

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 3056 OF 2017

Sanjay Tulshiram Shinde	}	
Age 57 years, Occ. Chief	}	
Engineer, MSETCL, 603,	}	
Samrat Ashok Co-Op. Hsg.,	}	
Plot No. 102, RSC-37,	}	
Gorai II, Borivali (W),	}	
Mumbai 400 091	}	Petitioner

versus

1. Maharashtra State	}	
Electricity Transmission	}	
Co. Ltd. (MSETCL), through	}	
its Chairman and Managing	}	
Director, Having address at	}	
Plot No. C19, Prakash Ganga,	}	
8 th floor, Bandra Kurla	}	
Complex, Bandra (East),	}	
Mumbai - 400 051	}	

2. The Chief General	}	
Manager, Human Resources-	}	
Technical Establishment	}	
Department, Maharashtra	}	
State Electricity	}	
Transmission Co. Ltd.,	}	
having address at Plot	}	
No. C19, Prakash Ganga,	}	
7 th floor, Bandra Kurla	}	
Complex, Bandra (East),	}	
Mumbai - 400 051	}	

3. Executive Director HR	}	
Human Resources	}	
Department, Maharashtra	}	
State Electricity	}	
Transmission Co. Ltd.,	}	
having address at Plot No.	}	
C19, Prakash Ganga,	}	

8 th floor, Bandra Kurla	}	
Complex, Bandra (East),	}	
Mumbai - 400 051	}	
	}	
4. The State of Maharashtra	}	
through the Department of	}	
Energy, having its office at	}	
Mantralaya, Mumbai	}	Respondents

Mr. A. Y. Sakhare-Senior Advocate with
Mr. Joel J. Carlos and Mr. Rohan S.
Mirpury for the petitioner.

Mr. Abhijeet Desai with Ms. Vrushali
Maindad, Mr. Navin Arora and
Mr. Sudarshan Maheshwari i/b. M/s. Desai
Legal for respondent nos. 1 to 3.

Mr. Himanshu Takke-AGP for State.

**CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATED :- NOVEMBER 24, 2017

ORAL JUDGMENT:- (Per S. C. Dharmadhikari, J.)

1. The petitioner, by this writ petition under Article 226 of the Constitution of India seeks quashing and setting aside of an office order dated 26th October, 2017 issued by the second respondent to this petition.

2. Since pleadings are complete and we have heard both sides extensively, we proceed to dispose of this petition finally by this judgment.

3. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.

4. The first respondent before this court is the Maharashtra State Electricity Transmission Company Limited (MSETCL). The second respondent is the Chief General Manager, Human Resources-Technical Establishment Department of the first respondent, whereas, the third respondent is the Executive Director, Human Resources Department of the first respondent company. The fourth respondent is the State of Maharashtra.

5. The petitioner has stated in the petition that he is Bachelor of Engineering (Electrical) and holding a Masters degree in Business Administration and Finance from the Nagpur University and Tilak Maharashtra University, Pune. He joined the services of the erstwhile Maharashtra State Electricity Board as Junior Engineer (Electrical and Mechanical) on 4th October, 1980 and continued to work as a Junior engineer upto 17th November, 1984. He was then selected as Assistant Engineer (Electrical and Mechanical) and was working as Assistant Engineer from 27th November, 1984 to 8th June, 1993. The petitioner was further promoted as Deputy Executive Engineer (Electrical and Mechanical) and continued to work on the said post from 30th June, 1993 to 16th June, 2001. Then he was promoted as

Executive Engineer (Transmission) from 16th June, 2001 and continued as Executive Engineer upto 20th June, 2006. The petitioner has set out in the petition his achievements and how he was instrumental in giving results so that the transmission company-the first respondent before us was able to achieve its targets.

6. It is common ground that the Maharashtra State Electricity Board was divided into transmission, generation and distribution companies. The transmission company's duties being clear, the petitioner states that he was one of such officers, who, by his hard work, sincerity and dedication, assisted his employer in achieving the targets. That is how he was promoted as Superintending Engineer on 20th June, 2006 and he continued as such upto 24th November, 2008. Thereafter, from 25th November, 2008, he has been promoted as Chief Engineer (Transmission). The petitioner claims that he has worked on several important assignments at various places and today is the senior most Chief Engineer as per the seniority list.

