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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 01.11.2022

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W.P.(C) 12441/2022 & CM APPL. 37421/2022 (stay)

SUMIT DAGAR

..... Petitioner

Through: Mr.Akanksha Kapoor & Mr.Avinash
Sharma, Advs.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr.K.D.Sharma, SPC with Mr.Hardik
Bedi, Adv.

Mr.Digvijay Rai & Mr.Archit Mishra, Advs. for
R-2 & 3

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioner, who has been working in the respondent no.2/Airport Authority of India since 18.07.2011, having joined as a Junior Executive (Air Traffic Control) (hereinafter referred to as 'ATC') has approached this Court seeking the following reliefs:-

(a) *“allow the present Civil Writ Petition in favour of the Petitioner and against the Respondents;*

(b) *issue an appropriate writ of certiorari or directions qua the Respondents to quash the impugned arbitrary and illegal. transfer & promotion order bearing no. A.32013/135/2022-DPC (ANS), dated 29.07.2022 to the extent of setting aside the transfer of the petitioner from the Indira Gandhi International Airport, New Delhi to the Mangalore Station;*

(c) *also allow Exemplary Costs in favour of the Petitioner and against the Respondents; and*

(d) finally issue such other Order or further Orders as may be deem fit & proper under the Circumstances of the present Case in favour of the Petitioner to secure the ends of Justice.”

2. It is the case of the petitioner that though after joining the services of respondent no.2 as a Junior Executive (ATC) on 18.07.2011 where he continued to remain posted at Delhi, he has been, vide the impugned order dated 29.07.2022, transferred to Mangalore. Learned counsel for the petitioner submits that all the transfers in the respondent no.2 organisation are required to be carried out in terms of the transfer policy dated 27.02.2018 issued by the respondent no.2 itself. She contends that while transferring the petitioner to Mangalore, the respondents have acted in violation of para 3(i), 3(ii), 3(v), 4.1 and 4.8 of the transfer policy which clearly mandates that transfers shall normally be avoided and, in any event, inter-regional transfers would be ordered only as per the seniority based on the length of stay of the officer in a station/region. She submits that, in the present case, while 406 officers were promoted from the post of Assistant Manager to the Manager vide the impugned order, most of them, unlike the petitioner, have been retained at the stations/regions where they were working as Assistant Managers, for which purpose he draws my attention to para nos.3 and 5 of the additional affidavit dated 27.10.2022 wherein the names of officers senior to the petitioner, who have been retained at their existing place of posting, have been mentioned.

3. She next contends that even otherwise the respondents having failed to seek any option from the petitioner as mandated in terms of para 3(i) of the transfer policy, the impugned order is liable to be set aside on this ground alone. She further submits that while issuing the impugned orders,

the respondents have even failed to follow the timelines specified in para 3 (i) of the transfer policy which envisages that all transfer orders should be issued by end of March in every year. In the present case, the transfer order having been issued on 29.07.2022 is clearly violative of para 3 (i) of the policy and is, therefore, liable to be set aside. Merely because the petitioner, in order to avoid any adverse orders, joined his new posting at Mangalore in the short time granted vide the impugned order, would not imply that he is not aggrieved by the impugned order or that the petition has become infructuous on account of his having joined duty at Mangalore, as contended by the respondent. She, therefore, prays that the impugned order, insofar as it relates to the petitioner's transfer to Mangalore, be set aside.

4. On the other hand, learned counsel for the respondent opposes the petition by contending that the petitioner having been transferred only pursuant to his promotion as the Manager, cannot rely on the transfer policy which is applicable only to annual transfers and not to a transfer which is necessitated as a consequence of the promotion of any employee. He submits that, even though these guidelines are not mandatory, the respondent no.2 is, for administrative reasons, entitled to transfer any employee to any region/station irrespective of his seniority in terms of stay in a particular region/station. In the present case, when the annual transfers of Assistant Managers were ordered on 17.05.2022, even though the petitioner was also then working as an Assistant Manager, by taking into account his seniority with reference to the length of his stay at Delhi, he was not transferred and thus, the guidelines have been strictly followed by the respondent. However, upon his promotion to the post of Manager, since the petitioner's services were required at Mangalore, it was, irrespective of his

seniority, deemed necessary for administrative reasons, to transfer him to Mangalore. Once the said transfer is not covered by the transfer policy dated 27.02.2018, the petitioner, who has voluntarily accepted the promotion, cannot complain at this stage when he had already joined his place of posting.

