

**WPCT 3 of 2023
with
CAN 1 of 2023**

21.08.23
Ct-11
Sl-22
(S.R.)

**Dr. Prakash Chandra Hazra @ Dr. P.C. Hazra
v.
Union of India & Ors.**

Mr. Subir Sanyal
Mr. Bikram Banerjee
Mr. Sudipta Dasgupta
Ms. Sunitra Das
Ms. Dipa Acharyya
Ms. S. Ghosh ... for the petitioner.

Mr. Ashok Kumar Chakraborty, ASG
Mr. Partha Ghosh
Mr. Madhu Jana ... for the UOI.

The present writ petition has been preferred challenging an order dated 2nd January, 2023 passed by the learned Tribunal in an original application being OA No.350/1005/2020.

Shorn of unnecessary details, the facts are that the applicant/writ petitioner herein was posted as Senior Chief Medical Officer (SAG) in the office of the respondent no.4. On 8th May, 2020, a Deputy Director in the Enforcement Directorate (in short, ED), namely, Mohsina Tabassum preferred an *online* application for CGHS card. The petitioner, being the CGHS card issuing authority, considered the said application and expressed his inability to issue the same. On 18th May, 2020, the writ petitioner was served a summons dated 14th May, 2020 issued by the Assistant Director (ED) asking him to be

present on 19th May, 2020 with details of movable and immovable assets and the bank details held in his name and in the names his family members together with the income returns for the last 3 years. In reply, the petitioner submitted a representation on 18th May, 2020, *inter alia*, praying for six weeks time for personal appearance in view of the prevailing pandemic situation. Subsequent thereto, the petitioner attended the office of the Special Director (ED) on 4th June, 2020 and submitted the requisite documents. Thereafter, on 22nd July, 2020 the said Deputy Director issued a letter to the respondent no.3 stating, *inter alia*, that investigation was in progress in a case under the Prevention of Money Laundering Act, 2002 (in short, PMLA Act) against one Snehasish Kar, UDC, CGHS, Kolkata and that it was learnt that Sri. Kar was having close contact with the petitioner and the petitioner was also trying to influence the case. By the said letter, the respondent no.3 was also requested '*to consider transferring him out of West Bengal to any other State*'. Thereafter, by a memo dated 9th October, 2020, the petitioner was transferred from CGHS Kolkata to CGHS Agartala. Challenging the said order of transfer, the petitioner preferred the original application being OA No.350/1005/2020 in which an interim order was passed on 21st October, 2020 directing, *inter alia*, that the competent authority shall review the order of transfer within a period of four weeks and in the meanwhile, the

petitioner shall not be compelled to comply with the said transfer order and should be allowed to perform his current duties in Kolkata. Pursuant to the said order, the petitioner was informed by a memo dated 20th November, 2020 that *‘the case has been reconsidered by Competent Authority and it has been decided that as the transfer of Dr. P.C. Hazra, CMO (SAG), CGHS Kolkata was in “Public Interest”, therefore, there may be no change in the earlier issued transfer Order No. C.18013 / 1 / 2019- CGHS.II / CGHS-I dated 09.10.2020.’* Subsequent thereto, the respondents filed an application for vacating the interim order dated 21st October, 2020 and by an order dated 28th November, 2020 the same was disposed of as infructuous. The petitioner also filed a miscellaneous application challenging the order dated 20th November, 2020 and by an order dated 7th December, 2022, the same was posted for hearing on 25th January, 2023. In the midst thereof, by an order dated 13th December, 2022 the petitioner was released. The transferred place was also filled up by appointing another employee for a period of one year with effect from 28th November, 2022. The petitioner challenged the release order by a miscellaneous application. By the order impugned in the present writ petition, the original application was dismissed and the miscellaneous application was disposed of.

Records reveal that a coordinate bench of this Court on 24th February, 2023 passed an interim order staying

the order of transfer and the release order issued by the respondents for a period of four weeks. The said interim order was extended from time to time and the same is subsisting till date.

Mr. Sanyal, learned advocate appearing for the petitioner has criticized the judgement on the ground that the learned Tribunal has rejected the petitioner's prayer for setting aside the order of transfer dated 9th October, 2020 without taking into consideration the fact that the sole reason towards issuance of the order of transfer was the direction issued by the Deputy Director, ED, as contained in the representation dated 22nd July, 2020. The order of transfer was not issued due to any public interest or any administrative exigency. Being oblivious of such circumstances, the learned Tribunal rejected the petitioner's prayer merely paraphrasing some judgments of the Hon'ble Supreme Court and without applying the law correctly to the facts of the case.

He argues that the learned Tribunal erred in law in refusing to lift the veil and to ascertain the actual reason towards issuance of the order of transfer. The order of transfer attracts the principle of malice as it was based on the direction the Deputy Director of ED, whose application for CGHS card was refused by the petitioner. The said order was thus an outcome of the revengeful attitude of the Deputy Director (ED).

Drawing our attention to the averments made in

paragraph 6.3 of the reply filed by the respondents, Mr. Sanyal submits that the respondents themselves have admitted that *'the transfer order of the Applicant was issued on the recommendation of the transfer committee on the basis of letter of Office of the Special Director Eastern Region Enforcement Director arising out of investigation under Prevention and Money Laundering Act 2002'*. However, in the very next paragraph no. 6.4, the respondents took a different stand stating that the letter from the ED had no relevance with the case.

