

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 18210 of 2016
Date of decision: 29.09.2016**

Union of India and another

.....Petitioners

Vs.

The Central Administrative Tribunal, Chandigarh Bench and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Puneet Gupta, Advocate for the petitioners.
Mr. Rohit Sharma, Advocate for respondent No.2

Ajay Kumar Mittal,J.

1. Challenge in this petition under Articles 226/227 of the Constitution of India, is for quashing the order dated 13.07.2016, Annexure P.4 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short, "the Tribunal") whereby the original application filed by respondent No.2 has been allowed by quashing the transfer order and directing the

petitioner–department to continue respondent No.2 at Bathinda only till he is given the posting of his choice. Further prayer has been made for staying the operation of the impugned order dated 13.07.2016.

2. Briefly, the facts necessary for adjudication of the controversy involved as narrated in the petition may be noticed. Respondent No.2 was appointed as Manager Grade-I on 04.11.1998. He was promoted as an Assistant General Manager w.e.f. 20.09.2012. He was posted at Bangalore prior to his posting at Bathinda vide order dated 22.05.2014, Annexure A.5. Vide order dated 03.03.2016, Annexure A.1, respondent No.2 was transferred from Bathinda to Mumbai in general order of transfers. Aggrieved thereby, respondent No.2 approached the Tribunal. By order dated 22.03.2016, Annexure P.1, the Tribunal stayed the transfer order of respondent No.2. Through order dated 13.07.2016, Annexure P.4, the Tribunal quashed the transfer order dated 03.03.2016 and the order dated 17.03.2016, Annexures A.1 and A.2 respectively, with the further direction that respondent No.2 shall continue to be posted at CSD Depot, Bathinda till he is granted compensatory posting at his choice station, as per policy guidelines dated 15.11.2009, Annexure A.3. According to the petitioners, the entire case of respondent No.2 was based upon the policy guidelines, Annexure A.3, which are merely guidelines and not any statutory rules. Respondent No.2 had made a representation on 04.02.2016, Annexure A.10, requesting for three stations of his choice. His request had not been rejected but was kept pending vide order dated 17.03.2016, Annexure A.2, stating that the same will be considered at an appropriate time. Further, when respondent No.2 was transferred from Guwahati on 07.06.2010 to Head Office Mumbai, he approached the Guwahati Bench of the Tribunal by filing an application which was disposed of vide order dated 17.06.2010, Annexure A.7 with the direction that a decision be

taken on his representation dated 09.06.2010 by passing a speaking order. Thereafter, speaking order dated 25.06.2010, Annexure R.2 was challenged by respondent No.2 by filing original application before the Tribunal at Guwahati which was dismissed on 01.07.2010. The writ petition filed by respondent no.2 before the Guwahati High Court was also dismissed on 06.08.2010. Respondent No.2 filed another application before the Tribunal which was also dismissed on 10.09.2010. Hence, the instant writ petition by the petitioners impugning the order dated 13.7.2016 passed by respondent No.1.

3. We have heard learned counsel for the parties.

4. Learned counsel for the petitioners submitted that the Tribunal erred in passing the impugned order dated 13.07.2016 quashing the transfer order of respondent No.2 with a further direction that he shall continue to be posted at Bathinda till he is granted compensatory posting at his choice of the station as per the policy guidelines dated 25.11.2009. It was further submitted that the policy guidelines dated 25.11.2009 are only advisory in nature and are not legally enforceable by an official of the department. Reliance was placed on judgments in *Mrs. Shilpa Bose and others Vs. State of Bihar and others*, 1991 (Sup2) SCC 659, *Union of India Vs. S.L. Abbas*, 1993(4) SCC 357 and *Union of India Vs. Ashok Kumar and another*, 2008(1) S.C.T. 704.

5. On the other hand, learned counsel for respondent No.2 supported the impugned order and relied upon judgment of this Court in *Dr. Dev Prakash Chugh Vs. State of Punjab*, 2005(4) SCT 726.

6. Admittedly, respondent No.2 was appointed as Manager Grade-I on 04.11.1998. He was promoted as Assistant General Manager w.e.f. 20.09.2012. He had served at two hard stations in North Eastern Region i.e. Dimapur and Narangi continuously from April 2008 to September 2010. Consequently, he sought compensatory posting at his choice Depot as per the

