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

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Date of decision: 04.01.2021

+ W.P.(C) No.9039/2020 and CM No.29123/2020

UMESH CHANDRA SINGH

.....PETITIONER

Through Mr. Santosh Kumar and Mr. Rajiv
Mishra, Advocates

versus

UNION OF INDIA & ORS.

.....RESPONDENTS

Through Mr. Jaswinder Singh, Adv. for R-1
Mr. Tushar Mehta, Solicitor
General of India with Mr. Ashim
Vachher, Mr. Aadarsh Tripathi,
Mr. Anish Gupta and Mr. Nikhil
Kandpal, Advocates for R-2 & 3

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. Challenge in the present petition is to an order dated 15.04.2020 passed by Respondent Nos. 2 and 3 (hereinafter referred to as NTPC) whereby the representation of the Petitioner dated 18.02.2020 has been rejected as well as to the Transfer Order dated 22.10.2020 and Release Order dated 28.10.2020 transferring the Petitioner to NTPC Kudgi, Karnataka. A direction is also sought to NTPC to post the Petitioner on the post of 'Scientist' in Research and Development Department (R&D), NETRA.

2. Petitioner had challenged his earlier Transfer to KBUNL, Kanti, Bihar, in a spate of litigation and although in the present petition the challenge is to a Transfer Order, whereby the Petitioner is transferred to Kudgi, however, the grounds for challenge are more or less the same.

3. As narrated in the petition, the facts necessary to decide the controversy involved in the present petition are that the Petitioner, after completing his M.Tech and having joined Bhabha Atomic Research Centre as a Scientist in the specialized area of Fracture Mechanics, Creep and Fatigue Analysis till 10.05.2005, responded to an Advertisement issued on 30.10.2004 by NTPC for recruitment of two Scientists / Technologists. In the Advertisement the minimum educational qualifications stipulated were Masters Degree in Chemical / Mechanical Engineering with CGPA of 8.50 or equivalent, with a post qualification experience, as mentioned in the advertisement.

4. Petitioner was selected for the post and an offer of appointment to the post of 'Scientist' at E4 level was issued on 22.03.2005. Petitioner was accordingly appointed as 'Scientist' and posted at Energy Technologies (ET) Department of NTPC. On 03.02.2009, ET and the then R&D Department were merged together to form a new Department called NETRA (NTPC Energy Technology Research Alliance), Greater Noida.

5. On 26.02.2010 Petitioner was promoted to Level E5 with effect from 01.01.2010, though according to him he should have been promoted with effect from 01.01.2009. Vide Circular dated 21.08.2012, designations in NTPC were made generic and the Petitioner was re-designated as Senior Manager (NETRA) from Scientist E5 (NETRA).

6. Vide order dated 14.07.2015, Petitioner was transferred to Operations and Maintenance Department (Mechanical Maintenance) KBUNL, Kanti, Bihar and the Petitioner protested against the Transfer Order by making several representations. Getting no favourable response, the Petitioner filed a petition in this Court being W.P.(C) No.738/2016 challenging the order amongst other reliefs. During the pendency of the said petition, a Release Order was served on the Petitioner on 29.01.2016, preponing the date of joining at Kanti. As there was no interim protection order and the Petitioner had joined the place of posting, the petition to the extent of the Transfer Order was disposed of as infructuous on 23.05.2016. LPA No.380/2016 filed against the said order was dismissed on 03.06.2016 and the Petitioner was also unsuccessful in challenging the said order before the Supreme Court in SLP(C) No.20295/2016 as the same was dismissed on 05.08.2016.

7. Petitioner made another representation on 19.12.2017 seeking transfer to NETRA on the ground of his specialized recruitment in terms of HR Policy dated 30.09.2017. Since there was no response from NTPC, Petitioner preferred W.P.(C) 11382/2018 before this Court challenging the inaction of NTPC on his representation. Vide order dated 22.10.2018, the petition was disposed of directing NTPC to decide the representation within four weeks and granting liberty to the Petitioner to challenge the decision, if aggrieved.

8. NTPC rejected the representation vide order dated 21.11.2018, and the Petitioner approached the Court by filing W.P.(C) No.1289/2019 praying for quashing the order dated 21.11.2018 and to restore his position by transferring him back to NETRA. The petition was disposed

of by the Court on 06.02.2020 directing the NTPC, that on the Petitioner making a representation for being assigned the duties, for which he was appointed, the Management of NTPC shall consider the representation and take appropriate decision on his posting to any place in India as may be required as also granting liberty to the Petitioner to approach the Court, if aggrieved by the decision.

9. NTPC vide the impugned order dated 15.04.2020 rejected the representation made by the Petitioner on 18.02.2020. Petitioner thereafter made unsuccessful attempts requesting to cancel his posting to Bihar. Petitioner also filed a Contempt Petition as according to him the order of the Court dated 06.02.2020 was flouted by the Respondents. During the hearing of the Contempt petition, it was pointed out by the Respondents that the representation had been decided in terms of the order passed by the Court on 06.02.2020 and that the Petitioner had the liberty vide the said order to take recourse to appropriate remedy, if aggrieved, and thus there was no ground for initiating contempt proceedings. The petition was thereafter dismissed as withdrawn, granting liberty to the Petitioner to file a writ petition reserving all rights and contentions of the parties.

