

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24237 of 2013

Date of Decision: 10.01.2017

Vikram Singh

... Petitioner

Versus

Union of India and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Mohit Jaggi, Advocate,
for the petitioner.

Mr. Aseem Aggarwal, Advocate,
for respondent No.1.

Mr. Vikas Soni, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.

1. This Court interfered in this transfer matter by issuing notice of motion on November 06, 2013 directing that till the next date of hearing the impugned order of transfer dated October 10, 2013 would not be given effect to qua the petitioner. Though the order has not been extended by any specific order thereafter but the authorities have understood the first order to be in operation. I would, therefore, regularize that period so that no harm comes to the petitioner in case, the petition is dismissed.

2. The interim stay order had proceeded on the argument that the petitioner had been transferred permanently to Chandigarh vide order dated March 27, 2004 and had since then been working in the Indian Airlines (Northern Region) Chandigarh. It cannot be disputed that the word 'permanently' has been used in Annex P-1 in terms of an order passed by

the General Manager referring to a notification dated March 24, 2004 mentioned in the order. Prior to coming to Chandigarh on posting, the petitioner was stationed at New Delhi. The petitioner admits that generally transfers are made for one year but in the case of the petitioner, he was permanently transferred to Chandigarh where he shifted with his family and belongings. It was portrayed in the petition that his two children were studying in Bhavan Vidyalaya, Chandigarh in Classes-VII and VIII and they were in Midterm examinations and their studies would be affected if the transfer orders were given effect to. The impugned order transfers the petitioner from Chandigarh to Raipur which is 900 kms. away in State of Chhattisgarh.

3. On notice, the respondents have filed a reply. They assert that transfer is an incidence of service and the place/station of posting has to be decided by the competent authority in its sole discretion keeping in view the exigencies of service. Moreover, security of passengers, aircraft, airlines and the country takes priority over all other considerations. They submit that to call a posting at Chandigarh 'permanent' is a misnomer. Indeed, no person can be posted at a station for life or for an indefinite period. The difference between posting at a station for a period of one year and the so-called permanent posting lies in the conditions attached to transfers. For instance, an official on posting from base to an outstation for one year will not be entitled to passage for his family. Nor may privilege leave be admissible except in extreme emergency. Outstation postings are governed by Circular dated April 18, 1990.

4. On the other hand, in case of the so-called permanent posting,

the period of stay at a station will normally be three years with term transfer benefits. The criteria for transfers and posting is laid down in Circular issued by Indian Airlines, Headquarters, New Delhi as early as on December 12, 1974, the postulate in its opening para of which reads:-

“It is the inherent right of the management to effect transfer of an employee from one station/region to another station/region at its sole discretion. The broad guidelines are, however, given hereunder to enable the competent authority to exercise its discretion where necessary.”

5. Postulate (e) of Annex R-2 runs as follows:-

“e) The period of stay at an outstation will normally be 3 years, provided that at hardship stations (which have been defined as such) it will be one year.”

6. The Ministry of Civil Aviation, Government of India, (Bureau of Civil Aviation Security) vide circular No.12/2013 have categorized airports in the country in view of the threat perception at all operational airports as Normal/Sensitive/Hyper sensitive. The Chandigarh airport has been marked as sensitive while Raipur Airport (Chattisgarh) has been listed as hyper sensitive. Therefore, from the security angle, it is desirable that officials posted in sensitive stations are rotated at appropriate intervals. On facts, they have disputed the averments in the petition the petitioner wrongly asserting he had brought his family to Chandigarh on the understanding that his transfer is permanent. It has been sworn in the written statement that the petitioner made a request in writing for making his posting permanent on August 27, 2004 in which he writes that 'he had already brought his family to Chandigarh'. This request was approved on September 29, 2004, from where permanent transfer is claimed as a matter

of right.

7. A perusal of the transfer policies dated December 12, 1974 and April 18, 1990 issued by the Indian Airlines Headquarters, New Delhi reveal that there is no provision for permanent transfer. There are two kinds of transfer, one is of one year posting within the region which shall not be applicable in the cases of transfers between one main base/sub-base station to another main base/sub-base station. See para.2 of Outstation Posting circular dated April 18, 1990. The 1974 circular envisages stay at an outstation which normally is three years, provided that at hardship stations, as defined, it will be one year. The proviso does not apply to Station Managers. A provision has been made that wherever possible transfers will be effected at the end of the academic session to avoid disruption in studies of wards of the employees concerned. Clause 2 (a) of the 1974 circular provides for compassionate transfers from one Station to another Station or from one region to another region on compassionate grounds, subject to availability of vacancy and with the concurrence of the higher authority. Loss of the seniority is also envisioned in such compassionate transfers. To re-emphasise, there is no provision for permanent transfer. It appears that in case of transfer, one year or three years, as the case may be, the word permanent used in Annex P-1 cannot be read for all times till retirement and can only mean protection against transfers on formats of year or three year terms. It is also well known in law that where discretion is not conferred none can be exercised in an arbitrary manner.

8. At least one thing is certain that the petitioner came from Delhi to Chandigarh on request and in this posting managed to get the word permanent put in the order without legal sanction of the policies and that is

why the respondent Airlines has been hard pressed to pry open holes in the earlier transfer order, as the Airlines might have to defend its orders whether good, bad or indifferent. Even on first principles, it seems to me that a permanent transfer in an All India Service is unheard of and this is a rare instance which has come to Court. When I granted the interim stay order it was till the next date of hearing and it was mostly persuaded by the use of the word 'permanent' in Annex P-1 and ensuing hardship to the family with children studying in Middle school so that their studies were not suddenly disrupted.

9. The law officer of the Union was asked to accept notice on the respondents on behalf of the Assistant Solicitor General, High Court to obtain a quick response. On the next date of hearing, the petitioner did not get the interim order extended and, therefore, technically speaking, there is no stay order operating in favour of the petitioner in any of the subsequent ten dates of hearing. Even the respondents have laboured under the impression that the Stay has continued since they opposed an adjournment on December 16, 2016 bringing to the notice of the Bench that the petitioner obtained an interim order way back on November 06, 2013 and it was operating. On the previous two dates i.e. July 15, 2016 and December 16, 2016 none appeared for the petitioner before the coordinate bench. That is how this matter has come before me today.

10. Learned counsel for the Airlines relies on Mrs. Shilpi Bose and others v. State of Bihar and others, AIR 1991 SC 532 where the Supreme Court has cautioned Courts not to interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer

orders are made in violation of any statutory rule or on the ground of mala fides. 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 the transferees 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 and instead affected party should be shown the door to approach the higher authorities in the department to avoid complete chaos in the administration which would not be conducive to public interest.

11. In the written statement, the respondents have pleaded that the petitioner had not put forth any representation expressing his grievance either verbally or in writing for re-consideration of his posting to Raipur and had rushed to Court.

12. In view of all said above, I do not find sufficient reason to continue with the assumed stay order, the benefit of which has gone in favour of the petitioner for more than three years and finding no merit in the petition merely on the play of the words “permanently transferred” I would dismiss the petition.

13. Hereafter, the petitioner will have liberty to pursue his administrative remedies by making a representation to the competent authority against the impugned order. In case he files one within a week from receipt of this order, it will be considered in terms of the prevailing policies and a decision taken thereon. In case the petitioner requests personal hearing in the office of the competent authority, it shall be granted.

Accordingly, the petitioner will be informed of his rights and duties and needless to say, his family circumstances would be kept in view in considering his case. However, till then status quo will be maintained as it exists today.

(RAJIV NARAIN RAINA)
JUDGE

10.01.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>