7. Such a high level officer is aggrieved and dissatisfied with his mid-term transfer. The complaint is that his transfer is not for any administrative exigency. The petitioner is due to retire on 31st January, 2018 and there is thus no warrant for

transferring him from the post of Chief Engineer at the EHV-PC O&M Zone, Vashi to the Corporate Office. The impugned order of transfer dated 26th October, 2017 is contrary to the express provisions in the circular dated 5th October, 2015. This is a circular on the subject of transfer and outlines the complete policy. Placing reliance upon clause 6 onwards, it is stated that the officers, who have been enlisted in the 5th Schedule, are the competent authorities for effecting transfers. Ordinarily, if an employee is due for transfer, then, he/she should be transferred or shifted in the month of April-May during general transfers. Thus, April-May is the period during which general transfers are effected so that no inconvenience is caused to the employees and their families. In the event any mid-term transfer is to be made and not in this period, then, sanction of the superior officers must be obtained.

8. Then, by clause 7(c), it is stated that as and when need arises or occurs, then, administrative transfers can be effected, but to subserve administrative interest. This is also taken to be an exceptional circumstance warranting transfer and if such transfer has to be effected, then, not only the competent authority has to be approached, but equally, the superior officer who will take the responsibility for effecting such transfers and approving

them. The reasons should be assigned, according to the petitioner, for such transfers. The petitioner then proceeds to state that having been working at the post mentioned above, there was no warrant for any transfer and he also invited our attention to the same policy of transfer, which, according to him, says that those who are likely to retire in immediate future, namely, two years, they should not be generally transferred. It is in these circumstances that it is stated that the petitioner was shocked and surprised that despite the definite and clear policy set out in the circular of 5th October, 2015 and further amended by circular dated 25th April, 2017, he was transferred. He was brought at Vashi on 29th April, 2015. The petitioner was holding additional charge of ERP and IT Head of the first respondent from February, 2009 upto 26th October, 2017. After completion of 37 years of service, the petitioner was expecting a retirement which ought to be happy and smooth. He was satisfied after rendering 37 years of blemishless service. At that time, he was served with the impugned order shifting him from Vashi to the Corporate Office at Mumbai. Pertinently, there is no permanent appointment made in the petitioner's place and what has been brought to our notice is that the Superintending Engineer, Panvel would take additional charge of the post of the petitioner after the petitioner's transfer.

9. The petitioner made a representation, copy of which is annexed as Annexure 'E', pointing out that there has been absolutely no complaint nor any occasion for him to be transferred and when he has just 2-3 months left for his retirement. The petitioner has specifically enlisted in this representation, not as his personal achievements, but that of his team, the following:-

“ I am instrumental in forming OPGW network in Mahatransco, which yields revenue to the company and has given good connectivity backbone to the communication. I have completed one of the finest project of RTU-DC and its operations in SLDC with new corporate look architecture of the building and installed technology therein.

I took efforts to save lot of amount in civil works of water proofing of Mahantansco Control Rooms and residential building wherein the same has been curtailed by providing the sheet to the control room and residential building.

400 kV Padghe S/stn is the major s/stn in the area which is feeding Mumbai city demand. There was no isolation arrangement and the bus conductor got deteriorated, which could not be replaced due to non availability of outage from SLDC. This situation continued for last 25 years and I feel proud to say that I had made bus sectionaliser arrangement by providing the re-orientation of 400 kV major feeders at Padghe, which is proposed to be commissioned by 30th October, 2017.

Goals achieved includes Capex of Rs.202.41 Crs, Capitalisation of Rs.230.98 Crs, Mumbai strengthening scheme to greater Mumbai region of Rs.798.28 Crores. The long pending ROW issues were for establishment of 100 kV Mumbra substations are resolved.

