

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.5802 of 2016

ORDER:

In the present writ petition, challenge is to the Movement Order No.AFA/7001/3/2/P3, dated 16.02.2016, passed by the Commandant, Air Force Academy, Dundigal, Hyderabad/fourth respondent herein.

2. According to the petitioner, he was appointed in Indian Air Force as Aircraft Technician in X Group at Mechanical Training Institute, Chennai on 14.07.1997 and later posted to Air Force Station, Bidar, 11 BRD, Ojhar, Nasik and currently posted to the strength of Air Force Academy, Dundigal, Hyderabad w.e.f. 31.08.2010 and he completed 18 years 7 months of service. It is further pleaded that in view of the health condition of his son and as the petitioner has completed five years tenure in the present station, he made an application to the fourth respondent on 12.03.2015, requesting for his retention at Hyderabad on compassionate ground or to defer the transfer till February, 2016 in the alternative.

3. According to the petitioner herein, the fourth respondent forwarded the said representation on 06.04.2015 and pending the same petitioner received posting order, dated 23.04.2015, posting him to 08 Wing, Air Force Station, Adampur, Jalandhar, Punjab State w.e.f. 20.07.2015. Thereafter, the respondents issued an order of cancellation on 14.07.2015 and directed the petitioner to move to Patankot with reporting date as 13.08.2015, and thereafter, on 20.07.2015, petitioner made an application to the Help Desk (AFRO), New Delhi, requesting for reconsideration, but the respondents rejected the said request on 16.09.2015 and directed the petitioner to proceed to Patankot. Thereafter, on 07.09.2015, the respondents permitted the petitioner, on medical grounds to continue at the same station for two months i.e., from 07.09.2015 to 19.11.2015.

3. According to the petitioner, on 15.10.2015 and 17.11.2015, he made

representations to the fourth respondent for permission for interview with AOC, AFRO, New Delhi, to put forth his grievance and in the alternative to post at one of the stations of Delhi, Pune, Bangalore or Chandigarh. On 19.11.2015, respondents directed the petitioner to proceed to Patankot, and thereafter, on 11.11.2015, petitioner made a statutory representation for redressal of grievance under Section 26 of Air Force Act, 1950. The respondents, on 21.01.2016, rejected the request and directed the petitioner to proceed to Patankot. On 23.01.2016, petitioner made a representation to the fourth respondent, requesting to wait on the ground of pendency of grievance application, dated 11.12.2015, before the AFRO, New Delhi. The respondents, on 16.02.2106, issued an order directing the petitioner to report to Patankot. In the above background, assailing the validity and legal sustainability of the Movement Order dated 16.02.2016, issued by the fourth respondent, the present writ petition came to be filed.

4. Heard Sri G.Jayaprakash Babu, learned counsel for the petitioner and Sri B.Narayana Reddy, learned Assistant Solicitor General for the respondents.

5. It is contended by the learned counsel for the petitioner that the order impugned is illegal, arbitrary, unreasonable and violative of Articles 14, 16 and 21 of the Constitution of India and the instructions of the Government; that the impugned action is discriminatory as the respondents considered the case of similarly situated persons and transferred from Patankot, New Delhi; that no proper medical facilities are available at Patankot; that the impugned action is violative of the principles of natural justice; that the Deputy Principal Medical Officer (DPMO), Command Discipline Officer (CDO), Chief Principal Staff Officer (CPSO) and Senior Officer Administration (SOA) at Head Quarters, Training Command have all positively considered the petitioner's request and forwarded to Air Force Record Office (AFRO), New Delhi; that the impugned action is contrary to Office Memoranda, dated 17.11.2014 and 06.06.2014.

6. Per contra, it is contended by the learned Assistant Solicitor General appearing for the respondents that there is no illegality nor there exists any

infirmary in the impugned action. It is further submitted that though the petitioner was directed to move as long back as on 14.07.2015 by 13.08.2015, he did not proceed to Patankot; that on 07.09.2015, on sympathetic ground, the time was extended till 19.11.2015; that on 12.03.2015, petitioner sought permission only till February, 2016 and having done so, it would not be open for the petitioner to ask for continuation permanently at the present station; that the medical facilities are available at Patankot as evident from the orders of AFRO, New Delhi, dated 16.09.2016.

7. In support of his submissions and contentions, the learned Assistant Solicitor General placed reliance on the order of this Court dated 28.12.2015 passed in W.P.No.41828 of 2015.

8. In the above background, now the question that emerges for consideration of this Court is “Whether the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India?”

9. It is a settled law that the scope of judicial review in the matter of transfer is very restricted and limited. Transfer of a Government servant appointed to a particular cadre of transferable post from one place to another is not only an incident, but condition of service and no Government servant has a legal right for being posted at any particular place and the Government servant has no justification to avoid or evade the transfer order merely on the ground of having made representation or on the ground of his difficulty in moving from one place to another. Since the transfer is an incident of service, there is no legal or statutory right to an employee for retention at particular station forever. Admittedly, the post which the petitioner is held is a transferable post. It is neither the case of the petitioner that the order impugned suffers from lack of jurisdiction nor it is his case that the post which he is held is not a transferable post. It is also a settled law that unless the order is tainted with *mala fides*, there cannot be any interference of this Court under Article 226 of the Constitution of India. In the instant case, it is not at all the case of the petitioner that the order impugned is tainted by *mala fides*. It is also

required to be noted that the petitioner vide application dated 12.03.2015 sought his retention till February, 2016 and the said period also came to an end. As per the respondents, all the medical facilities are available at Patankot and in support of the same the letter of the head office dated 16.09.2015 is placed on record by the learned Assistant Solicitor General and this Court does not find any reason to disbelieve the same. The impugned order clearly shows that the AFRO considered the issue at the appropriate level and did not agree on the ground that the requisite medical facilities as well as special schooling are available at Patankot Area.

This Court, by order dated 28.12.2015 in W.P.No.41828 of 2015, held as follows:

“It is well understood that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post. A transfer is *mala fide* when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. Such is not the case herein. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair.”

10. The Hon'ble Apex Court in the case of **K.C. DAS v. H.N. KITRANIA**^[1] held that transfer of public servant made on administrative ground or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on the ground of *mala fides*. In the case on hand, it is not the case of the petitioner herein that there is any violation of statutory rules and the order impugned is tainted with *mala fides*. In the absence of the same, this Court is not entitled to meddle with the impugned transfer order.

11. For the aforesaid reasons, the writ petition is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall

be no order as to costs.

A.V.SESHA SAI, J

Date:18.04.2016
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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Dated 18th April, 2016

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[\[1\]](#) 1989 (3) SCC 455