

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

Judgment reserved on: 19.10.2022

% **Judgment delivered on: 23.11.2022**

+ **W.P.(C) 6228/2014 & CM APPLs. 15061-62/2014, 19684/2014 & 28136/2016**

ALOK KUMAR VERMA Petitioner

Through: Mr. Rahul Gupta, Advocate.

Versus

UNION OF INDIA & ORS Respondents

Through: Mr. Krishna Kumar Sharma, Sr. Panel Counsel with Ms. Namrata Sharma & Mr. Bhaskar Bhati, Advocates for UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The Petitioner before this Court – is a retired employee, has filed the instant Writ Petition under Articles 226 & 227 of the Constitution of India against the Order dated 22.08.2014 passed by the Ld. Central Administrative Tribunal (“CAT”) in O.A. No. 1158 of 2014 (“**Impugned Order**”). Vide the Impugned Order, the Ld. CAT has refused to interfere with the Orders dated 31.12.2013 and 26.02.2014 whereby the Petitioner was transferred to

the North East Frontier Railways as a Chief Bridge Engineer (“**transfer orders**”).

2. Vide this instant Writ Petition, the Petitioner has prayed for this Court to quash the Impugned Order, set aside the transfer orders and direct the Respondents to restore the posting of the Petitioner to the same post he was holding prior to 26.02.2014. Further, to grant any other relief(s) as we deem fit.

3. This is an old matter concerning the manner in which the Petitioner was transferred from his post at the relevant point in time. The Petitioner was a Senior Administrative Grade (“**SAG**”) officer of the 1981 batch of the Indian Railway Service of Engineers (“**IRSE**”), a Group A service of the Indian Railways. It is not in dispute that subsequent to the filing of this Writ, the Petitioner has superannuated. Vide Order dated 02.12.2015, this Court had recorded the statement of the Petitioner that since he was nearing retirement, he had no objection to serve at his place of posting at the time. However, he was aggrieved in the manner his transfer orders had been passed, alleging that the same is hit by *mala fides*. Subsequently when this case was heard on 27.04.2017, it had been categorically held by a Division Bench of this Court that the only issue left for adjudication in these proceedings was the alleged *mala fide* manner of transfer of the Petitioner and therefore, for the purpose of adjudication of this case, we shall be confining our findings on the same.

4. Before delving into the facts surrounding the dispute or the manner in which the transfer orders of the Petitioner were passed through which the Petitioner is attempting to show *mala fide* on part of the Respondents, an

understanding of the term “*mala fide*” itself would be essential. At this juncture it would be useful to refer to the landmark judgement of the Hon’ble Supreme Court in the case of ***E.P. Royappa v. State of Tamil Nadu &Anr.***, (1974) 4 SCC 3. The same was a case wherein the Petitioner, an Indian Administrative Service Officer in the Cadre of the State of Tamil Nadu had approached the Supreme Court under Article 32 of the Constitution, praying for a direction to the Respondents to re-post him to the Post of Chief Secretary in the State of Tamil Nadu. One of the grounds alleged by the Petitioner was that the Chief Minister acted *mala fide* in removing the Petitioner from the post of Chief Secretary. Justice P.N. Bhagwati as he was then, speaking for himself, Justice Y.V. Chandrachud and Justice Krishna Iyer had held as under –

“85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic

principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., “a way of life”, and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be “cribbed, cabined and confined” within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

86. *It is also necessary to point out that the ambit and reach of Articles 14 and 16 are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position, he can complain of violation of Articles 14 and 16 if he has been arbitrarily or unfairly treated or subjected to mala fide exercise of power by the State machine. It is therefore, no answer to the charge of infringement of Articles 14 and 16 to say that the petitioner had no right to the post of Chief Secretary but was merely officiating in that post. That might have some relevance to Article 311 but not to Articles 14 and 16. We must, therefore, proceed to consider whether the transfer of the petitioner first to the post of Deputy Chairman and then to the post of Officer on Special Duty was arbitrary, hostile and in mala fide exercise of power. What was the operative reason for such transfer: was it the exigencies of public administration or extra administrative considerations having no relevance to the question of transfer? Was the transfer to the post of Deputy Chairman or Officer on Special Duty so irrational or unjust that it could not have been made by any reasonable administration except for collateral reasons? These are the questions which call for our consideration.*

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90. *We may now turn to the ground of challenge based on mala fide exercise of power. The petitioner set out in the petition various incidents in the course of administration where he crossed the path of the second respondent and incurred his wrath by inconvenient and uncompromising acts and notings and contended that the second respondent, therefore, nursed hostility and malus animus against the petitioner and it was for this reason and not on account of exigencies of administration that the petitioner was transferred from the post of Chief*

Secretary. The incidents referred to by the petitioner, if true, constituted gross acts of maladministration and the charge levelled against the second respondent was that because the petitioner in the course of his duties obstructed and thwarted the second respondent in these acts of maladministration, that the second respondent was annoyed with him and it was with a view to putting him out of the way and at the same time deflating him that the second respondent transferred him from the post of Chief Secretary. The transfer of the petitioner was, therefore, in mala fide exercise of power and accordingly invalid.