10. NTPC thereafter issued another Transfer Order dated 22.10.2020 transferring the Petitioner to Kudgi, Karnataka as Senior Manager (Safety Department) followed by a Release Order dated 28.10.2020. Petitioner protested against the said order and sent a representation on 28.10.2020 to cancel the order. The order was not, however, cancelled, and this led to the Petitioner approaching the Court by filing the present petition.

11. Learned counsel for the Petitioner has assailed the Transfer Order on manifold grounds. It is urged that the appointment of the Petitioner was a specialized recruitment as a Scientist with specific educational qualifications and in a specialized domain of research in Fracture Mechanics, Stress Analysis, etc. but on transfer, the Petitioner would be required to carry out functions which have no relationship with the qualifications, experience or job profile of a Scientist. There is no sanctioned post of Scientist at Kudgi nor is there any R&D Setup. It is incorrect to treat the Petitioner as an ordinary Mechanical Engineer since he has acquired the M.Tech Degree in Computer aided Design and Manufacturing – CAD / CAM and joined a World Class R&D Centre, Bhabha Atomic Research Centre, wherein he was imparted rigorous scientific training and was duly trained for the specialized area of Fracture Mechanics and Creep, Fatigue and Stress Analysis. Petitioner had responded to the advertisement issued by NTPC only because it clearly indicated that the Petitioner would be required to work in a specialized domain and accordingly the appointment letter was issued. Petitioner was not recruited nor can be forced into carrying out any other functions such as House Keeping or Mechanical Maintenance or Operation or such like jobs in the Safety Department. Merely by changing the nomenclature to a more generic one, the job profile of the Petitioner cannot be changed contrary to his qualifications and experience and the purpose for which he was recruited. There is no provision in the Transfer Policy which empowers the NTPC to change the functions of a specialist like the Petitioner.

12. It is further contended that a Scientist cannot be assigned work of Operations in Shifts in the Safety Department as it is barred under Rule 88A of The Karnataka Factory Rules, 1969. The pre-requisite qualifications for being appointed or transferred as a Safety Officer are laid down in the said Rule and therefore once the Petitioner does not fulfill the said requirements, he cannot be posted in the Safety Department, being ineligible, and moreover in the event of any mishap in the Department he may be liable to be prosecuted under the Statute for not possessing the requisite qualifications. It is clearly laid down by the Supreme Court in ***Rajendra Roy vs. UOI, (1993) 1 SCC 148*** that a transfer order made in violation of statutory rules is illegal. In ***Union of India vs. S.L. Abbas, (1993) 4 SCC 357*** the Apex Court has observed that the Authority must keep in mind the Guidelines issued by the Government while making transfers, and thus it is mandatory for the NTPC to follow the mandate of the Karnataka Factory Rules before effecting transfer of the Petitioner. Relevant part of the Rule relied upon by the Petitioner is as follows :-

“88.-A. (1) Qualifications

(a) A person shall not be eligible for appointment as a Safety Officer unless he -

(i) Possesses a recognised degree in any branch of engineering or technology and has had practical experience of working in a factory in a Supervisory capacity for a period of not less than 2 years, or

a recognised degree in physics or chemistry and has had practical experience of working in a factory in a supervisory capacity for a period of not less than 5

years, or a recognised diploma in any branch of engineering or technology and has had practical experience of working in a factory in a supervisory capacity for a period not less than 5 years;

(ii) Possesses a degree or diploma in industrial safety recognised by the State Government in this behalf; and

(iii) has adequate knowledge of the language spoken by majority of the workers in the region in which the factory where he is to be appointed is situated.

(b) Notwithstanding the provisions contained in clause (a), any person who

(i) possesses a recognised degree or diploma in engineering or technology and has had experience of not less than 5 years in a department of the Central or State Government which deals with the administration of the Factories Act, 1948, or the Indian Dock Labourers Act, 1934, or

(ii) possesses a recognised degree or diploma in engineering or technology and has had experience of not less than 5 years, full time, on training, education, consultancy, or research in the field of accident prevention in industry or in any institution;

shall also be eligible for appointment as a Safety Officer:

Provided that the Chief Inspector may, subject to such conditions as he may specify, grant exemption from the requirements of this sub-rule, if in his opinion, suitable person possessing the necessary qualification and experience is not available for appointment:

Provided further that, in the case of a person who has been working as a safety officer for a period not less than 3 years on the date or commencement of this rule, the Chief Inspector may subject to such conditions as he may specify relax all or any or the above said qualifications.”

13. It is next contended that by an order of transfer, the employer cannot change the cadre of an employee or affect his status. It is evident that the area of operation of duties, scope of work etc. that was earlier assigned to the Petitioner at KBUNL, Kanti, Bihar was in complete derogation of the job profile as a Scientist, and needless to state that the Petitioner would be required to perform the same functions at Kudgi as there is no work of Research and Development, NTPC Kudgi being a Coal based Thermal Power Plant only, with no R&D Setup. The Transfer Order is illegal as it has resulted in degrading the status of the Petitioner as a Scientist and while the Petitioner cannot resist a transfer order, however, he can only be transferred to a post of equivalent status. It is argued that the Supreme Court way back in 1974 in the case of ***E.P. Royappa vs. State of Tamil Nadu, 1974 (4) SCC 3*** held that upon transfer equivalence is to be seen not only in terms of pay scale but also the attendant conditions of service. In other words, the true criterion for equivalence is the status and nature and responsibilities of duties attached to a post. Reliance is placed on the judgment in ***State of Mysore vs. H. Papanna Gowda, 1970 (3) SCC 545*** wherein Supreme Court held that transfer of Government servant to a body Corporate resulted in extinction of his status as a civil servant and would be invalid.

14. The next contention is that the impugned order dated 15.04.2020 is also in violation of order dated 06.02.2020 passed by this Court in W.P.(C) 1289/2019 wherein it was observed by the Court that it would hope and expect that the Management of NTPC considers the case of the Petitioner in the spirit of getting the duties discharged for which he was appointed rather than being made to do jobs like overseeing the House Keeping or the Safety Department, etc. The petition was disposed of permitting the Petitioner to make an appropriate representation seeking to be assigned duties commensurate to his appointment and qualifications, but NTPC instead of implementing the order in its letter and spirit has rejected the representation mechanically and without dealing with the issue of considering the transfer in accordance with the appointment of the Petitioner. In the garb of giving an impression that the posting is to enable the Petitioner to acquire multi-dimensional knowledge or skills, NTPC is in fact destroying his career by taking him out of his cadre and making him work in areas for which he has no qualification or experience.

15. Another contention strenuously urged and labored upon by learned counsel for the Petitioner is that the Transfer Order is in violation of Clause 7 of the Job Rotation Policy dated 30.09.2017, which categorically excludes Scientists at NETRA from provisions of job rotation, due to their specialized qualifications and skills. Clause 7 provides a list of 13 functions which are excluded from job rotation and despite the said stipulation, vide the impugned order NTPC has erroneously excluded the Petitioner from deriving benefit under the said Policy, on the ground that Petitioner has been working at E5 level since

01.01.2010 and the Policy does not apply at that level. This according to the Petitioner is an incorrect reading and interpretation of the policy, as clearly the Policy applies upto E7 level, as on 30.09.2017, the date it was issued. In fact the Policy has been issued for the progress of the Organization as well as the employees and there is no reason why the NTPC should not adhere to its own Policy. Relevant portion relied upon by the learned counsel is as follows :-

“4.0 Job Rotation Policy Applicability

The job rotation policy shall only be applicable to all regular executives upto E7 level, on the rolls of the Company as well as those who are on secondment to subsidiaries ; joint venture companies of NTPC. In case of deputationists to other organizations, the period of deputation shall not be considered as job rotation.

7.0 General Conditions

- *The illustrative list of main functions, sub-function clusters and sub-functions is given as Annexure A.*
- *Job rotation movement shall take place across the Main functions / sub-function clusters / sub-functions.*
- *Every job rotation should be preceded by compulsorily going through relevant modules before embarking on the new role. Such trainings shall be coordinated by PMI / RLI / EDC at CC / Region / Unit respectively.*
- *In the event of a promotion being accompanied by job rotation, the promotion shall be effective only if the recommended rotation is accepted by the executive.*
- *Job Rotation shall be done on completion of specified period of 3 to 5 years at Sensitive Posts.*

- *Executives who are due to superannuate within 5 years shall be exempt from job Rotation.*
- *The list of functions which are excluded from the provision of job rotation are as under :*

** Medical*

** Legal*

** Company Secretary*

** NETRA (Scientists only)*

** Geology*

** Chemistry*

** Mining (Recruited specifically for Mining)*

** Safety (Qualified safety officers)*

** PMI (Recruited as Faculty only)*

** Corporate Communication / Public Relations*

** Rajbhasha*

** IT (Recruited specifically for ERP / Basis / ABAP)*

** Hydro (recruited specifically for Hydro)*

- *Such executives who are found to be non-performing / not aligned in the existing function an also be rotated to other function with an objective to give a chance to do better and in such cases rotation may be done even before the minimum mandatory period.*
- *The procedural guidelines for policy administration are enclosed at Annexure-B.*
- *Modification / cancellation / addition / amendment to the list of Main functions; Sub-function clusters and Sub-functions shall be done by Corporate HR Department with approval of Director (HR).*

16. Last but not the least, it is argued that none of the Scientists in NTPC have been treated like the Petitioner and assigned the job of non-

Scientists, and the Transfer Order is a result of malafide, discrimination and vindictiveness. Repeated postings of the Petitioner first to Bihar and then to Karnataka, allocating to departments like mechanical and operations and safety, wholly unconnected to his qualifications and job profile as also requiring the Petitioner to report to his juniors, reflects that there is no requirement of the Petitioner to be transferred and thus no administrative exigency can be pleaded by NTPC.

17. *Per contra*, Mr. Tushar Mehta, learned Solicitor General of India appearing for the NTPC supporting the Transfer Order argued that the Transfer Order impugned in the petition is in consonance with the Appointment order of the Petitioner and the Service Rules of NTPC. Clause 8 of the Appointment Order clearly stipulates that the designation could be changed depending on the work assigned to the Petitioner from time to time. Attention is also drawn to Clause 9 of the Appointment Order, according to which the Company reserves the right to post the Petitioner at any of its Offices / Projects / Subsidiaries / Joint Ventures or any Government Department / Statutory Body / Public Sector Undertaking, anywhere in India or abroad. According to Mr. Mehta, the job of the Petitioner carries a transfer liability both in India and abroad and he does not have any right to contend that he must continue to be posted at one place only. Genesis of the Appointment Letter is in the Service Rules of the Company which are to the same effect.

18. It is contended that Petitioner was appointed as E4 level Executive. The standard terms and conditions of appointment were duly enclosed with the Appointment Order and are binding on the Petitioner. Keeping in view the terms and conditions, the Petitioner was promoted from E4 to

E5 level on 26.02.2010 with similarly placed employees. After a span of almost ten years, Petitioner was for the first time transferred from NETRA to Kanti, Bihar to work in a Subsidiary of NTPC Ltd. and has been recently transferred to Kudgi Project as he is required to work in the said Project, based on his educational qualifications and experience.

19. The next contention of Mr. Mehta is that the issue of transferability of the Petitioner in the background of his being a Scientist has already attained finality in view of the orders passed by the Courts in the previous round of litigations between the parties. His initial order of transfer to Bihar was unsuccessfully challenged by the Petitioner in a writ petition being W.P.(C) No.738/2016. LPA as well as the SLP against the said order were dismissed by the Division Bench of this Court and the Supreme Court, respectively. Writ Petition seeking direction for being transferred to NETRA in view of the Job Rotation Policy dated 30.09.2017 was dismissed vide order dated 22.10.2018. In writ petition W.P. (C) No.1289/2019, Petitioner again sought directions to be transferred to NETRA and the grounds raised covered the aspect that Petitioner being a Scientist could not have been transferred. This petition was also dismissed by order dated 06.02.2020 and the Contempt Petition alleging violation of the said order was dismissed as withdrawn. In view of these orders, it is not open to the Petitioner to assail the impugned order on the same grounds, yet again.

20. Pleading administrative exigency, Mr. Mehta contends that the impugned Transfer Order to Kudgi has been issued purely on administrative grounds, as the earlier Officer who was required to join at Kudgi, on promotion, gave up promotion and did not join. The post

cannot be left vacant and is required to be manned by an experienced officer such as the Petitioner. It is also argued that a wrong impression is being given by the Petitioner that his work profile or status would be adversely affected by the present transfer. Petitioner was appointed along with several other B.Tech or Engineering employees who have been working at similar positions across the Company and have been posted as per the job requirement. There is no change of the service conditions of the Petitioner, which will continue to be the same. Petitioner is presently working in the Safety Department, which requires a particular set of skills as upkeeping Safety of a Thermal Plant is a high technical task that needs trained and experienced persons since it includes safety, cleaning and maintenance of boilers, switches, gas, etc. Any minor negligence or error may result in mishaps and/or unwarranted accidents. Further, similar transfers have been effected in the past with respect to other Scientists, and the list of such transfers was placed alongwith the additional affidavit in the earlier round of litigation and is on record of this Court.

21. In so far as the argument of malafide by the Petitioner is concerned, it is argued by Mr. Mehta that the Petitioner has only made vague allegations of malafides without any actual incidents or material on record to prove and establish the same. In ***N.K. Singh vs. Union of India & Ors. (1994) 6 SCC 98*** Supreme Court has held that there has to be very strong and convincing evidence to establish the allegations of malafide, and vague allegations without supporting material cannot help the Petitioner.

22. It is next contended that the scope of judicial review of this Court in a petition under Article 226 of the Constitution to interfere in

administrative transfers is extremely limited. This issue has been considered time and again by the Courts and is well settled by a catena of decisions that it is entirely for the Competent Authority to decide when and where a public servant is to be transferred. Transfer is not only an incident but an essential condition of service and cannot be said to adversely affect a service condition of an employee. No employee can claim a vested right to remain posted at a particular place. It is the domain and the prerogative of an employer to decide the place of posting, and the Court should not interfere in the administrative decisions as it also lacks the expertise to decide how an employee is to be utilized for carrying out the job assigned against a post at a particular place of posting.

23. Countering the submissions of Mr. Mehta, learned counsel for the Petitioner Mr. Mishra, in rejoinder, sought to reiterate that under the garb of administrative transfer, Petitioner cannot be assigned jobs which are not in keeping with his qualifications, experience and initial recruitment. Reliance on two paras 8 and 9 of the Appointment Letter by NTPC is misconceived. Alongwith the offer of appointment, NTPC had appended a two-page 'standard terms and conditions of appointment' containing 12 paras, which were verbatim same for all types of Executives, whether generalists or specialists or from the Engineering / Chemistry / HR / Medical / Mining or Geology Stream. Being standard terms, they cannot be relied upon by the NTPC in the case of a specialist like the Petitioner. The terms would have to be read with the nature of appointment and the job profile of the post in question. By changing the nomenclature of the designation, the nature of work of the Petitioner cannot be changed by non-contextual interpretation of para 8, and likewise as per para 9, only

posting is transferrable and not the nature of work. Careful reading of para 8 of the Service Rules shows that it relates only to transfer and not the nature of work.

24. In so far as the list of employees given by the NTPC in the additional affidavit filed in the Contempt Petition, it is argued by Mr. Mishra that none of the persons named in the said affidavits dated 14.09.2020 and 23.09.2020 were having the qualification and R&D Training or experience of a Scientist, and the list is thus irrelevant.

25. As far as the argument that the issue of transfer of the Petitioner as a Scientist has attained finality in the earlier rounds of litigations is concerned, learned counsel for the Petitioner strenuously argued that the stand of NTPC is totally unsustainable. W.P.(C) No.738/2016 was not decided on merits and was disposed of as infructuous as the Release Order had been passed during the pendency of the petition, in the absence of an interim order of stay. Division Bench in the appeal dismissed the same as not maintainable and in so far as the SLP is concerned, the same was dismissed 'in limine' and therefore there is no affirmation of the orders passed by the Courts. In W.P.(C) No.11382/2018, this Court directed the NTPC Management to decide the representation dated 19.12.2017 made by the Petitioner while dealing with the issues raised by him. Representation was, however, rejected by erroneously observing that the Job Rotation Policy was applicable only up to E4 level and by co-relating the same incorrectly with Clause 4.2 of the Career Development and Succession Policy whereas the relevant clause is Clause 4.3. W.P(C) No.1289/2019 was disposed of by directing NTPC to decide the representation as and when made by the Petitioner, which the Petitioner

did on 18.02.2020. Contempt Petition was withdrawn solely on the ground that the Contempt jurisdiction is limited in its nature and the appropriate remedy was to file a writ petition. Thus, it cannot be argued by the Respondents that the issue of transferability of the Petitioner in the background of his being a Scientist has attained finality in the earlier rounds of litigation.

26. I have heard the learned counsel for the Petitioner and learned Solicitor General of India for the NTPC as well as counsel for the Union of India.

27. The facts that emerge from the narrative above are that the Petitioner was appointed at the E4 level pursuant to an Employment Notice dated 30.10.2004. It is undisputed that he was recruited against an advertisement which had prescribed specific qualifications and post qualification experience related to Mechanical / Chemical Engineering. It is also undisputed that the Petitioner was working at NETRA for over ten years until he was transferred on 29.01.2016 and posted at Kanti, Bihar, firstly in Operations (General) and then in Operations (Shift), followed by Operations (House Keeping) and then in the Safety Department. Petitioner had initially challenged his Transfer Order dated 14.07.2015 in W.P.(C) 738/2016 but was unsuccessful in getting an order quashing the Transfer Order. The order of the Single Judge was upheld by the Division Bench of this Court and finally by the Supreme Court when the SLP(C) was dismissed vide order dated 05.08.2016. Subsequent thereto, the Petitioner made a representation dated 19.12.2017 seeking transfer back to NETRA on the basis of a Corporate Circular No. 841 of 2017 dated 30.09.2017 which was a Job Rotation Policy. On the representation being

rejected, Petitioner filed a writ petition before this Court being W.P.(C) 1289/2019 which was disposed of on 06.02.2020.

28. Pursuant to the liberty granted by the Court vide order dated 06.02.2020, the Petitioner made a representation which was rejected by NTPC vide order dated 15.04.2020 and which is impugned in the present petition. Subsequently, the Petitioner was transferred vide order dated 22.10.2020 to NTPC, Kudgi as Senior Manager in Safety Department and the said order is the substantive order challenged in the present petition.

29. The fulcrum of the arguments of the Petitioner is that he was appointed as a Scientist (R&D) with special educational qualifications and specialization in the field of Engineering and can only be deployed at such Establishments of NTPC where he can be utilized to work as a Scientist, and therefore transferring him to the Safety Department at Kudgi is violative of his very appointment and specialization. Added to this is the argument that the Petitioner is governed by the Job Rotation Policy dated 30.09.2017 and the Scientists, NETRA are categorically excluded from job rotation by virtue of Clause 7 of the Policy, and hence the impugned Transfer Order is contrary to and violative of the said policy. The argument is elaborated by contending that a Scientist cannot be made to work against non-scientific posts, and working in the Safety Department is changing the entire nature of work of the Petitioner including his status and is derogatory in terms of job profile.

30. There is no doubt that as per the advertisement the educational qualifications required were in the field of Mechanical/Chemical Engineering and the Petitioner, as indicated from the appointment letter, was appointed to the post of 'Scientist' at E4 level. However, as rightly

contended by Mr. Mehta, it was clearly stipulated in Clause 8 of the Standard Terms and Conditions of Appointment, appended to the appointment letter that the designation of the Petitioner could be changed depending on the work assigned from time to time. Relevant clause is as under :-

“8. Your designation upon joining the Company will be as already mentioned, however, it can be changed depending on work assigned to you from time to time.”

31. While the Petitioner has sought to argue that these are standard terms and conditions which are appended alongwith appointment letters of employees belonging to various cadres such as Medical, etc., but it cannot be overlooked that the terms and conditions were part of the appointment conditions and were accepted by the Petitioner with open eyes and without any demur or protest. No objection has been raised to these terms and conditions by the Petitioner through his earlier years of service and were well known to him and understood by him while accepting the appointment. Mr. Mehta is also right in his contention that the job of the Petitioner carries not only an All India Service Liability but he can even be posted abroad, if so required on account of administrative exigency. By virtue of Clause 9 of the terms of appointment, the Petitioner was well informed that the postings in NTPC were transferrable and the company reserved the right to post him at any Office / Projects / Subsidiary / Joint Venture or any other Government Department, etc. in India or abroad. Clause 9 is as follows :

“9. Since the postings in the Company are transferable, the Company reserves the right to post you at any of its Offices/Projects/Subsidiaries/Joint Ventures or any

Government department/statutory body/public sector undertaking anywhere in India or abroad.”

32. This term of the service condition was also clearly known to the Petitioner when the appointment letter was issued and was accepted by him. Petitioner cannot therefore claim that he has a right to remain posted at a particular place, as his terms and conditions of appointment enable NTPC to post him as per the administrative exigencies and/or requirements. Transfer is therefore an incident of service of the Petitioner.

33. In so far as the argument that the Petitioner cannot be transferred against a post which carries non-scientific functions is concerned, while there cannot be a doubt that an employee must be deployed against posts where his educational qualifications and experience as well as expertise can be best utilized, however, it is equally settled in law that it is the prerogative and the domain of an employer to decide as to where and how an employee has to be transferred and deployed as per the administrative requirements and exigencies. It is neither the role of a Court nor its expertise to substitute its own decision or wisdom in deciding the place of posting of an employee, unless the transfer is malafide or violative of a Policy or a Statutory Rule. Petitioner was initially deployed at NETRA where his services were utilized for over ten years but eventually the NTPC transferred the Petitioner to Bihar to utilize him in the Operations & Maintenance Department and thereafter in the Safety Department. By the impugned Transfer Order, the Petitioner stands transferred to Karnataka in the Safety Department. The Respondents have sought to explain during the arguments as well as in the Written Submissions that the transfer of the Petitioner was initially done to KBUNL, Bihar as there

was a requirement in that place as also to enable the Petitioner to acquire multi dimensional knowledge and skills for self development, to shoulder higher managerial responsibility and provide opportunity in diversified geographic and operational environment. As far as the present transfer is concerned, it is the categorical stand of NTPC that it is on account of pure administrative exigency, as the earlier Officer who was to join on promotion did not join and also gave up promotion. It is also explained that there has been no degradation of the work profile or cadre or service condition of the Petitioner, and that similarly placed employees with Engineering Degrees have been posted across the Plants of the Company depending on the requirement of the officer at a given place.

34. Mr. Mehta has during his arguments specifically taken a stand on instructions that the Petitioner is giving an impression as if the work of House Keeping or such like work in the Safety Department is akin to the job of House Keeping in Hotels and that the nature of work is far from a job requiring Engineering skills, but this is incorrect. It is clarified that the work in a Safety Department requires a special Engineering skill as it involves safety of a Thermal Power Plant, which can only be executed by a trained and experienced person as it includes safety, cleaning and maintenance of boilers, switches, gas, etc. and any minor negligence or error can result in mishappening and do require engineering knowledge and skill. It is beyond a doubt that it is for the NTPC to decide as to how the Petitioner has to be best utilized keeping in view his qualifications and experience. If the Competent Authority has taken a considered decision to utilize the skills and expertise of the Petitioner in the Safety Department, keeping in view the technical nature of the work executed

therein, there is no reason for the Court to intervene and substitute its decision, more particularly when the Court has no expertise to decide how an Engineer can be utilized by the employer. These are decisions best left to the employer and are beyond the limited scope of interference in transfer matters while exercising power of judicial review.

35. Petitioner has placed heavy reliance on the Job Rotation Policy to contend that Scientist, NETRA are excluded from the said Policy and therefore the transfer of a Scientist working in NETRA cannot be made on account of job rotation. The argument of the NTPC *per contra* is that the said Policy does not apply to the Petitioner as he is not in the E4 level as also that the NTPC has a separate Transfer Policy under which the impugned transfer has been effected. While I do find force in the contention of the Petitioner that the Job Rotation Policy applies to Executives at the E5 level as well and it is wrong for the NTPC to contend that it is only applicable at E4 level, however, this argument would still not inure to the advantage of the Petitioner, for two reasons. First and foremost, the issue that the NTPC has a separate Transfer Policy is no longer *res integra*. In the earlier round of litigation in W.P.(C) 1289/2019 Petitioner had raised an identical ground while challenging his transfer to Bihar. The contention raised was recorded in para 3 of the Order dated 06.02.2020 which is as follows :-

“3. In the submissions of ld. counsel for the petitioner, the said job rotation policy excludes any job rotation movement inter alia of scientists and therefore, in his submissions, as per the extant job rotation policy, the petitioner was required to be transferred back to NETRA, where, the scientists amongst others excluded thereby, are to be retained as per the policy. Adverting

to the diverse provisions of the said Job Rotation Policy and Career Development Succession Planning Policy dated 03.10.2017 -which form part of the paper book, ld. counsel for the petitioner strenuously contends that the job profile of the petitioner required the discharge of functions attached to the post of Scientist only, but, the petitioner on his transfer, was being made to discharge functions, which had no relation to the post of the Scientist. In support of his such submissions, the ld. counsel for the petitioner has very ably taken the Court to the various office orders that came to be passed on his joining KBUNL. It emerges from the record that on his transfer to KBUNL and his joining there, he was issued the joining order no. 159/2016 dated 08.02.2016, and, thereby, he was posted as Sr.Manager (Mech.Maint.). Then, he was issued office order dated 10.03.2016, and, thereby, posted to Operation Department with immediate effect. Thereafter, he was issued another officer order dated 16.04.2016, and, thereby, posted for the shift operation with immediate effect. Thereafter, he was issued another office order dated 29.11.2017, and, thereby, assigned to oversee housekeeping work - interestingly, a Scientist deputed to oversee housekeeping work. Then, another office order dated 28.02.2018 followed, and, thereby, the petitioner came to be posted to Safety Department. During the course of hearing, on being queried, ld. counsel for the petitioner states that as yet, the petitioner continues to remain posted with Safety department. In the given factual conspectus, ld. counsel for the petitioner strenuously seeks quashing of the impugned decision taken by NTPC, whereby, the representation made by the petitioner for being posted back to NETRA was refused to be entertained.”

36. NTPC had opposed the said contention and the arguments as recorded in para 4 of the said order are as follows :-

“4. Mr. Sangal, ld. senior counsel for NTPC on his part strenuously contends that either of the policies relied upon by the petitioner was of no consequence for the relief sought by the petitioner. In his submissions, either of the two policies, was meant for affording opportunities to the Executives to enable continuous capability building as well as equip them with the requisite knowledge and for assuming higher responsibilities in future and that, such policies were distinct from the transfer policy of NTPC.”

37. The Court had categorically observed that NTPC maintains a separate Transfer Policy for Executives and had found merit to this extent in the arguments of the counsels for NTPC. Relevant part of para 5 of the Order dated 06.02.2020 is as follows :-

“5. During the course of hearing it does transpire that NTPC maintains a separate transfer policy for Executives, and, it is the petitioner only, who has placed on record a copy thereof along with the rejoinder as Annexure P-1(colly). Taking note of the submissions of Mr. Sangal and the transfer policy for Executives being already in place, the submissions of Mr. Sangal,ld. senior counsel are found well merited. In view thereof, the Court does not consider it necessary to get into the merits of the basis on which NTPC issued the impugned letter dated 21.11.2018 rejecting the petitioner’s representation. Then, suffice it would be to observe, the posting of the petitioner to KBUNL having attained finality, which got the approval of the Court vide its order dated 23.05.2016 passed in W.P.(C) 738/2016, the only recourse available to the petitioner is to seek his transfer/posting as per the applicable transfer policy. Mr. Sangal, ld. senior counsel on his part submits, for the purpose, the petitioner is required to make a representation and any such representation can be made to the Management of NTPC. At this stage, ld.

counsel for the petitioner comes forward to say that he has instructions to not to press the petition any further and that the petitioner shall make a representation to the Management of NTPC for his posting/transfer to any place in India for discharging the duties for which he was appointed. The Court considers it to be very fair and it is hoped that the Management of NTPC considers the case of the petitioner in the spirit of getting the duties discharged by the petitioner for which he was appointed rather than being made to do other jobs like overseeing the housekeeping or safety department etc. etc.”

38. Once the Court has already observed that there is a separate Transfer Policy, the Petitioner cannot rely on the Job Rotation Policy out of context to challenge the Transfer Order based on a clause of the latter Policy. Additionally, if one was to peruse the said Policy dated 30.09.2017, it is evident by a bare reading that the Policy was brought in to provide diverse on-the-job learning opportunities to Executives to enable continuous capability building and to equip them with knowledge and skills for assuming higher responsibilities in future and for career growth. Clauses 2.0 and 3.0 would shed light on the rationale behind the Job Rotation Policy and are as follows :-

“2.0 With the aforementioned objectives the existing Job Rotation Policy has been revisited to make it more effective and in tune with individual and business requirements. The revised Job Rotation Policy is placed at Annexure-I.

3.0 This policy supersedes the earlier scheme of Job Rotation and Career Growth Path and all other communications with regard to Job Rotation.”

39. It is in this context that Clause 7, heavily relied upon by the Petitioner, laid down general conditions of Job Rotation and includes the list of functions which are excluded from the provision of job rotation and this list includes NETRA (Scientist) only. It is thus clear that the objective of the Policy is completely distinct from the Transfer Policy where transfers are made on different considerations. In fact it is crucial to note at this stage that in LPA 380/2016, one of the contentions raised before the Division Bench was that given the nature and purpose of the Transfer Policy, Petitioner's posting to a non-scientific post was legal malice. Relying on the Transfer Policy, especially paras 1.2 and 1.4, it was contended that keeping in view the mandate to optimally utilize every personnel's capacity, posting to a non-scientific position i.e., in Operations and Maintenance, was unwarranted. The Division Bench taking note of the argument observed that Petitioner as a public employee was on notice of the conditions of his employment, that not only was he entering a transferrable service but also that he could be moved out at least once after ten years, and therefore the question of appropriateness of the posting would hardly be subject matter of scrutiny in judicial review. The conclusion that one draws from the order of the Division Bench is that the Court did not agree with the argument of the Petitioner that he could not be posted against a non-scientific post being appointed as a Scientist. Therefore this argument of the Petitioner cannot be sustained in the present petition. Relevant para of the Order dated 03.06.2016 is as follows :-

