

I- 9

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

Date of Decision: September 21 , 2015

+ W.P.(C) 9036/2015

JITENDRA MOHAN SINGH Petitioner
Through; Mr.Samrat K Nigam, Ms. Ankita
K. Bahl & Ms. Aishwarya
Chander, Advocates

versus

BHARAT HEAVY ELECTRICALS LTD. Respondent
Through: Mr. J.C. Seth, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

Impugned order of 15th January, 2013 (*Annexure P-5*) transfers petitioner, an Engineer with the respondent, to RMSG, Bhopal. Vide office order of 4th February, 2013 (*Annexure P-6*) respondent has clarified that the transfer would be for a period of three years and the transferred employee will be repatriated to PEM after a period of three years. The challenge in this petition is to the transfer order (*Annexure P-5*) and Office Order (*Annexure P-6*).

On 14th May, 2013, petitioner's father had made a Representation (*Annexure P-8*) seeking cancellation of transfer of petitioner to Bhopal on the ground that petitioner was suffering from depression for the last one

year and was under treatment. Representation of 14th May, 2013 (*Annexure P-8*) was followed by a reminder of 31st May, 2013 (*Annexure P-9*) and another reminder of 17th June, 2013 (*Annexure P-10*).

Respondent vide Communication of 31st July, 2013 (*Annexure P-11*) had informed petitioner's father that overstaying of joining time for a long duration is not advisable and petitioner should join place of his posting in Bhopal, where there is stress free environment and medical facilities for petitioner's treatment are available and after petitioner joins his duties at Bhopal, his request for re-transfer would be considered at appropriate time.

Again on 12th August, 2013, petitioner's father had informed respondent vide letter of 12th August, 2013 (*Annexure P-12*) that petitioner has been admitted to *Vidyasagar Institute for Mental Health, Neuro & Allied Sciences, Nehru Nagar, New Delhi* (henceforth referred to as '*VIMHNAS*'). It is a matter of record that petitioner was discharged from the said hospital on 16th August, 2013 vide *Discharge Summary* (*Annexure P-14*). Again request for cancellation of transfer was made by petitioner vide letter of 27th August, 2013 (*Annexure P-15*) on the ground that petitioner was under treatment in '*VIMHNAS*' and needed constant supervision of caregivers.

Petitioner's father had again sought cancellation of petitioner's transfer by making Representation on 26th September, 2013 (*Annexure P-16*) while disclosing that petitioner is suffering from '*Paranoid Schizophrenia*'. According to petitioner, he was examined by a Medical Board in December, 2013 but the fate of his medical examination got done by respondent was not known. However, petitioner remained silent

during the year 2014 and only in April, 2015, petitioner's father had made another Representation of 8th May, 2015 (*Annexure P-20*) seeking cancellation of transfer order on the ground of mental illness of petitioner. While alleging violation of statutory provisions, cancellation of transfer order was again sought in May, 2015 vide Representation (*Annexure P-21*), which was followed by Reminder of June, 2015 (*Annexure P-22*) and information was also sought under Right to Information Act, 2005 (*Annexure P-23*) and Reply of 4th August, 2015 (*Annexure P-23*) to the application under Right to Information Act, 2005 is made the basis to file this petition.

At the hearing, learned counsel for petitioner had drawn attention of this Court to Reply of 4th August, 2015 (*Annexure P-23*) to point out that on the basis of report of 18th December, 2013 of the Medical Board, a proposal was mooted for cancellation of petitioner's transfer while treating the intervening period as *dies non*. During the course of hearing, learned counsel for petitioner had drawn attention of this Court to the '*Office Memorandum*' of 31st March, 2014 (*Annexure P-18*) to point out that in case of persons suffering disability, an exemption ought to be granted to such disabled employees.

At this stage, it was pointed out by respondent's counsel that the afore-referred '*Office Memorandum*' of 31st March, 2014 (*Annexure P-18*) exempting differently abled employees from transfer relates to Group- B,C & D posts and petitioner belongs to Group-A post and so, it does not apply to the case of petitioner.

Upon hearing and on perusal of the impugned transfer order, Representations, '*Office Memorandum*' and material on record, this Court

finds that by merely seeking information under Right to Information Act, 2005 in April, 2015 and by remaining silent throughout the year 2014, petitioner cannot make the stale claim for cancellation of transfer made in the year 2013 because it was brought to the notice of this Court that the salary of petitioner was stopped once he was relieved in December, 2013 itself. No medical record has been placed on record to show that the medical condition of petitioner had deteriorated in the year 2014 or as to what is the medical condition of petitioner now.

Unless the transfer order is shown to be vitiated by *mala fides* or any violation of any statutory provisions is alleged or it is asserted that transfer order was passed by authority incompetent to do so, courts refrain to interfere with the transfer of an employee. The pertinent observations of the Apex Court on this aspect in *State of U.P. vs. Gobardhan Lal*, (2004) 11 SCC 402 are as under:-

“7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. 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 contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be

interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.”

Upon considering the case of petitioner on the afore-noted parameters, this Court finds that this petition is not only hit by delay and latches but is otherwise liable to be dismissed for the reason that petitioner is trying to avoid transfer on medical grounds whereas good medical facilities are available at the place of his transfer i.e. in Bhopal. Once petitioner was advised to join place of his posting with the assurance that his prayer for recall of transfer order would be considered at the appropriate time, then petitioner ought to have joined the place of

his posting. Having not done so, now petitioner cannot claim any discrimination or violation of '*Office Memorandum*', as mental illness of petitioner does not come within the ambit of *The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995*. This was not disputed by petitioner's counsel during the course of hearing as well. This Court is of the considered opinion that this petition is hit by delay and laches. Even on merits, this petition deserves to be rejected. Infact, petitioner has no intention to join the place of his posting. Such a view is being taken as during the course of hearing, respondent's counsel had offered that if petitioner joins his place of posting within fifteen days, then he would be allowed to do so. Petitioner's counsel on instructions had submitted that petitioner does not intend to do so.

Consequently, this Court finds that there is no justification whatsoever to interfere with the impugned transfer order. This petition and application are accordingly dismissed with no order as to costs.

(SUNIL GAUR)
JUDGE

September 21, 2015

r