

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

Date of Decision: May 01, 2017

+ W.P.(C) 3677/2017 & C.M. 16208/2017

INDIAN AIRPORTS KAMGAR UNION AND ANR....Petitioners

Through: Mr. Maanav Kumar, Ms. Tara
Narula & Ms. Nupur, Advocates

Versus

AIRPORTS AUTHORITY OF INDIA AND ORSRespondents

Through: Mr. Dig Vijay Rai, Mr. Vivek
Kumar Pandey, Advocates with
Mr. Simon L. Fernandes, AGM
(HR), Mr. Surender Kumar,
Manager (HR) & Mr. Konark
Sharma, Manager (Law)

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

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In this petition, challenge is to '*National Transfer Order-2017 of Fireman Workers posted at Northern Regional Offices*' of 6th April, 2017 and order of 24th April, 2017 vide which petitioner No.2 has been relieved from Amritsar Airport to join at Dehradun Airport. Cancellation of Transfer Order of 20th May, 2016 is also sought in this petition.

Petitioners are the Indian Airports Kamgar Union and the Regional President of Northern Region of the aforesaid Union. Vide order of 20th May, 2016, transfer of more than 100 Senior Superintendents/ Superintendents Fire of various divisions from popular to non-popular

and vice-versa has been done.

It is a matter of record that the Transfer order of 20th May, 2016 (*Annexure P-1*) is subject matter of complaint No.6 before Central Government Industrial Tribunal (*hereinafter referred to as the Tribunal*) where the Transfer Policy of respondent-Authority is under challenge in I.D. No.88/2016 and is pending consideration for 5th June, 2017.

Learned counsel for petitioners submits that transfer of petitioner No.2-*Rajwinder Singh*, Regional President of Northern Region, Indian Airports Kamgar Union is subject matter of complaint No.6 before the Tribunal and so, on the last date of hearing, an oral prayer was made for stay of transfer of petitioner No.2, who had been allowed to continue at Amritsar Airport till 31st March, 2017 on account of children's education, but no orders have been passed by the Tribunal and so, petitioners are before this Court in this petition.

Learned counsel for petitioners submits that petitioner No.2 is a protected workman and the transfer orders are pending adjudication before the Tribunal and so, as per the mandate of Section 33 of *The Industrial Disputes Act, 1947*, it is mandatory upon respondent-Authority to obtain express written permission from Conciliation Officer and the Tribunal before issuing of transfer order of 6th April, 2017 and relieving order of 24th April, 2017. It is also submitted by petitioners' counsel that impugned transfers are *mala fide* as there are no administrative or operational reasons to effect the transfers and such large scale transfers have been done to disrupt petitioners' legitimate activities and election

process of petitioner-Union which shall take place in January, 2018. So, it is submitted by petitioners' counsel that the impugned transfers be kept in abeyance till the Tribunal adjudicates upon impugned transfers and about the exigencies of the Transfer Policy of respondent-Authority.

On the contrary, learned counsel for respondent-Authority submits that impugned transfers are due to administrative exigencies and as per the Appointment Letter of members of petitioner-Union, the employees of Airport Authority can be transferred anywhere in India as per the terms of their appointment letter and the Transfer Policy is very much in place and impugned transfers have been effected as per the Combined Transfer Policy effective from the year 2010. Copy of Combined Transfer Policy has been produced before the court. So, it is submitted that this petition deserves dismissal. Nothing else is urged on behalf of either side.

Upon hearing and on perusal of impugned transfer orders and decisions cited during the course of hearing, I find that respondent-authority's Combined Transfer Policy effective from the year 2010 is very much in place and so, reliance placed upon a Single Bench decision of High Court of Madras in *Indian Airports Kamgar Union Vs. Airports Authority of India* 2015 SCC OnLine Mad 13690 is of no avail, as the transfer policy was subject matter of Reference and so, it was directed that by resort to Section 33 of *The Industrial Disputes Act, 1947*, the requisite permission be obtained from the Tribunal before effecting the transfer. As per appointment letters of members of petitioner-Union, they can be transferred anywhere in India. Since transfer is not a condition of service, therefore, resort to Section 33 of *The Industrial Disputes Act*,

1947 is not required to be made before effecting any transfer.

No doubt, transfers made on 20th May, 2016 is sub-judice before the Tribunal but this by itself cannot be a ground to keep the transfers in abeyance, as it will lead to administrative difficulties. In any case, in this petition, *mala fides* are alleged qua transfer of petitioner No.2, who has been posted at Amritsar Airport for last more than fifteen years. The averments of *mala fide* are half baked and do not justify keeping in abeyance the impugned transfer of petitioner No.2, which has been implemented vide impugned order of 24th April, 2017 as he has been relieved to enable him to join at Dehradun Airport. So, during pendency of ID No.88/2016 or complaint No. 6, transfer of petitioner No.2 cannot be stalled, particularly in view of the fact that he is posted in Amritsar for last more than fifteen years.

Petitioners' plea of disrupting the elections which are yet to take place in January, 2018 is also quite vague, as it is not shown as to how the transfer of petitioner No.2 would stall the election process which is yet to take place in 2018. Pertinently, it is not shown by petitioners how the impugned transfer orders are in contravention of '*Combined Transfer Policy*' effective from the year 2010. Transfer of petitioner No.2 appears to be in consonance with the Combined Transfer Policy.

In view of the aforesaid, this Court is of the considered view that impugned transfer of petitioner No.2 is neither vitiated by *mala fides* nor is contrary to the provisions of Section 33 of *The Industrial Disputes Act, 1947* and it does not in any way stall the election process of petitioner No.1-Union. So far as petitioner No.2 being the protected workman is

concerned, it cannot be a ground to stall his transfer as petitioner No.1-Union is said to be an unrecognized Union.

This petition and application are accordingly dismissed while making it clear that any observation made herein shall have no bearing on the pending ID No.88/2016 or complaint No.6 which be expeditiously decided to avoid multiplicity of proceedings.

(SUNIL GAUR)
JUDGE

MAY 01, 2017
s/r

