

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-20184-2017 (O&M)
Date of Decision: 09.11.2023

BHARAT ELECTRONICS LIMITED

...Petitioner

Versus

THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-2,
HARYANA PRESS BUILDING, SECTOR 18/A, CHANDIGARH AND
ANR. ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Rajiv Atma Ram, Senior Advocate assisted by
Ms. Rahat Sekhon, Advocate
Mr. Pawan Kumar Mutneja, Senior Advocate assisted by
Ms. Suverna Mutneja, Advocate
Mr. Viranjeet Singh Mahal, Advocate
Mr. Abhishek Joon, Advocate
for the petitioner.

Mr. Ankit Chauhan, Advocate
for Mr. Aman Arora, Advocate
for respondent No.3.

HARSH BUNGER, J.

1. Petitioner (Bharat Electronics Limited) has filed the instant writ petition under Article 226 of the Constitution of India, seeking quashing of Award dated 03.07.2017 (published on 21.08.2017) (Annexure P-20) passed by the Central Government Industrial Tribunal-cum-Labour Court-2, Chandigarh (here-in-after referred to as 'the Tribunal'); whereby the reference was accepted and the action of the management in transferring 15 workmen from Panchkula to other Units was held not to be fair, correct and legal.

2. Briefly, the petitioner herein (Bharat Electronics Limited) (here-in-after referred to as 'the BEL'), is a Government of India enterprise

under the Ministry of Defence with its Head Office at Bangalore and have nine manufacturing units spread all over the country, including one unit at Panchkula. The basic purpose of the petitioner-enterprise is to meet the emerging strategic needs of defence forces and is engaged in design, development, manufacture and supply of equipment and systems in the area of communication, radar, fire control system etc.

3. It appears that the petitioner (BEL) issued a transfer order dated 26.06.2013; whereby 15 employees were transferred from Panchkula unit to other units at Ghaziabad, Chennai, Machlipatnam and Navi Mumbai. The details of the said employees are as under :-

<i>Sr. No.</i>	<i>Name, Staff No. (Sh./Smt.)</i>	<i>Designation</i>	<i>From</i>	<i>Transferred to</i>	<i>Report to</i>
1	Shamsher Singh NE-208989	Accountant	PK	CHN Unit	GM (CHN)
2	Naresh Sachdeva NE-206547	Sr. MM Asstt.	PK	GAD Unit	GM (RADAR)/GAD
3	Suresh Kumar NE-207163	Sr. Tech. Asstt.	PK	GAD Unit	GM (RADAR)/GAD
4	Roshan Lal NE-208136	Technical Asstt.	PK	GAD Unit	GM (RADAR)/GAD
5	Pawan Kumar NE-207958	Technical Asstt.	PK	GAD Unit	GM (RADAR)/GAD
6	Mukesh NE-208131	Technical Asstt.	PK	GAD Unit	GM (RADAR)/GAD
7	Balwan Singh NE-208448	Technical Asstt.	PK	GAD Unit	GM (RADAR)/GAD
8	Pawan Kumar NE-207706	Sr. Tech. Asstt.	PK	GAD Unit	GM (RADAR)/GAD
9	Rajinder Kumar NE-207692	Technical Asstt.	PK	GAD Unit	GM (RADAR)/GAD
10	Pawan Kumar NE-208116	Technical Asstt.	PK	MC Unit	GM (RADAR)/GAD
11	Jai Bhagwan NE-208114	Technical Asstt.	PK	GAD Unit	GM (RADAR)/GAD
12	Kuldeep Singh NE-207726	Project D'S Man	PK	CHN Unit	GM (RADAR)/GAD
13	Surinder Kumar NE-208137	Technical Asstt.	PK	GAD Unit	GM (RADAR)/GAD
14	Sunil Kumar Gupta NE-206887	Sr. Project D'S Man	PK	NAMU Unit	GM (RADAR)/GAD
15	Vijender Singh NE-207062	Sr. Tech. Asstt.	PK	GAD Unit	GM (RADAR)/GAD

4. The Bharat Electronics Workers' Union, Panchkula (respondent No.2, herein) raised an industrial dispute against the transfer orders,

alleging it to be unfair labour practice and an attempt to suppress the voice of the workers and spokesperson.