(Sanjay Shinde)
Chief Engineer
EHV PC O&M Zone, Vashi”

10. He, therefore, requests that the transfer order be quashed.
11. Our attention has been invited to the Officer Order No.214/impugned order dated 26th October, 2017. It reads as under:-

“OFFICE ORDER NO. 214

In pursuance of approval accorded by the Competent Authority viz., the Chairman & Managing Director in exercise of the powers delegated to him under Schedule FIFTH appended to the MSETCL Employees' Service Regulations, 2012, the orders are issued as under:

- (i) Shri. S. T. Shinde (01767330), Chief Engineer, EHV PC O&M Zone, Washi is hereby transferred to Corporate Office, Mumbai with an immediate effect and kept in waiting for posting until further orders. He stands relieved from the post of CE, Washi Zone, w.e.f. 26.10.2017 AN. His salary will be continued to draw against the post of CE, Washi as hither-to-before.
- (ii) Consequent on transfer of Shri. Shinde, CE the additional charge of the post of CE, Washi Zone is entrusted with Shri. S. V. Gaherwar (01997343), SE, EHV O&M Circle, Panvel. He will be entitled for charge allowance as per Company's rules.
- (iii) Further, Shri. M. B. Bhagwar (02232847), SE, ERP, Corporate Office, Mumbai is hereby called upon to look after the charge of ERP Department, Corporate Office, Mumbai. In addition to that he is given charge of IT Department. Consequently, the personnel working in IT Department will report to Shri. Bhagwat through their proper channel.

2. The above arrangements will come into force with an immediate effect.”

12. On such a petition being served, the respondents have filed an affidavit in reply. Rather, they have filed two affidavits in reply. In the first affidavit at page 38 of the paper book, the

respondents proceed to state that the petitioner was holding an important post in the first respondent company. The respondents have decided to entrust the petitioner with greater responsibility due to his experience and knowledge relating to the work. It is stated that the first respondent company takes all decisions related to transfer of employees, allocation of work etc. only after obtaining necessary approvals and strictly adheres to the internal rules and regulations of the first respondent company. It is stated that the circular, which is relied upon by the petitioner, enables, by clauses 6 and 7, that in cases of administrative exigencies after approval from the competent authority, namely, the Chairman and Managing Director in the case of the present nature, transfers can be effected. The petitioner cannot complain for the simple reason that there are other officers who have been transferred as well in the recent past. These officers have been transferred though they have not completed the ordinary normal period of three years. The affidavit proceeds on the footing that though there are such defined and clear policies, the administrative exigency would override them. These matters are to be decided solely by the superior officers and particularly in-charge of the Human Resources Department in the first respondent company. Once they decide that there is a need to bring in a fresh blood or another employee that does not mean

that the transfer is malafide. This is the stand in the first affidavit filed on 20th November, 2017.

13. Pertinently, there is an annexure to this affidavit styled as Annexure 'C' collectively, which says that this is a copy of the office note relating to the transfer and posting of the petitioner and how the approvals in that behalf have been obtained. That note reads as under:-

“OFFICE NOTE

No. MSETCL HR-TE/Trf/CF(T)STS 619

Date: 27th October, 2017

Sub: Transfer & Posting of CE (Trans)
Allotment of portfolio to Shri. S. T. Shinde (CE)

Submitted in pursuance to the instructions received from the higher authorities.

2. Vide this office order No. 214 (1162) dtd. 26.10.2017 Shri. S. T. Shinde, CE has been transferred from Washi Zone to Corporate Office, Mumbai and kept on waiting for posting until further orders. Now, directives have been received to submit a proposal to entrust the responsibilities of ERP and IT Department on him. For approval of the Competent Authority.

3. As per FIFTH Schedule appended to the MSETCL Employees' Service Regulations, 2012 the powers to transfer the officer of the rank of Chief Engineer are vested in the Chairman and Managing Director. In the instant case the transfer is already effected now the portfolio is to be assigned which is an administrative function. As per Administrative Circular No. 3 dated 24.11.2005 the power to decide the matters of general administration are also vested in the Chairman and Managing Director. As such the proposal is submitted for further orders please.

Submitted for approval/orders please.

A. G. M. (HR-1)”

14. An additional affidavit has been filed after a brief hearing. In that additional affidavit, the Chief General Manager (HR) of the first respondent states that the petitioner has rendered service of 37 years to the company. In order to avoid any stigma on his reputation and character and to avoid any unpleasant action, the petitioner has been transferred. This would enable him to draw all the service benefits. It is within the framework of the policy that the decision has been taken. It is purely an administrative decision.

