

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.7857 of 2020 (O&M)

Date of Decision: February 5th, 2021

Ravi Prakash Gupta, IAS

...Petitioner

Versus

Union of India and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Petitioner-Ravi Prakash Gupta in person.

Mr. Satya Pal Jain, Additional Solicitor General of India
with Mr. Rajneesh Shelly, Advocate
for respondent No.1.

Mr. B.R. Mahajan, Advocate General, Haryana
with Mr. Ankur Mittal, Additional Advocate General, Haryana.

(PROCEEDINGS THROUGH V.C.)

AUGUSTINE GEORGE MASIH, J.

CM No.6914 of 2020

Prayer in this application is for placing on record
written arguments of the petitioner.

Application is allowed subject to just exceptions.

Written arguments are taken on record.

CWP No.7857 of 2020

Challenge in this appeal is to the order dated 03.06.2020 passed by
the Central Administrative Tribunal, Chandigarh Bench, Chandigarh
(hereinafter referred to as 'CAT') in OA No.060/00302/2020 vide which the
Original Application filed by the petitioner challenging the order of transfer
dated 18.05.2020 (Annexure P-5) from the post of Deputy Commissioner,
Fatehabad, to the post of Director, Swarna Jayanti Haryana Institute for Fiscal

Management, on the ground of discrimination and violation of Rule 7 of the Indian Administrative Service (Cadre) Rules, 1954 (hereinafter referred to as '1954 Cadre Rules'), has been dismissed.

2. Briefly the facts are that the petitioner, an IAS Officer, who is 100% visually impaired, was initially allocated to Chhattisgarh State and as per the guidelines issued by the Government of India for cadre transfer for persons with disabilities, he was transferred to Haryana cadre vide Notification dated 21.10.2015. Petitioner expressed his willingness for field posting keeping in view the career progression of an IAS Officer as according to the Government of India instructions conveyed from time to time, an IAS Officer with three years' or two years' of combined field experience in the posts listed in the annexure, are only eligible for consideration to the central deputation at the level of Deputy Secretary and Under Secretary respectively. Since the petitioner did not have the requisite field experience on the posts referred to in the annexure which are the field posts, he had been making representations to the respondents for such posting. He had been asserting that all his batch mates had worked/handled the posts of Deputy Commissioner, Haryana, but he had been discriminated against.

Considering his representation dated 05.04.2016 for posting him as Deputy Commissioner, the same was accepted and the petitioner was assigned the post of Deputy Commissioner, Kaithal, vide order dated 25.04.2016. Hardly had 6-1/2 months been passed that a transfer order dated 12.11.2016 was issued posting the petitioner in the headquarters as Director, Foods and Supplies, Haryana, Special Secretary to Government of Haryana, Foods and Supplies Department and Managing Director, CONFED, in

violation of Rule 7 (3) read with Rule 3 of the IAS (Cadre) Amendment Rules, 2014 read with Notification dated 13.04.2016. Subsequent orders of posting were also passed but none of it was a field posting.

3. Petitioner ultimately challenged the order dated 12.11.2016 passed by the respondents by filing OA No.60/1289 of 2017 in the CAT, Chandigarh Bench, whereby the petitioner had been transferred from the post of Deputy Commissioner, Kaithal. This original application preferred by the petitioner was dismissed by the CAT on 28.05.2018 resulting in challenge of this order in *CWP No.16460 of 2018* titled as *Ravi Prakash Gupta Versus Union of India and others*. Even during the pendency of the writ petition, another transfer order dated 22.10.2018 was passed. A Division Bench of this Court vide order dated 05.12.2018, allowed the said writ petition by setting aside the order dated 28.05.2018 passed by the CAT and setting aside all the transfer orders, which have been passed by the respondents i.e. 07.11.2016, 03.01.2017, 22.08.2017 as also the order dated 22.10.2018, which was passed during the pendency of the writ petition. Direction was also issued to State of Haryana through Chief Secretary, Government of Haryana, to consider the case of the petitioner for posting him in the field strictly in accordance with law within a period of three weeks from the date of the order dated 05.12.2018.

Special Leave to Appeal (C) No.5463 of 2019 preferred by the State of Haryana was dismissed by the Supreme Court vide order dated 06.08.2019, however, four months' time was granted to the State of Haryana to comply with the order passed by the High Court in accordance with the Rules. In compliance with the said order, petitioner was posted as Deputy Commissioner, Fatehabad, vide order dated 28.12.2019.

4. After just about 4-1/2 months of posting of the petitioner as Deputy Commissioner, Fatehabad, a transfer order was passed on 18.05.2020 by the Chief Secretary to Government of Haryana posting him as Director, Swarana Jayanti Haryana Institute of Fiscal Management. This order was challenged by the petitioner by filing OA No.060/00302/2020 on the ground that the said impugned order of transfer was in violation of the order passed by the Division Bench of this Court on 05.12.2018, which order had been upheld by the Hon'ble Supreme Court of India, as also on the ground that the said transfer order has been issued in violation of the judgment of the Supreme Court in the case of ***T.S.R. Subramaniam and others Versus Union of India and others 2014 (1) SCC 255***, wherein the Hon'ble Supreme Court had said that an officer posted to a cadre post should not be transferred prior to two years of the said date of posting. Challenge is also posed to the said transfer order on the ground that the same is discriminatory and in violation of the 1954 Cadre Rules as amended from time to time, especially Rule 7 (3) read with Rule 3 of the IAS (Cadre) Amendment Rules, 2014 read with Notification dated 13.04.2016. The said OA was dismissed on 03.06.2020.

5. It is after the dismissal of the said OA of the petitioner that the present writ petition has been filed challenging the order dated 03.06.2020 passed by the CAT.

6. Petitioner, who appears in person, has reiterated the facts as have been narrated above and has asserted on the basis of the earlier order passed by this Court in CWP No.16460 of 2018 dated 05.12.2018 (Annexure A-2) that the reasons for which the earlier transfer order dated 07.11.2016 and all subsequent transfer orders were set aside was the

non-compliance of the Cadre Rule 7(3), which mandated that a cadre officer appointed to any cadre post should hold the office for at least two years unless in the meantime he or she has been promoted, retired or sent on deputation outside the State or training exceeding two months. For transfer of such cadre officer before the minimum specified period, recommendation of the Civil Services Board as specified in the Schedule annexed to the Rules was mandated, where reasons are required to be assigned for such recommendation. The Civil Services Board was constituted on 28.01.2014 and had recommended the transfer of the petitioner in a meeting held on 07.11.2016, however, no reasons were assigned for such recommendation. The Division Bench of this Court, therefore, vide order dated 05.12.2018 proceeded to hold that in the absence of any reasons having been assigned for making such recommendation of transfer, the Cadre Rules having been violated, the said action could not sustain leading to the setting aside of the said transfer order dated 07.11.2016 as also the subsequent orders of transfer passed thereto.

He further asserts that the said order having been upheld up to the Supreme Court vide order dated 06.08.2019 (Annexure A-3), whereby direction issued by this Court for posting the petitioner in the field strictly in accordance with the Rules was reiterated, the same have again been violated as merely after 6½ months of posting as Deputy Commissioner, Fatehabad, he has been transferred from the said post vide order dated 18.05.2020 (Annexure A-5), which is much below the mandated period of two years as provided for under Rule 7 (3) of the Cadre Rules as applicable. The impugned order dated 18.05.2020 does not assign any reason for making the transfer of the petitioner prior to his completion of the period of

two years, which has also been provided for and mandated by the Supreme Court in T.S.R. Subramaniam's case (supra). The order of transfer is in utter violation of the rules, notification and ratio of the judgment of the Supreme Court in T.S.R. Subramaniam's case (supra) as also the judgment dated 05.12.2018 of the Division Bench of this Court.

It has been submitted that each district has a lot of support staff and every department has its own infrastructure and District Level Officer. Only after working in the district for considerable number of years can one visualize the real opportunities to push and face the challenge and to solve the same when posted in the head office. The requisite field experience, therefore, is essential for an IAS Officer to perform his duties effectively and efficiently. It is asserted by the petitioner that since the petitioner has been prematurely transferred, he has failed to gain sufficient experience on a particular post, which will not be in public interest nor would it be for betterment of the administration as the petitioner has been deprived of the benefit of the first hand experience. The mandate of the statutory cadre rules has not been fulfilled as no reason has been assigned much less justifiable by the Civil Services Board for prematurely curtailing the tenure of two years fixed under the Rules. Mandatory rules having been not complied with, the impugned transfer order being violative of the statutory cadre rules cannot sustain. He asserts that the Central Administrative Tribunal (CAT) vide order dated 03.06.2020 has failed to appreciate these aspects and has wrongly proceeded to dismiss the original application preferred by the petitioner challenging the transfer order dated 18.05.2020.

7. In support of these assertions, petitioner has taken us through the Indian Administrative Service (Cadre) Amendment Rules, 2014,

whereby Rule 7 has been substituted vide notification dated 28.01.2014 as well as notification dated 13.04.2016 vide which sub-rule 5 of Rule 7 for the proviso, there was substitution thereof calling it the Indian Administrative Service (Cadre) Second Amendment Rules, 2016. On the basis of the above, it is asserted by the petitioner that the impugned order of transfer being in violation of the statutory rules governing the cadre cannot sustain and deserves to be set aside.

8. On the other hand, learned Advocate General, Haryana, has submitted that the transfer of the petitioner was not an isolated one, rather three other Deputy Commissioners were transferred along with the petitioner i.e. the Deputy Commissioner of Panipat, Sonapat and Charkhi Dadri apart from the petitioner, who was then posted as Deputy Commissioner, Fatehabad. His submission is that the said exercise was carried out because of an unusual and unexpected situation, which has not only engulfed our country but the entire world because of COVID-19 pandemic. In order to ensure stoppage of spread of coronavirus, Ministry of Home Affairs, Government of India, vide order dated 24.03.2020, had initially imposed the nationwide lockdown in the country for 21 days, which was subsequently extended from time to time and continued up to May 31st, 2020, whereafter unlocking in phases has been going on. All the State Governments were directed by issuance of detailed guidelines to take every possible effective measure so that everybody stay at home. The biggest responsibility fell upon the District Administration and the officers posted at the helm of affairs were required to take all possible measures keeping in mind the guidelines/directions issued by the Ministry of Home Affairs, Government of India. The responsibility,

therefore, came on the shoulders of respective Deputy Commissioners/District Magistrates being the District Heads to ensure the effective implementation of the guidelines/directions in their respective districts in coordination with the District In-charge deputed by the Government. Additional duties of supervision of food procurement, control of labour movement, various health issues as well as daily video conferences with the State Government, Cabinet Secretary and Ministry of Home Affairs, Government of India etc. were assigned to the Deputy Commissioners. Senior IAS/IPS/IFS Officers were deputed as District In-charge in all the districts for planning/coordination and monitoring implementation of all activities for prevention and control of spread of coronavirus.

It is in this chain of events and because of unprecedented and sudden changed circumstances, the matter with regard to postings/transfer of IAS Officers was discussed in the Department of Personnel keeping in view the pandemic situation due to spread of COVID-19 and observing that since the Deputy Commissioners/District Magistrates in the districts have to play pivotal role in handling various issues, some of the Deputy Commissioners/District Magistrates were required to be transferred from their districts. Since these officers had not yet completed tenure of two years on the cadre post of Deputy Commissioner including the petitioner, who was posted as Deputy Commissioner, Fatehabad, the matter was placed before the Civil Services Board on 18.05.2020. The Civil Services Board recommended transfers of the Deputy Commissioners of four districts i.e. Panipat, Sonapat, Fatehabad and Charkhi Dadri on administrative grounds and in public interest.

Accordingly, the petitioner was transferred by the State Government vide order dated 18.05.2020 (Annexure A-5).

9. The learned Advocate General has asserted that the order dated 05.12.2018 as passed by this Court in CWP No.16460 of 2018 and the order dated 06.08.2019 passed by the Hon'ble Supreme Court stood duly complied with when the petitioner was posted as Deputy Commissioner, Fatehabad on 28.12.2019. His submission with reference to the order passed by the Hon'ble Supreme Court on 06.08.2019 is that although the Special Leave Petition had been dismissed, however, four months' time was granted to the State of Haryana to comply with the order passed by the Division Bench of this Court in accordance with the Rules. He asserts that the order of transfer of the petitioner is in accordance with the statutory rules governing the service of the petitioner, especially with regard to the premature transfer of the petitioner as the said statutory rules have been duly complied with.

He has submitted that the primary grievance of the petitioner, when he had challenge the initial order of transfer dated 07.11.2016, was that his progression in career is being impaired and the career prospects being limited because of non-completion of the field posting experience leading to denial of the petitioner for consideration for central deputation at the level of the Deputy Secretary and Under Secretary. He has referred to the Governing of India Instructions/Guidelines issued through letter dated 10.11.2014 (Annexure R-2/2) to contend that three years and two years of combined field experience in the posts listed in the annexure to the instructions, which are field posting, makes an IAS Officer eligible for consideration for central deputation at the level of Deputy Secretary and

Under Secretary respectively. Referring to para 11 of the preliminary submissions in the reply filed on behalf of respondent No.2, it is asserted that the petitioner now has the total field posting experience of 36 months and 11 days. Petitioner, thus, has completed three years of field experience as required for central deputation at the level of Deputy Secretary. The prime grievance of the petitioner, therefore, does not survive.

10. The learned Advocate General has further submitted that transfer is an incident of service and it is not in dispute that the service in which the petitioner is engaged is transferable. Interference by the Court in transfer orders are where the said order is vitiated by *mala fides* or passed on extraneous or irrelevant consideration, where the said order has been passed without any authority of law. None of the statutory provisions have been violated and the interference of the Court is not called for, where the transfer has been effected to address administrative exigencies and for ensuring smooth functioning of the State Administration. He on the above basis asserts that in the absence of any of the grounds as mentioned above, interference by this Court in the transfer order, which is due to administrative exigencies and in public interest, is not called for. He has vehemently asserted that the petitioner has not been transferred due to any impairment but because of the peculiar circumstances, which had occurred in unexpected circumstances and were beyond control. Prayer has thus been made for dismissal of the writ petition.

11. Learned Advocate General has also referred to the order dated 10.12.2020 passed by this Court, where a coordinate Bench of this Court had issued notice to Smt. Keshni Anand Arora, the then Chief Secretary to Government of Haryana, who was the author of the order of

transfer dated 18.05.2020 (Annexure A-5) seeking explanation why contempt proceedings be not initiated against her for having deliberately violating the order dated 05.12.2018 passed by a Division Bench of this Court in CWP No.16460 of 2018 followed by the order dated 06.08.2019 passed by the Hon'ble Supreme Court upholding the said order for not permitting the petitioner to continue on the post of Deputy Commissioner, Fatehabad, where he was posted on 28.12.2019 in compliance with the order of the Hon'ble Supreme Court but not permitting him to continue in office for a minimum assured period of two years pursuant to the guidelines issued by the Apex Court in the matter of *T.S.R. Subramaniam and others Versus Union of India and others 2014 (1) SCC 255*, where it was held that posting of IAS Officers to any place should not be disturbed for a period of two years. With the transfer of the petitioner by the Chief Secretary, Government of Haryana, vide order dated 18.05.2020, it would be a deliberate attempt to outreach the order of the Apex court by indirectly disobeying the same.

Referring to the affidavit dated 04.01.2021, which has been filed by Smt. Keshni Anand Arora, Chief Secretary to Government of Haryana (retired) in compliance with the said order explaining the circumstances under which transfer order of the petitioner had been passed, Mr. Mahajan has referred to the Cadre Rules governing the service and had asserted that the order has been passed strictly in compliance with the said statutory rules. The normal tenure of an IAS Cadre Officer is two years on a post but there is no complete bar on such postings/transfers prematurely and for the said process, recommendation of the Civil Services Board is required, which mandate has been duly fulfilled. There being no violation of

the statutory rules and the transfer of the petitioner being in consonance with the same, the order as passed by the Supreme Court stood fully complied with as the Hon'ble Supreme Court vide order dated 06.08.2019 had specifically stated that the case of the petitioner for posting be considered as per the rules as was mentioned by the Division Bench of this Court. There being no violation of the rules, prayer is for withdrawal of the notice and discharge of the deponent.

12. We have considered the submissions made by the counsel for the parties and with their assistance, have gone through the pleadings, the statutory rules and the records made available.

13. Challenge before this Court is to the order dated 03.06.2020 passed by the CAT, whereby the Original Application preferred by the petitioner assailing the order of transfer dated 18.05.2020 from the post of Deputy Commissioner, Fatehabad to Director, Swarna Jayanti Haryana Institute for Fiscal Management, stands dismissed. Challenge before this Court is also, therefore, to the order dated 18.05.2020, whereby the petitioner has been prematurely prior to the completion of two years as Deputy Commissioner, Fatehabad, been transferred, which is asserted by the petitioner to be in violation of Rule 7 (3) and (5) of the Cadre Rules.

14. Prior to proceeding further, it would not be out of way to mention here that petitioner, who belongs to the IAS Cadre, is governed by the Indian Administrative Service (Cadre) Rules, 1954 (Annexure A-7). Rule 7 deals with the postings. The said Rule 7 was amended by the Central Government, Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions by issuing Notification dated 28.01.2014, which Rules were called the Indian Administrative

Service (Cadre) Amendment Rules, 2014.

15. A perusal of the above would show that as per Sub-Rule 3 of Rule 7, a cadre officer appointed to a cadre post was in normal circumstances required to hold office for at least two years unless in the meantime he or she was promoted, retired or sent on deputation outside the State or the period of training exceeded two months. As per Sub-Rule 5 of Rule 7, the Central Government or the State Government could transfer a cadre officer before the minimum specified period provided a recommendation is made by the Civil Services Board as specified in the Schedule annexed to the Rules. These recommendations of the Civil Services Board, as per the proviso, were not binding on the competent authority, who could reject the same by recording reasons therefor. Schedule to Rule 7 at Sr. No.1 gave the composition of the Civil Services Board. Sr. No.2 dealt with functions of the Civil Services Board. It was mandated to make recommendation for all appointments of cadre officers. It was required to examine cases of the officers, who are proposed to be transferred before completion of the minimum period specified under Sub-Rule 3 and Sub-Rule 4 of Rule 7 and thereafter consider transfer based on such circumstances as it thinks fit prior to making recommendation to the competent authority for transfer before completion of the minimum tenure with reasons to be recorded in writing. Sr. No.3 provided for the procedure. According to this, the Civil Services Board was required to seek detailed justification from the concerned Administrative Department for the transfer of an officer before the specified tenure. As per sub-clause (b), the Civil Services Board was not only required to consider the report of the Administrative Department along with any other input, which it may have

from other reliable sources but was required to obtain comments or views of the officers proposed to be transferred based on the circumstances presented to it in justification of the proposal. On such consideration, in case the Civil Services Board has satisfied itself of the reasons for such premature transfer, it was to make recommendation for such transfer of a cadre officer. The competent authority as per the proviso to clause 3 could reject the recommendation of the Civil Services Board for reasons to be recorded in writing.

16. The said amended Rule reads as follows:-

“1.(1) These rules may be called the Indian Administrative Service (Cadre) Amendment Rules, 2014.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Indian Administrative Service (Cadre) Rules, 1954,-

(a) for rule 7, the following shall be substituted, namely:-

“7. Postings.-(1) All appointments of cadre officers shall be made on the recommendation of the Civil Services Board as specified in the Schedule annexed to these rules.

(2) All appointments to cadre posts referred to in sub-rule (1) shall be made-

(a) in the case of a State Cadre, by the State Government; and

(b) in the case of a Joint Cadre, by the State Government concerned;

(3) A cadre officer appointed to any cadre post shall hold the office for at least two years unless in the meantime he or she has been promoted, retired or sent on deputation outside the State or training exceeding two months.

(4) A cadre officer, appointed to any ex-cadre post shall hold office for such period as may be specified by the State Government for that post, unless in the meantime he or she has been promoted, retired or sent on deputation outside the State or training exceeding two months.

(5) The Central Government or the State Government as the case may be, may transfer a cadre officer before the minimum specified period on

the recommendation of the Civil Services Board as specied in the Schedule annexed to these rules;

Provided that the Competent Authority may reject the recommendation of the Civil Services Board by recording the reasons therefor.

(b) 7A. Overriding effect,- These rules shall have effect notwithstanding anything contrary contained in any other notifications for the time being in force.”

(c) for the Schedule, the following Schedule shall be substituted, namely:-

Schedule

[See rule 7 (1) and (5)]

1. Composition of the Civil Services Board:

Every State Government shall constitute a Civil Services Board which shall consist of-

(i) Chief Secretary *Chairman*

*(ii) Senior most Additional Chief Secretary
or Chairman, Board of Revenue or Financial
Commissioner or an officer of equivalent
rank and status Member*

Member

*(iii) Principal Secretary or Secretary, Department
of Personnel in the State Government* *Member Secretary*

2. Functions.- (a) The Civil Services Board shall make recommendation for all appointments of cadre officers.

(b) The Civil Services Board shall examine the cases of officers who are proposed to be transferred before completion of minimum period of service as specified under sub-rules (3) and (4) of rule 7 of the Indian Administrative Service (Cadre) Rules, 1954.

(c) The Civil Services Board may consider for transfer before the tenure fixed under sub-rules (3) and (4) of rule 7 of the Indian Administrative Service (Cadre) Rules, 1954 based on such circumstances as it thinks fit.

(d) The Civil Services Board may recommend the Competent Authority the names of officers for transfer before completion of minimum tenure with reasons to be recorded in writing.

3. Procedure.- (a) The Civil Services Board shall seek detailed justification from the Administrative Department of the concerned State Government for the transfer of an officer before the specified tenure.

(b) *The Civil Services Board shall-*

- (i) *consider the report of the Administrative Department along with any other inputs it may have from other reliable sources;*
- (ii) *obtain the comments or views of the officer proposed to be transferred based on the circumstances presented to it in justification of the proposal;*
- (iii) *not make recommendation for premature transfer of Cadre Officers unless it has been satisfied itself of the reasons for such premature transfer.*

(c) *The Civil Services Board shall submit a quarterly report in such Form as it thinks fit to the Central Government clearly stating the details of officers recommended to be transferred before the minimum specified tenure and the reasons therefor:*

Provided that the Competent Authority may reject the recommendation of the Civil Services Board for the reasons to be recorded in writing.”

17. Thereafter vide Notification dated 13.04.2016, further amendment was brought about in Rule 7, which reads as follows:-

“1. (1) *These rules may be called the Indian Administrative Service (Cadre) Second Amendment Rules, 2016.*

(2) *They shall come into force on the date of their publication in the Official Gazette.*

2. *In the Indian Administrative Service (Cadre) Rules, 1954,-*

(a) *in sub-rule (5) of rule 7, for the proviso, the following shall be substituted, namely:-*

“Provided that the Competent Authority may amend, modify or reject the recommendation of the Civil Services Board by recording the reasons in writing therefor.”

(b) *In the Schedule, for serial number 3, the following shall be substituted, namely:-*

3. *Procedure.- (1) (a) The Civil Services Board may obtain the information from the Administrative Department of the State concerned or any other relevant sources while considering the transfer of an officer before completion of specified tenure.*

(b) *The Civil Services Board shall submit annual report on*

1st January to the Central Government about the date of the Civil Services Board meetings in the prescribed Form annexed to the Schedule and also upload the same on the website of the concerned State Government or Union territory in public domain.

(2) The Competent Authority may amend, modify or reject the recommendation of the Civil Services Board for the reasons to be recorded in writing.”

18. Vide the above notification, proviso to Sub-Rule 5 of Rule 7 of the 1954 Cadre Rules was substituted. Now according to the substituted proviso, the competent authority not only could reject the recommendation of the Civil Services Board by recording reasons in writing thereto but could also amend or modify such recommendations.

19. In Schedule, Sr. No.3, which deals with the procedure, was also substituted. According to this substitution, the Civil Services Board could obtain information from the Administrative Department of the State concerned or any other relevant sources while considering the transfer of an IAS officer before completion of specified tenure.

It may be mentioned here that as per the unamended Sr. No.3, the Civil Services Board was mandated to seek detailed justification from the Administrative Department concerned, whereas as per the amendment now brought above, the discretion was left to the Civil Services Board for obtaining information from the Administrative Department concerned and it was expanded to any other relevant sources while considering the transfer of an officer before completion of the specified tenure. Clause (b) which originally stood at Sr. No.3 required the Civil Services Board to obtain comments or views of the officer proposed to be transferred, has been omitted as it does not find mention in Sr. No.3 as per the Notification dated

13.04.2016. Proviso to this Sr. No.3 now confers the competent authority the powers to not only reject the recommendation of the Civil Services Board for the reasons to be recorded in writing but also to amend and modify the same. This being the statutory position as it existed on 18.05.2020, the date of transfer of the petitioner from the post of Deputy Commissioner, Fatehabad, the said needs to be considered in the light of the above.

20. Perusal of the records produced and the pleadings makes it amply clear that the issue involved in the present case as far as the compliance or otherwise of the statutory rules governing the postings of an IAS Officer would be Rule 7 of the Indian Administrative Service (Cadre) Rules, 1954, which deals with the postings. Relevant Rules for the purpose of adjudicating the present issue of transfer would be Rule 7 (3), (5) and Schedule to Rule 7 as notified on 28.01.2014 followed by Notification dated 13.04.2016.

There is no change as far as Sub Rule 3 of Rule 7 is concerned, according to which when a cadre officer is appointed on a cadre post, he/she would hold office for at least two years except for the contingencies mentioned therein, which would not be relevant for the purpose of the present case as none of them had occurred. Sub Rule 5 empowers the Central and the State Government, as the case may be, to transfer a cadre officer prior to completion of the minimum specified period as provided for in Sub-Rule 3 i.e. two years, on recommendation of the Civil Services Board as specified in the Schedule annexed to the Rules. The recommendations of the Civil Services Board are not binding upon the competent authority as is evident from the proviso thereto as the said

authority may amend, modify or reject the said recommendation by recording reasons in writing therefor. Schedule to the Rules at Sr. No.1 gives the composition of the Civil Services Board. Perusal of the same would show that they are the seniormost officer of the State Government. Sr. No.2 provides for the functions and Clauses (b), (c) and (d) mandate the Board to examine cases of officers, who are proposed to be transferred before the tenure fixed, which would include the circumstances as it thinks fit and thereafter, recommend to the competent authority the names of the officers for transfer with reasons to be recorded in writing.

21. Sr. No.3 deals with the procedure and as per the now applicable procedure, the Civil Services Board can obtain the information from the Administrative Department of the State concerned or any other relevant source while considering transfer of an officer prior to his completion of specified tenure.

22. It may be pointed out here at the cost of repetition that the now prevalent procedure after Notification dated 13.04.2016 does not require obtaining of comments or views of the officers proposed to be transferred. The recommendations of the Civil Services Board to the competent authority again is not binding and the competent authority may amend, modify or reject such recommendations by recording reasons in writing.

23. This being the position under the statute, when seen in the light of the records and pleadings, it cannot be said that there has been violation of the statutory rules by the respondents/State while transferring the petitioner as the mandate of the said rules has been fully complied with. No doubt the petitioner was posted as Deputy Commissioner, Fatehabad, vide order dated 28.12.2019 passed by the competent authority i.e. the

Chief Secretary to Government of Haryana in compliance with the order dated 06.08.2019 passed by the Hon'ble Supreme Court of India, according to Rule 7 (3), petitioner who is a cadre officer and was posted on a cadre post, should have held the office for at least two years as none of the contingencies and circumstances as mentioned in Sub-Rule 3 had arisen but as per Sub-Rule 5, the State Government was empowered to transfer the petitioner before the minimum specified period provided a recommendation of the Civil Services Board had been received as specified in the Schedule annexed to the Rules.

As detailed in the reply submitted by the learned Advocate General, an unusual and unexpected situation had arisen because of COVID-19 pandemic, where the country had to be put on nationwide lockdown with the State Governments directed by issuing detailed guidelines to take all possible steps to ensure that there is no spread of the said virus amongst the population. The extraordinary situation had occurred, which led to the State of Haryana to take immediate steps for giving effect to the directions/instructions received from the Ministry of Home Affairs, Government of India, vide order dated 24.03.2020 and subsequent communications. Senior IAS/IPS/IFC Officers were deputed as District In-charge for planning, coordination and monitoring the implementation of all activities for prevention and control of spread of coronavirus. The big responsibility came on all the officers, especially the Deputy Commissioners/District Magistrates being the District Heads. Additional duties were also assigned to the Deputy Commissioners for supervision of procurement of food, control of labour movement and various health issues apart from reporting to the State Government as well

as the Ministry of Home Affairs, Government of India. It is in the light of this situation that the posting/transfer of IAS was also discussed in the Department of Personnel, where requirement of transferring of some Deputy Commissioners/District Magistrates, who had not completed the tenure of two years on a cadre post of Deputy Commissioner, was to be considered, which included the petitioner, who had been posted in compliance with the directions of the High Court and Supreme Court. Accordingly, as mandated under Rule 7 (5), the matter was put up before the Civil Services Board on 18.05.2020. The Civil Services Board, on consideration of the same, recommended the transfers of the Deputy Commissioners of four districts i.e. Panipat, Sonapat, Fatehabad and Charkhi Dadri on administrative grounds and in public interest. It is thereafter that the petitioner as well the other Deputy Commissioners were transferred prematurely prior to having completed the tenure of two years on the cadre post of Deputy Commissioner. Reasons have been recorded as is reflected in the minutes of meeting of the Civil Services Board for recommending transfer of four officers before completion of the minimum tenure. It is thereafter that the competent authority has proceeded to transfer the petitioner and other three Deputy Commissioners. Thus, it cannot be said that there is violation of the statutory rules while passing the impugned order.

24. The contention of the petitioner that the transfer order dated 18.05.2020 is in violation of the order passed by this Court on 05.12.2018 and the order dated 06.08.2019 passed by the Hon'ble Supreme Court also is not sustainable in the light of the fact that this Hon'ble Court as well as the Hon'ble Supreme Court had directed the

respondents to reconsider the case of the petitioner for reposting him in the field strictly in accordance with law/rules. It cannot be said that the order passed by this Court had not been complied with by the respondents as the petitioner was admittedly posted as a Deputy Commissioner, Fatehabad, vide order dated 28.12.2019. The orders, thus, passed by this Court as well as the Hon'ble Supreme Court stood duly complied with.

25. Further assertion of the petitioner is that prior to completion of two years' minimum tenure as provided for under Rule 7 (3), he has been transferred, which goes against the mandate of Hon'ble Supreme Court in T.S.R. Subramaniam's case (*supra*), suffice it to say that the said order has been given effect to by the Central Government by amending the 1954 Cadre Rules vide Notification dated 28.01.2014, which have been subsequently amended vide Notification dated 13.04.2016, which governed the field at the time of transfer of the petitioner i.e. on 18.05.2020, which is impugned by him. The transfer of the petitioner being in accordance with the statutory rules as held above by us, we are of the considered view that it does not violate the orders passed by this Court or the Hon'ble Supreme Court, which had directed posting of the petitioner strictly according to the Rules.

26. Another plea which has been taken by the petitioner and was the primary grievance at the initial stage, when he had approached the CAT by challenging the order of transfer dated 07.11.2016 from the post of Deputy Commissioner, Kaithal to the post of Director, Food and Supplies, Haryana, was that his field experience has not been completed for three years, which is mandated for consideration for central deputation at the level of the Deputy Secretary and because of which, his career would be

adversely impacted leading to penal consequences.

A perusal of the reply, which has been filed by the respondents would show that the petitioner has completed the requisite three years field experience on the post specified i.e. field posting, which would make him eligible for consideration for central deputation at the level of the Deputy Secretary. The details in this regard have been given in para 11 of the preliminary submissions of the reply of respondent No.2. The relevant portion of the para reads as follows:-

“The petitioner joined Haryana Cadre on 29.10.2015 on his inter-cadre transfer from Chhattisgarh cadre to Haryana Cadre As per official record, the petitioner remained on field posting in Chhattisgarh and Haryana cadre as under:-

<u>In Chhattisgarh Cadre</u>			
Sr. No.	Posted as	Period	Field Experience
1.	Sub Divisional Officer	07.09.2012 – 31.03.2013	06 months-30 days
2.	Additional Collector	01.04.2013 – 31.03.2014	12 months
3.	Additional Collector/CEO, Zila Parishad	01.04.2014 – 04.10.2014	06 months-04 days
<u>In Haryana Cadre</u>			
1.	DC, Kaithal	26.04.2016 – 15.11.2016	06 months-20 days
2.	DC, Fatehabad	28.12.2019 – 21.05.2020	4 months- 24 days
	Total Experience		36 months-11 days

Accordingly, the petitioner has completed 3 years of field experience as required for Central deputation at the level of Deputy Secretary.”

The said grievance of the petitioner, therefore, does not exist now.

27. In the light of the above, it cannot be said that the impugned order of transfer passed by the State of Haryana is either *mala fide* or discriminatory or in violation of the statutory rules governing the service.

It would not be out of way to mention here that transfer is an incident of service and no Government servant has a vested right to remain posted at a place of his choice nor can an employee dictate terms with regard to his place of posting. The said power is vested in the employer, who is to exercise the said powers as per the administrative exigencies keeping in view the public interest unless it involves any adverse impact on the career or further prospects.

The exercise of power of transfer in the present case cannot be said to be not in accordance with law, which would call for any interference by this Court in exercise of its powers under Article 226 of the Constitution of India, especially under the power of judicial review.

28. In the light of the above and having gone through the affidavit dated 04.01.2021 of Smt. Keshni Anand Arora, Chief Secretary to Government of Haryana (retired) in compliance with the order dated 10.12.2020 passed by this Court, we are satisfied with the explanation given therein and are of the view that the orders passed by this Court as well as the Hon'ble Supreme Court have not been violated by her. The rule issued to her, therefore, stands discharged.

29. We do not find any merit in the present writ petition and, therefore, dismiss the same by upholding the order dated 03.06.2020 passed by the CAT, Chandigarh Bench, Chandigarh.

(AUGUSTINE GEORGE MASIH)
JUDGE

February 5th, 2021
puneet

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether reportable:	Yes