

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.35413 of 2015

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Date: 07.01.2016

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Between:

B.Krishna Murthy S/o late Sri B.A.Reddappa Setty,
Aged 59 years, Occu: Scientist E, Bureau of Indian
Standards Moulali, Hyderabad.

.....Petitioner

And

The Bureau of Indian Standards, rep.by its Director
General, Manak Bhavan, 9 B.S. Zafar Marg,
New Delhi and two others.

.....Respondents

The Court made the following:

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ORDER:

Petitioner entered into service of the 1st respondent as Assistant Director in September, 1986 and earned promotions during the course of his service and presently is in the cadre of Scientist-E. Petitioner attains the age of superannuation on 30.09.2016.

2. While working in New Delhi, petitioner submitted representation on 22.05.2015 requesting for transfer to Hyderabad on the ground that he is due for retirement. He has also cited personal reasons, such as, wife's service in State Bank of Hyderabad, children's marriage proposals, mother's age etc. Considering the representation of petitioner, by proceedings dated 27.05.2015, he was transferred to Hyderabad. Accordingly, petitioner joined in Hyderabad. While so, by the impugned proceedings, dated 28.10.2015, petitioner is again transferred to New Delhi. Challenging the said transfer order, this writ petition is filed.

3. This Court by order dated 30.10.2015, suspended the order of transfer. Praying to vacate the order of suspension, respondents filed W.V.M.P.No.4555 of 2015.

4. When the vacate petition is taken up for consideration, learned counsel for petitioner and learned senior counsel appearing for respondents counsel agreed for disposal of the writ petition finally.

5. Learned counsel for petitioner contends that writ petitioner is due for retirement within the next nine months. As per the clause 7.4 of transfer policy of the respondent organization, an Officer due for

retirement within a period of two years can request for transfer to place of his choice, so that an officer on retirement can smoothly settle down in the place of his choice. In terms of the said policy, petitioner submitted his representation, which was acted favourably and petitioner was transferred to Hyderabad. Thus, there is no justification to transfer the petitioner again to New Delhi, from which place, on request of the petitioner, he was transferred to Hyderabad.

6. Learned counsel for petitioner further contends that the justification of the respondents in transferring the petitioner back to New Delhi, by referring to the disciplinary proceedings of the year 2011, amounts to arbitrary exercise of power and authority. Learned counsel contends that for no fault of petitioner, the disciplinary proceedings are kept pending since the year 2011. While he was working in Visakhapatnam, he was transferred to New Delhi on the ground that disciplinary proceedings are initiated against the petitioner. He further submits that when petitioner requested for transfer to Hyderabad, the post in Hyderabad was not categorized as sensitive post and, therefore, petitioner was validly transferred. On account of subsequent change in the classification of the post, petitioner cannot be disturbed, more so when his tenure is only for eight months and his present transfer would cause lot of hardship and suffering to him and his family.

7. Learned counsel for petitioner contends that except petitioner, all other officers were again transferred, by issuing fresh proceedings dated 13.11.2015 transferring the officers listed therein. However the Government kept those orders in suspension. Thus, except petitioner, all other officers remained in the places of their original posting.

8. Learned senior counsel submits that no doubt when the petitioner requested for transfer and when petitioner was transferred to Hyderabad, the post to which he was transferred is not classified as

sensitive post. In the Circular dated 07.04.014, only head of Hyderabad branch office was notified as sensitive post. Subsequently, the sensitive posts were reviewed and revised Circular dated 13.04.2015 was issued, where under the post presently occupied by the petitioner is also classified as sensitive post. Learned senior counsel contends that as per the transfer policy, no officer facing disciplinary proceedings should be posted in a sensitive post. In terms of the transfer policy, as a consequence to treating the post occupied by the petitioner in Hyderabad as sensitive post, the orders of transfer are issued. Learned senior counsel therefore contends that there is no illegality and irregularity in effecting the transfer. He therefore contends that as a consequence to increasing the list of posts classified as sensitive, several other officers, who were similarly situated, were also transferred along with the petitioner in the impugned proceedings. Thus, it was not a case where petitioner was singled out for arbitrary decision. Replying to the contention of the learned counsel for petitioner that though proceedings dated 28.10.2015 contain the names of the several officers, except petitioner, all other officers are not disturbed, learned senior counsel contends that on account of order of the Government, those officers are not disturbed and it is not deliberate or willful.

9. Learned senior counsel further contends that no right is vested in the petitioner to work in the particular place of his choice, transfer is incidental and employee is liable to work wherever he is posted. He placed reliance on the decision of the Supreme Court in the case of **Rajender Singh and others vs. State of Uttar Pradesh and others**^[1]. Learned senior counsel submits that there is no other post nearby, which is classified as non-sensitive to accommodate the petitioner and the respondents have no option but transfer the petitioner back to New Delhi.

10. The short issue for consideration in this writ petition is whether the respondents are justified in retransferring the petitioner.

11. There are plethora of precedents in transfer matters. Some leading decisions are :

- i) Shilpi Bose vs. State of Bihar [1991 Supp (2) SCC 659];
- ii) N.K.Singh vs. Union of India [(1994) 6 SCC 98];
- iii) State of Madhya Pradesh vs. S.S.Kourav [(1995) 3 SCC 270];
- iv) Airports Authority of India vs. Rajeev Ratan Pandey (2009) 8 SCC 337];
- v) Tushar D.Bhatt vs. State of Gujarat and another [(2009) 11 SCC 678];
- vi) Rajendra Singh and others Vs. State of Uttar Pradesh and others [(2009) 15 SCC 178];
- vii) Registrar of High Court of Judicature of Madras vs. R.Perachi [(2011) 12 SCC 137];
- viii) State of Uttar Pradesh vs. Gobardhan Lal [(2004) 11 SCC 402]; and
- ix) State Bank of India vs. Anjan Sanyal and others [2001 (5) SCC 508]

12. It is clearly discernible from the precedent decisions that in matters of transfer, scope of judicial review is limited and High Court should not interfere with an order of transfer lightly, unless the transfer is vitiated either by *mala fides* or on the ground of infraction of any professed norm of principle: Only limited judicial scrutiny can be undertaken either at the interim stage or final stage. Transfer is an incidence of service, implicit as an essential condition of service; no employee has vested right to remain posted at a place of his choice; at times, several imponderables requiring formation of subjective opinion may be involved; realistic approach is to leave to the wisdom of

hierarchical superiors; the wheels of administration should be allowed to run smoothly; Courts do not substitute their own decision in the matters of transfer; there are no judicially manageable standards for scrutinizing the transfers; Courts lack necessary expertise for personnel management; in public interest, transfers involving public services have to be best left to the concerned authorities; even if an order of transfer is passed in violation of executive instructions or orders, Court should not interfere; affected party should approach higher authorities; Court should not interfere if transfer is made to equivalent post without any adverse consequence on the service prospects.

13. Admittedly, as disciplinary proceedings initiated against the petitioner in the year 2011 are pending, in accordance with the transfer policy, officer cannot be posted in a sensitive post. It is not in dispute that the post which was occupied by the petitioner in Hyderabad is now classified as sensitive post. Thus, the petitioner cannot be continued in a sensitive post.

14. Though the transfer policy envisages that an officer due for retirement can request for transfer to a place of his choice, such option is subject to other parameters of the transfer policy and over all guidelines concerning posting of the officer facing disciplinary proceedings to a post which is classified as sensitive. The officers posted in sensitive posts are required to attend inspection, conduct raid on erring units. Whenever a post is classified as sensitive, it is in public interest not to post an officer facing disciplinary proceedings as posting of that officer to a sensitive post would give wrong signals and is not conducive to proper administration. Thus, having regard to the said policy and as the post occupied by the petitioner in Hyderabad is now classified as sensitive post, the action of respondents transferring the petitioner cannot be faulted.

15. As noted above law as laid down in several precedent decisions, the Court cannot go into intricacies of the cadre management and posting of the employees. There can be several imponderables requiring formation of a subjective opinion and Court cannot go into those administrative issues in exercise of power of judicial review. In the instant case the reason assigned is petitioner cannot be continued in a sensitive post as disciplinary proceedings are pending. Having regard to the parameters set out by the Supreme Court in the precedents referred to above, I do not see any illegality in the transfer of petitioner warranting interference by this Court.

16. At this stage learned counsel for petitioner submitted that since petitioner is due for retirement shortly and he has other domestic obligations to fulfill, petitioner intend to apply for leave preparatory to his retirement and if such application is submitted by the petitioner, the same shall be considered objectively and direction be issued to that extent. No positive direction can be issued even before request is made and is considered. Thus, it is open to the petitioner to submit a representation to the competent authority requesting for grant of leave preparatory to his retirement. However, no such application can be made without jointing at the place of posting. As and when such request is made, the competent authority shall consider the representation sympathetically and objectively having regard to the fact that petitioner is due for retirement and shall pass appropriate orders.

17. The writ petition is accordingly disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 07.01.2016

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[\[1\]](#) (2009) 15 SCC 178