Mr. Sanyal also points out that the proceeding under PMLA Act was initiated against one Snehasish Kar and he was suspended by the competent authority, as would be explicit from the document annexed at page 48 of the writ petition. He informs us that the said order of suspension has already revoked but the petitioner has been penalized and the respondents have refused to revoke the petitioner's order of transfer even after re-examination of the same. The respondents have sought to disguise their *mala fide* act in a cloak of legality. In support of such argument reliance has been placed upon the judgments delivered in the cases of *Chandra Prakash Shahi v. State of U.P. & Ors.*, reported in (2000) 5 SCC 152, *Basanta Kumar Roy v. IDBI Bank Limited & Ors.*, reported in 2009 SCC OnLine Cal 2709 and *Punjab and Sind Bank & Ors. v. Durgesh Kumar*, reported in (2020) 19 SCC 46.

Per contra, Mr. Chakraborty, the learned Additional Solicitor General appearing for the respondents argues that the scope of judicial review in a matter where the learned Tribunal upon considering the fact scenario had arrived at specific findings, is very narrow. This Court cannot act as appellate authority over the order passed by the learned Tribunal. The order does not suffer from any jurisdictional error or any manifest injustice warranting interference of this Court.

He submits that the order of transfer was reconsidered in terms of the interim direction of the learned Tribunal and the competent authority arrived at a finding that the order of transfer was issued in public interest, as would be explicit from the order dated 20th November, 2020. In view thereof, the petitioner is estopped from rearguing that the authorities have been influenced by the comments of the Deputy Director (ED).

He argues that the allegations levelled by the petitioner were primarily against the Deputy Director and the other ED authorities (ED) and as such they ought to have been impleaded in the original application. In their absence, the petitioner cannot establish the allegation of *mala fide*.

He further submits that the petitioner was liable to be transferred in a routine manner as he was in the same post for more than 20 years. He was transferred in public interest and that too on the basis of the recommendation

of the competent authority being the Transfer Committee. In view thereof, there is no infirmity in the order of transfer. In support of the arguments reliance has been placed upon a judgment delivered by the Hon'ble Supreme Court in the case of *Sk. Nausad Rahaman & Ors. v. Union of India & Ors.*, reported in *2022 LiveLaw (SC) 266*.

An order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where *inter alia mala fide* on the part of the authorities is proved. The facts reveal that admittedly the application for CGHS card of the Deputy Director (ED) was refused by the petitioner on 8th May, 2020. Within six days thereafter a summons was issued on 14th May, 2020. Within four days thereafter on 18th May, 2020, the petitioner submitted a representation praying for six weeks time to appear in view of the prevailing pandemic situation. Within eighteen days thereafter the petitioner met with the competent authority on 4th June, 2020 and submitted all the necessary papers. About forty-eight days thereafter, the Deputy Director, ED issued a memo dated 22nd July, 2020 requesting the respondent no.3 '*to consider transferring him out of West Bengal to any other State*'. The transfer order was thereafter issued on 9th October, 2020. From the said sequence of facts, it clearly appears that the order of transfer is inextricably bound with the refusal of

the Deputy Director's prayer for issuance of CGHS card by the petitioner. There is no dispute as regards the proposition of law as laid down in the judgment delivered in the case of *Sk. Nausad Rahaman & Ors. (Supra)*, upon which reliance has been placed by Mr. Chakrabarty, however, the said judgment is distinguishable on facts.

The arguments of Mr. Chakraborty that after issuance of the order of re-examination on 20th November, 2020, the petitioner could not have reargued that the authorities have acted on the basis of directions of the Deputy Director and that the petitioner had failed to establish the allegation of *mala fide* having not impleaded the ED authorities are not acceptable to this Court. The reason towards issuance of the order of transfer was supplemented upon re-examination by stating that the same was issued in 'public interest'. However, in paragraph 6.3 of the reply, the respondents themselves have admitted that the transfer order was issued on the basis of letter of office of the Special Director Eastern Region Enforcement Director. The respondents herein have acted in a *mala fide* manner by issuing the order of transfer not based on any factor germane for passing an order of transfer but based on an irrelevant ground i.e. on the basis of the direction issued by the Deputy Director, ED, as contained in the representation dated 22nd July, 2020.

In the said conspectus, the learned Tribunal erred

in law in observing that no material had been placed on record to establish any *mala fide* and that the transfer order had been issued as per administrative exigencies.

For the reasons discussed above, the order passed by the learned Tribunal on 2nd January, 2023 in the original application being O.A. No.350/1005/2020, the order of transfer dated 9th October, 2020 and the release order dated 13th December, 2022 are set aside and quashed. The application for vacating the interim order being CAN 1 of 2023 is, accordingly, dismissed and the writ petition being WPCT 3 of 2023 is disposed of.

We have been informed by the parties that in view of the interim order passed and extended from time to time, the petitioner is working in the post of Senior Medical Officer till date. However, Mr. Sanyal submits that he has not been paid the salaries for the months of January and February, 2023.

As we have set aside the order of the learned Tribunal as well as the order of transfer and the release order, we direct the respondents to disburse the arrear salaries, if any payable to the petitioner within a period of two weeks from date of communication of this order.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)

