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

**WRIT PETITION NO. 2706 OF 2019
WITH
INTERIM APPLICATION NO. 1622 OF 2022**

Shri Dattatray Krishnaji Pawar

.. Petitioner

Versus

Union of India & Ors.

.. Respondents

Mr. Vicky A. Nagrani for petitioner/applicant.

Ms. Anamika Malhotra for respondent no.1

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

**RESERVED ON : JUNE 9, 2022
PRONOUNCED ON : JUNE 27, 2022**

JUDGMENT [Per Chief Justice]:

1. The original applicant in Original Application No. 210/558/2016 on the file of the Central Administrative Tribunal, Bombay Bench, Mumbai (hereafter "the Tribunal", for short), by instituting this writ petition dated 22nd February 2019 takes exception to the judgment and order dated 31st January 2019 of the Tribunal dismissing such original application with costs of Rs.5000/- to be paid to the respondents within a month. The Tribunal also directed the respondents to take further action as per observations contained in paragraph no.4(1) (v) and (vi) of such judgment.

2. Challenge in the original application was laid by the petitioner to an order of transfer dated 31st March 2016 by

which he was transferred from the Passport Office, Thane to the Passport Office, Bhopal as well as an order dated 1st July 2016 whereby his representation dated 25th April 2016 questioning the order of transfer stood rejected.

3. At the material time, the petitioner was working as an Assistant Passport Officer and posted at the Passport Office, Thane. According to the petitioner, he and other employees faced various problems with regard to TA/DA while sent on deputation; hence, he along with 28 others preferred a joint complaint dated 28th March 2016 complaining of non-release of TA/DA as per rules as well as on other issues. Since the petitioner was the first signatory, he had been singled out for punishment and within three days of such representation, the order dated 31st March 2016 was issued whereby he was posted, on transfer, to the Passport Office at Bhopal.

4. The only ground for challenging the order of transfer dated 31st March 2016 was that the same had been issued as a measure of punishment and, therefore, such order of transfer was in the teeth of the decision of the Supreme Court reported in AIR 2000 SC 3182 [**Rhone-Poulenc (India) vs. State of U.P. & Ors.**] as well as decisions of the Ernakulam Bench and Chennai Bench of the Central Administrative Tribunal.

5. The Tribunal duly noted the contentions advanced on behalf of the petitioner as well as by the respondents and was of the opinion that the impugned transfer of the petitioner was justified on administrative grounds as well as in public interest; that rejection of the petitioner's representation did not suffer from any infirmity or flaw; that the petitioner did not have any

serious medical ground which could have qualified him for special sympathetic consideration of his case for serious illness covered under paragraph 2(v) of the Transfer Policy dated 30th March 2015 for Central Passport Organization officers/officials dated 30th March 2015; and that there was no unfairness or unreasonableness in ordering his transfer. After concluding as above, the Tribunal in sub-paragraphs (v) and (vi) of paragraph 4(1) recorded as follows: -

"4(1). Based on our careful consideration of rival claims of the parties to the OA as analyzed in the foregoing paragraphs, we sum up our overall conclusions as under:

(i) ***

(ii) ***

(iii) ***

(iv) ***

(v) on the part of the applicant, there were repeated instances of shirking of the duty and persistent hostile attitude towards the respondents. He is a negatively oriented person and compulsive complainant, seems suffering from unfounded imaginary and exaggerated sense of victimhood. He has displayed reckless behaviour with extreme disregard to discipline which amounts to violation of conduct rules and is unbecoming of a responsible civil servant; and

(vi) the applicant has made unsustained contradictory false claims and has indulged in wasteful litigation because of which he must pay at least a part of the cost of litigation borne by the respondents i.e. Rs.5,000/-. For utter disregard to discipline and violation of conduct rules, he fully deserves appropriate discipline action by the respondents, including critical assessment of his fitness to continue him service as per the applicable service rules and laws."

