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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 18.08.2020

Pronounced on: 20.08.2020

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W.P.(C) 3373/2020 & CM APPL. 11965/2020

CAPT. VIVEK SINGH

..... Petitioner

Through: **Mr. Jasbir Singh Malik, Advocate**

versus

STATE BANK OF INDIA

..... Respondent

Through: **Mr. Rakesh Munjal, Sr. Advocate
with Mr. Anil Kumar Sangal &
Mr. Siddharth Sangal, Advocates**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

1. Challenge in the present petition is to an order dated 21.05.2020 transferring the Petitioner from Local Head Office (LHO), New Delhi to Bhubaneswar Circle. Petitioner also prays for a writ of mandamus directing the Respondent to continue his services at LHO, New Delhi, to complete 10 years in accordance with the Policy framed by the Respondent being HR/CM/7/2243 dated 21.03.2011.

2. Petitioner is a Short Service Commission Officer who served the Indian Army from March 1995 to March 2000. From 2002 to 2010, he was appointed as Security Officer in Punjab National Bank. Pursuant to an offer of appointment dated 15.12.2009 by State Bank of India, for the post of Deputy Manager (Security) Grade Scale-II, Petitioner joined the

Respondent on 26.04.2010 and was posted as Deputy Manager (Security) at Administrative Office, Bidhannagar, West Bengal on 30.04.2010.

3. On 21.03.2011, in order to make the postings in North-Eastern Circle, more attractive, Respondent issued a Policy, inviting applications from Officers willing for such postings, from other Circles, with an assurance that posting at a place of their choice will be given at the end of the two year tenure.

4. Pursuant thereto on 23.05.2012, Petitioner submitted his application with the Circle Security Officer, LHO, Kolkata, expressing his willingness for being posted in the North-Eastern Circle. Relevant at this point is to note that the Parent Circle of the Petitioner is admittedly, Kolkata Circle.

5. After being relieved on 26.04.2013, Petitioner joined the North-East Circle and reported at LHO, North-East Circle, Guwahati. During his tenure at Guwahati, Petitioner received two letters of appreciation dated 25.06.2014 and 24.09.2014 for his dedicated and exemplary work. In August 2014, Petitioner was promoted as Manager (Security) Scale-III. Having completed three years, instead of two years, as were initially contemplated for the North-Eastern Circle tenure, Petitioner was asked to opt for his choice posting, as an incentive to his willingness to serve in the North-Eastern Circle. Exercising his choice, Petitioner chose to be posted at Delhi Circle and was accordingly transferred to Delhi on 10.05.2016. In May 2019, Petitioner was promoted as Chief Manager (Security) Scale-IV and on 21.05.2020, he was transferred to Bhubaneswar, which is the order assailed by the Petitioner before this Court.

6. Learned counsel for the Petitioner assails the Transfer Order on various grounds. It is contended that the Petitioner has been abruptly transferred to Bhubaneswar Circle, despite an assurance given to the officers that on rendering service for two years at the North-Eastern Circle, officers would get posting at a place of their choice and will not normally be transferred out of the Circle for a period of 10 years, except for postings on foreign assignments and on promotion to TEGS. Petitioner rendered three years exemplary service instead of two years and was transferred to Delhi, as an incentive for posting at Guwahati, but Respondent is now going back on the commitment and assurance of a tenure of at least 10 years at Delhi. He submits that this is in complete violation of the terms and conditions of the Policy dated 21.03.2011. It is argued that at the time when the Policy was issued, officers were unwilling to be posted in the North-Eastern Circle and as an incentive it was assured to the officers that in case they opted to serve in the North-Eastern Circle, they will be assured a static posting for 10 years at whichever place they chose, within or outside, the Parent Circle. The action of the Respondent in issuing the impugned order is therefore completely illegal, arbitrary and in the teeth of the assurance given to the Petitioner and violative of principles of Promissory Estoppel.