91. *Now, when we examine this contention we must bear in mind two important considerations. In the first place, we must make it clear, despite a very strenuous argument to the contrary, that we are not called upon to investigate into acts of maladministration by the political Government headed by the second respondent. It is not within our province to embark on a far-flung inquiry into acts of commission and omission charged against the second respondent in the administration of the affairs of Tamil Nadu. That is not the scope of the inquiry before us and we must decline to enter upon any such inquiry. It is one thing to say that the second respondent was guilty of misrule and another to say that he had malus animus against the petitioner which was the operative cause of the displacement of the petitioner from the post of Chief Secretary. We are concerned only with the latter limited issue, not with the former popular issue. We cannot permit the petitioner to side track the issue and escape the burden of establishing hostility and malus animus on the part of the second respondent by diverting our attention to incidents of suspicious exercise of executive power. That would be nothing short of drawing a red herring across the trail. The only*

question before us is whether the action taken by the respondents includes any component of mala fides; whether hostility and malus animus against the petitioner were the operational cause of the transfer of the petitioner from the post of Chief Secretary.

92. *Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charge of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up—these considerations are wholly irrelevant in judicial approach—but because otherwise, functioning*

effectively would become difficult in a democracy. It is from this standpoint that we must assess the merits of the allegations of mala fides made by the petitioner against the second respondent.

93. *Now extensive arguments were addressed before us by Counsel on both sides and we were taken through a mass of documents, papers and official notings on this part of the case but we are afraid it is not possible for us to say that the onus of establishing mala fides against the second respondent, heavy as it is, has been discharged by the petitioner. The allegations of mala fides have been dealt with fully in the judgment of the learned Chief Justice and we do not think it will serve any useful purpose for us to discuss the merits of those allegations once again in this judgment, as we are substantially in agreement with what the learned Chief Justice has said. But we cannot help mentioning that there are certain disturbing features which cause us anxiety. We may take by way of example the imputation in regard to the Cooum River Project. It seems that in or about the beginning of February 1970 the second respondent asked the Director of Vigilance to look into the affairs relating to Cooum Improvement Project as he apprehended that there were certain malpractices in the execution of that scheme. Whether this was done by the second respondent on his own initiative or at the instance of the petitioner is immaterial and we need not go into that controversy. The Director of Vigilance, as his subsequent letter dated February 25, 1970 shows informed the second respondent that without a discreet inquiry it would not be possible to allay or confirm the apprehensions with any degree of credibility since the head of the concerned engineering department was personally involved in the execution of the scheme and he accordingly by that letter pointed out to the petitioner that he needed authorisation to embark on the inquiry and*

Government Order in that behalf should therefore be obtained and communicated to him. The petitioner made an endorsement on this letter on the very next day with a remark that the Public (Secret/Confidential) Department should deal with it immediately. The Public (Secret/Confidential) Department prepared a note at the foot of the letter and submitted it for circulation to the Minister for Works and the second respondent for orders whether the Director of Vigilance should be requested to make a discreet inquiry and send his report. The endorsement made below the note shows that it was submitted for circulation on March 3, 1970. It appears, however, that this note remained unattended until the middle of September 1970. On September 12, 1970 the Minister for Works made an endorsement that the Director of Vigilance may make a discreet inquiry and this endorsement was approved by the second respondent on September 20, 1970. The file containing the note together with the endorsements of the Minister for Works and the second respondent was thereafter placed before the petitioner along with a draft of the memorandum to be addressed by the petitioner to the Director of Vigilance. It is common ground that no memorandum in terms of this draft was issued by the petitioner to the Director of Vigilance. The case of the petitioner was that he did not do so because the second respondent subsequently ordered that no inquiry need be made in this matter. This position was disputed by the second respondent who stated that to the best of his recollection he did not make any such order cancelling the inquiry. That is a matter of controversy between the parties and as pointed out above it does not fall within our province to investigate it. But the fact remains, and that cannot be disputed, that no inquiry thereafter took place in the affairs of the Cooum Improvement Scheme. It is a little interesting

to note that Sabanayagam addressed a letter dated July 31, 1971 to the petitioner stating that though the Personal Assistant to the Chief Secretary had been reminded to send back the file relating to this matter, it had not been received and the petitioner should arrange to send it back, if it was with him. The petitioner immediately replied to this letter on August 8, 1971, pointing out that he distinctly remembered that the second respondent had subsequently ordered that no inquiry need be made in this matter and the file was not with him. It is significant that though the petitioner stated categorically that the second respondent had subsequently ordered that no inquiry need be made, Sabanayagam did not write back challenging the correctness of this statement. The file pertaining to this matter was all throughout in the possession of the Government and even after the petitioner pointed out that it was not with him, curiously enough, it could not be traced until the filing of the petition. In fact, the absence of the file could not have stood in the way of ordering an inquiry. These and a few other circumstances do create suspicion but suspicion cannot take the place of proof and, as pointed out above, proof needed here is high degree of proof. We cannot say that evidence generating judicial certitude in upholding the place of mala fides has been placed before us in the present case. We must, therefore, reject this contention of the petitioner as well.

94. *We accordingly dismiss the petition with no order as to costs.”*

5. The Constitution Bench of the Hon’ble Supreme Court, while dealing with the matter of a transfer had eloquently put down the meaning of *mala fide*, stating that where the operative reason for State action is not legitimate and relevant, but is extraneous and outside the area of permissible

considerations, it would amount to a *mala fide* exercise of power. Such an action would be hit by Articles 14 and 16. It was further held that the burden of establishing *mala fides* is very heavy on the person who alleges it. The allegations of *mala fides* are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility.

6. In the case of ***Shilpi Bose (Mrs.) and Ors. v. State of Bihar & Ors.***, 1991 Supp (2) SCC 659, the Hon'ble Supreme Court, while elucidating the instances in which the Courts should interfere with transfer orders made in public interest had held as under –

“4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.”

7. The same has been reiterated by the Hon'ble Supreme Court in the

case of **Rajendra Roy v. Union of India**, (1993) 1 SCC 148, and **Union of India & Ors. v. S.L. Abbas**, (1993) 4 SCC 357. Unless the Order is hit by *mala fides* or made in violation of statutory provisions/ service rules/ guidelines for transfer without any proper justification, the Court cannot interfere with the said Order.

8. While expounding the meaning of the term *mala fide* itself, the Apex Court in the case of **State of Bihar & Anr. v. P.P. Sharma, IAS & Anr.**, 1992 Supp (1) SCC 222, had held as under:—

“50. Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.”

51. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.”

9. In a recent case titled as ***Chandra Prakash Mishra v. Flipkart India Pvt. Ltd. & Ors.***, Civil Appeal Nos. 2859-2861 of 2022, vide Judgement dated 30.03.2022 the Apex Court had held that even an erroneous, illegal, or preserve order/ action, by itself, cannot be termed as wanting in good faith or suffering from *mala fide*. The Appellant therein was aggrieved by the observations/ remarks of the High Court of Judicature at Allahabad relating to the acts and omissions of the Appellant when he was functioning as the Deputy Commissioner, Commercial Tax, Range-II, Sector 2, Noida. The relevant part of the Judgement has been reproduced as under –

“13. Having examined the matter in its totality, we are of the view that even if the High Court found that the impugned actions of the authorities concerned, particularly of the appellant, had not been strictly in conformity with law or were irregular or were illegal or even perverse, such findings, by themselves, were not leading to an inference as corollary that there had been any deliberate action or omission on the part of the Assessing Authority or the Registering Authority; or that any ‘tactics’ were adopted, as per the expression employed by the High Court. Every erroneous, illegal or even perverse order/action, by itself, cannot be termed as wanting in good faith or suffering from mala fide.”

10. In the considered opinion of this Court, it is the aforesaid precedents which would be applicable to adjudicate the instant allegations of *mala fide* raised by the Petitioner. It is this standard of proof which one must show the Court in order to meet the threshold for proving a *mala fide* action at the behest of an authority.

11. It is submitted by the Petitioner that the issue of *mala fides* needs to be determined notwithstanding the retirement of the Petitioner. Further, that

even subsequent to his retirement, he is being continuously victimized by the Respondents.

12. It is the case of the Petitioner that his transfer orders were not issued as a matter of administrative exigency in normal course but were marred with motives drawn from extraneous considerations. He submits that the transfer orders have their genesis in the Petitioner's drive of about two years which began in early 2012. The drive was to improve the quality of drinking water supplied over northern railways. The Petitioner states that the same had deteriorated due to neglect and that the rate of sample failure in tests for assessing the microbial quality of water was extremely high compared to the limits laid down in relevant provisions. Yet, no remedial measures were being taken up by the railways to safeguard public health.

13. It was submitted by the Petitioner that the Order dated 31.12.2013 was not issued in a normal course of administrative functioning by the Respondents and was actually an outcome of the Petitioner having directed the Delhi Division to stop releasing payments to water treatment contractor M/s Deioners Specialty Pvt. Ltd., vide communication dated 05.10.2013. He submits that upon conducting an inspection, the Petitioner found the contractor to be carrying out chlorination with sub-standard quality plants and the same resulted in an unacceptable standard of water treatment.

14. It is submitted by the Petitioner that the transfer orders were issued as an attempt to scuttle the Petitioner's drive to improve the quality of water to cover up the continuing alarming condition of water quality and the dereliction of duty on part of the Respondents thereby allowing poor water quality to continue in the organisation. It was stated that his transfer orders

were issued to protect railway officials and contractors who were taking undue advantage of this neglect of water quality to make massive illegal gains for themselves.

15. It was submitted that the relieving Order dated 26.02.2014 was given effect to after the Petitioner wrote to the Railway Board on 12.11.2013, to reconsider its earlier decision dated 11.04.2013 to procure the so called PLC-based Automatic Bacteriological Treatment Plants and entrust the entire work of chlorination including operation and maintenance of the plants to the contractors. Further, that his transfer order arose out of the decision taken by the Petitioner in meeting dated 28.01.2014, i.e., to issue charge sheets to officials who had allegedly colluded with the contractors in operating sub-par chlorination plants.

16. The Petitioner submits that his transfer was contrary to the circular dated 16.09.1999 issued by the Ministry of Railways, wherein it has been stated that for certain posts where Non-IPRS Officers are to be posted, the officers posted in the North Eastern region should be first posted as far as possible.

17. It was submitted that the Petitioner's name was proposed for a transfer, even in light of the aforesaid circular. It was stated that he had met the Member Engineer on 07.01.2014 and addressed a letter dated 09.01.2014 to apprise him that the circumstances of the transfer showed that it could be for the sake of protecting erring contractors and officials who feared they might be held accountable for irregularities. The Petitioner vide his letter attempted to show the evidence of tailor making technical specifications to suit a particular company which was likely to gain huge monetary profits

while making competitive bids.

18. The Petitioner submits that notwithstanding the retirement of the Petitioner, the issue of *mala fides* still need to be determined and the Petitioner is still being continuously victimized. To substantiate, he has stated that vide applications for LAP dated 13.03.2014 and 20.04.2014, he had applied for leave on the ground of sickness of his wife. It was only after two months that he received a reply declining the same and directing the Petitioner to join his post in Guwahati.

19. The Petitioner submits that he had over 455 days of unutilized LAP when he retired but the Respondent No. 1 decided to treat the period of absence of the Petitioner as Leave on Half Average Pay (LHAP), vide its Order dated 27.04.2016.

20. Placing reliance on the case of *Somesh Tiwari v. Union of India*, (2009) 2 SCC 592, the Petitioner has submitted that even if there is no stay on the transfer orders of an employee, and he doesn't join his new posting, if it is shown that the transfer was not made while exercising powers in a *bona fide* manner, the principle of no work no pay would not apply and the Petitioner cannot be penalized for the fault of a transferring authority.

21. The Petitioner submits that he is being continuously victimized by the Respondents as his Death Cum Retirement Gratuity (“DCRG”) of about Rs.20,00,000/- has not been paid. Though an amount of Rs. 9,21,000/- of the said arrears due to the Petitioner were received on 13.05.2022 and 17.05.2022 (six years after superannuation), the same was released without interest. Further, Rs. 8,74,756/- has been deducted as penal rent from him for a time period of 30 months whilst he occupied a government house in

Delhi.

22. The Petitioner submits that out of the said period, penal rent could not have been recovered from him for a period of 8 months on the ground of sickness of his wife and further, for the period of 30.05.2015 – 30.05.2016, the time period when he was serving in Guwahati. The Petitioner has placed reliance on Master Circular number 49 on '*Allotment of Quarters and Retention Thereof On Transfers, etc.*' of Ministry of Railways.

23. It is submitted by the Petitioner that the Impugned Order is erroneous as the Ld. CAT, while dismissing the O.A. had directed the Respondents to conduct an in-depth inquiry into the allegations made by the Petitioner herein. It was submitted that by entrusting the inquiry to the Respondents, they had asked them to be a judge in their own cause. Further, that even till date, no inquiry seems to have been conducted.

24. The Petitioner has further contended that the Respondents had come up with a false narrative before the Ld. CAT on the basis of which the Impugned Order has been passed. It was submitted that the Impugned Order records proposal to initiate the transfer of the Petitioner was done so only on 30.10.2013 but the same was in fact initiated sometime after 05.11.2013. Further, the Ld. CAT failed to take cognizance of the letters dated 18.11.2013 and 05.10.2013 whereby the Petitioner had asked the Divisions to stop the payments of the chlorination contractors till it is certified by the concerned divisional officer that the plants are functioning properly and instructions issued by the headquarter office regarding operation and maintenance of the chlorination plants are being followed. It was submitted that the Petitioner had taken direct action against M/s Deioners Speciality

Chemicals (P) Ltd. on 05.10.2013, almost a month before the proposal for his transfer was initiated and had also issued various administrative changes several months earlier, which, according to him, led to exposure of malpractices and a feeling of insecurity among concerned stakeholders.

25. The Petitioner has further contended that the view of the Respondents that there is nothing wrong with the quality of water or the performance of chlorination contracts by contractors is in contrast to their earlier views wherein they have concurred with the Petitioner that inspections have revealed serious irregularities. The same can be seen from minutes of meeting held at headquarters on 28.01.2014.

26. The Petitioner has further contended that he was relieved of charge by sparing just as investigations into malpractices was nearing to a close, when the Petitioner reached office on 28.02.2014 he found his office chambers locked and was informed that he stood relieved to carry out his transfer to the North East Frontier Railways. Further, that he was not permitted to enter his office chamber.

27. The Petitioner has further contended that the Relieving Order must have also been issued with the approval of Respondent No. 3 as per paragraph 233 of the Indian Railways Establishment Code Vol. I and the same vitiates the relieving of the Petitioner.

28. On the other hand, it is the contention of the Respondents that the case of the Petitioner is based on false premises and that he has made a deliberate attempt to suppress facts, and mislead this Court. Further, that since the Petitioner has superannuated, this fact itself is sufficient for the dismissal of this instant Writ Petition as it has become infructuous. It is submitted that

the Petitioner has not come with clean hands to this Court.

29. The Respondents have further submitted that the Petitioner had worked in Northern Railways for over 10 years and at the time of the relevant transfer orders being issued he was posted in New Delhi. It was only due to public interest and administrative exigency that his transfer orders were issued, to transfer him to Northeast Frontier Railways in compliance of Railway Board's letter No. E(O)III - 2OL3/TR/442 dated 31.12.13, reiterated vide office Notice dated 26.02.2014 (S.NO -125).

30. The Respondents have further submitted that the Ld. CAT passed a detailed speaking Order dated 22.08.2014 in O.A. No. 1158/ 2014, vide which it refused to interfere with the transfer orders of the Petitioner. It is submitted that vide the Impugned Order, it was directed that the Respondent shall also set up a committee for an in-depth inquiry to be conducted, as per the directions of the Ld. CAT. It is submitted that the Petitioner, instead of complying with the transfer orders, decided to file this instant Writ Petition challenging the Impugned Order, and has subsequently superannuated on 31.05.2016. It is submitted that the amount due to the Petitioner in terms of gratuity, amounting to Rs. 9,21,000/-, has been released in his favour vide CO6No.050109220000179 dated 13.05.2022 and CO7 No.05010922700036 dated 17.05.2022. Further, that no other dues accrue to the Petitioner after his retirement from the Respondent.

31. The Respondents have further submitted that the Petitioner is a 'Group A' officer and has All India Transfer Liability. Hence, he cannot be pleading to be retained in a post of his choice. The transfer orders were made by the relevant competent authority at the Railway Board, New Delhi,

and the attempt made by the Petitioner to impute the same on Respondent No. 3 shows a *mala fide* intention on the Petitioner's part as he really does not have any legitimate grounds to challenge his transfer.

32. The Respondents have further submitted that the allegations of the Petitioner that the transfer was not made in public interest, but to serve the interests of a certain interested contractor is wrong and unsubstantiated. Further, that the same has been made without any proof. In the normal working tenure of any officer there may be many instances where there may be difference of opinion but that by itself cannot be a ground that the officer becomes entitled to a choice posting New Delhi.

33. The Respondents have submitted that the Petitioner is a habitual litigant and had issues with multiple Railway Officers. Further, that prior cases filed by the Petitioner were also motivated by his transfer and has nothing to do with his so-called title within the railways as a 'whistle blower'. It is submitted that this litigation had been pursued by the Petitioner to safeguard his own personal interest and stay in Delhi.

34. The Respondent placed reliance on the operative part of the Impugned Order to substantiate that the Ld. CAT has already directed an in-depth inquiry on the subject matters of this instant dispute and pursuant to that, a committee has also been nominated. It was submitted that the improvement in quality of drinking water is a perpetual process, for which, the Respondents had posted a suitable officer against the post vacated by the Petitioner at the time and that the same does not concern his transfer. It was submitted that proper handing over of files subsequent to vacation of the post of the Petitioner at the time had also taken place.

35. This Court has heard the arguments on behalf of the parties and perused the documents placed before it with a fine lens. Needless to say, this Petition has become infructuous and the primary issues raised by the Petitioner regarding his transfer orders do not survive. The same was even held by this Court vide Orders dated 27.04.2017 and 02.12.2015. However, upon insistence of the Petitioner that his transfer orders were issued in a *mala fide* manner, this Court took it upon itself to look into the same and directed the Petitioner to confine its submissions on this aspect.

36. After a careful perusal of the submissions of the parties and documents on record, by no stretch of imagination can it be said that the Petitioner's transfer orders were hit by any *mala fide* act of the Respondents. The Petitioner has clearly failed to establish, beyond any doubt, the heavy burden laid upon him for establishing that his transfer orders were issued in a *mala fide* manner.

