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

+ **W.P.(C) 8639/2017**

SUKHVEER SINGH

..... Petitioner

Through: Mr. Shrigopal Aggarwal, Adv.

versus

UNION OF INDIA & ANR

..... Respondent

Through: Mr. Jasmeet Singh, CGSC with Mr.
Srivats Kaushal, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

26.09.2017

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C.M. No. 35482/2017

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 8639/2017

1. The petitioner has preferred the present writ petition to assail the order dated 16.08.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.3628/2015 as well as the order passed in the review application being R.A. No. 191/2016 in the aforesaid O.A. dated 23.09.2016. The tribunal by the impugned order dated 16.08.2016 dismissed the O.A. preferred by the petitioner, wherein he had

assailed his transfer vide order dated 04.09.2015 from the Govt. Opium and Alkaloid Works Neemuch to Customs House Laboratory, Kolkata. The tribunal has also rejected the review application.

2. The factual position which emerges from the record is that the petitioner was appointed as Assistant Chemist in Central Revenue Control Laboratory (CRCL) on 13.05.1999. He was initially posted at Ghazipur which is considered as a hard station. Thereafter, it appears that the petitioner continuously served at Delhi. After serving at Ghazipur/Delhi for 14 long years, he was transferred on promotion vide order dated 26.06.2013 to Customs House Laboratory, Kolkata with immediate effect. The petitioner represented against his transfer and requested that he be posted on promotion to Delhi or Neemuch (Madhya Pradesh), which are nearer to Ghaziabad where his divorce petition was pending. This request of the petitioner was acceded to and he was posted on 31.07.2013 at Govt. Opium and Alkaloid Factories, Neemuch on promotion to the post of Asst. Chemical Examiner (Group-B Gazette). The petitioner joined the said post at Neemuch and served at the said post for about two years when the transfer order in question was issued on 04.09.2015. The transfer order, insofar as it is relevant, reads as follows:

“In pursuance of Chief Controller, Government Opium and Alkaloid Factories letter F. No. [V(1)1/ Confl./ CCF/2013-1982 dated 18.11.2014 and letter F. No.37-40/90-Lab. (Pt. IV) dated 24.08.2015 received from Commissioner of Customs (A&A), Custom House, Kolkata, Shri Sukhveer Singh, Assistant Chemical Examiner, Govt. Opium & Alkaloid Works, Neemuch is hereby transferred to Custom House Laboratory, Kolkata in public interest with immediate effect and until further order:-

The Controlling Officer of Shri Sukhveer Singh is directed to relieve the officer to enable him to join at his new place of posting by 18.09.2015. The date of his relieving and joining may be intimated to this office for records”.

3. The said transfer order refers to two communications dated 18.11.2014 being the letter issued by the Chief Controller, Govt. Opium and Alkaloid Factories, and the letter dated 24.08.2015 received from the Commissioner of Customs (A&A), Customs House Kolkata. The first letter dated 18.11.2014 is a communication issued by the Chief Controller to the Director, CRCL, wherein he refers to the communication received from the Asst. Commandant, CISF Unit, GOAW, Neemuch through the General Manager, GOAW Neemuch dated 12.11.2014. In the said report, the Asst. Commandant intimated that different executive agencies are affecting the seizure of narcotic drugs and sending their samples for chemical analysis report to Govt. Opium and Alkaloid Works, Neemuch as per the norms. Thereafter, the remnant of the seized drugs is being misused some officers including the petitioner. The communication also records that since the petitioner has been specifically named, he had been shifted from Opium Laboratory to Alkaloid Plant and in his place another officer had been placed in the Opium Lab. The letter further recorded that Alkaloid Plant is also a very sensitive posting as large quantities of sensitive drugs are lying there and presence of a person with such dubious tendency may create problem.