5. The Government of India, Ministry of Labour, vide an order dated 22.10.2013 referred the dispute for adjudication to the Labour Court at Chandigarh, by making the following reference :-

“...Whether the action of the management of Bharat Electronics Ltd., Panchkula in transferring 15 workmen as annexed from Panchkula Unit to other units without any transfer policy is just, fair and legal? If not, what relief the concerned workmen are entitled to?...”

6. The afore-said reference came to be challenged by the petitioner-management before this Court in **CWP No.111 of 2014**, which came to be dismissed vide order dated 09.01.2014. Thereafter, an intra-court appeal (LPA No.590 of 2014) was filed before this Court, which was partly allowed by the Division Bench of this Court on 16.09.2015 by holding that the reference as framed was contrary to the standing orders. Consequently, the reference order was thus set-aside with liberty to the appropriate government to take a fresh decision in accordance with law.

7. It appears that thereafter, the Government of India, through the Ministry of Labour made another reference on 01.02.2016, which reads as follows :-

“...Whether the action of the management of Bharat Electronics Limited, Panchkula in transferring 15 workmen as annexed from Panchkula Unit to other units is just, fair, correct and legal? If not, what relief these workmen are entitled to...”

8. Soon after the revised reference was made, the petitioner-organization relieved the transferees and directed them to join at their respective places of posting.

9. Respondent no.2-Union challenged the relieving orders before this Court in a Writ Petition i.e. **CWP No.25804 of 2015**; however, the same was dismissed by the learned Single Judge of this Court vide order dated 06.05.2016.

10. The above-said order dated 06.05.2016 passed in **CWP No.25804 of 2015** was further challenged before this Court by way of intra-court appeal (LPA No.840 of 2016), which was also dismissed on 18.05.2016 by holding as under :-

“[9] The issue as to whether or not the transfer of office-bearers of Workers’ Union amounts to ‘unfair labour practice’ is essentially a question of fact which can be effectively determined by the appropriate forum on consideration of evidence on record. It may not be prudent for a writ court to pre-empt the effect of a transfer order merely on the basis of allegations of ‘unfair labour practice.’ We are satisfied that the previous directions issued by this Court to keep the transfer orders in abeyance were for the interregnum only till the appropriate-Government could decide as to whether or not there existed a referable Industrial dispute. Once reference has been made, it is for the Industrial Tribunal-cum-Labour Court to pass appropriate orders for which the appellant is at liberty to approach.

[10] Since the appellant directly approached the writ Court against relieving orders, the learned Single Judge has rightly declined to interfere with the same following the settled principles governing the scope of interference in ‘transfer orders’ issued in administrative exigency and/or as in incidence of service. Further, there is nothing on record to hold that the officer-bearers of the appellant-Union are appointed against non-transferable posts.

[11] The learned Single Judge appears to be right in observing that the Workers-Union may not have any locus-standi to question the relieving order of an individual employee before the Writ Court though it may be competent to represent the collective interest of its workmen-members before an Industrial Tribunal-cum-Labour Court.

[12] Needless to say that the observations made by the learned Single Judge on the scope of interference in 'relieving orders' are in the context of exercise of writ jurisdiction and such observations in no manner would impinge upon the jurisdictional competence of the Industrial Tribunal-cum-Labour Court in deciding the reference in question on merits.

[13] The appeal thus stands dismissed, save the clarifications made above."

11. It appears that respondent No.2-Union filed a Special Leave to Appeal (C) No.24606/2016 against the order dated 18.05.2016 passed in LPA No.840 of 2016, which came to be disposed of by the Hon'ble Supreme Court of India vide order dated 29.08.2016, by observing as under :-

"5. We are informed that pursuant to the order passed by the High Court, a fresh Reference has been made to the Central Government Industrial Tribunal, Chandigarh on 01.02.2016 and the same is pending before the said Tribunal.

