

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

Writ Petition (WP) No. 5270/2021

Vijay Kesharao Khatdeo

Vs.

The Chief General Manager,(HR), Corporate Office, Mumbai and ors.

WITH

Contempt Petition (CP) No. 314/2021

IN

Writ Petition No. 5270/2021

Vijay Kesharao Khatdeo

..VS..

Shri Sugat Gamare, The Chief General Manager, (HR) Corporation Office, Mumbai
and ors.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.M.Vaishnav, Advocate for petitioner.

Shri Makrand Rajkondawar, Advocate for respondent nos. 2 to 5.

CORAM :- A.S.CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.

DATE :- FEBRUARY 09, 2022.

In view of the notice for final disposal issued earlier we have heard the learned Counsel for the parties at length.

2. The challenge raised in this writ petition is to the order of transfer dated 10.12.2021 issued by respondent no. 5 transferring the services of the petitioner who is holding the post of Additional Executive Engineer (Transformation) from EHV Line Maintenance Sub-Division, Badnera to a newly sanctioned post at 2.20 KV Sub Station, Malkapur.

3. It is the case of the petitioner that he entered service with the respondents on 25.06.2003 as a Junior Engineer. He was promoted to the post of Assistant Engineer on 11.04.2008. Thereafter, on 07.08.2013, he was further promoted to the post of Additional Executive Engineer. Since 06.06.2017 he has been discharging duties at the Badnera Sub-Division. During the course of service, the petitioner was required to visit Dharni for maintenance of service lines there. According to the petitioner, he has been discharging his duties to the best of his ability and his superiors are satisfied

with rendering such services. His Annual Confidential Report for the previous years indicated that his service was "Very Good". According to the petitioner while undertaking the work of maintenance at Dharni some employees made a complaint to the superior Authority on 03.05.2019. The petitioner put forth his say on 13.05.2019 and denied the allegations sought to be levelled against him by the concerned employees. The respondents did not conduct any further enquiry but the petitioner was given charge of the post of Executive Engineer (Administration) at Amravati on deputation. The petitioner discharged the additional responsibility as assigned to him even by subsequent communication dated 04.06.2021. It, however, appears that in view of notice dated 06.09.2021 given by the employees Union, the Chief Engineer took steps to resolve the misunderstanding between the employees and the petitioner and a meeting was held on 16.09.2021. Thereafter, on 25.11.2021 the petitioner made an application to the Chief Engineer in which it was stated that the petitioner had discharged duties at Badnera for the last four years and he was facing some health problems at Dharni. He, therefore, requested that he be transferred to the Amravati Sub Division. On 10.12.2021, however, the services of the petitioner were transferred to Malkapur which was beyond Amravati Circle. Being aggrieved, the petitioner has challenged the said order of transfer.

4. Shri S.M. Vaishnav, learned Counsel for the petitioner submitted that the petitioner has been unnecessarily victimized on account of unwarranted complaints made by the employees' Union. The petitioner was always interested in getting the work assigned to him completed satisfactorily and in that process various directions were required to be issued to his subordinates. At no point of time were any of the employees required to go beyond their normal duties and it was only on account of the petitioner insisting upon proper and timely completion of work that there had been a complaint against him. Inviting attention to the Circular dated 05.10.2015, it was submitted that for an Executive Engineer as well as an Additional Executive Engineer routine transfer within the Division could be made on completion of three years and transfer beyond the circle could be made after six years. The petitioner had not completed his tenure of six

years at Amravati Division and yet he was transferred to Malkapur which was in the Akola Division. He also referred to a subsequent Circular dated 23.07.2021 and submitted that no case for routine transfer was made out though it was stated in the transfer order that the same was being effected for administrative exigencies. In absence of any administrative exigencies, the petitioner was being penalized by way of transfer. In fact, the respondents could have made an enquiry into the matter if there were any serious complaints against the petitioner. However, without doing so and by recording statements of some employees in his absence the petitioner had been victimized. As the petitioner's transfer was not in accordance with the Circulars dated 05.10.2015 and 23.07.2021 and as the order of transfer was for punitive reasons based on a frivolous complaint made by the employees, the order was liable to be set aside. The learned Counsel placed reliance on the decision in ***Sanjay Tulshiram Shinde vs. Maharashtra State Electricity Transmission Company Ltd. 2017 SCC Online Bom 9671.***

It was then submitted that though this Court had on 14.12.2021 passed an *ad-interim* order directing that if the petitioner was not relieved from the post held by him on that day, he shall not be relieved until further orders. Despite intimation of this fact to the respondents, the petitioner was relieved from the said post thereafter. This indicated the approach of the respondents and in that regard the petitioner had filed Contempt Petition No. 314/2021. It was thus submitted that the petitioner was entitled for appropriate relief.

