

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-21866-2016

Date of decision: 21.10.2016

Kuldeep Singh Sohal

..... Petitioner

Versus

National Projects Construction Corporation Ltd. and another

..... Respondents

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

PRESENT: Mr. GS Bal, Senior Advocate with
Mr. ADS Bal, Advocate for the petitioner.

RAMENDRA JAIN, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has, *inter alia*, prayed for issuance of a writ of Certiorari for quashing the order dated 03.10.2016 (Annexure P-5) passed by respondent No. 2-Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal') whereby the Original Application No. 060/00728/2016 (Annexure P-1) filed by the petitioner challenging the impugned order dated 05.07.2016 (Annexure A-1) qua his transfer to Bangalore was dismissed. Further a writ of mandamus has been sought that consequent upon quashing of impugned orders Annexures A-1 and P-5, the petitioner may be permitted to continue at his present place of posting till his retirement on 30.09.2017.

2. Put pithily, the petitioner joined the National Projects Construction Corporation Ltd.-respondent No. 1 (hereinafter referred to as 'the Corporation') on 31.12.1984 as Assistant Executive Engineer and after due promotions in the years 1990, 1996 and 2006, at present, he was posted as Deputy General Manager (Civil) at Faridabad. The Corporation has framed a Transfer Policy known as NPCC Transfer Policy-2007 (Annexure A-2). Clause 3.8 of the said policy prescribes that employees due for retirement on superannuation would not ordinarily be transferred. The retirement age in the Corporation is 58 years which the petitioner would attain on 30.09.2017. As such, now the petitioner has less than one year of service left to his credit. The grouse of the petitioner is that the impugned order Annexure A-1 transferring him from Corporate Office, Faridabad to Southern Zone, Bangalore was passed by totally ignoring the said policy, and without considering his representation dated 11.07.2016 (Annexure A-3). The petitioner had challenged the aforesaid order Annexure A-1 by way of filing the Original Application (Annexure P-1) before the Tribunal which was dismissed vide order Annexure P-5. The transfer of the petitioner from Corporate Office, Faridabad to Southern Zone, Bangalore is patently illegal, arbitrary, without jurisdiction and against the principles of natural justice being in utter violation of Clause 3.8 of the Transfer Policy (Annexure A-2) of the Corporation, more particularly, when 4 persons were already available with the Corporation for transfer to Zonal Office, Bangalore and their transfer would otherwise be in consonance with the Transfer Policy. After retirement, the petitioner intends to settle at Delhi, where he is constructing his house. That apart, his parents are residing at Gurdaspur (Punjab) and also do not keep good health

and, thus, the petitioner often had to visit them for their treatment and health related problems and intend to shift them to Delhi after construction of his house. In these circumstances, the impugned orders Annexures A-1 and P-5 were liable to be set aside. Hence, the present writ petition.

3. Learned counsel for the petitioner while drawing attention of the Court to Clause 3.8 of the Transfer Policy (Annexure A-2) urged that as per own policy of the Corporation, the petitioner could not have been transferred from Corporate Office, Faidabad to Southern Zone, Bangalore as his date of superannuation is 30.09.2017. More so, the Corporation did not consider hardship of the petitioner that construction of the house of the petitioner at Delhi is going where he has finally decided to stay after his retirement coupled with the care of his old and ailing parents residing at Gurdaspur (Punjab). The above difficulty was pointed out by the petitioner vide his representation Annexure A-3 but the same was not taken into consideration before passing the impugned order of his transfer Annexure A-1.

4. After hearing learned counsel for the petitioner and going through the impugned order Annexure P-5 passed by the Tribunal, we do not find any merit in the present writ petition.

5. Undisputedly, the petitioner earlier filed CWP-13961-2016, but withdrew the same to approach the Tribunal, in view of circular dated 28.03.2014 (Annexure A-5) issued by the Government of India. For brevity, Clause 3.8 of the Transfer Policy (Annexure P-2) is reproduced as under:-

“3.8 Employees due for retirement on superannuation within a period of three years, before their

superannuation shall not ordinarily be transferred, but requests for transfer to places of their choice, if made would be considered sympathetically.”

6. In the written statement (Annexure P-3) filed before the Tribunal, the Corporation had taken a stand that there was acute shortage of civil engineers at Bangalore and there was a dire need to fill up the vacancies there so that the projects of the Corporation would progress as per the schedule. Admittedly, the petitioner had already spent 16 years in the Corporate Office, Faridabad and the newly recruited civil engineers have also not joined as yet, therefore, the petitioner had to comply with the transfer order in the interest of work and his employer. No employee has vested right or interest to serve at the location convenient to him for all times to come. The petitioner has not been able to show any misuse of power by the Corporation in transferring him from the Corporate Office, Faridabad to Zonal Office, Bangalore. Even no *mala fide* has been alleged against anyone by the petitioner for his transfer, thus, in these circumstances, the transfer of the petitioner seems to be made due to administrative exigencies which does not reflect any colourable exercise of power. The power of transfer of an employee to be exercised by the employer has also to be given due weight unless the exercise of such power clearly demonstrates to be a colourable exercise. The Tribunal has relied upon **Union of India Vs. S.L. Abbas, 1994 SCC (L&S) 230** and **Shilpi Bose and others Vs. State of Bihar and others, 1991 Supp (2) SCC 659**, wherein it has been held that courts should not interfere with the transfer orders issued in public interest and/or on account of administrative exigencies.

7. Since, as discussed above the petitioner has not been able to show any violation in the impugned order Annexure P-5, therefore, we are not inclined to interfere with the same.
8. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(RAMENDRA JAIN)
JUDGE

October 21, 2016
rishu

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No