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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment Dated: 11th July, 2016***

+ W.P.(C) 5804/2016

DEVENDER SINGH Petitioner

Through Mr. Ashok K. Singh, Advocate

versus

NATIONAL TECHNICAL RESEARCH ORGANIZATION

..... Respondents

Through Mr. Arun Bhardwaj, CGSC with Mr.
Mimansak Bhardwaj, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

CM.APPL 23959/2016(Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 5804/2016

1. The petitioner is aggrieved by the order dated 18.05.2016 passed by the Central Administrative Tribunal(hereinafter referred to for short as 'the Tribunal') by which the OA filed by the petitioner seeking stay and to set aside the transfer order stands dismissed.
2. Mr. Bhardwaj, learned counsel for the respondent has entered appearance on an advance copy. Mr. Bhardwaj submits that it is not necessary for him to file a counter affidavit.
3. With the consent of the parties, we have heard the matter finally.

4. The facts which have led to the filing of the writ petition are as under:
5. The petitioner joined National Technical Research Organization (NTRO) as a Deputy Field Officer (Technical) on 09.10.2002. In the year 2006, he was transferred to Assam and was transferred back to Delhi as a Technical Officer(A) on 15.07.2009. The wife of the petitioner was selected as a Primary Teacher under the Haryana Government on 04.01.2011 where she joined as a Primary Teacher in Government Primary School, Atta, Panipat, Haryana. By an order dated 02.02.2016, the petitioner stands transferred from AED, Mayur Vihar, Delhi to FRU, Anandpur, Himachal Pradesh vide Office Order No.PC-12014/02(P&T)/NTRO/14/Pers/512 dated 02.02.2016. A representation was made by the petitioner to the Chairman, NTRO, Head Quarters, New Delhi seeking cancellation of the transfer on the ground that his spouse was working at Sonipat, they have small children, aged 05 years and 10 years. The petitioner urged reasons of acute hardship and sought stay of his transfer. At present, the wife of the petitioner has been transferred to Government Senior Secondary School, Khewra, District Sonipat as a Science Teacher. The representation of the petitioner stands rejected by an order dated 04.05.2016 which forced the petitioner to approach the Tribunal on 10.05.2016. The OA filed by the petitioner stands dismissed by the learned Tribunal vide its order dated 18.5.2016.
6. Learned counsel for the petitioner has reiterated his submissions made before the Tribunal. It is submitted that the respondents have acted in an arbitrary manner and have failed to take into account the guidelines as per which in the case where both the spouses are working, as far as possible they should be placed in the same station. The learned counsel also submits that even if the respondents extend one term of three years

to the petitioner, his children would be of manageable age and he would accept such a transfer.

7. Mr. Bhardwaj, learned counsel for the respondent submits that firstly the policy sought to be relied upon by the petitioner is not applicable to the petitioner for the reason that the petitioner is employed by the Central Government while his wife is employed by the State Government. He submits that the petitioner has already worked in Delhi for 06 years and 11 months far beyond the normal tenure of any Officer which is only 03 years. He further submits that having regard to the nature of the petitioner's employment, the petitioner has been transferred to the nearest office of NTRO where his services are required which is at Anandpur in Himachal Pradesh. He further submits that the petitioner has failed to point out any infirmity in the order dated 18.05.2016 passed by the Tribunal which would require interference by this Court in proceedings under Article 226 of the Constitution of India.
8. We have heard the learned counsel for the parties. We had enquired from the petitioner as to whether the petitioner has joined his place of posting. The answer was in the negative. The Tribunal, in our view, has carefully examined the submissions made by the learned counsel for the petitioner and correctly applied the law of the Supreme Court. In the case of *Union of India v. S.L. Abbas*, reported in (1993) 4 SCC 357, the Supreme Court held that transfer is a matter of incidence of government servant. It has also held that unless the order of transfer is vitiated by mala fides or some mischief is attributed, the Court should not normally interfere. The Court also considered the effect of guidelines that as far as possible, husband and wife must be posted at same place. Paras 6 to 10 read as under:

“6. An order of transfer is an incident of Government Service. Fundamental Rule 11 says that "the whole time of 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 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.

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right.

8. 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. This is evident from a perusal of Article 323-A of the constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created

under Article 323-A. (We find it all the more surprising that the learned Single Member who passed the impugned order is a former Judge of the High Court and is thus aware of the norms and constraints of the writ jurisdiction.) The 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. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if it were sitting in appeal over the order of transfer made by the Senior Administrative Officer (competent authority).

