

\$~18

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

Date of decision: December 3, 2015

+ **W.P.(C) 10768/2015, CM No.27687/2015**
CHITRA Petitioner

Through: Mr.Manoj K.Srivastava, Adv. with
Mr.Ram Nath, Adv.

Versus

CENTRAL WAREHOUSING CORPORATION & ORS Respondents
Through: Mr.K.K.Tyagi, Adv. with Mr.Iftekhar
Ahmad, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J (Oral)

1. The challenge in this writ petition is to the order dated October 12, 2015, whereby the petitioner, who was working as a Superintendent, Central Warehouse, Kirti Nagar was transferred to Regional Office, Jaipur.
2. It is the submission of the learned counsel for the petitioner that the transfer order has been effected with the mala-fide intention. He would state, the petitioner had initially raised an issue of sexual harassment, which was forced to be withdrawn by the respondents. He also states that the petitioner had made a detailed representation, which was forwarded by the

Regional Manager to the Corporate Office but has not been considered and replied till date. That apart, it is his case that the respondent No. 3, who had a grudge against the petitioner, has downgraded her appraisal reports/ACRs. That apart, it is the case of the petitioner, that assuming that the transfer order has been effected for certain misconduct, the same could not have been issued without holding a regular departmental enquiry under the Conduct Rules. He has also pleaded violation of the posting policy. He would rely upon the followings judgments in support of his contention:

- 1. State of U.P. and Others Vs. Jagdeo Singh, 1984 (Supp) Supreme Court Cases 413***
- 2. Pratap Singh Chauhan Vs. State of H.P. and Ors., 2012 (7) SLR 612 (H.P.)***
- 3. S.V.Singh Vs. Union of India and Others, Constitutional Writ Jurisdiction No. 909 (W) of 1987, decided on 15.6.1987***
- 4. Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others, (2005) 1 Supreme Court Cases 625***

3. Mr.K.K.Tyagi, learned counsel appearing for the respondents, on advance notice, would justify the transfer of the petitioner, on the basis of the incident that has taken place on September 17, 2015, which resulted in a complaint by the respondent No. 3, wherein, the respondent No. 3 has

alleged that the petitioner had entered her room and abused her for getting removed the plants in the way of boundary wall being constructed by the Engineer of the constructed site. He states, the petitioner also slapped her in front of official guards as well as one Translator sitting in the room. According to Mr. Tyagi, this complaint was enquired into by the Regional Manager by constituting a Committee. The Committee gave its report which was forwarded to the Corporate Office along with the recommendations. This report was considered by the Competent Authority, Director (Personnel) in the Corporate Office, resulting in the transfer of the petitioner to Jaipur, by noting that there are only 20 Superintendents in position, as against sanctioned strength of 45. It was also observed that the major penalty proceedings be initiated against the petitioner. Mr. Tyagi would rely upon the judgments of the Supreme Court in the cases reported as *(2004) 4 SCC 245 Union of India and Ors. Vs. Janardhan Debanath and Anr.* and *AIR 1993 SC 2444 Union of India and Ors. Vs. S.L.Abbas* in support of his contention.

4. Having heard the learned counsel for the parties, I may only state that this writ petition was initially listed on November 23, 2015 when this Court directed the respondents to produce the relevant file, wherein, decision was

taken to transfer the petitioner to Jaipur. On the next date of hearing, i.e. November 24, 2015, the relevant note sheets were produced. On the said date, the matter was deferred for today. Today, the respondents have produced the relevant note sheets and the report of the Committee.

5. I have perused the same.

6. Insofar as the submission on malafides against the respondents, are concerned, suffice to state, there is no allegation against the Director (Personnel) the Competent Authority, who has taken the decision to transfer the petitioner, nor he is a party in these proceedings, either by designation or by name. The submission needs to be rejected.

7. Insofar as the submission that she was forced to withdraw her complaint of sexual harassment or the downgrading of the ACRs, are concerned, the same has no relation with the order of transfer. As has been argued by Mr. Tyagi, the foundation of the transfer order of the petitioner is primarily the conduct of the petitioner qua the respondent No. 3. The only issue which requires consideration is, given the foundation of the transfer order, whether the same is justified and in administrative exigency.

