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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: October 10, 2019

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W.P.(C) 38/2019, CM APPL. 209/2019

SMT. VEENA DEVI

..... Petitioner

Through: Mr. Thomas Oommen, Adv.

versus

CONTAINER COPORATION OF INDIA LTD.(CONCOR)
AND ORS.

..... Respondents

Through: Mr. Vinay Bhasin, Sr. Adv. with
Ms. Kanishka Prasad, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

A.K. CHAWLA, J. (ORAL)

W.P.(C) 38/2019, CM APPL. 209/2019

By the instant petition, the petitioner, who was initially appointed as Stenographer Gr-I in the year 2005 and with successive promotions was appointed as Junior Officer/Private Secretary on 01.07.2018, assails and seeks quashing of her transfer no. 109/2018 dated 05.12.2018 and the relieving order no. 201/1419 dated 06.12.2018.

2. The impugned transfer/office order 109/2018 dated 05.12.2018, reads as under:

"Ms. Veena Devi, Jr. Officer (Private Secretary)/Corporate office is transferred and posted as Regional Office/ER with immediate effect.

This has the approval of the Competent Authority.

sd"

The very next day, the respondent passed the impugned relieving order no. 201/1419 dated 06.12.2018, which reads as under:

"In terms of Corporate Office order No. 109/2018 issued vide letter no. 259/2/2700 dated 05.12.2018, Ms. Veena Devi, Jr. Officer (Private Secretary) is hereby relieved from her duties on the close hours on 06.12.2018. She is advised to report to Regional Office/Easter Region for further orders.

sd/-"

Was the subject transfer effected to meet any exigency or for better administration of the affairs of the respondents and did not suffer from any malafides or ulterior motives, is the short question for consideration in the instant petition. One would find catena of judgments to the effect that transfer and posting is an incident of service and the prerogative of the employer in such matters cannot be interfered with, unless, it comes to be shown that the action of transfer or posting suffered from the vice of malice or was punitive. In the subject context, it would suffice, if the following observations made by the Supreme Court in **Somesh Tiwari v. Union of India** (2009) 2 SCC 592 are adverted to:

"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."

3. In view of the foregoing and to cut short the controversy, during the course of hearing, Mr. Bhasin, Id. Senior Counsel for the respondent was queried as to what were the reasons for sudden transfer of the petitioner from Delhi to the Regional Office/Eastern Region, with immediate effect. To meet the query, Mr. Bhasin, Id. Senior Counsel adverted to para 8 of the counter-affidavit, which is as under:

"8. The respondent acted at the request of the petitioner. Since there was no suitable post available in the NR (Northern Region)/NCR (North Central Region), and the respondent authority has been receiving request from the Eastern Region for Secretarial Assistant. Accordingly, the respondent authority has issued the transfer order and the relieving order which were impugned by the petitioner by filing the present writ petition. The allegations of discrimination in transfer and atrocities against the respondent are completely false which cannot be substantiated, as allegations were made only after the transfer order and relieving order were issued by the respondent authority and were served to the petitioner by email."

On such advertence, when queried, as to what was the material in support of such assertions, nothing comes to be pointed out. Pitched against such bald assertions, the case of the petitioner is that she has been seeking to be transferred from the HR department, where she was currently posted to another and in that regard, it appears, she has *inter alia* been sending e-mails to her senior officers. In one of such instances, she is shown to have addressed a communication even to the Chairman and Managing Director of the respondent - CONCOR on 02.12.2018, a day, which happened to be a Sunday. The court does not consider it necessary to get it to the reasons on account whereof the petitioner has been seeking to be transferred out of the HR department inasmuch as, it is not in dispute that for any of her alleged misconduct or otherwise, the respondents had conducted a fact finding inquiry on 04.12.2018, and, immediately the next day, she came to be served with the transfer order. Copy of the said fact finding report forms part of the paper book as Annexure P-8. On the perusal of the said fact finding report *prima facie*, it does appear that her acts were irrational and tantamounted to overreach the higher authorities for reasons whatever and would invite disciplinary action. On this aspect of disciplinary action, Id. counsel for the petitioner adverting to annexure R-3 forming part of the counter affidavit of the respondents pointed out that as per the said office notings, the Director (Domestic) had recommended disciplinary action inviting minor penalty on 12.12.2018, but, no disciplinary inquiry was initiated as yet. The given facts and circumstances thus leave no doubt that the impugned transfer order and the consequent relieving order were passed as a punitive action instead

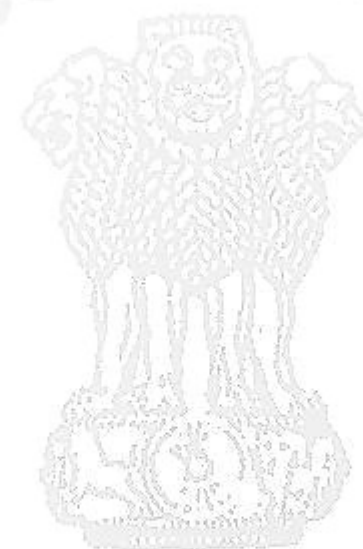
of taking the appropriate disciplinary action, as provided for under the rules. The impugned transfer and reliving order, which the Court finds to be punitive action, cannot therefore be sustained.

4. For the foregoing reasons, the writ petition is allowed and the impugned transfer order no. 109/2018 dated 05.12.2018 and relieving order no. 201/1419 dated 06.12.2018 are quashed. No order as to costs. Writ petition stands disposed off accordingly.

A.K. CHAWLA, J.

OCTOBER 10, 2019

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