37. The Petitioner has laid claim to multiple efforts made by him improving the supply of drinking water in the railways while he was in service, alleging that there were several irregularities in the treatment of drinking water and chlorination plants used to treat the water. He has further laid emphasis on withholding of gratuity, certain monies taken as ways of penal rent for occupying a government house, denial of leave, and the manner of his transfer. It was his case that due to vested interests of multiple parties and for the fact that his efforts would have led to the exposure of grave irregularities in the system, he was transferred. However, by the documents on record, the Petitioner has in no manner been able to establish or prove any clear-cut nexus between his attempts to improve the quality of water in

the railways, and his transfer orders being issued with a motive to scuttle his efforts, i.e., being issued with an extraneous consideration or outside permissible limits. It cannot be stated that the Respondents had any malus animus or hostility towards the Petitioner.

38. It is also not in any dispute that the Petitioner had been posted in Delhi for the past 10 years and was a 'Group A Officer'. Such officers do in fact have an All India Transfer Liability and his transfer orders were issued within the power of the relevant authority.

39. The Ld. CAT had also dismissed the Application of the Petitioner vide the Impugned Order. The relevant part of the Order of Ld. CAT dismissing O.A. No. 1158 of 2014 vide Impugned Order has been reproduced below:—

“7. As has been noticed hereinabove, in the present case, despite specific query, Mr. Ajit Singh, learned counsel for the applicant could not point out any complaint made by the applicant regarding the quality or efficiency of service of the Contractor prior to 30.10.2012. In such circumstances, it is not possible for us to take a view that the transfer of the applicant is consequence of pointing out irregularity of the aforementioned Companies. Though, during the course of hearing, the learned counsel for the applicant tried to point out that the wife of the applicant is unwell and is taking treatment from Central Railway Hospital, but the applicant who was present in person took a definite stand that he is not interested in serving at Delhi and is prepared to perform his duty in any part of the Country and what is needed in the present OA is that justice should be done. However, when he was asked to explain the reasons for not joining at the place of posting even after six months, he could again put forth the ailment of his wife as a ground for not doing so. Though the efforts made by the applicant in making suggestions to improve the quality of water

supplied in Northern Railway may deserve appreciation, but at the same time, in the absence of any stay of the order of his transfer, his conduct of non-joining at the place of his posting would scuttle all his claims and concern towards the public service. Having joined the applicant in his concern regarding the quality of water supply and in taking the stand against the Contractors given responsibility to do the chlorination/ treatment of the water, the respondents have shown their bonafide in the matter. Learned counsel for the applicant also submitted that the respondents could not have transferred the applicant within three years. It is seen that out of 18 IRSE officers in NR as on 26.02.14, the applicant has the longest stay. For easy reference, the chart produced by the respondents in this regard is reproduced hereinbelow:—

SN	DESIG	DIVN	GR	P/W INCUMBENT	Wkg on N. Rly. since
1	CE/TMC	HQ	SAG	Pt P.K. SANGHI	23.08.13
2.	CE/G	HQ	SAG	Pt RAJESH AGARWAL	04.07.13
3.	CE/TMS	HQ	SAG	PT B.P. AWASTHI	00.06.05
4.	CBE	HQ	SAG	Pt N.K. SINHA	15.06.11
5.	CE/TSP	HQ	SAG	Pt. R.K. JHA	26.06.06
6.	CE/P&D	HQ	SAG	Pt. S.K. RAINA	22.08.12
7.	CE/HQ	HQ	SAG	Pt. A.K. VERMA	00.04.04
8.	CTE	HQ	SAG	Pt. RAKESH KUMAR GOYAL	16.01.14
9.	CE/RC	HQ	SAG	Pt NARINDER KUMAR	08.03.11
10.	CE/MRTS	HQ	SAG	W.P.K. AGGARWAL	04.02.13
11.	CE/C/CENTRAL	KG	SAG	W MANOJ SHARMA	11.06.10
12.	CE/C/JAT	JAT	SAG	W.B.B.S. TOMAR	16.01.14
13.	CE/C/NW	KG	SAG	W.M.K. GUPTA	28.03.12
14.	CE/C/Spl.	KG	SAG	Pt S.C. JAIN	00.03.09
15.	CE/CII/JAT	JAT	SAG	W SANDEEP GUPTA	14.02.12
16.	CE/C/E	KG	SAG	W LALIT KAPUR	22.08.12
17.	CE/C/NC	KG	SAG	W MAHIPAL SINGH	23.07.10
18.	CE/C/SURVEY	KG	SAG	W VIJAY PRATAP SINGH	29.02.12
	TRG/LEAVE			J.S. SONDHI	13.03.13
	LEAVE			VISHWAISH CHAUBEY	00.05.12

Thus, the plea of secured tenure of three years is not available to applicant, as a ground to interfere with the order of transfer. As far as the malafide alleged against Shri V.K. Gupta is concerned, we do not find any document on record to show his involvement in the transfer of the applicant. The transfer of the applicant is ordered at the level of Railway Board. Besides, as has been ruled by Hon'ble Supreme Court in a catena of cases,

the transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has any legal right for being posted at any particular place. Having followed said judgments of Hon'ble Supreme Court, this Tribunal declined to interfere with the transfer of applicant in OA No. 1043/2012. Relevant excerpts of the order dated 4.09.2012 passed in said OA read as under:—