8. First dealing with the judgments referred to above, in the case of *State of U.P. and Ors. Vs. Jagdeo Singh (supra)*, the Supreme Court was

concerned with the facts, wherein, the respondent, who was working as a Station House Officer at the Chandpur Police Station in Uttar Pradesh, was transferred to the Kotwali Police Station as a Second Officer. He protested against that posting since it involved the loss of the special emolument. Later on, he was transferred to Fatehgarh. He made a representation that he was entitled to be posted as a Station House Officer, Fatehpur, but that representation was rejected on the ground that his name was not approved for posting as a Station House Officer in the district of Fatehgarh. The respondent was transferred again as a Second Officer to Kanpur. Finding that his representation had been rejected, he filed a writ petition in the High Court of Allahabad, seeking that the order transferring him as a Second Officer of a Police Station be quashed. The writ petition having been allowed by the High Court, State of U.P. filed the appeal before the Supreme Court. The Supreme Court in para 2 of the judgment, had noted, the stand of the State of U.P. in its counter-affidavit that the respondent was found negligent in the discharge of his duties. As a consequence, the respondent was reverted from the post in which he was incharge of the police station and a misconduct entry was made in his character roll on May 5, 1971. It was because of the finding of negligence against the respondent, and the

misconduct entry that the respondent in the said case was transferred from Fatehpur to the Fatehgarh Police Station in July 1973 where he was posted as a Second Officer and not as a Station House Officer. The Supreme Court held, the provisions of Section 7(d) of the Police Act, 5 of 1861, were therefore attracted. Section 7(d) provided to the extent material that the Inspector General or any other officer named therein may award to a member of the Police Force any one or more of the punishments mentioned in clauses (a) to (d), if he is found to have discharged his duties in a careless or negligent manner. Clause (d) of Section 7 speaks of the punishment of removal from any office of 'special emolument'. The respondent therein was drawing a special emolument as a Station House Officer of which he was deprived by way of punishment. It was on that limited ground, the Supreme Court confirmed the order of the High Court, in favour of the officer. The Supreme Court in para 3 of the said judgment has observed as under:

“3. We must make it clear that any and every transfer of a police officer from one police station to another will not amount to punishment, even if it involves the loss of a special emolument. if a police officer is transferred from one charge to another in the ordinary course of administrative exigencies, the provisions of Section 7 of the

Police Act will not be attracted because a transfer simpliciter is not punishment. It is only when the transfer is made by way punishment, as in the instant case, that Section 7 would come into play”.

9. The facts of the aforesaid case are different from the facts of the present case and are distinguishable. In the aforesaid case, the posting of the officer who was working as Station House Officer as a Second Officer, resulted in the withdrawal of the special emolument, which the officer was getting as a Station House Officer, which according to the Supreme Court, could have been withdrawn as a punishment and having withdrawn the special emolument, the transfer is punitive. It is not the case of the petitioner that the Conduct Rules stipulates, a transfer is a punishment. He concedes to the fact that the transfer is an incidence of the service. If that be so, the aforesaid judgment of the Supreme in the case of ***State of U.P. and Ors. Vs. Jagdeo Singh (supra)*** has no applicability and would not help the petitioner.

10. Insofar as the judgment in the cases of ***Pratap Singh Chauhan (supra)*** and ***S.V.Singh (supra)*** are concerned, suffice to state, in view of the opinion of the Supreme Court in ***UOI and Ors. Vs. Janardhan Debanath and Anr. (supra)***, on which reliance was placed by Mr. Tyagi, learned

counsel for the respondents, they have no application. In this case, the facts are almost identical, wherein, the respondents before the Supreme Court, who were working in the Postal Services Department were transferred from Agartala Division to Meghalaya Division. Feeling aggrieved by the order, they had moved the Central Administrative Tribunal, Guwahati Bench. The Tribunal, after hearing the parties, directed the parties to consider the representations made by the two lady applicants who were co-applicants along with the respondents within one month. So far as the respondents before the Supreme Court were concerned, no such direction was made by the Tribunal. The said respondents filed writ petitions before the High Court, primarily on the ground; (a) that the transfer orders of two respondents were in violation of provision of Rule 37 of the Posts and Telegraphs Manual, Vol. IV read with DG Posts Letter, dated August 23, 1990; (b) the transfer is in violation of Rule 15 of the Fundamental Rules; (c) the inter-divisional transfer would affect the seniority and promotional prospects of the writ petitioners; and (d) the transfer order was passed as a measure of penalty. The petitioner before the Supreme Court i.e. Union of India took the stand that the transfer was done in public interest and on account of exigencies of administration. It was pointed out that the