“2. The Single Judge's rejection of the appellant's writ petition is the subject matter of these proceedings. Two

grievances were articulated during the course of the proceedings. First that given the nature and purpose of the transfer policy, the appellant's posting to a non-scientific position in essence is legal malice and two, that denial of the relevant PACE forms and Normalisation/ Moderation recorded relevant to the petitioner's consideration for promotion to E-6 position was wrongful. With respect to the first submission, Mr. V.K Garg, learned counsel for the appellant relied upon the transfer policy-especially in paras 1.2 and 1.4 and highlighted that keeping in view the organisational mandate to optimally utilise every personnel's capacity, the impugned posting to a non-scientific position i.e. one entailing operation and maintenance was unwarranted. According to him, this amounted to legal malice and therefore was unsustainable in law. The petitioner, as a public employee was on notice of the conditions of his employment that not only was he entering transferable service but also that he could be moved out at least once after 10 years. In these circumstances, the question of the appropriateness of the posting could hardly be the subject matter of scrutiny in judicial review given the entirety of the circumstances."

40. I also agree with the contention of Mr. Mehta that the scope of interference in transfer matters is extremely limited, and ordinarily the Court should not interfere unless malafides are established or there are violations of statutory Policies or Rules. It is equally settled that no employee has a vested right to be posted at a particular place. In this regard, I may allude to the judgment of the Supreme Court in **N.K. Singh** (supra) wherein the Supreme Court observed that personnel management of Government departments must be left to department Heads as Courts

lack necessary expertise of management except to the extent of limited judicial scrutiny. Relevant part of the judgement is as under :-

“4. There are two aspects of transfer of a public servant holding a sensitive and important post. One aspect relates to the private rights of the public servant as an individual pertaining only to his service career. The other is concerned with prejudice to public interest irrespective of the individual interest. The element of prejudice to public interest can be involved only in transfers from sensitive and important public offices and not in all transfers. Mere suspicion or likelihood of some prejudice to public interest is not enough and there must be strong unimpeachable evidence to prove definite substantial prejudice to public interest to make it a vitiating factor in an appropriate case unless it is justified on the ground of larger public interest and exigencies of administration. Such cases would be rare and this factor as a vitiating element must be accepted with great caution and circumspection.

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23.The tendency of anyone to consider himself indispensable is undemocratic and unhealthy. 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 scrutinised judicially, there are no judicially manageable standards for scrutinising 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.”

41. In so far as the allegations of malafides are concerned, Mr. Mehta is right in his contention that there is hardly any pleading to support the allegations of legal malice. The judgement of the Supreme Court in ***Airports Authority of India v. Rajeev Ratan Pandey, (2009) 8 SCC 337*** is apposite in this context. The Court observed:

“7. In State of U.P. v. Gobardhan Lal [(2004) 11 SCC 402 : 2005 SCC (L&S) 55] , while dealing with a matter of transfer, this Court observed that allegations of mala fides must inspire confidence of the Court and ought not to be entertained on the mere asking of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference would ordinarily be made with an order of transfer. That the burden of proving mala fides is on a person levelling such allegations and the burden is heavy, admits of no legal ambiguity. Mere assertion or bald statement is not enough to discharge the heavy burden that the law imposes upon the person levelling allegations of mala fides; it must be supported by requisite materials.

8. In the present case, as noticed above, at the threshold, no allegations of mala fides have been pleaded in the writ petition. It is only by way of a supplementary affidavit that allegations of mala fides have been put forth by Respondent 1 but even such

allegations are not supported by any material whatsoever. In a matter such as the present one where plea of mala fides is not made in the writ petition and the assertion of mala fides is made for the first time in a supplementary affidavit which too is not supported by any convincing and cogent material, the plea of mala fides hardly deserved acceptance, prima facie, justifying stay of operation of a transfer order.

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10. In the writ petition, the transfer order has been assailed by the present Respondent 1 on the sole ground that it was violative of transfer policy framed by the appellant. The High Court, did not even find any contravention of transfer policy in transferring Respondent 1 from Lucknow to Calicut. In a matter of transfer of a government employee, scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer.”

42. In **Somesh Tiwari v. Union of India**, (2009) 2 SCC 592, the Supreme Court delineated the scope of the Court’s interference in the context of malice as follows:

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds—one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of

transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”

43. From the conspectus of the arguments made and the pleadings, this Court is of the opinion that the impugned transfer is a routine transfer made purely in the interest of administrative exigencies and there is nothing unusual or malafide. While this Court has no doubt about the technical qualifications, experience, expertise and calibre and credential of the Petitioner yet it can only be observed that it is for the NTPC to decide how to best utilise the services of the Petitioner. The Courts have been repeatedly observing that in the absence of malafides or policy violations or a detrimental effect on the career of the employee, the challenge to the Transfer Order must be eschewed and interference should be minimal.

44. For the aforesaid reasons, the Court does not find this to be a fit case to interfere in the impugned transfer order. The Petitioner is granted a joining period of two weeks from today to join the place of posting. It is relevant to note that during the pendency of the present petition, the Court had directed the Respondents not to insist on the Petitioner joining the new place of posting as the matter was subjudice. Thus the period for which the petition was pending before this Court, including the period of

two weeks within which the Petitioner has been permitted to join at Kudgi, Karnataka shall be treated on duty by NTPC for all purposes.

45. Petition is hereby dismissed along with pending application.

JYOTI SINGH, J

JANUARY 04, 2021

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