15. At the same time, the deponent of this affidavit states that he desires to bring to the notice of this court certain factsheets, which would indicate that when the petitioner was discharging his service as Chief Engineer, Vashi Zone, he was of completely high handed nature, hypocritical, accused of non-compliance of administrative directions and not adhering to time constraints. There have been many administrative lapses on his part. These led to delay in completion of works and proper operation and maintenance of transmission system. In the backdrop of such administrative lapses, the management was many times constrained to divert the assignments so allotted to Vashi Zone to the Corporate Office in order to safeguard the business interest.

16. Then, a reference is made to a letter dated 22nd June, 2016 addressed by the office of the Chief Engineer, Maharashtra State Load Dispatch Centre, Navi Mumbai to the Director (Operation), Corporation Office, wherein, the authority had in a way complained regarding abnormal delay in restoration of certain works, which falls within the administrative control of the petitioner. Since the petitioner failed to take any cognizance of the complaint regarding restoration of line, a show cause notice was issued dated 8th May, 2017. The show cause notice called upon explanation from the petitioner as to why there had been frequent changes in decisions/plans for restoration of lines and also to explain the delay in restoration so caused at his instance in the Padghe area, which had put the Corporate Office into lot of inconvenience and hardship.

17. Then, a reference is made to the letter dated 5th December, 2016 on the point of a tender which was issued and from the petitioner's zone. There was no adherence to certain policy regarding issuance of such tenders. Finally, on 11th September, 2017, the petitioner was called upon by a letter to give explanation as to why there has been a delay in execution of certain scheme and projects.

18. The affidavit continues to highlight the serious lapses much less of a contract terminated by him without any authority and assuming excessive jurisdiction. The said contract had to be reinstated upon the indulgence of the Corporate Office. Thus, the affidavit proceeds to allege that with a view to allow the respondents to smoothen the operations of the unit, the petitioner was transferred.

19. Then, an allegation is made in para 13 of this affidavit that the petitioner has not forwarded his appraisal reports from 2013-14.

20. It is in these circumstances that the transfer has been justified. It is stated that the additional charge assigned to the Superintending Engineer, Panvel, who has about 35 years' experience, is a temporary administrative arrangement. In these circumstances, this court should not take any cognizance of the present complaint and grievance and interfere with the transfer order. It is also urged that the petitioner has assumed charge in the Corporate Office and he has been allotted work.

21. The petitioner has filed a rejoinder affidavit and it is taken on record today, but a copy thereof was already served on the respondents. In this rejoinder affidavit, the petitioner states that

the action is completely arbitrary. Having served the first respondent company, the petitioner did not desire to make allegations, but in this affidavit in reply, when his alleged lapses have been brought to the notice of this court, it becomes his duty to point out that no show cause notice has ever been served on him, as alleged. He also states that the petitioner has not taken charge of the transferred post unconditionally, but under protest. A letter dated 8th November, 2017 is relied upon. It is stated that in this affidavit that the allegations that are made cannot justify the punitive transfer. The letter dated 22nd June, 2016 is not annexed to the affidavit, but that would indicate as to how it was a routine work. The transmission line breakdowns are a part of work hazard and is not restricted only to the zone of which the petitioner was put in-charge. In fact a site report was called for from the Superintending Engineer and that Superintending Engineer's report, in the form of a letter dated 12th August, 2016, annexed as Annexure 'R2' to this affidavit, would indicate that the problem of breakdown arose because of bad weather. Thus, false statements are made on oath with a view to tarnish the reputation of the petitioner. The letter dated 8th May, 2017 would indicate that an explanation was called regarding restoration of Talegaon line and the same was explained to the Director by clearly stating that the said decision was taken to avoid further

delay and the said explanation of the petitioner was accepted by the Director. The petitioner takes strong exception to the use of unparliamentary language, but we do not refer to it in further details, save and except stating that there was a letter dated 15th December, 2016 with regard to issuance of a tender and the matter was brought at rest. Thus, beyond routine correspondence, there has never been any lapse or conduct of the petitioner, which could be termed as unbecoming of an officer of the first respondent. He has never defied any superior officer much less misconducted himself. Pertinently, there was no proposal for termination forwarded to the Corporate Office for approval as far as any contract is concerned. It is in these circumstances that he would submit that all the allegations made in the additional affidavit in reply are but an afterthought. There is nothing in the transfer order which would indicate that the petitioner has been transferred because of any administrative exigency or because of any misconduct or impending inquiry into the same. Paragraphs 18 to 21 of this affidavit are thus relied upon.