“In Public Services Tribunal Bar Association v. State of U.P. (2003 (3) SLJ 14), Hon'ble Supreme Court ruled that transfer is an incident of service and is made in administrative exigencies. Normally, it is not to be interfered with by the Court, except in rare cases where the transfer has been made in a vindictive manner. Para 38 of the judgment read as under:—

“38. Transfer is an incident of service and is made in administrative exigencies. Normally, it is not to be interfered with by the Courts. This Court consistently has been taken a view that orders of transfer should not be interfered with except in rare cases here the transfer has been made in a vindictive manner”.

In Sujata Kohli v. High Court of Delhi (148 (2008) DLT 17 (DB), Hon'ble Delhi High Court reiterated the aforementioned view taken by Hon'ble Supreme Court, in the following words:—

“12. It is not in dispute that transfer is an incidence of service and the High Court, which has the superintending control over the subordinate judiciary, is empowered to decide about the posting, transfer, promotion etc. of the judicial officers belonging to the subordinate judiciary. Law in the matter of transfers is also well settled by catena of judgments of the Apex Court. Instead of taking note of all these judgments, it would be sufficient to refer to two decisions of the Apex Court wherein the Court considered its earlier decisions. First case, note whereof we take, is

Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey AIR 2004 SC 4850, wherein the Court reiterated the principle of law in the following terms:

“Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by malafide or infraction of any prescribed norms of principles governing the transfer (see Ambani Kanta Ray v. State of Orissa 1995 Supp (4) SCC 169). Unless the order of transfer is visited by malafide or is made in violation of operative guidelines, the Court cannot interfere with it (see Union of India v. S.L. Abbas. Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by malafide or is made in violation of operative any guidelines or rules the courts should not ordinarily interfere with it. In Union of India v. Janardan Debanath it was observed as follows:

“No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions

prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan”.

In Union of India v. N.P. Thomas (AIR 1993 SC 1605) also it is viewed that an employee holding a transferable post has no vested right to remain posted at a particular place as a matter of right. In Gujarat Electricity Board v. Atmaram Sungomal Poshani (AIR 1989 SC 1433) it was held thus:—

“4. Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make

representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other”.

In Shanti Kumari v. Regional Deputy Director, Health Services, Patna Division, Patna (1981) 2 SCC 72), it was ruled that the transfer of a Government servant may be due to exigencies of service or due to administrative reasons, the Courts cannot interfere in such matters. 6. Considering the aforementioned view taken by Hon'ble Supreme Court and Hon'ble Delhi High Court, it is reiterated that the transfer is an incident of service and the applicant has no legally enforceable right to remain posted at any particular place.

7. The question whether the order of transfer passed during contemplation/pendency disciplinary action/complaint can be termed

as punitive or not is no longer res integra. In Somesh Tiwari v. Union of India ((2009) 2 SCC 592), it has been held that when an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal. However very recently in Registrar General, High Court of Judicature of Madras v. R. Perachi (2011) 12 SCC 137)), Hon'ble Supreme Court viewed that when a complaint against the integrity of an employee is being investigated, very often he is transferred outside the concerned unit. It is desirable from the point of view of the administration as well as that of the employee. Relevant excerpt of the said judgment read as under:—

“As seen above, the transfer was purely on the administrative ground in view of the pending complaint and departmental enquiry against first respondent. When a complaint against the integrity of an employee is being investigated, very often he is transferred outside the concerned unit. That is desirable from the point of view of the administration as well as that of the employee. The complaint with respect to the first respondent was that he was dominating the administration of the District Judiciary, and the District Judge had reported that his retention in the district was undesirable, and also that departmental enquiries were pending against him and other employees, with respect to their integrity. In the circumstances the

decision of the then Chief Justice to transfer him outside that district could not be faulted”.

From the aforementioned, it is apparent that an order of transfer cannot be based on the allegation in complaint or charge sheet in a departmental enquiry, but during pendency of such enquiry, independent of allegation enquired into, an employee can be posted out. Thus the order of transfer of applicant cannot be held punitive merely on the ground that the same is passed at a point of time when he is facing disciplinary action. As has been held by the Hon'ble Supreme Court in the case of Registrar General, High Court of Judicature at Madras v. R. Perachi (AIR 2012 SC 232), transfer during pendency of disciplinary action is desirable. Such view is also envisaged as guiding principle for such suspension wherein it is laid down that while placing an employee under suspension the competent authority should consider whether the purpose cannot be served by transferring the official from his post to a post where he may not repeat the misconduct or influence the investigation, if any, in progress. Such guiding principles published in Chapter 2 of CCS (CCA) Rules published in Swamy's Compilation read as under:—

