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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3715 OF 2021

Vivekanand Dattatraya Abhyankar Petitioner
Vs.
Union of India and ors. Respondents

Ms. Swapna Vaibhav Gokhale, for the petitioner.
Mr. Advait M. Sethna a/w Mr. P.J.Khosla and Mr. Ranjan
Majumdar, for the respondents.

**CORAM : DIPANKAR DATTA, CJ &
M.S.KARNIK, J.**

DATE: OCTOBER 21, 2021

P.C.:

1. The petitioner challenges a judgment and order dated February 5, 2021 passed by the Central Administrative Tribunal, Bombay Bench, Mumbai (hereinafter "the Tribunal" for short) dismissing his original application. In the original application, the petitioner had challenged an order of transfer whereby he was transferred from Mumbai and posted at New Delhi as Assistant Director (Official

Language) in the office of the Controller General of Patents, Designs and Trade Marks (hereafter "the CGPDTM", for short).

2. It is not in dispute that the petitioner, while holding the said post of Assistant Director (Official Language) under the CGPDTM and posted at Mumbai, was involved in a quarrel with one Mr. Khandare, a group 'B' non-gazetted post holder. The petitioner being a group 'A' gazette officer, this was seen as tarnishing the image and reputation of the office of the CGPDTM. A committee was constituted to find out who was responsible for such quarrel. The committee, after collecting materials, made the following recommendations: -

".. On overall assessment of complaints and statement I find that there was a tussle and quarrel between the two complainant near the office gate on the alleged date. Being the responsible officials of TMR, Mumbai, they should have maintained the decorum and act as per Conduct Rules. For the smooth functioning of the office and maintain decorum I recommend that both complainants should be given warning and may be separated from the present place of posting for the time being to avoid any such situation."

3. On the basis of such recommendations, the petitioner as well as the said Mr. Khandare were transferred. As noted above, the petitioner was transferred and posted at New Delhi, whereas the said Mr. Khandare was transferred and posted at Ahmedabad.

4. The challenge to the transfer order was laid on the ground that it was made as a measure of punishment. The Tribunal heard the parties and returned a finding that in transferring the petitioner from Mumbai to New Delhi, neither any statutory rule was violated nor was there any *mala fide* behind it. This resulted in dismissal of the original application.

5. Before us, Ms. Gokhale, learned advocate for the petitioner has raised the same ground which was urged before the Tribunal to persuade us set aside the order of transfer. In support of the contention that transfer cannot be effected as a measure of punishment, reliance has been placed by her on the decision of the Supreme Court reported in (2009) 2 SCC 592 [**Somesh Tiwari Vs. Union of India and others**].

6. It has also been pointed out by Ms. Gokhale that the said Mr. Khandare has been re-transferred to Mumbai from Ahmedabad by an order dated July 23, 2020 and, therefore, there is no reason as to why the petitioner should not be similarly treated. According to her, the approach of the respondents in treating the petitioner and the said Mr. Khandare differently amounts to violating the petitioner's right guaranteed by Article 14 of the Constitution of India.

7. Ms. Gokhale has, accordingly, prayed that the judgment and order of the Tribunal be set aside together with the impugned order of transfer of the petitioner to New Delhi and that a direction be issued to the respondents to re-transfer the petitioner to Mumbai.

8. *Per contra*, Mr. Sethna, learned advocate appearing for the respondents has submitted that the order of transfer has been issued in public interest and to maintain discipline in service and can hardly be equated with an order of punishment. It is his contention that because of the petitioner's transfer to New Delhi from Mumbai, there has been no loss of emoluments or reduction in rank. According

to him, the post of Assistant Director (Official Language) is the sole post in the establishment under the CGPDTM and the petitioner was transferred to New Delhi along with the post with a special eye on protection of all his interests.

9. In support of the contention that the order of transfer challenged before the Tribunal should not be set aside in exercise of the powers of judicial review, Mr. Sethna has placed reliance on the decisions of the Supreme Court reported in 1991 Supp (2) SCC 659 [**Shilpi Bose and ors. Vs. State of Bihar and ors.**] and (2004) 4 SCC 245 [**Union of India (UOI) and ors. Vs. Janardhan Debanath and ors.**]. He has also placed before us for our consideration a short order of the Supreme Court dated September 6, 2021 in Special Leave to Appeal No. 36717/2017 [**Namrata Verma Vs. The State of Uttar Pradesh and ors.**] for the proposition that it is entirely the domain of the employer to decide where the employee should be posted or transferred.

10. Mr. Sethna has, accordingly, submitted that the Tribunal having been justified in spurning the challenge of

the petitioner to the order of transfer, its judgment and order should not be interdicted.

