

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 164 of 2016**

Navindra Kumar Lala S/o Late Ravindra Mohan Lala about 50 years working as Tracer at O/o Collector Land Record Rajnandgaon District Rajnandgaon (Chhattisgarh)

---- Appellant**Versus**

1. State of Chhattisgarh through its Secretary Revenue Department Mahanadi Bhawan New Raipur P.S. Rakhi Raipur District Raipur (Chhattisgarh)
2. Commissioner Land Record Block-2 Third Floor Indravati Bhawan New Raipur (Chhattisgarh)
3. Director Office of Commissioner Land Record Block-2 Third Floor Indravati Bhawan New Raipur (Chhattisgarh)
4. Collector (Revenue) Rajnandgaon District Rajnandgaon (Chhattisgarh)

---- Respondents

For Appellant	: Shri Vinod Deshmukh, Advocate.
For Respondent/State	: Shri R.K. Gupta, Deputy Advocate General.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****30/03/2016**

1. The present appeal arises from order dated 12.2.2016 dismissing Writ Petition (S) No.364 of 2016 declining to interfere with the order of transfer of the Appellant from Rajnandgaon to Jagdalpur dated 8.9.2015.
2. The Appellant was posted at Rajnandgaon since 2004. That alone was sufficient for us to dismiss the appeal. But since detailed arguments have been addressed with regard to the merits of the order of transfer, in fairness to the Appellant, we must deal with each of the arguments.

3. Learned Counsel for the Appellant submits that the order for transfer was in violation of the administrative circular laying down the transfer policy dated 1.7.2015. According to Clause 1.1 of the policy, transfer could not be done after 20.7.2015. It was next submitted that it was not a bonafide order of transfer but was malafide. The representation against the same has been rejected by an unreasoned and non-speaking order. The transfer was punitive in nature evident from the official note-sheets obtained by the Appellant under the Right to Information Act. Reliance was placed on 2009 (2) SCC 592, (Somesh Tiwari v. Union of India) to submit that despite transfer being an administrative order if it was ordered malafide *inter alia* on basis of anonymous complaint, it would amount to a punitive transfer.

4. Learned Counsel for the State has supported the order under appeal contending that it calls for no interference. It was next submitted that the order of transfer has been passed in accordance with the transfer policy routed through the Departmental Minister and approved by the Chief Minister.

5. We have considered the respective submission on behalf of the parties and are of the opinion that the order under appeal calls for no interference.

6. No government servant has a right to insist that he must remain at a place of posting of his choice. The duty of government servant ordered to be transferred is to first go and join at the transferred place of posting and then represent. Failure to abide by the order of transfer by joining at the transferred place of posting amounts to a misconduct rendering the government servant liable for disciplinary action also under Clause 1.9 of the transfer policy dated 1.7.2015 on which the Appellant seeks to rely.

7. In (2009) 3 SCC 124 (Novartis India Ltd. v. State of West Bengal) it was observed as follows:

"18. When an employee does not join at his transferred place, he commits a misconduct. A disciplinary proceeding was, therefore, required to be initiated. The order of discharge is not a substitute for an order of punishment....."

8. The Appellant has remained at Rajnandgaon since 2004. The transfer policy in Clause 1.4 provides that a government servant was liable to be transferred after one year. There is no challenge to this policy. Unless there are any allegations of statutory violation or outright malafide, an order of transfer is not to be interfered with in exercise of judicial review usurping the powers of the administrator who is the best judge to decide the utility of a government servant at a particular place.

9. File notings cannot be relied upon and cannot be looked into by the Court for grant of relief. Notings in a file is but a part of the decision making process which ultimately culminates in the decision. It is the decision which is open to challenge in judicial review and not the notings in the file preceding the decision. From the records it transpires that the authorities received complaints against his working affecting discharge of government obligations. We are of the considered opinion that it was not obligatory for the Respondents to hold a departmental enquiry on the allegations and only then order any transfer of the Appellant. If based on certain complaints received, the authorities were satisfied that in the interest of administration to move out the Appellant, it cannot be said that they have acted arbitrarily and whimsically. There is no challenge to the fact that earlier also on similar allegations the Appellant had been suspended and there was a criminal prosecution pending against him.

10. The justification for the present transfer finds full support from 2004 (4) SCC 245, Union of India v. Janardahan Debanath observed at Paragraph-14 as follows:

"14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any

misbehaviour is a question which can be gone into in a departmental proceeding. For the purpose of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour 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 the 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. Somesh Tiwari (supra) is completely distinguishable on its own facts as ultimately in the enquiry ordered the allegations were found to be untrue.

12. It would have been more beneficial for the Appellant in his own interest and also he could have set a better example of an obedient government servant by joining the transferred place of posting by discharging his duties, for which he is paid from public funds rather than wasting his time in frivolous litigation.

13. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE