

#10

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 13.10.2020

+ W.P.(C) 7616/2020 & CM APPL. 25242/2020

RAKESH KUMAR ASSISTANT DIRECTOR Petitioner

Versus

**UNION OF INDIA THROUGH ITS
SECRETARY & ANR.** Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Ashish Nischal, Adv.

For the Respondents : Mr. Jivesh Kumar Tiwari, Senior Panel Counsel.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TALWANT SINGH

J U D G M E N T

SIDDHARTH MRIDUL, J. (Open Court – via Video Conferencing)

1. The present writ petition assails the order dated 17.09.2020 passed by learned Central Administrative Tribunal, Principal Bench, New Delhi, (hereinafter referred to as the 'learned Tribunal'), dismissing OA No. 1294/2020 titled as '*Rakesh Kumar vs. UOI & Anr.*', instituted on behalf of Mr. Rakesh Kumar, the petitioner herein, seeking quashing of the transfer order

dated 14.08.2020, rendered by the official respondent whereby he was transferred from Delhi to Chandigarh.

2. At the outset, it is an admitted position that the petitioner has been transferred to Chandigarh in the backdrop of a vigilance investigation, that is currently ongoing against him.

3. It is further the case of the official respondent that the petitioner is required to be posted on a non-sensitive post to ensure fair and impartial conduct of the above said investigation. It is also the case of the official respondent that since no non-sensitive post is available in Delhi, the petitioner has been transferred to Chandigarh, where such post is currently available.

4. The sum and substance of the submission made on behalf of the petitioner is that since the extant guidelines provide that the officers who are retiring within two years may not be transferred and that he is due to superannuate on 22.02.2022, he ought to be retained in Delhi. It is also the petitioner's case that his wife is employed in Dr. Ram Manohar Lohia Hospital and in terms of the subject DoP&T instructions, husband and wife are required to be posted at one place.

5. The learned Tribunal, vide the impugned order dated 17.09.2020 observed as follows:

“7....In view of the peculiar circumstances that a vigilance investigation is going on and the applicant was posted at Delhi for about 18 Years & six months while outside Delhi he has been posted for 4 years & 10 months, the Tribunal does not find any merit to interfere with the transfer order in the instant OA”.

6. There is no gainsaying the established legal position that a Government servant is subject to transfer, as an instance of his employment and cannot insist on being continued on a particular post or station unless his transfer is illegal or *mala fide*.

7. In this behalf, the Hon’ble Supreme Court of India in ‘*Shilpi Bose (Mrs.) and Others v. State of Bihar and Others*’ reported as **1991 Supp.(2) SCC 659** has categorically upheld the authority of the employers to transfer the employees as hereunder:

“4. In our opinion, the Courts should not interfere with a transfer order which are 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.”

8. In the present case, it is axiomatic that the petitioner has been transferred in view of the ongoing vigilance inquiry against him and his transfer is premised on his being required to be posted on a non-sensitive post during its tenure. Even otherwise as observed by the learned Tribunal, the petitioner during his career been posted at Delhi for about 18½ years and has remained posted outside Delhi only for a period of 4 years and 10 months.

9. We must also observe that vide Office Memorandum dated 11.05.2020, it is open to the official respondent to transfer the petitioner to a non-sensitive post, when there is a vigilance inquiry contemplated against him. Furthermore, we observe that the petitioner has not joined his posting at Chandigarh, despite being relieved from his current posting since 26.08.2020.

10. It is also apposite to observe that the petitioner made a representation dated 14.08.2020 to the Special Director General (PRC) Chandigarh, requesting for grant of retention at Delhi Station due to family problem and remaining of only 18 months of service *qua* impugned transfer order, which was duly considered and denied affirmatively by reasoned order

dated 10.09.2020 by Chief Engineer (Works cum TLQA), Central Public Works Department, Chandigarh.

11. For the foregoing reasons, we find no irregularity with the impugned order dated 17.09.2020 passed by the Central Administrative Tribunal, Principal Bench, New Delhi so as to warrant interference by this Court in the present proceedings.

12. The writ petition being devoid of merit is accordingly dismissed. The pending application also stands disposed of.

**SIDDHARTH MRIDUL
(JUDGE)**

**TALWANT SINGH
(JUDGE)**

OCTOBER 13, 2020
dn/Danish

[*Click here to check corrigendum, if any*](#)