11. We have heard the parties and have considered the materials on record as well as the decisions cited at the bar.

12. The decisions in **Janardhan Debanath** (supra) and **Somesh Tiwari** (supra) along with other decisions of the Supreme Court on the point as to when a transfer can be said to have been effected as a measure of punishment without conducting a thorough departmental proceedings came up for consideration before the Division Bench of this Court in its decision reported in 2021 (4) All MR 83 [**Dr. Soudamini S. Chaudhari Vs. The State of Maharashtra and ors.**]. Since there has been thorough consideration of **Janardhan Debanath** (supra) and **Somesh Tiwari** (supra) in **Dr. Soudamini S. Chaudhari** (supra), we consider it appropriate not to refer to the same in any great detail. It would suffice, for the purpose of a decision on this writ petition, to quote a relevant passage from the decision in **Dr. Soudamini S. Chaudhari** (supra) hereinbelow: -

"That the complaint received by the Dean from the staff of Podar Medical College and forwarded to the Director, Ayush formed the plinth of the petitioner's transfer, is the admitted position. There is nothing oblique on that count as such to cast a doubt. Question is, whether by reason of the order of transfer the petitioner has been punished, or in other words, whether the weapon of transfer has been used against her as a punitive measure, or whether it is in public interest that it was considered necessary to transfer and post her at the Govt. College. Having regard to the law laid down in Janardhan Debanath (supra), to amount to a punishment it is incumbent for the petitioner to show that the order of transfer has entailed penal consequences for her. There is no allegation from the side of the petitioner that by reason of the impugned transfer order, she has been asked to discharge duty on a post lower than that she held at Podar Medical College, or that there has been downgrading of her pay, or that her promotional prospects are jeopardised or that the order is stigmatic in the sense that she would have to carry an indelible stain for the rest of her service career without there being any finding of guilt recorded against her. On the contrary, the complaint together with the report of the Dean acted as a catalyst to meet two ends, i.e., avoid further conflict between the petitioner and the staff and to secure the interests of the patients, which was taking a beating because of such conflict. The petitioner's presence at Podar Medical College was not found desirable, on facts and in the circumstances, which resulted in the

respondents deciding to post her at the Govt. College but keeping her entitlements intact."

13. We find no reason to take a view different from the one taken in **Dr. Soudamini S. Chaudhari** (supra) as to when an order of transfer could be held to be punitive in nature. There is no allegation from the side of the petitioner that by reason of the order of transfer to New Delhi, he has been asked to discharge duty on a post lower than that he held at Mumbai. Such a question does not arise since he has carried the post held by him in Mumbai to New Delhi. There is further no allegation that his pay has been downgraded. Also, there is also no allegation that by reason of the order of transfer, his promotional prospect has been jeopardised or that the order is stigmatic, in the sense that he would have to carry an indelible stain for the rest of his service career. On the contrary, we find that the order of transfer of both the petitioner and the said Mr. Khandare were made in public interest and in the exigency of administration to keep them apart for quite some time so that discipline in the organization can be maintained. As has been held in **Shilpi Bose** (supra), the administrative

discretion that the employer enjoys ought not to be lightly tinkered unless the statutory rules are violated or *mala fide* is pleaded and proved. That is not the case here.

14. It is true, as has been submitted by Ms. Gokhale, that the said Mr. Khandare has been re-transferred to Mumbai from Ahmedabad. However, nothing turns on such contention. Question of discrimination would arise if equals are treated unequally. The petitioner holds a group 'A' post whereas the said Mr. Khandare is a subordinate officer. They are far from being equals so as to attract the charge of discrimination. Also, as held in **Namrata Verma** (supra), the employer is the best judge to decide when and where to post an employee. It is not a matter for the Court to decide. Transfer being an incidence of service and the petitioner being the holder of a transferrable post, he cannot complain against the transfer order unless a clear case of violation of the statutory rules is set up or *mala fide* is shown to be the genesis of the transfer. We do not find any of the available grounds, on which an order of transfer could be assailed, to exist in the present case.

15. In such view of the matter, the order of the Tribunal dismissing the original application is affirmed and the writ petition stands dismissed. No costs.

16. At this stage, we are informed by Ms.Gokhale that the petitioner is due to retire on December 31, 2022. She prays that during the last year of the petitioner's service, he may be re-transferred to Mumbai, particularly having regard to the ill-health of the petitioner's mother.

17. Having heard such submission, we grant the petitioner liberty to make a representation before the competent authority with a prayer to allow him discharge the last year of his service at Mumbai. If such an application is made by November 15, 2021, the competent authority may proceed to consider the same and pass appropriate order by the end of this year. Consideration of the representation must be effected without being influenced by the fact that earlier representations made by the petitioner for re-transfer to Mumbai have been rejected. From the beginning of next year, the petitioner would be entering into the last year of his service. In our opinion, this circumstance was not

present while rejecting the earlier representations and, therefore, such rejection should not have any reflection in the fresh order to be passed in terms hereof.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)