

I-13 & 14

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

Date of Decision: October 29, 2015

+ **W.P.(C) 9887/2015 & C.M. 23925/2015**

AJITHKUMAR KOMATH Petitioner

Through: Ms. Saahila Lamba, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Digvijay Rai, Advocate for
respondents No.2 & 3

+ **W.P.(C) 9910/2015 & C.M. 23969/2015**

TARUN CHANDER CHANDOLIA Petitioner

Through: Ms. Saahila Lamba, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Digvijay Rai, Advocate for
respondents No.2 & 3

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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In the above captioned first petition, petitioner-*Ajithkumar Komath* assails the Memorandum of 28th September, 2015 (*Annexure P-9*) vide which his Representation against his transfer from Indira Gandhi International Airport (*henceforth referred to as IGI Airport*) to Corporate

Head Quarters, New Delhi is challenged. In the above captioned second petition, petitioner- *Tarun Chander Chandolia* assails his transfer from IGI Airport to Corporate Head Quarters, New Delhi. It is submitted that petitioner- *Ajithkumar Komath* has worked as Radar Controller at IGI Airport for six years and petitioner- *Tarun Chander Chandolia* has worked as Radar Controller at IGI Airport for one year.

Since impugned transfers are assailed in above captioned two petitions on identical grounds, therefore, these petitions have been heard together and are being disposed of by this common judgment.

Learned counsel for petitioner submits that Airport Authority of India's Transfer Policy General Guidelines (*Annexure P-1*) mandates that length of stay at a station would govern the transfers and persons senior to petitioners have been retained at Air Traffic Control in IGI Airport whereas petitioners have been picked up to be sent to Corporate Headquarters. Attention of this Court is drawn to list of Stations/ Tenure Stations to show that Corporate Headquarters at Delhi and IGI Airport, Delhi are two different stations and so, petitioners' transfer from IGI Airport, Delhi to Corporate Headquarters, Delhi or vice versa would constitute transfer and would not be considered as a mere posting.

Learned counsel for petitioner submits that five similarly placed officers- *Manjit Singh, Vipin Kumar, Pramod Kumar Sharma, Santosh Kumar Maurya and Anup Kumar* were transferred on 23rd June, 2015 and subsequently their transfers have been cancelled on various grounds like man power requirement at IGI Airport, Delhi and four of such officers, whose transfers have been cancelled, are senior to petitioner.

At this stage, it is pertinent to note that the aforesaid five officers were not transferred from Air Traffic Control, IGI Airport to Corporate Headquarters but to different places outside Delhi.

Learned counsel for petitioner pointed out that two senior officers- *Satya Pal Singh* and *Hari Om Sharma* were exempted to transfer from IGI Airport on account of operational requirement and in this manner petitioners are being discriminated. Thus, regarding petitioner- *Ajithkumar Komath* it was pointed out that the impugned transfer would greatly hamper his career prospects, as in June, 2009 petitioner has already undergone Tower Rating; in August, 2011 petitioner has undergone Area Rating and in April, 2015 petitioner has undergone Area Radar and petitioner is now qualified to take practical examination for completion of Terminal Approach Radar Training. It was further submitted that petitioner will complete his training within one year and so, there was no justification for transferring petitioner from IGI Airport while retaining his seniors on the ground of man power requirement at IGI Airport.

Regarding petitioner- *Tarun Chander Chandolia*, it was submitted that he had been in Air Traffic Control at IGI Airport for one year and normally posting at a station is for three years. Attention of this Court has been drawn to Transfer Policy (*Annexure-I*) to submit so. Attention of this Court was drawn to respondent's Communication of 21st September, 2015 (*Annexure P-12*) to show that one officer- *Jay Kumar* was transferred from Corporate Headquarters to IGI Airport, Delhi and this Communication shows that it is a transfer and not a mere posting. Thus, alleging discrimination, quashing of the impugned orders is sought

in the above captioned two petitions.

On behalf of second respondent- *Airport Authority of India*, learned counsel submitted that aforesaid *Jay Kumar*, who is referred to in Communication of 21st September, 2015 (*Annexure P-12*), was not given any joining time or transfer grant/ expenses. Learned counsel for second respondent has placed on record short affidavits in the above captioned two petitions to state that Communication of 21st July, 2015 (*Annexure P-12*) in the above captioned second petition, the word 'transfer' is an advertent error and infact, Delhi is one station and *inter se* postings are made from India Gandhi Airport to Headquarters. In this regard, attention of this Court is drawn to Communication of 10th February, 2015 (*Annexure R-2/2*), which reads as under:-

“SUB: AAI TRANSFER POLICY- TRANSFER-2015 REG.

Reference is made to SHQ letter of even No. dated 05.12.2014, on the above subject.

2. *It has been observed that while submitting the option forms for three different places at the time of annual transfers, officers generally indicate the same place/ municipality, thereby simply changing nomenclature of the Unit i.e. CHQ/RHQ-NR/SAP/RCDU/NIAMAR etc. in the case of Delhi/ Northern Region despite clear instructions that it would count as one option only.*

3. *It is therefore, once again reiterated that while forwarding the option form, it must be ensured that an individual has opted three different stations/ municipalities, failing which no option*

form shall be accepted and treated as null and void.

4. *The above instructions should be given wide publicity and complied with strictly.”*

Thus, it was submitted by learned counsel for second respondent that for all practical purposes, Delhi Region is considered as one unit for the purpose of transfer and so, guidelines governing the transfer would not apply in the case of petitioners and so, no discrimination can be alleged and dismissal of above captioned two petitions is sought.

After having heard both the sides and on perusal of the impugned Orders/ Memorandum and material on record, I find that unless transfer orders are vitiated by *mala fides* or prohibited by service rules or passed by incompetent authority, these orders ought not be lightly interfered with. In this regard, the pertinent observations of the Apex Court in *Rajendra Singh & ors. Vs. State of Uttar Pradesh & ors.* (2009) 15 SCC 178 are as under:-

“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 as long as he desires.”

In the instant case, in view of operational and administrative requirement, officers are posted / transferred to Corporate Headquarters, Delhi every year and shifting of petitioners from IGI Airport, Delhi to Corporate Headquarters, Delhi is a mere posting and not a transfer and hence, transfer policy is not applicable. No doubt Appendix-I to the Transfer Policy indicates that Corporate Headquarters, Delhi and IGI Airport, Delhi are general stations but *inter se* posting at these stations is on account of administrative exigencies. Courts are always reluctant to interfere with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from *mala fides*. No *mala fides* have been alleged and there appears no violation of any statutory provision in posting petitioners from IGI Airport to Corporate Headquarters.

Consequently, this Court finds no ground to exercise its discretionary jurisdiction to interfere with the posting of petitioners from IGI Airport, Delhi to Corporate Headquarters, Delhi.

The above captioned two petitions are accordingly dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

OCTOBER 29, 2015

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