5. Mr.Rai next submits that once the petitioner's transfer is not an annual transfer and is not covered by the policy dated 27.02.2018, his plea that the respondent ought to have issued the transfer order after taking an option from him and following the timelines as prescribed in para 3(i) of the transfer policy, is also misconceived. His plea, thus, is that once the petitioner's impugned transfer is not covered by the transfer policy dated 27.02.2018, the timelines prescribed therein would not be applicable to the said transfer. Furthermore, the petitioner was granted almost four weeks' time to join the new place of posting which he had joined without any demur or seeking any deferment whatsoever. In fact, the petitioner preferred a representation only on 04.08.2022 and thereafter, approached this Court on 24.08.2022 i.e., much after he had joined Mangalore and, therefore, contends that on this ground alone the writ petition is liable to be dismissed.

6. Mr.Rai finally submits that the petitioner's plea that since various other similarly placed Managers have not been transferred despite being promoted, the petitioner who was junior to them also ought to have been retained at Delhi, is also misplaced. He submits that a decision to transfer a particular officer upon his promotion is based on a number of administrative factors and therefore, merely because some other officers, despite their promotion, have been retained at the same station/region, cannot be a ground for the petitioner to urge that he must be retained at Delhi. By placing

reliance on a recent decision of a Division Bench of this Court in *Amarjeet Singh Dagar vs. Union of India and Others*, (2022) SCC OnLine Del 694, he contends that once the petitioner has not alleged any *malafide*, this Court ought not to interfere with the impugned transfer order. He, therefore, prays that the writ petition be dismissed.

7. Having considered the rival submissions of the parties, it would be appropriate to first note hereinbelow, the relevant extracts of the transfer policy dated 27.02.2018, which is the sheet-anchor of the petitioner's challenge to his impugned transfer.

3. DEFINITIONS:

(i) **Normal Transfer Season:** *For both inter regions and intra regions,*

- *The transfer seniority in respect of all cadres and grades should be uploaded on AAI Website by 31st October along with inviting options for choice of stations from the employees.*
- *Options for choice of stations from the employees should reach by 15th December to the concerned discipline.*
- *Annual transfer proposals having recommendations of the "Transfer Recommendation Committee" should be put up before the Competent Authority for consideration by 28th February.*
- *Annual transfer orders should be issued by end of March every year.*
- *Annual transfer shall be combined with Annual DPC.*

(ii) **Inter Regional Transfer:** *Transfers from one region to another region.*

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(v) **Length of stay at the station/in the region:** *Transfer will be in accordance with the seniority in stay at the region/station as applicable. Length of stay means period continuously spent at the station in the region under AAI in a post which has the liability of service anywhere in India. To illustrate, person A may be in Delhi (Northern) Region for the last six years- four*

years as Sr.Superintendent (HR) and two years as Asstt. Manager (HR), his/her length of stay in Delhi (Northern) Region is six years. Similarly, shall be the case in respect of his stay at the same station. However, in the case of Group D posts, length of stay shall be computed only from the date of promotion to Group C posts.

4. GENERAL GUIDELINES

4.1 Except in cases where operational/administrative reasons warrant, transfers shall normally be avoided. Transfers when made shall be in accordance with the seniority in stay at the station in the region.

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4.8 Intra- regional transfers shall be made on the basis of length or continuous stay at the station and inter regional transfers on the basis of length of continuous stay in the region.”