6. Mr. Sanjay Kapur, learned counsel appearing for respondent Nos.1 & 2 points out that during this period, 11 out of 15 workmen had already joined their new work place and only 4 are yet to join.

7. In the above factual matrix, we do not propose to go into the validity of the impugned order passed by the

High Court by which the High Court has declined to grant any stay of transfer.

8. *We direct the Central Government Industrial Tribunal, Chandigarh to dispose of the Reference and pass an award expeditiously and at any rate within a period of four months.*

9. *Till the Reference is answered, the status quo, as on today, with regard to the place of work of the remaining 4 workmen, shall be maintained.*

10. *We record the submission of the learned counsel appearing for both sides that the parties would co-operate with the Tribunal for the expeditious disposal of the Reference.*

11. *With the above observations, the appeal is disposed of.”*

12. Before the Industrial Tribunal, the respondent No.2-Union filed a claim statement for and on behalf of 15 workmen, who were transferred by the petitioner (BEL); wherein it was stated that since the inception of the Company, no workman had been transferred from one unit to another unit, except on willingness or by internal advertisement because every unit has its different set of service conditions in terms of certified standing orders. It was specifically stated that in the Panchkula unit, since its inception till 26.06.2013, no transfer took place without taking willingness of the employees, as per the prevailing practice. It was stated that all of a sudden and to the surprise of the workmen, the management of petitioner (BEL) passed a transfer order dated 26.06.2013, ordering inter unit transfer of 15 non-executive employees from Panchkula unit to various other units. Against the said transfers, the respondent No.2-Union submitted a representation to the management, indicating that in the history of BEL, such a large scale of transfers have been ordered for the first time, without

there being any transfer policy for workmen. It was mentioned in the claim statement that 11 workmen out of 15 transferred workmen had joined at their respective transferred place conditionally subject to the orders to be passed on their rights over the transfer order. It was also mentioned that the Hon'ble Supreme Court vide its order dated 29.08.2016 had clarified that till the time the reference is decided, *status quo* (as on that day) with regard to the place of work of the remaining four workmen shall be maintained. Accordingly, it was mentioned that although, the management filed an application seeking clarification/modification of para No.9 of the order dated 29.08.2016 passed by the Hon'ble Supreme Court, with a further prayer to issue a direction to the remaining four workmen to join at their transferred place of work; however, the said application was withdrawn on 21.10.2016. It was stated that despite the request of the Union to the management to allow the four workmen to work at Panchkula unit, followed by a legal notice dated 25.10.2016, the management refused to accept the request of the Union/workmen.

13. In the statement of claim filed by respondent No.2-Union before the Tribunal below, it is their categorical case that in Panchkula unit, since its inception till 26.06.2013 and thereafter also, no transfer took place without taking willingness of the employees as per the prevailing practice. It is the stand of the Union that there is no inter unit transfer rules for transferring the non-executive employees whereas, there are well defined inter transfer rules and benefits in executive cadre like payment of HRA, medical benefits, out of pocket allowance, daily allowance, disturbance allowance etc.; whereas, no such benefits were available to the workmen as they are low paid as compared to the executives. The Union took a specific

stand that it was a regular practice of the company as well as in the Panchkula unit that when any post/vacancy is required in any unit, then the Head Office issues an internal circular, asking for willingness of employees of all the units for that relevant place and post and after receiving application/s from willing employees, interview is conducted and thereafter, the employees are selected and transferred to that place and post. Such internal advertisements issued by the corporate office of the petitioner were attached as Annexure W-26, collectively. It was stated that before passing the impugned transfer order dated 26.06.2013, the aforesaid practice of taking willingness from the employees was not followed by the petitioner organization. It is also the case of the Union that in fact, no vacancy had arisen in any of the units and the transfer order was arbitrary, un-reasoned and un-sustainable in the eyes of law. It was further claimed that there was no exigency in service in transferring 15 workmen and had there been any exigency during the period 26.06.2013 onwards, then the petitioner organization would have made alternate arrangements at the said units during the relevant period. It was claimed that the transfer order has been passed by way of colourable exercise of power and the transfer was arbitrary, punitive in nature on account of *mala fide* intention of the then Chairman-cum-Managing Director namely, Anil Kumar Lal (retired on 31.12.2013) and also based on pick and choose method in order to settle a score. In para No.9 of the claim statement, specific allegations were made against Sh. Anil Kumar Lal and it was stated that the transfers have been made with *mala fide* intention on account of the fact that the said transferred employees had taken part in Trade Union Activities and in order to settle the score, the said persons have been ordered to be posted at far

flung areas i.e. from Panchkula unit to Chennai, Ghaziabad, Machlipatnam and Navi Mumbai units. It was also mentioned that the transfer shall have adverse effect on the designation of 15 affected workmen and on their social security schemes available in the Panchkula unit.

14. In the claim statement, the Union had highlighted that the so-called “exigency of work” has been created by the management with *mala fide* intent by stating as under :-

“a) The workman Pawan Kumar figuring at Serial No.10 of the transfer order who was Vice President of the Union and is at present a Executive Member of the Union, is a Technical Assistant and has been transferred to Machhlipatnam (Andhra Pradesh). It is humbly submitted that the Machhlipatnam Unit has a workforce of around 350 and out of those, as many as 91 workmen are working on the same trade with same technical qualifications and same nature of duties. It is highly improbable that the workload is held up by those 91 workmen for want of one more workman.

b) More interesting is the case of Sh. Kuldeep Singh, who figures at serial No.12 of the transfer order. Said Kuldeep Singh is the main target of the management as he remained President of NTU and had raised objections against the wrongs of the then CMD (Sh. A.K. Lal). He is Draftsman by profession and has been transferred to Chennai Unit, where out of total 89 workmen, as many as 07 are Draftsmen and the alleged “exigency of work” has been created by requiring one more Draftsman.

c) Same is the case of Sh. Shamsher Singh who was General Secretary of the NTU, he belongs to Clerical Cadre and he has also been transferred to Chennai Unit where already a workforce of 10-15 clerical staff is working.

d) Sh. Sunil Kumar Gupta who figures at Serial No.14 of the transfer order, is also a Draftsman by profession. He has been transferred to Navi Mumbai Unit where out of 373 workmen (presently 343), 2 Draftsman is already working there.

e) The other 10 workmen figuring at Serial No.3 to 7, 9 to 11, 13 and 15 are Technical Assistants and have been transferred to Ghaziabad Unit where out of around 800 workforce (presently 700 workforce), as many as around 450 similar workmen are working.

f) Sh. Naresh Sachdeva figuring at Serial No.2 of the transfer order, is from clerical cadre and has been transferred to Ghaziabad unit where about 60 persons are working in clerical cadre.”

15. The issue regarding knowledge of local language was also raised by the transferred employees.

16. With the afore-mentioned pleas, it was prayed by respondent No.2-Union that the transfers are going to change the service conditions of the transferred employees and prayer was made for answering the reference in favour of the Union/workmen.

17. The afore-said claim of the Union/workmen was contested by the petitioner-management by submitting its written statement; wherein, it was *inter alia* stated that the condition of transfer is clearly mentioned in the certified standing orders of the Panchkula unit and also in the appointment letters of the transferred workmen. It was stated that the Union was estopped from challenging the transfers as on an earlier occasion, a settlement dated 19.05.2010 has been entered into between the parties under Section 12(3) of the Industrial Disputes Act, 1947; therefore, the same was binding on all the workers employed in the company. It was stated that Clause 1.3 of the settlement provided for re-deployment of man-power,

wherever required. It was further stated by the petitioner-management that a meeting of the Joint Standing Committee was held on 13.05.2013 at Bangalore wherein, the representatives of the Unions, including respondent No.2-Union herein, had participated and various issues were discussed, one of which was as under :-

“Panchkula Unit has not done well and profit margins are shrinking. Bharani RADAR has taken 2 years, the progress is not up to the mark and is yet to get bulk production clearance (BPC).

Considering the business requirements, transferring employees from PK unit to other units is necessary.

PK unit has done more IUST and transferring a product from one unit to another is not a solution. Employees will be transferred depending on the work requirement in other units. Recruitment is not an option. However manpower optimization should be done.”