22. It is on the above materials that we have heard the oral submissions.

23. Mr. Sakhare learned senior counsel appearing for the petitioner would submit that it is well settled that this court would not interfere with a policy of transfer or an order of transfer if it is made in administrative exigency. Ordinarily, this court will not interfere with such routine transfers when they are effected in order to smoothen the affairs of a public corporation. Ordinarily, this court has never questioned the authority, power and jurisdiction of the superior officers to effect an out of turn transfer or a shifting mid-term. However, Mr. Sakhare would submit that unless this court take serious note of some high handed acts of public bodies, which, in the garb of exercise of above powers, are in fact raising complex issues, then, we would be failing in our duty to uphold the rule of law. Mr. Sakhare would submit that the office order would indicate that an purported approval was accorded by the competent authority in exercise of the power conferred to him under the 5th Schedule appended to the MSETCL Employees' Service Regulations, 2012, after the order of transfer. The transfer of the petitioner to Corporate Office, Mumbai is with immediate effect, but he was kept on waiting until further orders. Pertinently, Mr. Sakhare submits that though the petitioner is transferred, there is no permanent officer brought in his place, which is stated to be a crucial post in the Zone. The Superintending Engineer at Panvel

is given an additional charge. Mr. Sakhare then invited our attention to page 60 of the paper book, which is a office note of 26th October, 2017, but the same, if carefully read, would indicate that the transfer order was already issued and the approval was sought later. The approval is on directives, but who issued these directives to submit a proposal to make the changes in the post of Chief Engineer has not been clarified. Thus, the whole document, if carefully perused, would denote that there are signatures appearing below the same. These signatures have been effected because at page 59, the office note of 27th October, 2017 had to be submitted to comply with certain instructions received from higher authorities. Mr.Sakhare would submit that there is no indication in the affidavits in reply as to who are the higher authorities. His argument, therefore, is that because the petitioner had to be shifted on account of certain directives issued from higher authorities and somebody else had to be brought in his post that he was shifted abruptly and mid-term. This order, coupled with the allegations now made, as an after thought, in the affidavit in reply, certainly cast a stigma on his reputation and character. The impugned order violates the mandate of Articles 14 and 16 of the Constitution of India. A public body is expected to adhere to its own scheme and policy and unless there are materials to depart from the same, the normal expectation is that

the policy is strictly adhered to. His final argument is that if the allegations are taken in their entirety, they would certainly denote that the transfer is punitive in character. Therefore, Mr. Sakhare would submit that the order be quashed and set aside.

24. Mr. Sakhare relies upon a judgment of the Hon'ble Supreme Court in the case of *Somesh Tiwari vs. Union of India and Ors.*¹ and a Division Bench judgment of this court in the case of *Purushottam Govindrao Bhagwat vs. State of Maharashtra and Ors.*².

25. On the other hand, Mr. Desai appearing for the respondents would submit that in the writ petition there is not a single averment alleging malafides or arbitrariness. There are no pleadings to that effect. Further, relying upon the Hon'ble Supreme Court judgments rendered from time to time on this point, Mr. Desai would submit that so long as the transfer orders are not questioned by making clear and precise allegations of malafides, this court should not sit, as an appellate authority, over the same. Mr. Desai would submit that if the allegations are that the transfer orders are result of political pressure, then, equally it is the bounden duty of a party like the petitioner to plead that aspect and give particulars thereof. It is not open to

¹ (2009) 2 SCC 592

² 2012(3) BCR 442

allege malafides or arbitrariness orally. Mr. Desai then submits that in the affidavit in reply the respondents are at pains to point out as to how they avoided making allegations against the petitioner though there were complaints of serious lapses on his part. At the fag end of his career, they do not wish to cause any embarrassment to him. He is shifted to the Corporate Office. A balancing act is thus performed by the respondents. They wanted to achieve best results by proper administration. Thus, to fulfill the targets and obtain best performance from competent officials, the shifting has been made. The petitioner should not, therefore, complain about such transfers. From 2013 to 2014, the petitioner has not submitted his self appraisal report, which is also a serious lapse on his part. Thus, if the transfer is made in administrative exigency, we must not interfere therewith. The writ petition, therefore, be dismissed.

