he made a representation to the Member (P&V), CBDT on 27.05.2013 stating that he was transferred before completion of the 8 years continuous stay in Delhi and, therefore, it was against the prescribed guidelines. He has also mentioned some of his family problems. In this regard, he has relied upon para 4.3 of the “transfer of placement guidelines for officers of the Indian Revenue Service CBDT-2010”. It is also the contention of the petitioner that there are many officers who are having longer stay than that of the applicant in Delhi but they are being retained. He has also stated that the present order of transfer under the garb of administrative grounds is an arbitrary and discriminatory act and thus bad in law. The respondents are in fact adopting a pick and choose policy and the present transfer order is being imposed upon the applicant and the same is in absolute violation of transfer policy. Original file of the petitioners were called by the Tribunal. It would be useful to refer to para 10 of the order of the CAT, which is extracted as under:

“10. On the directions of this Tribunal, the Respondents have also made available the following two files:

- “(i) A-22012/1/2013-Ad.VI*
- (ii) A-22013/4/2013-Ad.VI”*

Both the files do not contain the deliberations regarding the transfers of the Applicants. However, they contain copies of the minutes of the Placement Committees. In a routine manner, all the minutes contain a recitation in the following manner:-

“3. In deliberations, the Placement Committee adopted the following norms and criteria while deciding and recommending the transfer/postings:

- a. *the overall shortage of officers in different regions of the country*
- b. *the overall revenue potential of the region/station*
- c. *the requests of spouse grounds*
- d. *the requests on compassionate (medial/health) and education ground*
- e. *the tenures of particular officers in a region/station*
- f. *the administrative grounds and requirements and other exigencies*

4. *After due deliberations, keeping in mind the provisions of TPG-2010 and the above mentioned norms/criteria, the Placement Committee decided to make the recommendations in respect of the officers who had filed their online requests & paper representations, officers who reverted back to the department, those who have been transferred on administrative grounds/requirement as well as postings in the Directorates of CBDT, the recommendations of the Placement Committee for transfer/posting are at Annexure D. As regards the officers who were due for a review, the recommendations of the Placement Committee are enclosed at Annexure E”.*

In fact there were no data or details regarding the shortage of offices, overall revenue potential, tenure of officers in the region/station etc. as provided in the “transfer of placement guidelines” before the Placement Committee. There is also no explanation as to the type of “administrative grounds and requirements and other exigencies etc.” based on which the Respondents have curtailed the minimum tenure of the posting of the Applicants in their present stations. From the record, I did not find any deliberations on the part of the Placement Committee regarding any exigency which necessitated them to recommend the transfer of the Applicants in violation of the guidelines. On the other hand,

I do not find any kind of application of mind by the members of the Committee.”

18. Although the petitioners sought to make out a case that there has been no deviation from the Transfer Policy in effecting the transfer of the respondent but from the pleadings, records and submissions it is more than evident that the petitioners deviated from the Transfer Policy in issuing the transfer order in respect of the respondent.
19. In the light of the facts and circumstances of the present case, we are of this considered view that there is no explanation adduced by the petitioners with regard to administrative grounds and other exigencies based on which the petitioners have curtailed the minimum tenure of the posting of the respondent in their transfer order dated 24.05.2013. After perusing the records of the present case we have noticed that there are no deliberations on the part of the Placement Committee regarding any exigency which necessitated them to recommend the transfer of the respondent in violation of the aforementioned guidelines. As we know that the administrative exigencies and public interest are the guiding principles for transfers. Such consideration shall also be to the extent possible, in accordance with the guidelines. Though guidelines are not statutory in nature, it cannot be said that they are not required to be followed without assigning any reasons. In the present case, the petitioners in their reply before the CAT have not given any reasons for not following the aforestated guidelines, hence, the transfer order passed by the petitioners is arbitrary and not in accordance with the provisions of ***Transfer & Placement Guidelines-2010***.

20. For the reasons stated above, we do not find any infirmity in the order of Tribunal impugned before us and accordingly, the present writ petition being devoid of any merit is dismissed.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 25, 2015
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