6. It is not in dispute that despite dismissal of his original application by the aforesaid judgment and order dated 31st January 2019, and even in the absence of any order passed by this Court on this writ petition, staying operation of the impugned judgment and order, the petitioner did not report for duty at the Passport Office, Bhopal. It is further not in dispute that a charge-sheet dated 29th November 2019 having been drawn up against the petitioner for alleged misconduct in not reporting for duty at the Passport Office, Bhopal, he finally joined such office on 23rd December 2019. Also, it is undisputed that the disciplinary proceedings are yet to be concluded and, in the meanwhile, the petitioner has retired on superannuation on 31st December 2019.

7. Appearing in support of the writ petition, Mr. Nagrani, learned advocate for the petitioner, has contended as follows:

- (a) Note dated 29th June 2016 (page 168 of the writ petition) of the DPO (PVA & CADRE) would reveal that the petitioner had been "transferred to P.O. Bhopal on the complaint of gross indiscipline by him and also to incite others to do so". No inquiry having been conducted into the alleged complaint of gross indiscipline, it is clear that the weapon of transfer was used against the petitioner with *mala fide* motive to teach him a lesson for having raised his voice against the atrocities of certain departmental officers. Reliance has been placed by the petitioner on the decision of the Supreme Court reported in (2009) 2 SCC 592 [**Somesh Tiwari vs. Union of India & Ors.**] in

support of the proposition that an order of transfer, if passed *in lieu* of punishment, the same is liable to be set aside being wholly illegal. Reliance was also placed on the decision of the Supreme Court reported in (2020) 19 SCC 46 [**Punjab and Sind Bank & Ors. vs. Durgesh Kuwar**] which held that a carrot-and-stick policy cannot be adopted while seeking to discipline an officer whom the employer perceives to be undesirable.

- (b) The transfer policy dated 30th March 2015 provides that transfer shall be effected strictly based on the length of stay of the official at a station. Although there were two officers posted at Thane from well before the time the petitioner was posted at Thane, they had not been transferred and hence the transfer policy was breached.
- (c) The Passport Office, Bhopal had no post of Assistant Passport Officer when the petitioner was transferred and, therefore, this is sufficient proof of the respondents acting *mala fide* to secure the petitioner's ouster from the Passport Office, Thane.
- (d) Disciplinary proceedings under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules 1965 have been initiated against the petitioner vide charge-sheet dated 29th November 2019 on the dictation of the Tribunal, as evident from the observations contained in paragraph 4(1)(v) and (vi) of the impugned judgment and order. There being absence of independent application of mind of the

disciplinary authority, such charge-sheet is liable to be quashed.

- (e) The Tribunal was approached questioning the legality and/or validity of the order of transfer dated 31st March 2016. While examining such challenge, the Tribunal was incompetent and unjustified in making the observations that it did touching upon the petitioner's conduct and capacity to work and directing the respondents to take disciplinary action against the petitioner. Since the impugned order as well as the charge-sheet based thereon suffers from a gross jurisdictional error, the same cannot be sustained and ought to be set aside.

8. Answering the contentions of the petitioner, Ms. Malhotra, learned advocate for the respondent no.1, contended that absolutely no case has been set up by the petitioner for interference.

9. Relying on the decision of the Supreme Court, reported in (2004) 4 SCC 245 (**Union of India vs. Janardhan Debanath and Anr.**), Ms. Malhotra contended that transfer from one post to another post in the same cadre on account of inefficiency or misbehaviour has been held to be not barred by Rule 15 of the Fundamental Rules (hereafter "FR", for short). The finding of the Supreme Court that the High Court had completely misconstrued FR 15 as if there cannot be any transfer on account of inefficiency or misbehaviour was highlighted by her. Further, she contended that for the purposes of effecting a transfer, the question of holding an inquiry to find

out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the *prima facie* satisfaction of the authority concerned on the contemporary reports about the occurrence complained of; and if the requirement of holding an elaborate inquiry is to be insisted upon, the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. Also, she contended that in the present case, neither the petitioner's pay nor his status as an officer in the particular cadre was affected. It was, therefore, her contention that no prior inquiry was required to be conducted into the complaints that were received against the petitioner.