26. In support of his contentions, Mr. Desai would rely upon the following decisions:-

- (i) Airport Authority of India vs. Rajeev Ratan Pandey and Ors., 2009 III CLR 136;
- (ii) National Hydroelectric Power Corporation Ltd. vs. Shri. Bhagwan and Anr., AIR 2001 SC 3309;
- (iii) State of U. P. and Ors. vs. Gobardhan Lal, 2004 III CLR 78

27. We need not refer to the settled principles. Suffice it to state that a transfer is an incident of service. Once there is a power to transfer and that power is exercised for administrative reasons, to take care of administrative exigency, then, it is not for this court to interfere with the same. However, wherever there are defined and clear policies, rules and regulations and which denote that the power of transfer should not be exercised mid-term and an employee should be allowed to work ordinarily for two to three years at one post, then, relaxation and deviation or departure from such rules/regulations demands that a public body records specific reasons. If the reasons are not recorded in the communication, they must be at least be clear from the files or the records produced before the court.

28. All that we do is we take a review on our judicial side of the action of this nature, when there are allegations that there is a violation of the mandate of Articles 14 and 16 of the Constitution of India. That mandate is that every administrative action has to be clean, just, non-arbitrary and non-discriminatory in nature. If there are allegations that there are deviations and departures from defined policies, rules and regulations and transfers are effected for extraneous reasons, then, this court cannot shirk or avoid its duty of scrutinising the record in its power of judicial review.

29. We have, therefore, on record the transfer order and the two notes. Pertinently, the transfer order is dated 26th October, 2017 issued by the Chief General Manager (HR). He is the second respondent to this writ petition. The Office Order No. 214 recites that the Human Resources-Technical Establishment Department obtained approval of the competent authority, namely, Chairman and Managing Director in exercise of the powers delegated to him under the 5th Schedule appended to the MSETCL Employees' Service Regulations, 2012.

30. We have also referred to these regulations and the powers thereunder. The original circular is not before us, but it is stated that the said regulations allow issuance of circulars. There is a circular precisely on the point of transfer, dated 5th October, 2015. These are the guidelines guiding the officials to effect transfers. In that, we have a clear stipulation at page 23 of the paper book. That is clause 2(d), which says that those employees, who are going to retire in the next two years, should not be ordinarily transferred. Undisputedly, the petitioner retires with effect from 31st January, 2018. He has merely two months of service left at his disposal. As far as the power to transfer mid-term is concerned, clauses 6 and 7 would guide the authorities in making such transfers. It is common ground that the transfers

are effected by the end of academic year and particularly in the month of April and May of every year. That is to enable the employee, who is transferred, to organise his affairs and particularly the family matters. He must take care of his children's academic sessions and studies. He has also to make other arrangements like accommodation etc. at his transferred place. If the posting is at far off place, then, apart from travelling time, he must get time to settle down. It is that endeavor which mandates that such transfers should not be effected mid-term. If they have to be effected, then, there are clear guidelines to that effect. We think that when such orders are challenged before the court, the least that is expected of the respondents then to demonstrate from the transfer order or the note itself as to why a party or person like the petitioner, at the fag end of the term and on the eve of his retirement, should be transferred and brought to the Corporate Office, but not assigned any duties. If this does not visit him with stigma then what else, has not been clarified to us at all. We find from the office note that there are no reasons which would denote any administrative exigency or official matter or overriding public interest which would require shifting and transfer of an official, who is to retire in three months.