5. Shri Makrand Rajkondawar, the learned Counsel for respondent nos. 2 to 5, opposed aforesaid submissions. According to him the impugned order of transfer was purely on account of administrative exigencies. He submitted that while serving at Dharni, the employees' Union on 03.05.2019 had made a complaint with regard to the petitioner's manner of working. The allegations made were denied by the petitioner on 13.05.2019. Thereafter, the petitioner was posted on deputation and given charge of the post of Executive Engineer (Administration). However, on 06.09.2021, the employees' Union again issued a notice and threatened to go on strike if their demands were not made. With a view to resolve the matter, the

representatives of the Union and the petitioner were heard on 16.09.2021. On that day, the petitioner issued a letter to the Chief Engineer in which it was stated that he would abide by all directions of his superiors and that he would ensure that in future no complaints were received against him. The Chief Engineer on 25.10.2021 forwarded a Confidential Report of the matter to the Superior Authorities at Mumbai recommending the petitioner's transfer on administrative grounds. It is thereafter that on 25.11.2021, the petitioner made a request for being transferred from Dharni to Amravati Sub-Division. This request was voluntarily made on health reasons. In this backdrop, considering the administrative exigencies and the fact that the petitioner was capable of shouldering the responsibility of the newly sanctioned 220 KV Sub Station at Malkapur, he was accordingly transferred there on 10.12.2021. It was further submitted that as per Clause 7 of the Circular dated 05.10.2015, it was permissible to transfer the services of an employee even beyond the Division for administrative reasons. Considering the aforesaid, the impugned order was passed and the same could not be said to be either mala fide or contrary to the transfer policy of the respondents. The petitioner was relieved from service on 14.12.2021 pursuant to the order of transfer. It was thus submitted that there is no case made out to interfere in writ jurisdiction and the writ petition is liable to be dismissed.

6. We have heard the learned counsel for the parties at length and we have perused the documents placed on record. At the outset, it may be stated that transfer being an exigency of service the employer is the best judge of assessing its requirements of posting an employee at an appropriate place where there is need of such employee. The scope to interfere with an order of transfer would be limited to examine as to whether the same is arbitrary or discriminatory in nature or that it has been effected disregarding the prevailing policy of the employer. The employer has to be given some leeway in administering and managing its affairs.

The material on record indicates that the petitioner has been serving at Badnera Sub-Division from 06.06.2017. Since May 2019 there have been some complaints by the employees' Union against the petitioner

as regards the manner in which he was getting duties executed from the staff assigned to him. The petitioner responded to that complaint on 13.05.2019 and after that the petitioner has been assigned with a distinct responsibility by posting him on deputation at Amravati. Subsequently again on 15.09.2021 it appears that yet another complaint was made against the petitioner and the employees' Union had given a notice of protest if no action was taken against the petitioner. Pursuant thereto the members of the Union as well as the petitioner were called upon by the superiors to remain present on 16.09.2021 so as to attempt to redress the grievances. On 16.09.2021 itself the petitioner issued a communication to the Chief Engineer, Amravati stating therein that henceforth he would abide by all directions given by his superiors and that he would attempt to ensure that in future there would be no complaints against him. It is thereafter that on 25.11.2021 that a request was made by the petitioner to transfer him to Amravati Sub-Division on account of health problems faced by him at Dharni. The material on record indicates that the aforesaid developments were informed by the Chief Engineer to the Head Office at Mumbai and the Chief Engineer proposed the transfer of the petitioner as the employees had gone on agitation on 21.10.2021. It is thereafter that on 10.12.2021 that the services of the petitioner were transferred from Badnera Sub-Division to Malkapur.