8. A bare perusal of the aforesaid policy shows that the same is meant to apply to general transfer of employees, which it is a common case of the parties, is generally done on an annual basis. It is in this situation that provisions have been made for taking option from the employees well in time so that the transfers can be directed before the end of March every year so as to not cause any inconvenience to the employees and their families. These clauses, however, do not deal with a transfer which may be necessitated on account of promotion of an employee wherein he is expected to discharge a higher responsibility. Learned counsel for the petitioner, while conceding that none of the clauses of this policy specifically deals with transfers on promotion, vehemently urges that the same parameters as applicable to annual transfers must apply to the transfers on promotion. I am regrettably unable to agree. In my considered view merely because the respondent no.2 as an employer has framed certain guidelines to regulate the

transfers of its employees which are evidently meant to be annual transfers, it cannot imply that the same parameters must be applied even to transfers on promotion. The right of an employer to utilize the services of an employee upon promotion in the manner which is deemed fit, cannot be curtailed by the general guidelines issued for regulating annual/routine transfers. I, thus, have no hesitation in holding that the policy guidelines dated 27.02.2018 are not applicable to the transfers on promotion which fall in a different class altogether.

9. Vide the impugned order, the petitioner has been transferred to Mangalore only upon being promoted from the post of Assistant Manager to the Manager and, therefore, it is not a case of regular or annual transfer which alone is governed by the policy guidelines dated 27.02.2018. Once, I am of the view that the policy dated 27.02.2018, relied upon by the petitioner, is not applicable to a transfer upon promotion, which is the position in the present case, both the grounds of challenge of the petitioner which hinge only on the said policy, are untenable and are liable to be rejected.

10. I also find merit in the respondent's plea that even if the transfer of an employee like the petitioner, who is in a transferable job, is in violation of executive guidelines, the Court ought not to normally interfere with the transfer unless a ground of *malafide* is made out. In this regard, reference may be made to following extracts of the decision in **Amarjeet Singh Dagar** (*supra*) which read as under:-

23. At the outset, it must be emphasised that an employee in a transferable job has no vested right to remain posted at one place. The Courts should not readily interfere with the transfer order which is made in the public interest and for

administrative reasons, unless the transfer order is made in violation of any mandatory statutory rule or on the ground of mala fide. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order, instead, the affected party should approach the higher authorities in the concerned department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and/or its subordinate Authorities, there will be complete chaos in the administration which would not be conducive to the public interest. Interference under Article 226 of the Constitution of India is permitted only where the Court finds either the transfer order is mala fide or that the service rules prohibit such transfer or that the Authorities issuing the order were not competent to pass the same. It must be remembered that transfer ordinarily is an incidence of service and must be left to the discretion of the Authorities concerned, which are in the best position to assess the necessities of the administrative requirements of the situation. The Courts must maintain judicial restraint in such matters. (Refer: Shilpi Bose (Mrs.) vs. State of Bihar, 1991 Supp. (2) SCC 659; Mohd. Masood Ahmad vs. State of Uttar Pradesh, (2007) 8 SCC 150; State of Haryana vs. Kashmir Singh, (2010) 13 SCC 306; and Major Amod Kumar vs. Union of India, (2018) 18 SCC 478)).

24. *In Punjab and Sind Bank & Ors. vs. Durgesh Kuwar, 2020 SCC OnLine SC 774, the Supreme Court summarised the principles applicable to transfer orders, as under:*

"17. We must begin our analysis of the rival submissions by adverting to the settled principle that transfer is an exigency of service. An employee cannot have a choice of postings. Administrative circulars and guidelines are indicators of the manner in which the transfer policy has to be implemented. However, an administrative circular may not in itself confer a vested right which can be enforceable by a writ of mandamus. Unless an order of transfer is established to be malafide or contrary to a statutory provision or has been issued by an authority not competent to order

transfer, the Court in exercise of judicial review would not be inclined to interfere. These principles emerge from the judgments which have been relied upon by the appellants in support of their submissions and to which we have already made a reference above. There can be no dispute about the position in law."

11. In the present case, the petitioner has neither raised any ground of *malafide* nor urged that the impugned order was not issued by a competent authority nor contended that the transfer order was in violation of any statutory rule. The petitioner, who is a trained Air Traffic Controller and is in a transferable job, has already remained posted in Delhi for more than 11 years. This Court finds no reason to interfere with the respondent's decision to utilise his services as a Manager (ATC) at Mangalore.

12. For the aforesaid reasons, the writ petition being meritless is dismissed.

(REKHA PALLI)
JUDGE

NOVEMBER 1, 2022
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