31. Compounded with all this are the allegations now made in the affidavit in reply, which Mr. Sakhare attacks as an afterthought. Is there any serious lapse to proceed against the petitioner departmentally? If, indeed a show cause notice was issued, if indeed his behaviour was rude, non co-operative with subordinates, superiors or contractors and public, then, this is definitely a matter which should have been promptly investigated, probed and inquired so as to subserve larger public interest. We cannot accept the argument of Mr. Desai that the respondents followed the policy of not embarrassing employees like the petitioner. They decided not to visit people like the petitioner with extreme consequences at the fag end of their service. We must emphasise that the first respondent is a public body. It has to abide by the constitutional mandate enshrined by Articles 14 and 16 of the Constitution of India. It is not a private authority, much less an entity of a Chairman and Managing Director or like officials. They cannot go by whims and fancies and take drastic decisions and thereafter justify them as routine administrative matters. These are not purely administrative matters as is being projected. If indeed there were serious allegations and the performance of the petitioner was below par, then, larger public interest demands that inquiries are initiated by obtaining appropriate approvals from the higher

authorities and Government departments, take the matter to its logical end. Those deserving punishment even at the fag end of their career ought to be punished. Besides, if the petitioner, as a Chief Engineer has not performed to the satisfaction of the respondents, his performance landed them in difficulty, there were complaints, the targets were not achieved and the schemes of transmission of electricity were not completed in time, then, the least that was expected that an inquiry be made. Even today, we do not see any such inquiry in the offing. Therefore, the first contention of Mr. Desai that a lenient treatment or a view has been taken in order to balance the authority of the respondents with the power and the position of the petitioner, cannot be accepted. We do not think that the respondents can oblige a person like the petitioner, if he is indeed guilty of serious misconduct. If there was a *prima facie* case of serious misconduct, then, that should have been spelt out in the files and notes. If indeed his presence was not conducive to the smooth functioning and administration of the zone, then, that should have been clearly recorded. There is no question of any official hesitating to record a fearless and independent opinion about the performance of another officer even if may be the Chief Engineer. Therefore, when we demand complete adherence to the rule of law, we expect the authorities like the respondents to spell out

such materials in their orders itself. They should be discernible from the order. The petitioner, on receipt of the office order, on that day itself addressed a representation. He brought fore the issue of not his performance, but the transfer policy. Secondly, he also says that despite his best performance, there were certain matters, which were not under his control, which resulted in some delay in transmission.

32. We do not think that the office note, copy of which is at page 59 as also 60 of the paper book was already in existence. The first office note at page 60 of the paper book shows that there are directives received to submit proposal to make changes in the post of Chief Engineer. These are the proposed changes and set out in the note at page 60 of the paper book. This note is dated 26th October, 2017. Acting upon such a note, an approval order is issued. Then, the petitioner's representation being on record, the office note says and at page 59 that there has to be a transfer and posting of the Chief Engineer (Transmission) and allotment of portfolio to the petitioner. It says that this note is submitted in pursuance of the instructions received from the higher authorities. Though the petitioner has been transferred, he is kept on waiting for posting until further orders. Directives were received to submit a proposal for approval of the competent

authority to entrust the responsibilities of ERP and IT Department to him. That is how the approval of the competent authority was sought.

33. Thus, it is clear that this note proceeds on the footing that the transfer is already effected, but only the portfolio remained to be assigned.

34. Mr. Desai would like us to believe that this is a proposal seeking approval to the transfer. We do not think that pages 59 and 60 can be read in that fashion and manner. One refers to the directives, which have been received already to submit proposal to make the changes pursuant to which the order impugned in the petition has been issued. The second is then seeking approval to post somebody like the petitioner in the Corporate Office and assign him work.

35. This is not on par with what the policy demands when a person has to be shifted mid-term. We find that a public body cannot depart from its policy and for reasons which are not germane or relevant to achieve administrative efficiency, much less to take care of administrative exigencies. The transfers cannot be effected so as to accommodate somebody. They are not to be effected because an official convenient to the superiors can

be brought at a crucial post. The transfers cannot be effected also to avoid holding departmental inquiries. In the least they cannot be issued so as to oblige somebody, who is retiring shortly and allow him to retire peacefully without any stigma even though he is guilty of serious lapses while in service. We do not know how all this achieves administrative exigency and guarantees optimum results. Public interest demands that those vested with such powers act as trustees of public. Eventually, all such powers are in the nature of trust. They are coupled with a duty. If they are not so exercised, a conclusion can be drawn that they are vitiated by arbitrariness, unreasonableness, unfairness and they cannot be termed as just. From the record of the present petition, it is clear that the mandate of Articles 14 and 16 is violated because, firstly, the order not indicating the reasons, much less of any administrative exigency, secondly, the reasons are being supplied by way of the affidavit and the additional affidavit as an after thought and thirdly, despite such material being placed before the court and alleging misconduct on the part of the petitioner, the authorities are trying to justify their *ex-facie* illegal action by urging that they do not want the petitioner to face undue harassment at the fag end of his career. This reason is not in public interest, to say the least.