7. The petitioner contends that the order of transfer is penal in nature and the same has been effected by accepting complaints made against him to be true and correct. Without holding any enquiry into the allegations, the petitioner has been transferred in a manner contrary to the Circulars dated 05.10.2015 and 23.07.2021. The respondents on the other hand contend that the transfer is purely for administrative reasons and with a view to assign a greater responsibility to the petitioner at the newly sanctioned Sub-Station at Malkapur as it was felt that the petitioner was more suitable for discharging duties there.

We find on a reading of Clause 7 of the Circular dated 05.10.2015 that it is permissible to effect a transfer on administrative exigency subject to obtaining consent of the immediate superior Authority. As stated above

pursuant to the joint meeting held on 16.09.2021, the minutes of the proceedings were forwarded by the Chief Engineer to the Head Office on 25.10.2021. Thereafter on 25.11.2021 the petitioner requested for his transfer to Amravati Sub-Division as he was facing some health problems at Dharni. It is not the case of the petitioner that this request for transfer was made by him under any pressure. Similarly the earlier communication issued by the petitioner on 16.09.2021 is also not stated to have been issued under any duress or pressure from the superiors. No complaint in that regard has been made by the petitioner to any superior Authority that he was forced to issue such communication. It is in this backdrop that the order of transfer dated 10.12.2021 would have to be viewed. Since the respondents have sought to place the petitioner at a newly sanctioned Sub-Station at Malkapur and the petitioner's transfer has been effected by following the modality of Clause 7 of the Circular dated 05.10.2015 it cannot be said that the order of transfer either smacks of *mala fides* or that it has been issued in an arbitrary manner disregarding the prevailing transfer policy. It appears that the respondents with a view to ensure smooth running of the Sub-Station at Badnera sought to post the petitioner at Malkapur by giving him a greater responsibility of establishing the newly sanctioned Sub-Station. It would not be permissible for this Court to enquire into the justification for posting the petitioner at Malkapur in these circumstances though the petitioner requested for his transfer to Amravati.

8. The learned counsel for the petitioner relied upon the decision in *Sanjay Tulshiram Shinde* (supra). Since we are satisfied that the transfer has been effected for administrative reasons which have been disclosed from the records produced before this Court (Paragraph 27 of the said decision), we do not find that the petitioner's transfer has been effected malafidely or that it is in complete violation of the transfer policy. Hence we are not inclined to interfere with the order of transfer.

9. It may be stated that on 14.12.2021 this Court had passed an interim order while issuing the notice that if the petitioner was not relieved from his post at Badnera he was not to be relieved in the meanwhile. It is

pointed out by referring to an email communication dated 14.12.2021 sent by the petitioner at 17.04 hrs. to the respondents that such order had been passed by this Court and that the copy of the order would be produced as early as possible. The relieving order however was communicated to the petitioner on 14.12.2021 at 18.23 hrs. We find that the petitioner having communicated the passing of ad-interim order on 14.12.2021 at 17.04 hrs, the relieving order as communicated at 18.23 hrs on the same day was not liable to be acted upon. It is informed that from 14.12.2021 the petitioner is availing leave which is otherwise admissible to him and has not joined at the place of transfer. In the light of ad-interim order dated 14.12.2021 which is operating till today, we are inclined to permit the petitioner to join at the place of transfer by holding him entitled to such joining period as is permissible under the relevant Rules by treating him to have held the post of Additional Executive Engineer (Transmission), Sub-Division, Badnera till today. If the petitioner is found entitled to avail leave in accordance with the Rules, he shall be so entitled to claim the same and such leave shall not be denied to him only on the ground that the relieving order was communicated to him on 14.12.2021 at 18.23 hrs.

10. Hence for the aforesaid reasons, Writ Petition No.5270/2021 stands dismissed subject to what has been observed in paragraph 9 above. No costs.

In view of these directions, we do not find it necessary to entertain Contempt Petition No.314/2021. It is accordingly dismissed.

(PUSHPA V. GANEDIWALA, J.)

(A.S.CHANDURKAR, J.)

Gate/Andurkar.