7. Learned counsel further argues that Applications were invited for posting to North-Eastern Circle and the officers were informed of the incentives/additional facilities that would be provided to them and particularly draws the attention to paras 2 and 3 of the invitation letter which is at page 29 of the Writ Petition. The argument is that it is clearly mentioned in para 2 that officers who opt for posting at North-Eastern

Circle shall have the option to be repatriated to a Circle of their choice, instead of their Parent Circle and para 3 further provided that on being so transferred to the Circle of their choice, they will normally not be transferred within a period of ten years.

8. Learned counsel for Petitioner additionally submits that Respondent ought to have deferred the posting of the Petitioner on account of the fact that Petitioner has aged parents living with him. They have health issues and medical ailments and movement to a far off area, during the present Pandemic Covid-19, will not be conducive, as they are vulnerable to infection. This apart, one of his children is studying in Class X and the other is giving examinations for entrance to MBA course.

9. Per contra, Mr. Rakesh Munjal Learned Senior Counsel appearing for the Respondent raises a preliminary objection and submits that the Petitioner has deliberately suppressed vital information and documents from this Court and a person who does not come to the Court with clean hands is not entitled to any relief from this Court under Article 226 of the Constitution of India, which is an extraordinary and equity jurisdiction. He submits that the Petitioner was promoted to the post of Chief Manager (Security) Scale-IV in May 2019 and while accepting the promotion he had given an undertaking that the Respondent may at its discretion, post him to some other Circle depending on the requirement. The undertaking dated 30.04.2019 as filed by the Respondent is as under:

“I am aware that promotion to SMGS-IV is based on the vacancies on an all India basis.

2. I understand that the bank may, at its discretion, post me to some other Circle/Corporate Centre/Corporate Centre Establishment(s) depending on the requirement.

3. I also understand that the Bank may not be able to accommodate request for cancellation/modification of transfer orders.”

10. Learned Senior Counsel submits that condition No. 8 of the ‘Promotion Conditions for Officer Specialist Cadre’ for 2019-2020 provides that Specialist Cadre Officers may be transferred out of their Parent Circle as per administrative requirement and in case an officer found suitable for promotion to next Grade is posted out of the Circle after promotion, no request for retention will be considered on any ground viz. spouse/extreme compassion etc. He submits that under the said Revised Policy for Promotion, Officers were given a choice to opt-in/opt-out and the option had to be exercised as per the format which was given along with the Policy. Option so exercised was taken on record and digitally saved. It is submitted that the Petitioner had exercised the choice and opted for the promotion process for promotion in the year 2019-2020 and after being promoted, he cannot make a request for retention at Delhi Circle.

11. Learned Senior Counsel contends that the nature of the job of the Petitioner entails an All India Service Liability and Clause 5 of the Appointment Letter clearly stated that he was liable to frequent transfers anywhere in India and no request for posting at a particular place will be entertained. Learned Senior Counsel points out that as per Rule 47 of the ‘State Bank of India Officers’ Service Rules’, every Officer is liable for

transfer to any Office or Branch of the Bank or to any place or deputation to any other Organization, in India. Petitioner is clearly bound by the said Rules and cannot resist his transfer to Bhubaneswar.

12. It is argued that the Petitioner is wrongly reading and interpreting the provisions of the Policy, inviting willingness for posting at the North-Eastern Circle. It is no doubt true that in order to make the postings to North-Eastern Circle more attractive, incentives were granted, but a combined reading of Clauses 2 and 3 of the said letter would show that an Officer who opted for a posting to North-Eastern Circle had the option to be either repatriated to a Circle of his choice instead of his Parent Circle or to be repatriated to the Parent Circle. Para 3 clearly conveys that it is only when an Officer is repatriated to the Parent Circle, he would normally not be transferred out of the Parent Circle, within a period of ten years, except for posting on foreign assignment and on promotion to TEGS. However, if the Officer chooses to be repatriated to a Circle of his choice, outside the Parent Circle, he cannot claim a right to a tenure for ten years. Admittedly, Parent Circle of the Petitioner is Kolkata Circle, but the Petitioner instead chose to be repatriated to an outside Circle i.e. Delhi and therefore he cannot stake a claim to the tenure envisaged in Para 3 of the 2011 Policy.

