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

Date of decision: 23.05.2019

+ W.P.(C) 11073/2017 & C.M. Nos.45304/2017 (for stay) &
14147/2019 (for interim direction)

RAM CHAND SHARMA PETITIONER
Through Mr.Amavendra Sharan, Sr. Adv. with
Mr.Sanchit Garv, Adv.

versus

UNION OF INDIA AND ORS. RESPONDENTS
Through Mr.Rajan Sabharwal, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. The petitioner has preferred the present writ petition to assail the order dated 25.10.2017, whereby he has been transferred from Kashmere Gate Out Post, Delhi East Division to Firozpur Division. He also seeks a writ of mandamus to direct the respondents to continue his posting at Delhi till he completes five years at the said posting in Delhi.

2. At the outset, we may observe that the petitioner was posted at the Kashmere Gate Out Post, Delhi East Division on 03.06.2014. The petitioner himself states in ground 'C' of his writ petition that he would complete his tenure of five years in the post on 29.05.2019, which is six days away.

3. The challenge raised by the petitioner to his transfer is premised on a plea of legal *mala fides*. His case is that a complaint was made against him which was inquired into, confidentially, without his participation and without putting him notice or giving him any opportunity to defend himself. The petitioner's plea is that he was transferred out, on the basis of the findings of the said confidential inquiry.

4. In support of his case, the petitioner has sought to place reliance on ***Somesh Tiwari Vs. Union of India & Ors. (2009) 2 SCC 592*** and in particular on paragraph 16 of the decision which reads as follows:-

“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.”

5. On facts, there is no dispute. The respondents have filed their counter affidavit wherein it is stated that Shri P.N. Rai, Assistant

Security Commissioner/Delhi Main, had conducted a confidential inquiry in respect of the complaints received against the petitioner. One such complaint made on 08.01.2016 was addressed to the then Hon'ble Minister for Railways. On receipt of the complaint, the Sr. Div. Security Commissioner/RPF/DLI-East was directed vide HQ Office Letter dated 04.04.2016 to keep a close watch on the activities of the petitioner and to ensure that he is not involved in the official work of RPF/Delhi Main in any way. A copy of the report dated 24.10.2017 submitted by Shri P.N. Rai, Assistant Security Commissioner, Delhi Main in respect of the confidential inquiry conducted by him has been filed with the counter affidavit as annexure R-2. As per this report, the petitioner was found to be interfering into the working of the Delhi Post indirectly and, therefore, he was directed to be transferred out from RPF outpost Kashmere Gate in administrative interest.

6. Having heard Mr. Sharan, learned senior counsel for the petitioner, perused the record and considered the decision in ***Somesh Tiwari (supra)***, we are of the opinion that there is no merit in this petition. The complaint against the petitioner related to his only administrative functions as a consequence of his interfering in the working of the Delhi Main indirectly, which fact was confirmed by the findings of the confidential inquiry. The petitioner was not accused of any misconduct. Interference by one officer in the functioning of other functionaries in the office is certainly an administrative issue which has to be dealt with by the administration. In our view, there was no need to involve the petitioner in the

confidential inquiry, since the same was not in respect of any misconduct for which the petitioner could be proceeded with departmentally, and subjected to punishment. Merely because the petitioner's transfer has been triggered by the complaint which, on discreet inquiry, was found to be true, it does not mean that he had to be put to notice and explanation called before action was taken thereon to transfer him. Transfer, by itself, is not a punitive decision in respect of the person transferred.

7. The facts of *Somesh Tiwari (supra)*, on which reliance has been placed by learned senior counsel for the petitioner, were very different. This was a case where the appellant therein was targeted by employees who were posted in the office of the respondent in Bhopal. They apprehended disciplinary and also criminal action at the hands of the appellant, and consequently, an anonymous complaint was made against him alleging caste bias on his part. This complaint was examined and found to have no merit. Yet, the appellant was transferred out. It is in the aforesaid background that the Supreme Court made its observation in paragraph 16 as quoted hereinabove. The facts of that case are clearly distinguishable inasmuch, as, in the present case, it is not the case of the petitioner that the complaint against him was anonymous. Moreover, on discreet inquiry the complaint was found to be having merit since it was found that the petitioner was interfering with the functioning of other functionaries in the office. Thus, the transfer of the petitioner was clearly made on account of administrative exigencies and could not be labelled as punitive. Even otherwise, we find that based on his averments in the

writ petition, the petitioner's tenure of five years, which according to him was curtailed vide the impugned order, would come to an end in the next five days itself i.e. on 28.05.2019. We may note that by virtue of the interim order passed by this Court on 13.12.2017, the petitioner has continued to remain in Delhi and, therefore, at this stage, he can have no real grievance qua the impugned transfer order.

8. For the aforesaid reasons, we find no merit in this petition. The petition and pending applications are dismissed.

9. Dasti.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

MAY 23, 2019/aa