10. Regarding the contention of the petitioner that the transfer was ordered in breach of the transfer policy, Ms. Malhotra contended that any breach thereof, if at all, does not give rise to an enforceable legal right. The petitioner cannot, therefore, claim that he could not have been transferred unless the officers having longer length of stay were transferred.

11. Insofar as the charge-sheet is concerned, Ms. Malhotra contended that the same was not the subject matter of challenge in the original application and, therefore, any exception that the petitioner wishes to take ought to be taken in an independent original application before the Tribunal. Even otherwise, she contended that the disciplinary proceedings were initiated against the petitioner because he failed to report for duty at the Passport Office, Bhopal till at least 23rd December 2019, i.e., more than three weeks after the charge-

sheet was issued. The passing reference made in the charge-sheet about the order passed by the Tribunal does not vitiate the charge-sheet and would not have the effect of invalidating it since reference to such direction of the Tribunal finds place as part of the sequence of events narrated therein.

12. It was, therefore, prayed by her that the writ petition be dismissed.

13. We may place on record that while hearing the writ petition on 23rd March 2022, we had called upon Ms. Malhotra to obtain instructions as to whether the petitioner was paid salary between 1st April 2016 and 23rd December 2019 and, if not, whether such period of absence could be treated as *dies non*. Also, having regard to the fact that the petitioner had retired from service and in excess of two years having passed since the charge-sheet was issued, whether the respondents are serious to continue with the disciplinary proceedings at this stage.

14. Ms. Malhotra responded by submitting that the petitioner had not been paid any salary during the period of his absence. Insofar as the status of the disciplinary proceedings is concerned, it was urged that the inquiry officer who was appointed to inquire into the charges forming part of the charge-sheet dated 29th November 2019 submitted a report dated 28th June 2021 holding both articles of charge as proved and the petitioner has been served copy of such report by a letter dated 5th October 2021 seeking his comments thereon. She also urged that the respondents are now awaiting the decision of the Union Public Service Commission with regard to

the next course of action. In such view of the matter, it is contended that the respondents are indeed serious in taking the disciplinary proceedings to its logical conclusion.

15. We have heard Mr. Nagrani and Ms. Malhotra at considerable length.

16. In course of hearing, attention of Mr. Nagrani was drawn to a decision of a co-ordinate Bench of this Court reported in AIR OnLine 2020 Bom 2677 [**Soudamini S. Chaudhari vs. State of Maharashtra & Ors.**], wherein the decisions in **Someshwar Tiwari** (supra), **Janardhan Debanath** (supra) as well as the decisions of the Supreme Court reported in (2004) 7 SCC 405 [**State of Uttar Pradesh vs. Siya Ram**] and (2011) 12 SCC 137 [**High Court of Judicature at Madras vs. R. Perachi**] were considered. Upon such consideration, the coordinate Bench recorded its conclusions in paragraphs 16 to 22 of the decision. We had called upon Mr. Nagrani to persuade us not to follow the view expressed in **Soudamini S. Chaudhari** (supra). Since no submission of worth was advanced, we have to proceed to deal with the contentions raised on behalf of the petitioner after recording our concurrence with the view expressed by the said Bench on the question as to when would an order of transfer qualify to be regarded as one passed *in lieu* of punishment.

17. By way of reiteration, we observe that an order of transfer would amount to a punishment if by reason thereof the officer/employee has been asked to discharge duty of a post lower than that he had been holding or if his pay has been downgraded or his promotional prospects are jeopardized or if

the order is stigmatic, in the sense that he would have to carry an indelible stain for the rest of his service career without there being any finding of guilt recorded against him. None of these incidents is present in the case of the petitioner's transfer. We, therefore, cannot hold his transfer as punitive.