respondents not only misbehaved with the Director (Postal Services), a senior lady officer, she was confined and dragged from one room to another and this was done with a view to force her to withdraw the charge sheet against the Deputy Postmaster. She was abused in filthy language. The High Court accepted the prayers of the respondents and held that transfer was impermissible in terms of Rule 37 and was in violation of FR 15. It was the conclusion of the High Court that the transfer was a measure of penalty and the seniority and the promotional prospects were likely to be affected. In appeal, the Supreme Court, has in para 14 has held as under:

“14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum

and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs”.

11. From the above, it is clear that the Supreme Court has, in clear terms held that, for the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of.

12. In the case in hand, the incident was enquired into by a Committee. A prima facie opinion was there before the competent authority about the incident, which formed the basis for transfer. The plea of Mr. Srivastava that if such an incident happened, she could not have transferred, need to be rejected. It is not the case of the petitioner that on her transfer to Jaipur, her service conditions would be affected.

13. I have been informed that the petitioner remained posted in Delhi since her appointment. It is also not in dispute that her services were liable to be transferred anywhere in the country. During the course of the submissions, the Court had put to Mr. Tyagi, the petitioner being a woman employee, whether the respondents would consider the appropriate posting nearer Delhi; it was his submission that, in case, the petitioner seeks a transfer to a place near Delhi, she is within her right to make a representation in that regard, which would be considered by the authorities, but, that would not preclude her to join the place of current posting.

14. One of the submission of Mr. Srivastava is that the respondents have violated the provisions of their own posting policy, which vide, clauses 6, 7 and 11(a) stipulate as under:

“6. Normally transfer shall be ordered in the month of March/April so that the individuals can take up positions at the new place of posting before the commencement of the academic session and the education of the children is not adversely affected. However, for administrative and specific reasons, if transfer is considered imminent, the same can be ordered any time during the year. For computing the period given at para 11 below, cases up to 30th June of the year shall be considered for planning the transfers.

7. *Normally employee on promotion shall not be retained at the same place of posting. However, to avoid hardship to the employees, as far as possible, they shall be posted nearby States/adjoining Regions subject to availability of vacancy.*

XXX XXX XXX

11. *Following periodicity shall normally be maintained while ordering transfers:-*

(a) Employee in Groups A&B-Not exceeding three years if in a sensitive post and five years in other posts....”

15. The clause 6 of posting policy, has no applicability as it is not the case of the petitioner that in the mid academic session of her children, the transfer order has been passed. Insofar as clause 7 of the posting policy is concerned, it is his submission that persons, who have been promoted, have not been transferred out of Delhi. As I have noted the reasons for transfer of the petitioner, such a plea, is not available to her. In any case, it goes without saying that the exigency of administration would be paramount for the competent authority to transfer an officer and the same cannot be interfered with. Insofar as clause 11(a) of the posting policy is concerned, the same is directory as is clear from the words *‘Following periodicity shall normally be maintained while ordering transfers: (a) Employees in Groups*

A & B—Not exceeding three years if in a sensitive post and five years in other posts’. Further, as noted above, the petitioner remained in Delhi since her appointment in the respondent-organization. Even if five years have not elapsed in the present place of posting, no right has accrued to the petitioner in terms of clause 11 (a) of the policy. The reliance placed by Mr. Srivastava on the judgment of the Supreme Court in ***Bannari Amman Sugars Ltd. (supra)*** has no application in the facts.

16. In view of my discussion above, I do not find any merit in the petition. The same is dismissed.

CM No.27687/2015

17. In view of the order passed in the writ petition, the present application is dismissed as infructuous.

V. KAMESWAR RAO, J

DECEMBER 03, 2015/akb