18. It is the case of the petitioner-management that the transfer proposal dated 17.06.2013 was mooted, keeping in view the workload, order book position and need of optimization of manpower and deployment in various units and only thereafter, the transfer order dated 26.06.2013 was issued.

19. It was the case of the petitioner-management before the Tribunal below that the transfer is an incidence of service and does not amount to change in the conditions of service and the condition of transfer was specifically provided in the appointment letter, which reads as under :-

“6. Your duties will be allocated by the Management i.e. you should be prepared to serve in any position in any department of the Company and in any shift allotted to you from time to time subject to provisions of

Factory Legislations. You will be liable to serve in any part of India or abroad at the discretion of the Company and this liability will also include transfer to any site/Factory under the Management of BEL.”

20. Further, reliance was placed upon Clause 8 of the Certified Standing Orders of the Panchkula Unit, which reads as under :-

“8.0 TRANSFERS:

8.1 Depending on the exigencies of work, workman may be transferred from one shop/section/department to another within the Unit or from one Unit to another belonging to the Company or from one station to another. On such transfer, the workman’s seniority and normal emoluments applicable to him will not be affected. Where the transfer is to another Unit, the transferee will be governed by the service condition of that Unit.

8.1.1 A workman may also be transferred according to exigencies of work, from one job to another, which in the opinion of the Manager he is capable of doing.”

21. Accordingly, it was stated that the appointment letter, the certified standing orders as well as the settlement provided for transfer and therefore, the claim made by respondent No.2-Union was required to be dismissed.

22. After considering the material/evidence available on the record, the Tribunal below passed an Award dated 21.08.2017 (Annexure P-20); whereby, the reference was accepted and the action of the petitioner-management in transferring 15 workmen from Panchkula unit to other units was held not to be fair, correct and legal and it was further observed that the workmen are entitled to join at Panchkula unit.

23. In the afore-mentioned circumstances, the petitioner (BEL) has filed the instant writ petition before this Court.

24. I have heard learned counsel for the parties and have perused the paper book with their able assistance.

25. The Tribunal below, while passing the Award dated 21.08.2017 (Annexure P-20), has held as under :-

“38. Thus, this court is to find out whether the transfer of the workers amount to “unfair labour practice” or whether the same are just and fair. It is settled law that employer is the best judge to post an employee at the place which suits it and the Courts have limited power to substitute its own decision in place of the employer transferring the employee.

39. Now the question is whether the transfers are made as per the transfer policy as framed by the Company. Clause 8 of the Standing orders deals with the transfers and it reads as follows :

8.0 Transfers

8.1 “Depending on the exigencies of work, workman may be transferred from one shop/section/department to another within the Unit or from one Unit to another belonging to a company or from one station to another. On such transfer the workman seniority and normal emoluments applicable to him will not affected. Where the transfer is to another Unit, the transferee will be governed by the service conditions of that unit.

8.1.1 A workman may also be transferred according to exigencies of work, from one job to another, which in the opinion of the Manager he is capable of doing.

40. Clause 1.3.4 of the settlement (Annexure R3) arrived at between the Bharat Electronics Workers Union Panchkula and the management read as follows :

“To improve the utilization of existing manpower by re-deployment and retraining of workmen wherever required and also by undertaking multi-skills training.”

41. Thus, as per Clause 8.1 of the standing orders and Clause 1.3.4 of the settlement dated 19.5.2010 (Exhibit D4), the workmen can be transferred due to the “exigencies” of work and to improve the utilization of the existing manpower by re-deployment. Thus, when there is urgent need or demand in any Unit, an employee can be transferred from one unit to another and similarly if there is surplus manpower, the surplus persons can be transferred to another unit where they are so required. Thus, as per transfer policy as mentioned in the said standing orders, and in the settlement arrived at between the parties, the workman can be transferred due to ‘exigencies of work’ or to improve the utilization of existing manpower. Both these facts are not proved in the present case.