18. It is also not a case where the petitioner despite not having suffered any civil consequence by reason of the order of transfer being allegedly punitive in nature, or despite the transfer order being innocuously worded but founded on reported indiscipline, we can and must, by lifting the veil, ascertain whether any *mala fide* motive has triggered the same and/or the petitioner has been dealt with in any manner violative of his rights in the matter of public employment. It is not in dispute that the petitioner's service was transferable. Over and above that, the petitioner being governed by FR 15, he could be transferred on account of misbehaviour. As has been held in **Janardhan Debanath** (supra), in a case where transfer is on account of inefficiency or misbehaviour, the same can be made to a post carrying less pay than the pay of the post on which the officer/employee holds a lien. The petitioner not having been transferred to hold a post carrying lesser pay, we see no reason to hold that in the given facts the petitioner suffered the order of transfer as and by way of punishment.

19. Next, we find no substance in the contention of Mr. Nagrani that the petitioner had been transferred in breach of the transfer policy. The Supreme Court in its decision reported in (1993) 4 SCC 357 [**Union of India vs. S. L. Abbas**] has held that executive instructions such as for transfer of

Government servants are in the nature of guidelines and do not confer a legally enforceable right. In such decision, it has also been held that an order of transfer is an incident of Government service and that it is a matter for the appropriate authority to decide, who should be transferred where. Unless the order of transfer is vitiated by *mala fides* or is made in violation of any statutory provisions, the Court cannot interfere with it. In such view of the matter, the contention of Mr. Nagrani based on the transfer policy is rejected.

20. The third contention of Mr. Nagrani that there was no post of Assistant Passport Officer in the Passport Office at Bhopal is one which has been raised without there being any pleading to this effect in the original application. Since the Tribunal did not have the occasion to consider such contention, we do not propose to hold that the Tribunal committed an error in not examining the legality and validity of the order of transfer bearing in mind such contention. Even if the contention of Mr. Nagrani that such fact came to the notice of the petitioner subsequently is correct, the remedy of the petitioner was to apply for a review of the impugned order. In the absence of the petitioner having explored his remedy in accordance with law, it would not be a proper exercise of discretion to allow him to raise a point for the first time before the writ court without any such point being raised in the writ petition itself, even by amending it.

21. The penultimate contention of Mr. Nagrani touches upon issuance of the charge-sheet in the light of the Tribunal's

jurisdiction to make observations/issue directions contained in paragraph 4(1)(v)(vi), quoted above.

22. It appears that by a memorandum dated 8th April 2019, the petitioner was called upon to explain his unauthorized absence from 2nd April 2019 and also as to why FR 17A should not be invoked for his willful absence. The petitioner seems to have made a representation dated 16th April 2019, which is on record being Exhibit "B" to the interim application. The charge-sheet having been issued thereafter, it can be reasonably inferred that the decision to initiate disciplinary proceedings was taken after due consideration of the petitioner's explanation. The petitioner having not joined the post at Passport Office at Bhopal till the charge-sheet was issued, his such absence was considered sufficient reason for the respondents to initiate disciplinary action and we see no reason to hold that issuance of the charge-sheet was on the dictation of the Tribunal. In any event, since the charge-sheet is not the subject matter of challenge in this writ petition or before the Tribunal, we need not dilate on it any further except observing that the disciplinary proceedings shall be taken to its logical conclusion by the disciplinary authority without being influenced by any direction issued by the Tribunal in subparagraphs (v) and (vi) of paragraph 4(1) of its judgment and order, quoted above, as well as the observation made by us *infra*.

23. Finally, we are left with the contention as to whether the Tribunal was justified in making observations on the conduct of the petitioner. It would have been appropriate if the Tribunal

had refrained from making any such observation. However, in view of our observations in the preceding paragraph, we are of the considered view that the same will take care of the petitioner's other grievance relating to the Tribunal's jurisdiction.

24. For the foregoing reasons, relief claimed in the writ petition cannot be granted except setting aside of the order imposing costs. We order accordingly. The writ petition stands disposed of with the aforesaid observations. There shall be no order as to costs.

25. In view of the aforesaid order, Interim Application No. 1622 of 2022 also stands disposed of.

26. The petitioner shall be free to question the charge-sheet and the proceedings following it before the appropriate forum in accordance with law, provided the occasion therefor arises.

SALUNKE
J V

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by SALUNKE J V
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(M. S. KARNIK, J.)

(CHIEF JUSTICE)