9. *Shri Goswami, learned counsel for the respondent relies upon the decision of this Court in Bank of India v. Jagjit Singh Mehta[1992] 1 S.C.C.306 rendered by a Bench of which one of us (J.S. VermaJ.) was a member. On a perusal of the judgment, we do not think it supports the respondent in any manner. It is observed therein:*

"There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a

promotion or any appointment in an all- India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, 'they cannot as-of right claim to be relieved of the ordinary incidents of all-India service and avoid transfer to a different place on the ground that-the spouses thereby would-be posted at different places..... No doubt the guidelines requires the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees."

(Emphasis added)

10. The said observations in fact tend to negate the respondent's contentions instead of supporting them. The judgment also does not support the Respondents' contention that if such an order is questioned in a Court or the Tribunal, the authority is obliged to justify the transfer by adducing the reasons therefor. It does not also say that the Court or the Tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can it be characterised as malafide for that reason. To reiterate, the order of transfer can be questioned in a court or Tribunal only where it is passed malafide or where it is made in violation of the statutory provisions.

9. A three-Judge Bench of the Supreme Court of India in the case of **Major General J.K. Bansal v. Union of India And Others**, reported at (2005) 7 SCC 227, has also adopted the view taken in the case of **Union of India** (supra).

10. It would also be useful to refer paras 7 and 8 of **State of U.P. v.**

Gobardhan Lal, reported in (2004) 11 SCC 402, which read as under:

“7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on

the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

11. In the case of ***Rajendra Singh etc. etc. v. State of U.P. & Others***, reported in (2009) 15 SCC 178, in paras it was held as under:

“6. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires [see *State of U.P. v. Gobardhan Lal*; (2004) 11 SCC 402].

7. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In the case of Shilpi Bose (Mrs.) & Ors. v. State of Bihar & Ors., this Court held :

"4. In our opinion, the courts should not interfere with a transfer order which is 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 courts 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 overlooked these aspects in interfering with the transfer orders."

8. In *N.K. Singh v. Union of India & Ors.*², this Court reiterated that the scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any specific provision.

12. In the case of *State of M.P. And Another v. S.S. Kourav And Others*, reported at (1995) 3 SCC 20, the Supreme Court of India has held as under:

" The courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation."

13. In the case of *State of U.P. And Another v. Siya Ram And Another*, reported at (2004) 7 SCC 405, wherein the respondents therein were transferred on administrative grounds, the Apex Court has held as under:

"5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or

employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally 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 employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan and Anr. (2001 (8) SCC 574).

6. *The above position was recently highlighted in Union of India and others v. Janardhan Debanath and another (2004 (4) SCC 243). It has to be noted that the High Court proceeded on the basis as if the transfer was connected with the departmental proceedings. There was not an iota of material to arrive at the conclusion. No mala fides could be attributed as the order was purely on administrative grounds and in public interest.*

14. It is settled law that Government Servant has no vested right to remain posted at a place of his choice. The scope of interference in matters of transfer is rather narrow and limited. We find that the order of transfer is neither *malafide* nor hit by arbitrariness. Perusal of the transfer order shows that the petitioner stands transferred in the ordinary course of business. Even during the course of hearing, the counsel for the petitioner has netiher alleged mala fide nor placed any material on record in support of such a plea. A copy of the transfer order dated 02.02.2016 has been placed on record. The order shows that 15 persons have been transferred to different places and not that the petitioner has been singled out.

15. Mr. Bhardwaj, during the course of hearing, explained the nature of duties which are performed by the petitioner and also stated at bar that the nearest place where the petitioner could have been transferred having regard to the nature of duties being performed by him from Delhi is Anandpur in Himachal Pradesh.
16. At this stage, the learned counsel for the petitioner submits that the petitioner would join at his place of duty within one week from today. He submits that the petitioner would avail the liberty granted by the Tribunal and make another representation and highlight the difficulties being faced by him and also his family. We hope that in case such a representation is made, the same would be considered in accordance with law and sympathetically.
17. We find no reasons to entertain this petition and in view of the stand taken by the counsel for the petitioner, the writ petition is dismissed.

CM.APPL 23958/2016(stay)

18. Since the instant writ petition stands dismissed, the application is also dismissed accordingly.

G.S.SISTANI, J

I.S. MEHTA, J

JULY 11, 2016

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