13. It is further contended on behalf of the Respondent that 16 Security Officers are posted in Delhi Circle against a sanctioned strength of 13 and in Bhubaneswar Circle, 8 Security Officers are posted against the required strength of 9. To make up the deficit, Petitioner was transferred, on promotion to SMGS-IV Grade, during 2019-2020. Petitioner is having the longest stay in Delhi Circle amongst all SMGS-IV Male Security

Officers. There is thus no arbitrariness in issuing the posting order and nor is it in conflict or violation of the Policy, as alleged by the Petitioner.

14. Responding to the argument of the Petitioner with respect to the Pandemic Covid-19, Learned Senior Counsel submits that State Bank of India has been working Pan-India even in the Covid-19 times. The Management of the Bank had resolved to work as normally as possible, in order to cater to the needs and requirements of the citizens. Bank is duty bound to see that Officers are posted at the places where their services are required, as this is crucial to the smooth functioning of the Banking Industry. As far as the issue of the parents and children of the Petitioner are concerned, Petitioner had voluntarily opted-in for promotion and given the requisite undertaking and was aware of the consequences of such an undertaking. In any case the Petitioner shall be permitted to continue the Lease of his residential premises at Delhi and there is no urgency or pressure to take his parents and children to Bhubaneswar in the prevailing circumstances. Medical facilities etc. will also be continued to be provided to the family members of the Petitioner and thus Petitioner has no reason to be worried on this count.

15. Learned Senior Counsel contends that the Petitioner is in the cadre of Security Officers and being in the post of Chief Manager (Security), he is required at Bhubaneswar. On account of the administrative exigency, Petitioner cannot be permitted to continue at Delhi. It is a settled law that postings of employees are worked out as per the requirements of the service and its exigencies and is the prerogative of the employer, who knows best where to post and how to utilize the services of his employees. Learned Senior Counsel further points out that after the

promotion exercise last year, Respondent carried out, once in a year Inter-Circle Transfer exercise, to fill up the gap in different Circles and Scales. There have been more than 50 transfers from Delhi Circle to other Circles and more than 700 transfers have been made Pan-India, within the Respondent Bank for the year 2020-2021.

16. Learned counsel for the Petitioner in Rejoinder submits that the Respondent has suppressed the Policy dated 01.09.2018, whereby it had conceived that Specialist Officers are subject to transfer after completion of five years and the stay at one Centre would not exceed 7 years. However, in contrast thereto, Respondent has retained several Officers, even after completion of 7 years and the names and details of five such Officers have been furnished in the Rejoinder.

17. It is further argued that insofar as the undertaking given by the Petitioner on 30.04.2019 is concerned, the same has no bearing on the merits of the present Petition as the same was a pre-requisite condition for consideration for promotion of an employee. The Undertaking was signed under duress and coercion as Petitioner at that stage had no option. Since the copy of the undertaking was never furnished to the Petitioner, he had no occasion to file it with the writ Petition. In any event the undertaking was given way back in 2019 and cannot be pressed in the context of a posting order, much less for all times to come.

18. It is reiterated by the counsel for the Petitioner that there is a violation of paras 2 and 3 of the invitation letter, under the 2011 Policy, seeking willingness for posting to the North-Eastern Circle. The minimum tenure of ten years stipulated in Para 3 would equally apply to Officers who serve the North-Eastern Circle and are repatriated outside

the Parent Circle. To restrict the said incentive to those repatriated to the Parent Circle would amount to clear discrimination between two identically placed set of Officers, in violation of Article 14 of the Constitution of India.