policy guidelines dated 25.11.2009. However, the same was not granted. He was transferred from Dimapur to CSD Head Quarter Mumbai vide order dated 07.05.2010. The representation dated 09.06.2010 filed by respondent No.2 seeking posting at his choice station was rejected vide order dated 10.06.2010. He challenged the said order before the Guwahati Bench of the Tribunal which was disposed of vide order dated 17.06.2010, directing the petitioner-department to decide his representation dated 09.06.2010 by passing a speaking order. Thereafter, the order dated 25.06.2010, Annexure A.8, was passed directing that the choice Depots of respondent No.2 were extra-large Depots and he could not be considered for the same having completed eleven years service only and that he would be eligible for posting thereafter one year or completion of twelve years service as per the policy guidelines. It was further mentioned in the order that his choice will be considered on merit subject to availability of vacancies in various Depots. The speaking order dated 25.06.2010 was challenged by respondent No.2 by filing application before the Guwahati Bench of the Tribunal which was dismissed on 01.07.2010. Even the writ petition filed by respondent No.2 before the Guwahati High Court was dismissed on 06.08.2010. Thereafter, respondent No.2 was transferred from Mumbai to Bangalore. Respondent No.2 was transferred to Bathinda vide order dated 22.05.2014. However, vide order dated 03.06.2016, he was transferred from Bathinda to Mumbai. The whole case of respondent No.2 was based on the policy guidelines, Annexure A.3, the relevant extract of which reads thus:

“6. Preferential Posting

The officer posted to the tenure and field station will be allowed to give three choice stations as under :-

- (i) The officers having less than 7 years of service may be given three choice stations excluding large and extra large Depots.
- (ii) The officers having more than 7 years and less than 12 years of service may give three choice stations excluding Extra Large Depots.
- (iii) The officers having more than 12 years of service may give three choice stations irrespective of category of Depots.

7. Conclusion

The posting of Group 'A' Officers in every organization is made keeping in view the interest of the organization. It may not be possible to follow any policy in totality which may restrict movement of officers and results against the interest of the Department. The various criteria for transfer when decided should be used as guidelines for effecting postings keeping in view the overall interest of officers and the organization.

SGM CSD, being head of the department reserve the right to relax any of the aforesaid provision depending upon the exigencies of service.”

7. A perusal of the above guidelines shows that although the officers have been given liberty to give option of three choice stations irrespective of category of Depots, interest of the organization has been given paramount importance. If due to Administrative exigencies, transfers are made keeping in view the overall interest of the organization, no illegality or arbitrariness can be found in the same. Moreover, it is well settled that transfer is an incidence of service and the Courts should not interfere with the transfer orders unless the same are in violation of any statutory rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other. (*Kendriya Vidyalaya Sangathan v. Damodar*

Prasad Pandey and others, (2004) 12 SCC 299, ***State of UP and others v. Gobardhan Lal***, AIR 2004 SC 2165, and ***State of UP and others v. Siya Ram and another***, AIR 2004 SC 4121).

8. In ***Smt. Shilpi Bose's case (supra)***, while delving into the issue of transfer orders due to administrative exigencies, the Apex Court observed as under:-

“In our opinion, the courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala-fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Court ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the Courts, continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders.”

9. In ***S.L. Abbas's case (supra)***, it was held by the Supreme Court as under:-

“An order of transfer is an incident of Government Service. Fundamental Rule 11 says that “the whole time a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority.” Fundamental Rule 15 says that “the President may transfer a Government servant from one post to another”. That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that the order of his transfer is

vitiated by mala-fides on the part of the authority making the order,- though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed “mischief” to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a set-back some time ago. He relies upon certain executive instructions issued by the Government in that behalf.” Those instructions are in the nature of guidelines. They do not have statutory force.”

10. In *Ashok Kumar’s case (Supra)*, this Court recorded as under :-

“10. In *National Hydroelectric Power Corporation Limited V. Shri Bhagwan*, 2002(1) SCT 236: AIR 2001 SC 3309 Hon’ble Supreme Court held that unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned.

11. In *S.L. Abbas’s case (supra)*, Hon’ble Supreme Court has held that the jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service matters. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Article 323-A of the Constitution. The Central Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer.”

11. With regard to the judgment relied upon by the learned counsel for respondent No.2 in *Dr. Dev Prakash’s case (supra)*, it may be noticed that

there is no quarrel with the proposition that transfer is purely an administrative order and the Courts will not interfere with the same unless it is found to be mala-fide or in violation of some rule or policy without sufficient reasons and without there being any public interest involved. In the present case the transfer order of respondent No.2 has been passed keeping in view the overall interest of the organization and due to administrative exigencies which has not been shown to be illegal or arbitrary by the learned counsel for respondent No.2. Nothing has been placed on record by the learned counsel for the respondent No.2 to substantiate the claim made by him. The Tribunal was, thus, in error in quashing the transfer order of respondent No.2 from Bathinda to Mumbai issued on 3.3.2016 and order dated 17.3.2016 (Annexures A.1 and A.2 respectively). Consequently, the writ petition is allowed and the impugned order dated 13.07.2016, (Annexure P-4) is quashed.

(Ajay Kumar Mittal)
Judge

September 29, 2016
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes