

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 6th April, 2021

+ L.P.A 139/2021

UMESH CHANDRA SINGH

..... Petitioner

Through: Mr. B.K Singh with Mr. Rajiv Ranjan
Mishra, Advocates.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Tushar Mehta, Solicitor General
with Mr. Ashim Vachher and Mr.
Adarsh Tripathi, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

C.M. No. 12960/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application stands disposed of.

L.P.A 139/2021 with C.M. No. 12961/2021(for ad interim stay), C.M. No. 12962/2021(for seeking leave to file lengthy synopsis and lengthy list of dates) & C.M. No. 12963/2021(for placing on record additional documents)

1. The present *intra* Court appeal impugns the judgment dated 4th January, 2021, passed in W.P.(C) No. 9039/2020 and order dated 5th March,

2021, passed in review petition no. 18/2021 in W.P.(C) No. 9039/2020. Vide the impugned judgment, the learned Single Judge has dismissed the writ petition filed by the appellant against the transfer order dated 22nd October, 2020 passed by the respondents, transferring the appellant to National Thermal Power Corporation (NTPC) Kudgi, Karnataka for being posted in the Safety Department of the respondent. Subsequent review petition filed by the appellant for the review of the aforesaid impugned judgment has also been dismissed by the learned Single Judge vide order dated 5th March, 2021.

2. The appellant was offered appointment to the post of 'Scientist' at E4 level on 22nd March, 2005 by the respondents. On 3rd February, 2009, the Energy Technology (ET) Department of NTPC and its R&D Department were merged together to form a new department called NTPC Energy Technology Research Alliance (NETRA), Greater Noida. On 26th February, 2010, appellant was promoted to the level of E5 with effect from 1st January, 2010 and vide Circular dated 21st August, 2012, appellant was redesignated as 'Senior Manager' in NETRA. Vide order dated 14th July, 2015, the appellant was transferred to Operations and Maintenance Department (Mechanical Maintenance), KBUNL, Kanti, Bihar. The appellant protested against the said transfer and his representations not being successful, the appellant filed a petition before this Court, being W.P.(C) No.738/2016 challenging the said transfer. Since no interim order was passed in his favour, appellant joined the place of his posting and the writ petition filed by the appellant was disposed of as having become infructuous vide order dated 23rd May, 2016. The LPA filed by the appellant, being LPA No. 380/2016

was dismissed on 3rd June, 2016, insofar as the challenge to the transfer order was concerned, and the SLP(C) No. 20295/2016 filed by the appellant against the same was also dismissed vide order dated 5th August, 2016.

3. The appellant made another representation on 19th December, 2017 seeking his transfer to NETRA and which representation not being considered favourably, the appellant preferred W.P.(C) 11382/2018 before this Court. The said petition was disposed of vide order dated 22nd October, 2018 directing NTPC to decide the representation within four weeks. The said representation having been rejected vide order dated 21st November, 2018, the petitioner once again approached this Court by filing W.P.(C) 1289/2019. The said petition was disposed of by this Court on 6th February, 2020 directing NTPC to consider the representations that may be filed by the petitioner and take appropriate steps with regard to his posting. The said representation having been preferred by the petitioner on 18th February, 2020, was once again rejected by NTPC vide order dated 15th April, 2020.

4. Another transfer order dated 22nd October, 2020 was issued by NTPC transferring the appellant to Kudgi, Karnataka as 'Senior Manager' in the Safety Department of NTPC, followed by a release order dated 28th October, 2020. The appellant filed a representation dated 28th October, 2020 against the said transfer order, which not having been considered, the petitioner approached this Court by filing the writ petition, from which the present appeal arises.

5. The main grounds of challenge before the learned Single Judge were as follows:-

(i) The appellant was appointed as a 'Scientist' based on certain specialized qualifications, but on transfer the petitioner would be required to carry out functions having no relationship with his specialized qualifications or experience.

(ii) The transfer of the appellant in the Safety Department is in violation of Rule 88A of the Karnataka Factories Rules, 1969, as the appellant does not fulfill the prescribed qualifications for being appointed as a 'Safety Officer' as laid down in the said Rules.

(iii) The said transfer order impugns the change of cadre of the appellant, which cannot be done by NTPC as it degrades the status of appellant as a 'Scientist'. The impugned order dated 15th April, 2020 is in violation of the order dated 6th February, 2020 passed by this Court in W.P.(C) 1289/2019.

(iv) The transfer order is in violation of the Clause 7 of the Job Rotation Policy dated 30th September, 2017 of NTPC which categorically excludes 'Scientists' at NETRA from provisions of Job Rotation due to their specialized qualifications and skills.

(v) The transfer order is malafide, discriminatory and on account of vindictiveness against the appellant.

6. The said conditions did not find favour with the learned Single Judge and petition filed by the appellant was dismissed vide the impugned judgment. It has been observed/held by the learned Single Judge as follows:-

(i) Clause 8 of the standard terms and conditions of appointment, appended to the appointment letter issued to the appellant clearly states that the designation of the appellant could be changed, depending upon work assigned from time-to-time. Clause 9 of the said terms of appointment specifically provided that postings in NTPC were transferable and NTPC had right to post the appellant at any of his offices in India or abroad. In light of the aforesaid Clauses 8 and 9 of the terms of appointment, the appellant cannot claim that he has a right to remain posted at a particular place and NTPC has right to post him anywhere and also change his designation, as per administrative exigencies or requirements. The appellant never objected to the said two Clauses, which were a part of his employment contract with NTPC.

(ii) 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 and the Courts cannot substitute their own view in deciding the place of posting of an employee. In so far as the petitioner's transfer was concerned, it was the categorical stand of NTPC that it was on account of pure administrative exigencies, as the earlier officer who was to join on promotion did not join and also gave up his promotion.

(iii) There was no degradation of work profile or cadre or service conditions of the appellant as a consequence of the said transfer. Similarly placed employees with engineering degrees have been posted across the Plants of NTPC depending upon the requirements of the officer at given place.

(iv) The work in the Safety Department of NTPC, to which the appellant has been transferred to, requires special engineering skills as it involves a thermal power plant which can only be executed by a trained and experienced person. It is for NTPC to decide as to how the appellant can be best utilized keeping in view his qualifications and experience. Courts have no expertise to decide how an employee can be best utilized by the employer.

(v) Even though the Job Rotation Policy would apply to the appellant, since NTPC has a Separate Transfer Policy, in terms of which the appellant has been transferred, his case would be covered by the said Transfer Policy. The note of the said transfer policy was taken by this Court in the order dated 6th February, 2020 while disposing of the earlier writ petition, W.P.(C) No. 1289/2019 filed by the appellant.

(vi) In the order dated 3rd June, 2016 in the earlier LPA No. 380/2016 filed by the appellant, the Division Bench had noted that the appellant was a public employee and was conscious that he was entering a transferable service and therefore, his posting could not be a subject matter of judicial review.

(vii) The scope of interference in transfer matters is extremely limited and the Court should not ordinarily interfere unless malafides are established or there is a violation of statutory rules or policies. No employee has a vested right to be posted in a particular place. In this regard, reliance was placed by learned Single Judge on the decisions in *N.K. Singh vs. Union of India & Ors. (1994) 6 SCC 98*; *Airports Authority of India vs.*

Rajeev Ratan Pandey & Ors. (2009) 8 SCC 337 and Somesh Tiwari vs. Union of India & Ors. (2009) 2 SCC 592.

7. Accordingly, the learned Single Judge was of the view that the impugned transfer was a routine transfer made purely in the interest of administrative exigencies and it is for NTPC to decide how to best utilize the services of the appellant. Accordingly, the learned Single Judge did not find this to be a fit case to interfere and the appellant was granted two weeks to join the place of posting. Thereafter, the appellant filed a review, being Review Petition No. 18/2021, seeking review of the aforesaid judgment. The review was primarily on the ground that the learned Single Judge had failed to take into account the argument of the appellant that his transfer was in violation of Rule 88A of Karnataka Factories Rules, 1969. Review was contested by the respondents by filing an affidavit in response, wherein it was categorically stated that the appellant was not posted as ‘Safety Officer’, but was posted as ‘Senior Manager’. There were already two Safety Officers posted at Kudgi, Karnataka. Taking note of the above, the learned Single Judge was pleased to dismiss the review petition.

8. Being aggrieved with the judgment of the Single Judge, the appellant impugns the judgment dated 4th January, 2021 passed in W.P.(C) No. 9039/2020 and the order dated 5th March, 2021 passed in Review Petition No.18/2021, in the present appeal. We have heard Mr. B.K. Singh on behalf of the appellant as well as Mr. Tushar Mehta, learned Solicitor General (SG), on behalf of the respondents.

9. Counsel for the appellant has primarily reiterated the submissions made before the learned Single Judge. He has contended that the learned

Single Judge failed to give any finding on the aspect of transfer of the appellant being in violation of Rule 88A of Karnataka Factories Rules, 1969. Accordingly, the appellant had preferred a review petition and the said review petition was dismissed only on the ground that the appellant was not appointed as a 'Safety Officer'. It was contended that in real terms, the appellant was to perform the role of a 'Safety Officer', even though the nomenclature given to his post was that of 'Senior Manager'. It was further contended that the transfer of the appellant to Kudgi, Karnataka was malafide. In fact, the previous transfer order in respect of the appellant transferring him to Kanti, Bihar was also malafide and was therefore challenged by the appellant in legal proceedings before this Court. It was contended by the appellant that the impugned judgment wrongly records that the earlier proceedings filed by the appellant were dismissed, when as a matter of fact, they were disposed of and not dismissed and that the respondents have wrongly stated that the said petitions/appeals were dismissed by this Court, whereas the fact is that there were no adverse findings given against the appellant in the aforesaid petitions/appeals. It has been reiterated before us that officers, such as the appellant, working at E5 level as 'Scientists' in NETRA are exempted from transfer.

10. Per contra, learned Solicitor General has placed reliance on Clauses 8 and 9 of the terms and conditions attached to the appointment letter of the appellant, in terms of which the respondent NTPC was free to change the designation of the appellant depending upon the work assigned to him from time-to-time and was free to transfer the appellant to any of the offices of NTPC in India or abroad. Though the appellant was appointed on 22nd

March, 2005, his first transfer order was issued only on 14th July, 2015, ten years after his appointment, to Kanti, Bihar. The said transfer order was challenged by the appellant without success all the way up to the Hon'ble Supreme Court. He further added that full justification for the transfer of the appellant to Kudgi, Karnataka, was given by the respondents in their affidavit filed before the learned Single Judge and there was no malafide involved. The contention of the appellant with regard to Job Rotation Policy of NTPC has been fully dealt with by the learned Single Judge in paragraph 38 of the impugned judgment.

11. In rejoinder, appellant has reiterated that his transfer to Kudgi, Karnataka in capacity of 'Safety Officer' was wrong and malafide. It was further stated that none of the previous writ petitions filed by the appellant against the previous transfer order to Bihar were decided on merits.

12. The whole premise of the submissions of the appellant in the present case is based on the fact that the appellant having been appointed on a specialized post of 'Scientist', he could not be transferred to any other post performing non-scientific jobs. This assumption is completely negated by Clauses 8 and 9 of the terms of appointment attached to the appointment letter issued to the appellant. The same are set out for below ease of reference :-

"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."

"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.”

13. The above said Clauses were part of the employment contract between the appellant and his employer, NTPC. It is clear from the said Clauses that NTPC was free to change the designation of the appellant from time-to-time depending upon the work assigned to him. Therefore, NTPC was completely justified in redesignating the appellant from the post of ‘Scientist’ to that of ‘Senior Manager’. Further, Clause 9 makes it clear that all postings in NTPC are transferable and the appellant could be transferred to any of the offices/projects/subsidiaries/joint ventures, anywhere in India or abroad. It is a matter of record that the appellant never objected or protested against the aforesaid Clauses. This being so, when the appellant is being transferred on the basis of the above Clauses, the appellant is estopped from questioning the same.

14. It is completely misconceived on the appellant to contend that he had a right to continue to work as a ‘Scientist’ throughout his tenure with NTPC. NTPC was free to assign any duty or role or responsibility to him as it deemed fit as an employer, so as to best utilize his qualifications or experience. It is perfectly normal for an employee who has joined in a particular department in an employer to be transferred to other departments and this aspect is completely in the domain of the employer.

15. Great emphasis is placed by the appellant on the alleged violation by the purpose of Rule 88A of the Karnataka Factories Rules, 1969, relevant part of which rule is set out below :-

“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”

16. Once again, the appellant has placed wrong reliance on the said Rule. The said Rule would only be applicable to a person who is appointed as ‘Safety Officer’. It is a matter of record that the appellant was not appointed as a ‘Safety Officer’ in his posting at Kudgi, Karnataka. The respondents have stated in their affidavit filed in response to the review petition that there were already two Safety Officers working at Kudgi, Karnataka, and the role of the appellant was only as an additional officer for maintaining the safety of the plant and to muster additional work force. This aspect has been fully dealt with by the learned Single Judge in the order dated 5th March, 2021 while dismissing the review petition. We see no infirmity in the said findings of the learned Single Judge and are in full agreement with the same.

17. Learned Single Judge has correctly observed that the appellant had also challenged his previous transfer order to Kanti, Bihar, almost on similar

grounds and in the various legal proceedings taken out by the appellant against the aforesaid transfer, he was unsuccessful. In fact, learned Single Judge has rightly placed reliance on the observations of the Division Bench in its order dated 3rd June, 2016 in LPA No. 380/2016, wherein it was stated that the appellant, as a public employee, was on notice of the conditions of his employment that not only was he entering a transferable service but also that he could be moved out at least once after ten years and therefore this could not be the subject matter of scrutiny in judicial review. This was clearly a finding given against the appellant in the previous proceedings and would also be equally applicable to the present transfer. Therefore, it was wrong on the part of the appellant to contend that there were no adverse findings against the appellant in the previous rounds of litigations. If this was not an adverse finding, there was no reason why the appellant would have challenged it before the Hon'ble Supreme Court. Even in the subsequent petitions filed by the appellant, W.P.(C) No. 11382/2018 and W.P.(C) No. 1289/2019, no relief was granted to the appellant and the matters were disposed of with the appellant being asked to make representations to the respondents, who would consider the same. Representations made by the appellant pursuant to the said orders passed by this Court were duly rejected and the transfer posting of the appellant was upheld.

18. The learned Single Judge has correctly observed that scope of interference by Courts in transfer matters is extremely limited. The transfer of any employee is completely in the domain of the employer and unless it is shown that the transfer is on account of malafide reasons, the Courts would

be loathed to interfere in such matters. It is also settled position of law that no employee has a vested right to be posted at a particular place. In so far as allegations of malafides are concerned, the law is settled that the burden to show malafide rests on the person alleging the same and mere vague allegations with regard to malafide cannot be taken into account to prove malafide. In the present case, from the pleadings of the appellant no case of malafide has been made out by the appellant. The learned Single Judge has correctly placed reliance on the judgments in *Airports Authority of India* (supra) and *Somesh Tiwari* (supra) with regard to interference by the Courts on the grounds of malafide.

19. In view of the above discussion, no merit is found in the present appeal.

Dismissed.

AMIT BANSAL, J.

RAJIV SAHAI ENDLAW, J.

APRIL 06, 2021/sr