19. Learned counsel vehemently opposes the plea of the Respondent that the transfer of the Petitioner is on account of Delhi Circle having officers in excess of sanctioned strength and/or Bhubaneswar Circle being deficit. He submits that insofar as Delhi Circle is concerned, after the transfer of Petitioner to Bhubaneswar Circle, two Officers of the same rank Maj. Ankita Shrivastava and Mr. Alok Deep Sharma have been brought back to Delhi Circle. Maj. Ankita was promoted in June 2018 and transferred to Ahmedabad, but has been brought back to LHO, Delhi within two years. Mr. Sharma was transferred on promotion in June 2018 and has been brought back from Corporate Office Mumbai to Delhi Circle within two years. Both Officers have served in Delhi Circle for 8 years and 6 years, respectively. It is strenuously contested that Bhubaneswar Circle has any deficit in the post of Chief Manager (Security) and the plea is only to justify the transfer of the Petitioner. Capt. Brar was posted as Chief Manager (Security), Bhubaneswar, in May 2017 and has been brought back to Chandigarh Circle on 22.05.2020, creating a deficit. His posting is in violation of the Policy dated 11.05.2020 and Respondents are aware that Chandigarh Circle had surplus strength.

20. It must be noted at this stage that after the Petitioner had taken the additional grounds of surplus and deficit as well as postings of certain other officers, in Rejoinder, Respondent in order to counter the said

allegations had sought permission to file a short affidavit. Based on the statements in the short Affidavit, Mr. Munjal, Learned Senior Counsel argues in Sur-rejoinder that the allegations of the Petitioner in the Rejoinder are completely unfounded. Stand taken in the short affidavit is that letter dated 01.09.2018 relied upon by the Petitioner refers to 'Mandatory Transfer on Completion of 3/5/7 Years' of Specialist Officers. Neither has the Petitioner challenged the Transfer Policy of the Specialist Officers nor has he based his case on the said letter. Even otherwise, the said letter does not inure to his advantage, having spent over four years in Delhi Circle. As far as the status of five Officers who are alleged to have stayed beyond 7 years is concerned, the Respondent has given a tabular response which is as under:

<i>Name</i>	<i>Particulars</i>
<i>Sh. Joydipto Bose</i>	<i>Posted in Kolkata Circle since March, 2011, which is his Parent Circle. Posted in Siliguri since 2018, which is a difficult (sensitive) centre. Kolkata Circle is a 'deficit Circle' and if the officer is transferred out of Circle, immediate replacement would have to be provided.</i>
<i>Ms. Pratibha Sharma</i>	<i>Female Officer, and is under Order of Transfer to Mumbai Circle from Corporate Centre.</i>
<i>Sh. Peddada Gargi</i>	<i>Posted in Hyderabad Circle (Parent Circle) which is a 'deficit circle' and if the officer is transferred out of Circle, immediate replacement would have to be provided.</i>

<i>Sh. Rajshekhar Gattu</i>	<i>Posted at Guntur from 2012 to May 2017. Is posted in Amravati Circle since May 2017. Amravati Circle is a 'deficit Circle' and if the officer is transferred out of Circle, immediate replacement would have to be provided.</i>
<i>Ms. Seema Pandey</i>	<i>Female Officer, and is posted in Lucknow City since January 2014.</i>

21. Insofar as the transfer of Maj. Ankita and Mr. Sharma is concerned, the response of the Respondent is as under:

<i>Name</i>	<i>Particulars</i>
<i>Ms. Ankita Srivastava</i>	<i>Female Officer (SMGS-IV). Parent Circle is Delhi Circle. On promotion, was posted in Ahmedabad Circle in 2018. Requested for repatriation back to Delhi Circle on Spouse Ground this year, so transferred back to Delhi Circle.</i>
<i>Sh. Alok Deep Sharma</i>	<i>SMGS-IV Officer – Parent Circle is Delhi Circle. On promotion, was posted in Corporate Centre in 2018. Requested for repatriation back to Delhi Circle on Compassionate Ground this year, so transferred back to Delhi Circle. His Mother is bed-ridden and wife has serious kidney ailment.</i>

22. As far as transfer of Sh. Brar is concerned, Learned Senior Counsel submits that he was posted in Chandigarh which is his Parent Circle. He was an employee in the State Bank of Patiala which merged into State Bank of India w.e.f. 01.04.2017. Immediately after the merger, he was transferred to Bhubaneswar Circle as an MMGS-III Officer as it was a deficit Circle, in 2017. Shri. Brar was posted to SMGS-IV in 2018 and after spending 3 years in the outside Circle, he requested for repatriation back to his Parent Circle i.e. Chandigarh Circle on spouse ground, which was accepted, as per law.

23. I have heard learned counsel for the Petitioner and Learned Senior Counsel for the Respondent.

24. The first plank of the argument of the Petitioner is that there is a violation of the Policy formulated by the Respondent in 2011 for inviting options of the Officers for posting to North-Eastern Circle. The argument between the parties hinges on the interpretation of two paragraphs of the Policy dated 21.03.2011 which are as under, for ready reference:-

“2. In addition to the above, the period of posting of an officer to North Eastern Circle is only for two years. Officers are to be repatriated to the Circle from where their services have been drawn, on completion of the 2 year tenure in North Eastern Circle. Officers who opt for posting at North Eastern Circle, in response to this announcement shall have the option to be repatriated to a Circle of their choice, instead of to their parent Circle, on completion of the normal tenure of two years in North-Eastern Circle. This facility will not be available to those who are posted there on appointment or transfer (other than by giving option).”

3. On repatriation back to the parent Circle, the Circle Management normally ensures that the officers get a posting at a place of their choice. Apart from this they are normally not transferred out of the Circle within a period of 10 years except for posting on Foreign assignment and on promotion to TEGS.”

25. Having carefully perused the two paragraphs, in my view, the provisions as read plainly provide that Officers who opt for posting at North-Eastern Circle shall have the option to be repatriated to a Circle of their choice instead of their Parent Circle after the tenure of two years is completed in the North-Eastern Circle. This can only be interpreted to mean that on completion of the North-Eastern tenure, an Officer shall have the choice not to go back to his Parent Circle, but to seek a posting to any other Circle, outside the Parent Circle. Para 3 as simply read, provides that if the Officer is repatriated back to the Parent Circle, then the Circle Management would normally ensure that within the Parent Circle he gets a posting at a place of his choice. This apart, the Officer will normally not be transferred out of the Circle within a period of 10 years. The words in the two paragraphs have been carefully and cautiously used in contradiction to one another. In para 3 the word ‘Circle’ qualifies the word ‘Choice’ and is followed by the words ‘instead of to their parent Circle’. This implies that the choice can be exercised to a Circle outside the Parent Circle. The words ‘assuring a tenure of ten years’ in normal circumstances are conspicuously absent in paragraph 2. In paragraph 3, the word ‘choice’ is qualified by the word ‘place’ implying thereby that if an Officer is repatriated to the Parent Circle, then within the Circle, he can exercise the choice to be posted at any place. A

minimum tenure of 10 years is mentioned in paragraph 3 and the sentence starts with the words 'Apart from this'. Thus, reading the two paragraphs, I cannot agree with the interpretation sought to be given by the learned counsel for the Petitioner that on exercising choice for posting outside the Parent Circle, a minimum tenure of 10 years is assured. The reason for this conscious drafting of the two paragraphs has a logic, which is not difficult to fathom. When an Officer seeks to exercise the choice outside the Circle, the outside Circle will have employees, who will have rights and tenures, of postings, within their Circle, which cannot be jeopardized for a prolonged period of ten years, by permitting an Officer from an outside Circle to continue therein. Thus in my view Petitioner cannot seek the benefit of ten years' tenure envisaged in Para 3 of the Policy.

26. Court also finds force in the submission of Learned Senior Counsel for the Respondent that the Petitioner was obliged to disclose that he had rendered an undertaking on 30.04.2019 while opting for promotion to SMGS-IV. It is clear from the undertaking that the Petitioner understood that the Bank in its discretion could post him to any Circle/Corporate Centre/ Corporate Centre Establishment(s) depending on the requirement and may not be able to accommodate the request for cancellation/modification of the Transfer Order. Document placed by the Respondent as Annexure R-4 clearly gave an option to the Petitioner to opt-in/opt-out of the promotion process and required the Petitioner to fill in a proforma indicating his choice, which the Petitioner admittedly did and opted-in for promotion. Relevant para reads as under:

“9. Procedure to opt-in/ opt-out of the promotion process in HRMS is attached as annexure. The record of opt-in/ opt-

out will be digitally saved in the system. The user manual for the process is enclosed as Annexure 'A'."

27. Respondent is also right in its contention that the nature of appointment of the Petitioner entails an All India Service Liability. Rule 47 of the State Bank of India Officers' Service Rules provides as under:

"47. Every officer is liable for transfer to any office or branch of the Bank or to any place or deputation to any other organization, in India."

28. Additionally, the Petitioner was clearly informed of his transfer liability in the offer letter. Relevant Clause 5 of the letter dated 15.12.2009 reads as under:

"5. You are liable to frequent transfers anywhere in India and request for posting at particular place will not be entertained by the Bank."

29. Petitioner has laid much emphasis on the alleged discriminatory and arbitrary action of the Respondent in posting certain other Officers, giving them undue indulgence. Respondent in the short Affidavit filed in response to the Rejoinder has clearly brought out the detailed reasons for posting of the said Officers to their respective places of posting. There is no reason for the Court to disbelieve the statements made in the Affidavit on oath and therefore there is no merit in this contention of the Petitioner. Court is satisfied after perusal of the Affidavit that the transfers have not been made violating the guidelines of transfer or against the norms of 'Surplus' or 'Deficit' in various Circles.

30. It needs to be mentioned at this stage that this Affidavit was directed to be filed, to satisfy the Court that the action of the Respondent

is not arbitrary and/or that no discriminatory treatment is being meted out to the Petitioner. However, if one looks at the prayer of the Petitioner, perhaps this exercise was not even necessary. Petitioner has predicated his case purely on the interpretation of the Policy dated 21.03.2011, which according to him assured him a tenure of ten years, as an incentive, on repatriation to a Circle of choice posting, after completion of tenure at North-Eastern Circle.

31. Insofar as the plea of parents and children of the Petitioner is concerned, certainly these issues have to be dealt with soft hands and need to be looked at with compassion. On being questioned with respect to this issue, Mr. Munjal Learned Senior Counsel submitted that Respondent has stated in its Reply that the Petitioner would be permitted to continue the Lease of his residential premises at Delhi and would also be given medical and other facilities required by his family. Petitioner therefore need not disrupt the life of family members and can continue to keep them at Delhi for the present. Mr. Munjal assured the Court that no disruption shall be caused, entailing the Petitioner to move his family to Bhubaneswar in the near future. In my view, this assurance redresses the grievance and the concern of the Petitioner of having to move his family at this juncture, from Delhi.

32. Respondent has in my view rightly argued that transfer is an exigency of service and it is purely in the domain of the employer to decide how the postings have to be carried out. It is not for the Court in a judicial review to interfere with the transfers and postings of the employees unless the transfer is in violation of a policy or is *malafide*. Supreme Court has repeatedly held that transfer of a Government Servant

from one place to another is an incidence of service. No Government Servant or employee of a Public Sector Undertaking has a legal right for being posted at any particular place. Transfer is also necessary in public interest and efficiency in public administration.

33. In ***Gujarat Electricity Board vs. Atmaram Sungomal Poshani*** (1989) 2 SCC 602, Supreme Court held as under:

“4. Transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other.”

34. In ***Mrs. Shilpi Bose & Ors. vs. State of Bihar 1991 Supp (2) SCC 659***, Supreme Court clearly held that the Courts should not interfere in a Transfer Order made in public interest and for administrative reasons unless the order is in violation of mandatory Statutory Rule or on grounds of malafide. Relevant para reads as under:

“4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. 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 his 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 instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.”