Guiding principles

1. While public interest is to be the guiding factor in deciding to place a Government servant under suspension, the competent authority should take all factors into account and exercise his discretion with due care while taking such action even when the matter is under investigation and before a prima facie is established. The following circumstances may be considered appropriate to place a Government servant under

suspension:—

Where his continuance in office will prejudice investigation, trial or any enquiry (e.g., apprehended tampering with witnesses or documents);

Where his continuance in office is likely to seriously subvert discipline in the office in which he is working;

Where his continuance in office will be against the wider public interest, e.g., if there is a public scandal and it is considered necessary to place

The Government servant under suspension to demonstrate the policy of the Government to deal with officers involved in such scandals, particularly corruption;

Where a preliminary enquiry revealed a prima facie case justifying criminal or departmental proceedings, which are likely to lead to his conviction and/or dismissal, removal or compulsory retirement from service; and

Where he is suspected to have engaged himself in activities prejudicial to the interest of the security of the State.

2. Certain types of misdemeanour where suspension may be desirable in the circumstances mentioned above are indicated below:

An offence or conduct involving moral turpitude;

Corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gain;

Serious negligence and dereliction of duty resulting in considerable loss to Government;

Desertion of duty; and

Refusal or deliberate failure to carry out written orders of superior officers.

In case of types (iii), (iv) and (v), discretion should be exercised with care. As suspension may cause lasting damage to the Government servant's reputation even if he is exonerated or is ultimately found guilty of only a minor misconduct, the discretion vested in the competent authority in this regard should be exercised with care and caution after taking all factors into account.

3. While placing an official under suspension the competent

authority should consider whether the purpose cannot be served by transferring the official from his post to a post where he may not repeat the misconduct or influence the investigation, if any, in progress. If the official would like to leave that might be due to him and if the competent authority thinks that such a step would not be inappropriate, there should be no objection to leave being granted instead of suspending him”.

In the circumstances it is held that the transfer of the applicant during contemplation/pendency of disciplinary action cannot be called punitive but may be considered as desirable.

x x x x x x x x x

11. In view of the aforementioned, the interference with the impugned orders is declined. Nevertheless, the respondents are directed to conduct in-depth enquiry into the allegation made by the Applicant that his transfer is the result of the efforts made by him to improve the quality of water in Northern Railway which adversely affected the interest of M/s Mercury (International) Pvt. Ltd or M/s Deioners Speciality Chemicals (Pvt.) Ltd. If in such enquiry, it is found that his transfer is consequence of the concern shown by him to improve the quality of work in the Northern Railway, which proved adverse to the interest of the aforementioned companies, the applicant would be brought back to his present place of posting. The respondents would ensure that any action brought by the two contractors against this applicant for the steps taken by him in discharge of his official duty and in public interest to improve the quality of water is defended by the Railway Administration. In case, the applicant has any personal problem such as ailment of his wife and all, after joining at the place of transfer, he may make a representation to the respondents espousing the same. The representation, if made would be examined by the respondents objectively. The Original Application stands disposed of. No cost.”

40. The Ld. CAT arrived at the above finding after referring to a catena of judgements, considering the submissions of the parties at length, and perusing all the documents placed before it. We are also in agreement with the decision of the Ld. CAT in dismissing the O.A. filed by the Petitioner

herein. From the Impugned Order, it is further seen that the Petitioner had the longest stay out of 18 IRSE officers in NR, as on 26.02.2014.

41. As has been stated above, the threshold for establishing that an Order has been issued in a *mala fide* manner in matters of service, employment and transfers, is very high. The burden to prove the same rests on the person alleging it. The position of law, with regards to issues of policy and transfers is also very clear. The Courts are slow to interfere in such matters and it is not in the Court's province to embark into far-flung inquiries about acts of the Respondent regarding the quality of water in the railways. In this case especially, the scope of the inquiry before this Court is limited to the grounds of *mala fide* which have been raised by the Petitioner. The Courts are slow to draw vague inferences from facts placed before it by a party, especially when upholding such allegations would have grave consequences. People exercising positions of power are often constrained to take actions which could adversely affect others, but these are usually necessary for executive action. If imputations against an officer holding a high office is proved on mere dubious inferences, or allegations made by a person without substantiating the same through relevant documentation/ proof, it would make the functioning of this democracy rather difficult.

42. The Petitioner has also *inter alia* raised multiple issues regarding his leave being treated as LHAP and penal rent being recovered from him. These, in our opinion are in no manner concerned with the instant dispute and do not show an iota of proof towards *mala fide* on the part of the Respondents in issuing the Petitioner's transfer orders.

43. For the sake of argument, even if it is found that the transfer orders

are perverse or illegal, even then the Petitioner would not pass the threshold required for establishing that these were issued *mala fide*. Reliance can be placed on the Judgement of the Hon'ble Supreme Court in *Flipkart India* (supra).

44. In light of the aforesaid, we find no merit in the instant Petition, the same is dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

NOVEMBER 23, 2022

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