

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

% *Date of decision : July 16, 2015*

+ LPA 445/2015

S K JINDAL

..... Appellant

Represented by: Mr.Sarvesh Bisaria with
Mr.Prakash Chand Sharma,
Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Represented by: Mr.Manish Mohan, CGSC with
Ms.Manisha Rana Singh &
Ms.Sidhi Arora, Adv.for R-1.
Mr. K.K. Tyagi, Adv.for R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order dated 28th April, 2015 dismissing the writ petition filed by the appellant S.K.Jindal being WP(C) No.3264/2014, the appellant prefers the present appeal. In the writ petition S.K.Jindal had challenged his transfer order dated 8th May, 2014 transferring him from CO,Tech. Division Delhi to Sikar, Rajasthan and also quashing of the relieving order dated 13th May, 2014 and order dated 19th May, 2014 rejecting his representation.

2. S.K.Jindal was appointed as Junior Technical Assistant with the respondent Central Ware Housing Corporation in the year 1980 and was promoted as Superintendent in April, 2010. All these years he was posted at Delhi except for a short period at Kandla Port. It is the case of S.K.Jindal

that since he was one of the office bearers of the Officers' Association and raised voice on material issues including the allegations of corruption against respondent No.2 Corporation on 4th August, 2011, made representation to the CVC with regard to the manipulation in filling up various posts through direct recruitment process and that no extension be granted to respondent No.3 as Managing Director, he was transferred vide the Order dated 8th May, 2014.

3. Before the learned Single Judge the contentions raised by S.K.Jindal were that (i) transfer order was vitiated on account of malafide of the Managing Director (MD) of respondent No.2, who has been sued as respondent No.3 as S.K.Jindal had made complaint of corruption against him; (ii) being an office bearer of the association of officers of respondent No.2, he has been victimized by the management of respondent No.2; (iii) as per transfer policy, if two years of service of employee is remaining, the employee cannot be transferred and (iv) the appellant has been singled out as many other officers who have been working for more than 30 years have not been transferred out.

4. The learned Single Judge noted that the writ petition ought to have been dismissed in limine for the reason that once the interim application of S.K.Jindal was dismissed on 21st May, 2014, the appellant ought to have joined the service however in spite of transfer order, it has been nearly one year and the appellant had not joined at the place of posting at Sikar, Rajasthan. Thus, the length of period and obdurate attitude of the appellant affecting the administration of respondent No.2 was sufficient to decline to entertain the writ petition and exercise discretionary power under Article 226 of the Constitution of India. With regard to the allegations of malafide,

the learned Single Judge noted that earlier a writ petition bearing No.4235/2014 titled as Central Ware Housing Corporation Officers Association Vs. Union of India & Ors. was filed *inter alia* seeking directions to the CVC and CBI to investigate the complaint of corruption. The said writ petition i.e. WP(C) No.4235/2014 was dismissed by this Court on the ground that the said petition was not bonafide, being motivated and belated and that S.K.Jindal had already been held guilty of misusing the process of law of this Court. With regard to the contention that S.K.Jindal could not be transferred because he had only two years remaining in service, learned Single Judge noted para 28 of the policy which stated that as far as possible within two years of retirement, a person must be posted near his home town, however, this does not mean that the employer for administrative exigency cannot post an employee outside. Counter affidavit filed by the Management clearly showed the reasons for transfer of S.K.Jindal which cannot be held to be malafide. Learned Single Judge also rejected the contention that S.K.Jindal was being victimized for being an office bearer of the officers association. The Court noted that even if other officers were not transferred that does not mean that respondent No.2 could not transfer the appellant herein and thus the petition was dismissed with costs of ₹50,000/-.

5. Before us two grounds have been urged, firstly that if two years remain then the officer should not be transferred away from his home town and secondly that the other officers who were transferred have not been relieved but the appellant has been.

6. Clause 28 of the posting policy of the respondent provides that employees due to retire within a period of two years shall as far as possible be posted near to their home town and they shall be entitled to a full transfer

benefits even if the transfer is made on their request. Further Clause 31 of the posting policy provides that office bearers of registered/recognized Unions/Associations shall not be immune to transfers and shall be subjected to transfers as per the norms laid in the posting policy especially with regard to the sensitive posts. They may be, however, if possible, allowed to continue in the same station during their tenure of office in the Unions/Associations. As per the counter affidavit, the transfer order of S.K.Jindal was passed in administrative exigencies for the reason that Warehouse Manager, Sikar was retiring in the month of July, 2014. Regulation 12 of the Central Warehousing Corporation (Staff) Regulations, 1986 provides that a person recruited to any post under the Corporation shall be liable to serve anywhere in India or Abroad. As per the transfer policy, the officers in Group A and B shall be transferred after 3 years if in sensitive post and 5 years in other post. Admittedly the appellant has been in Delhi for nearly 30 years.

7. With regard to the contention that other officers, who were also directed to be transferred have not been relieved but the appellant has been relieved, a chart has been placed by learned counsel for the respondents before this Court which would show that Daniel Singh, who was also transferred along with the appellant had already been relieved and has joined however since there was shortage of staff with RO, Delhi B.M. Sharma, V.K.Mahajan and D.R. Singh have not been relieved to join the transfer posting.

8. It is apparent that S.K.Jindal has not been able to make out any case of discrimination or malafide exercise. As a matter of fact whenever S.K.Jindal is transferred, he is in the habit of raising such pleas as noted by

learned Single Judge. Despite the stay application being dismissed, S.K.Jindal did not join at Sikar. Further even when transfer orders were passed on 17th September, 2004 and S.K.Jindal was relieved on 21st September, 2004, he remained unauthorizedly absent from 22nd September, 2004 to 17th June, 2005 and did not join at the new place of posting.

9. It is trite law that a Government servant has no vested legal rights to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. Transfer of an employee is an incidence of service and transfer cannot be evaded merely on the ground of pendency of representation or difficulties. Thus we find no merit in the appeal. The appeal is dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 16, 2015
‘v mittal’