35. To the same effect is the decision in ***Rajendra Singh vs. State of U.P. 2009 (15) SCC 178***.

36. Relevant would it be to refer at this stage to the observations of the Supreme Court in ***Mohd. Masood Ahmad vs. State of U.P. (2007) 8 SCC 150***, where the Supreme Court clearly held that an order of transfer is a part of service condition of an employee and should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction

under Article 226 of the Constitution of India. Relevant para reads as under:

“The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in Rajendra Rao v. Union of India AIR 1993 SC 1236, National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan AIR 2001 SC 3309, State Bank of India v. Anjan Sanyal AIR 2001 SC 1748. Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in Vijay Pal Singh v. State of U.P. (1997) 3 ESC 1668 : 1998) AII LJ 70 and Onkarnath Tiwari v. The Chief Engineer, Minor Irrigation Department, U.P. Lucknow (1997) 3 ESC 1866 : 1998 AII LJ 245, has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were no competent to pass the orders.”

37. In **N.K. Singh vs. Union of India 1994 (6) SCC 98**, Supreme Court observed as follows:

“Assessment of worth must be left to the bona fide decision of the superiors in service and their honest assessment accepted as a part of service discipline. Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times, the only realistic approach is to leave it to the wisdom of that hierarchical

superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.”

38. This Court in **Anil Dhall vs. Union of India & Ors. 81 (1999) DLT 501**, summarizing the law of transfer and relying on the judgements in **Union of India v. S.L. Abbas 1993 4 SCC 357** and **Bank of India vs. Jagjit Singh Mehta (1992) 1 SCC 306**, concluded as follows:

“7. Before dealing with the aforesaid contention it may be stated that law relating to transfers is now well settled by catena of judgments pronounced by Supreme Court. Transfer is an administrative function. An employer is the best judge about the requirement and posting of its employees. Courts are not to interfere with the discretion of the employer in such matters. Scope of judicial review is very limited and the transfer can be challenged only under two circumstances namely, (a) when their transfer is an act of mala fides on the part of the respondents; (b) when it is made in violation of statutory provision.

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13. In view of this position arguments of the petitioner that he has right to stay at Delhi for 3-5 years, based on these guidelines, has no merit. In the case of Union of India vs. S.L. Abbas (supra) it was held that such guidelines/instructions do not confer any right on the employee to challenge the transfer order on the ground of violation thereof, merely because the guidelines are violated

is not sufficient to quash the order as being mala fide. Order of transfer on an administrative grounds can still be passed even if it is in violation of such guidelines which have no statutory force and administrative exigencies have to give way to these guide-lines. In the case of Bank of India vs. Jagjit Singh Mehta; reported in (1992) 1 SCC 306 dealing with the case of posting of husband and wife at one station as per government guidelines, it was held by Supreme Court, that such guidelines would not confer any right on the employee to remain at same place. The only requirement is that departmental authority should consider this aspect along-with exigencies of administration. In the present case it is mentioned in guidelines itself that they would not confer any right on the officers to represent against posting quoting these orders. Therefore, petitioner cannot, as of right, state that he should be allowed to remain in Delhi for a period of 3-5 years as per these guidelines. As no such right can be claimed by the petitioner, it is not open to the petitioner to allege the violation of these guidelines and make the same as basis to challenge transfer.”

39. In the present case, Petitioner has neither pleaded nor argued any violation of any Statutory Rule nor alleged any *malafide* as a cause of the impugned Transfer Order. The interpretation given by the Petitioner, in my view, is not a correct interpretation of the Policy entitling him to a relief of quashing the Transfer Order and continue staying in Delhi Circle.

40. In view of the above, there is no merit in the petition.

41. Accordingly, Petition, along with accompanying application, is dismissed.

JYOTI SINGH, J

AUGUST 20th, 2020/rd