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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C)6061/2015

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Judgment dated 17th August, 2015

B. TIWARY

..... Petitioner

Through : Mr. B.K. Berera, Advocate

versus

UNION OF INDIA & ANR

..... Respondents

Through : Mr. Kirtiman Singh, CGSC with
Mr. Waize Ali Noor & Mr. Gyanesh
Bhardwaj, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Aggrieved by the order of transfer dated 20.03.2015, OA No.1520/2015 was filed by the petitioner before the Central Administrative Tribunal(hereinafter referred to as 'CAT'). The said OA was dismissed by the CAT by an order dated 29.05.2015 which has led to the filing of the present writ petition.
2. The petitioner joined as an Assistant Director/Assistant Executive Engineer based on a Combined Engineering Service Examination conducted by the Union Public Service Commission(hereinafter referred to as 'UPSC') on

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By:AMULYA in December, 2005. He was promoted as Dy. Director in June, 1990 and Director
On 30.09.2014, the petitioner was promoted as Chief

Engineer and, subsequently, posted as Chief Engineer in HETD Division of Hydro Wing CEA on 17.10.2014. The petitioner was shocked to receive the transfer order by which he was transferred to Polavaram Project Authority(hereinafter referred to as 'PPA'), Hyderabad only after five months of his posting as Chief Engineer in HETD Division of Hydro Wing CEA. The petitioner was to be relieved from 31.03.2015.

3. Aggrieved by the order of transfer, the petitioner made a representation on 23.03.2015 which was rejected on 30.03.2015. Another representation was made on 31.03.2015 which was also rejected on the same day.
4. The order of transfer was challenged before the CAT on four grounds: (1) Petitioner claimed that he had only one year and ten months left to his retirement and he should not normally have been transferred out; (2) The petitioner's father was 81 years of age and has suffered a paralytic stroke and is bed-ridden; (3) He has to look after his unmarried sister and who is staying with him and is suffering from liver cirrhoses; and (4) There are other senior officers who may be more suitable and who are lesser in age who could be transferred out.
5. All four grounds of the petitioner were rejected by the CAT. In addition to the aforesaid four grounds, reliance is placed by the learned counsel for the petitioner on the policy formulated by the respondents pursuant to the directions contained in the case of *T.S.R. Subramanian & Ors. v. Union of India & Ors.*, reported at (2013) 15 SCC 732. Learned counsel for the petitioner has relied upon Clauses 4 and 5.3, sub-rule (1) of the Office Memorandum No.1/5/2013.Adm.I(CEA) dated 27.02.2014 issued by Government of India, Ministry of Power, Central Electricity Authority, Sewa Bhawan, R.K. Puram, New Delhi, while reiterating that the petitioner had less than two years service remaining and thus, he should not have

been transferred out. The Clauses 4 and 5.3, sub-rule (1) of the Office Memorandum read as under:

“4. The minimum tenure of an officer at a particular post at a particular place will be TWO YEARS under normal circumstances.

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5.3 The Guiding principles for consideration of cases for transfer/posting shall be as under:

- i) Officers & staff due for retirement on superannuation within a period of 2 years shall not normally be transferred if suitable persons of lesser age are available for manning the post.”

6. Reliance is also placed by the petitioner on Clause 6 of the Office Memorandum, which reads as under, to show that no meeting of the Board took place to recommend transfer of the petitioner:

“6. The BCOT may, in public interest, recommend the names of officers to the Chairperson, CEA, for transfer before completion of minimum tenure with reasons to be recorded in writing.”

7. The learned counsel for the petitioner has also relied on a decision rendered by the Supreme Court in the case of **Ramadhar Pandey v. State of U.P. & Ors.**, JT 1993(4) SC 72, wherein in para 17 it was held as under, to show that the transfer was stayed by the Supreme Court as except few months remained for the appellant to retire in the said case:

“17. We are informed by the learned counsel for the appellant that appellant is due to retire in another few months. That being the position, we do not think that he should be transferred as Joint Secretary, more so in the absence of any public interest involved. Accordingly, we set aside the impugned judgment dated 23.11.1992 passed by the High

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Court and the impugned order of transfer dated 8th July, 1992.”

8. Mr. Kirtiman Singh, learned CGSC submits that as far as the policy is concerned, it makes it clear that normally a person is not to be transferred out in the circumstances as detailed in the policy. It is contended that in the policy basically guide lines have been framed which are generally to be followed. It is submitted that the order of transfer is not for mala fide reasons. In fact, in his entire tenure the petitioner has never been transferred out of Delhi and the only reason why he has been transferred out is after the Andhra Reorganization Act, the Polavaram Project Authority came to be established the respondent requires the expert service and supervision of an electro mechanical expert and the petitioner was the only expert who could be posted at that place. Persons younger than the petitioner did not have the expertise and only because of his experience and expertise required at the said place, it was decided to post him. The learned counsel for the respondents has relied upon the judgment in the case of **Rajendra Singh & Ors. v. State of Uttar Pradesh & Ors.**, (2009) 15 SCC 178 in support of his argument that a Government servant has no vested right to remain posted at his choice. In paras 8 and 9 it was held as under:

“8. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position

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as long as he desires(see *State of U.P. v. Gobardhan Lal*, (2004) 11 SCC 402.

9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In *Shilpi Bose v. State of Bihar*, AIR 1991 SC 532, this Court held:

“4. In our opinion, the courts should not interfere with a transfer order which is 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. A government servant 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 affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.”

9. The learned counsel for the respondents has drawn our attention to para 4 of the order dated 29.05.2015 passed by the CAT, wherein it was held as under:

“4. After examining all the aforesaid issues, I feel that since the applicant had been supported by the employer all these years, when the employer requires his services for special purpose, it is not appropriate for the applicant to deny it. He is in the pink of health and his father's condition can be managed by his brother as well, but then, for this reason, the transfer order cannot be set aside. When senior officers are

given purposeful responsibilities, it cannot be considered as proper for them to deny it.”

10. While we may sympathise with the petitioner who does not want to leave his ailing father, the law is well-settled that transfer is an incidence of service and the courts must not ordinarily interfere unless it is shown to be arbitrary or the action is *malafide*. We may also notice that it has not been disputed before us that the petitioner’s younger brother is also a resident of Delhi and is stated to be staying nearby. We may notice that even during the pendency of the writ petition, the petitioner had given a representation to the respondents which was not found favourable. In addition, except that the petitioner had less than two years service at the time when he was transferred, we find no grounds have been made out to show that there has been any act of *malafide* on the part of the respondents to transfer the petitioner. In *Udai Vir Singh Rathi(AC) v. Union of India & Ors.*, (W.P.(C). No.2435/2014) decided on 03.06.201, in para 10, this Court held as under:

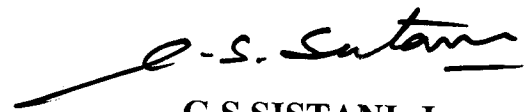
“10. In Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey, (2004) 12 SCC 299, it has been held thus:

“Transfer which is in incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer[see Abani Kanta Ray v. State of Orissa, 1995 Supp (4) SCC 169]. Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it(see Union of India v. S.L. Abbas, AIR 1993 SC 2444). 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.”

11. The respondents have given reasonable and cogent reasons for the transfer of the petitioner.
12. Accordingly, we find no merit in the writ petition; the same is accordingly dismissed.

CM.APPL 11011/2015(stay)

13. Since the present writ petition has been dismissed, the application also stands disposed of.


G.S.SISTANI, J


SANGITA DHINGRA SEHGAL, J

AUGUST 17, 2015
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