36. We do not think that any judgment of the Hon'ble Supreme Court of India as also this court holds that despite such a position emerging from the facts and circumstances of a particular case, this court, in exercise of its judicial review conferred by Article 226 of the Constitution of India, cannot interfere and quash and set aside any transfer order. We would be failing in our duty if we uphold such action of public officials or public body when the mandate of Articles 14 and 16 is clearly flouted.

37. None of the decisions that have been brought to our notice lay down such a principle. Rather, in the case of *Somesh Tiwari* (supra), the Hon'ble Supreme Court says in clear terms that if the power is exercised not in public interest or administrative exigency, the transfer order, may be administrative, but if issued for reasons completely extraneous and has no nexus with the object to be achieved, then, it should be interfered with. In para 16 of this judgment, the Hon'ble Supreme Court holds thus:-

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds – one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say

that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”

38. Even in the Division Bench judgment in the case of *Purushottam Govindrao Bhagwat* (supra) relied upon by Mr.Sakhare, we find that the Division Bench was reminding the State and the public bodies that transfers can be effected in special cases or as an exception. The legislative intent is that ordinarily Government servant will not be transferred prior to completion of his tenure. However, it would be permissible in special cases when the competent authority records the reasons for the same and obtains prior approval of the immediately superior transferring authority.

39. *State of U. P. and Ors. vs. Gobardhan Lal*³ was a case where the Hon'ble Supreme Court found that there was an interference in the power of the State to transfer officers. There were disputed questions of fact. Once the High Court was of a clear opinion that there are disputed questions of fact, it should not have exercised its power under Article 226 of the Constitution of India, much less to interfere with an order of transfer. The challenge to it was not clear, precise, but vague and ambiguous. The challenge was in general terms. An allegation was made casually that the transfer

orders are result of political pressure, but no particulars were given. Hence, the appeals of the State were allowed and the order of the High Court was set aside. Such is not the position emerging from the record before us.

40. Equally, in the case of *National Hydroelectric Power Corporation Ltd. vs. Shri. Bhagwan and Anr.*⁴, the Hon'ble Supreme Court found that an order of transfer from an existing place or office to the new project was being questioned on the ground of prejudice in seniority. This was a routine exercise in public interest and to improve efficiency in public administration. Therefore, such orders could not have been interfered with.

41. In the case of *Airport Authority of India vs. Rajeev Ratan Pandey and Ors.*⁵, by an interim order, the transfer was stayed by the High Court. It is only some inconvenience of the officer without any whisper of malafides which prevailed the Hon'ble Supreme Court to interfere with it. Therefore, this order was set aside being contrary to the settled principles. Even this judgment is distinguishable on facts.

42. As a result of the above discussion, the writ petition succeeds. Rule is made absolute in terms of prayer clause (a).

The transfer order is set aside.

4 AIR 2001 SC 3309

5 2009 III CLR 136

43. We clarify that since the petitioner has assumed charge under protest and without prejudice, all the more for the aforesaid reasons, we do not find any justification for the respondents preventing him from continuing as Chief Engineer at Vashi, particularly because there is no permanent arrangement made at that place.

44. We clarify that we have expressed no opinion as far as the allegations against the petitioner, much less their merits. If any inquiry can be initiated, even now, then let that be initiated and concluded in accordance with law.

45. At this stage, Mr. Desai prays for stay of this order for a period of four weeks. This request is opposed by Mr. Sakhare.

46. Having heard both sides, we find that the order of transfer was ex-facie illegal and erroneous so also arbitrary. We would not be justified in staying such an order. The prayer for stay is refused.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)