4. The second communication referred to in the transfer order dated 24.08.2015 is a communication received from the office of the

Commissioner of Customs, Kolkata stating that there is huge pendency of samples of about 1500 in the chemical laboratory of the Customs House, Kolkata and that there are 18 vacant posts out of 24 posts in Asst. Chemical Examiner and Chemical Assistant, and that immediate action be taken and at least two Assistant Chemical Examiner and two Chemical Assistant be posted on regular basis.

5. The submission of learned counsel for the petitioner is that the aforesaid communications referred to in the transfer order were not provided to him when the transfer order was issued. According to the petitioner, the transfer of the petitioner is punitive.

6. We cannot accept this submission. Transfer is an exigency of service. Therefore, the petitioner need not have been supplied with the said two communications by the respondent at the time of issuance of the transfer order. In any event, admittedly, these communications were supplied to him on 24.09.2015 after he had preferred the O.A.

7. The next submission of learned counsel for the petitioner is that the order dated 18.11.2014 casts aspersion on the conduct of the petitioner and no inquiry has been held against the petitioner. He submits that on the basis of mere allegations, he could not have been transferred. He submits that though no show cause notice was issued for initiation of disciplinary proceedings against the petitioner, he was questioned in the matter since an inquiry was conducted. He states that nothing substantial was found against the petitioner in the said inquiry.

8. The communication dated 18.11.2014 does not conclusively state that

the petitioner was found to be indulging in misuse of the remnants of the seized drugs which were remaining after the chemical analysis. At the same time, it does state that it was not desirable that the petitioner should continue at the sensitive location. In our view, there was no necessity to put the petitioner to notice or to call for his explanation or hold an inquiry, since the respondent had chosen not to take disciplinary action against the petitioner, nor the petitioner can have no grievance in this regard. The communication dated 24.08.2015 issued by the Commissioner of Customs, Kolkata shows that there was acute shortage of Asst. Chemical Examiner and Chemical Assistant at Kolkata, which had led to pendency of large number of samples. Thus, it is clear to us that the transfer of the petitioner was on germane considerations. Pertinently, the petitioner had served for nearly 14 years at Ghazipur/ Delhi before he was transferred to Kolkata. At the request of the petitioner, even that transfer order was recalled and he was posted at Neemuch. The petitioner cannot insist that he should be posted at a place of his choice on any ground whatsoever. Merely because the petitioner may be facing a divorce case at Ghaziabad is no ground to post him at a location close to Ghaziabad.

9. The submission of learned counsel for the petitioner is that there are several officers who have never been posted out from Delhi or other inconvenient places. He also referred to the draft transfer policy which states that Ghazipur and Neemuch are considered as hard postings and the officers are expected to undergo the said postings for a limited tenure.

10. So far as the petitioner's grievance that there are other officers who have served at Delhi or other metros for long tenure and who have never

been given hard posting is concerned, the same may be an aspect that the respondent needs to look at. However, that by itself is no ground to assail the petitioner's transfer, since he is serving in a transferable job. Reliance on the draft transfer policy is, therefore, misplaced. The petitioner can have no grievance since he has been posted out of a hard posting i.e. from Neemuch to Kolkata, which is not considered as a hard posting.

11. Learned counsel for the petitioner has also sought to place reliance on *Union of India & Ors. v. S.L. Abbas*, JT 1993 (3) Supreme Court 678. This decision, in our view, goes against the petitioner since it holds that who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provision, the court cannot entertain with it. The petitioner has not alleged any malafide against any particular officer of the respondent. No specific statutory provision has been cited which may have been breached by transferring the petitioner to Kolkata. The transfer of the petitioner is clearly necessitated on account of there being acute shortage of officers at Kolkata. Moreover, since doubts were raised about the petitioner's role and conduct at Neemuch, it was desirable to remove him from the said location.

12. The submission of the petitioner that his representation against his transfer was not being considered also has no merit. He has pursued his O.A., which was contested by the respondents. In these circumstances, there was no further scope for consideration of his representation by the respondents.

13. For all the aforesaid reasons, we find absolutely no merit in this petition. The same is, accordingly, dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

SEPTEMBER 26, 2017

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