42. Sh. Rajesh Kumar, who appeared in the witness box in support of the case of the workman-Union, reiterated the case of the workmen as pleaded in the statement of claim, and deposed in para 37 of his affidavit as follows :-

The so-called “exigency of work” has been created by the Management with mala fide intention whereas in fact there no exigency of work. These facts would be clear from the following submissions:

a. ***The workman Pawan Kumar figuring at Serial No.10 of the transfer order who was Vice President of the Union (1999 to 2003) and was a Executive Member of the Union at the time of transfer order dated 26.06.2013, is a Technical Assistant and has been transferred to Machhlipatnam unit in Andhra Pradesh. It is humbly submitted that the Machhlipatnam Unit has a workforce of about 350 and out of those, as many as 91 workmen***

are working on the same trade with same technical qualification and same nature of duties. It is highly improbable that the workload is held up by those 91 workmen for want of one more workman.

b. More interesting is the case of Sh. Kuldeep Singh who figures at serial No.12 of the transfer order. Said Kuldeep Singh is the main target of the management as he remained President of NTU {1995 to 2006} and had raised objections against the wrongs of the AGM, Sh. Anil Kumar. He is a Draftsman by profession and has been thrown to Chennai Unit, deliberately where out of total 89 workmen, as many as 07 are Draftsmen.

c. Same is the case of Sh. Shamsheer Singh who was General Secretary of the NTU, he belongs to Clerical Cadre and he has also been transferred to Chennai Unit where already a workforce of 10-15 clerical staff is working.

d. Sh. Sunil Kumar who figures at Serial No.14 of the transfer order, is also a Draftsman by profession. He has been transferred to Novi Mambai Unit where out of 373 workmen (presently 343), presently 7 Draftsman is already working there.

e. The other 10 workmen figuring at Serial No.3 to 7, 9 to 11, 13 and 15 are Technical Assistants and have been transferred to Ghaziabad Unit where out of around 800 workforce (presently 700 workforce), many as around 450 similar workmen are working.

f. Sh. Naresh Sachdeva figuring at Serial No.2 of the transfer order is from clerical cadre and has been transferred to Ghaziabad Unit where about 60 persons are working in clerical cadre.

It is relevant to note that Panchkula Unit is having its own Development & Engineering Department having a full fledged Drawing office. Out of total workforce of around 350, there are only 3 Draftsmen and out of those

two have been transferred-one to Chennai and other to Novi Mumbai.

43. *His above noted statement is not challenged in cross-examination and it remains unrebutted on the file which prove that sufficient workforce was already working at Chennai, Ghaziabad, Machlipatnam and Navi Mumbai and there was no requirement of posting any more persons of the particular trade as were the transferred employees nor respective units sent any requisition to the Head Office asking for deploying more persons there having the qualifications and the experience of the present workmen. Thus, the transfer of the workmen to the respective places was not required at all. Meaning thereby, the management has totally failed to prove that there was an urgent need of the workmen transferred to different places as shown in (Annexure W2).*

Similarly, there is nothing on the file to suggest that there was surplus work force at the Panchkula Unit which required immediate need of the transfer of 15 workmen.

Thus, it cannot be said that the transfers are made due to “exigencies” of work or there was excess manpower in Panchkula Unit which necessitated the transfer of the 15 workmen from the Unit to different places and as such, the transfer policy made by the company itself is not followed in the present case.

44. *The learned counsel for the management carried me through the minutes of the meeting (Annexure R-4) held on 13.5.2013 attended by Rajesh Kumar, the representative of the workmen-Union and submitted that the Chairman-cum-Managing Director of the respondent management informed the persons present there that employees from the Panchkula Unit are to be transferred depending on the work requirement in other units and for optimization of the manpower. But the CMD was requested by the members of the Unit not to disturb the employees.*

Thus, the proposal was made to transfer the employees to which the members of the Union did not agree and the minutes of the meeting do not lay down any transfer policy and on its basis transfer cannot be effected which can only be done by following Clause 8 of the Standing Orders and Clause 1.3.4 of the Settlement entered into between the parties.

45. *It is pleaded in Para 2B and 2C of the statement of claim which reads as under :-*

2B. That since the inception of the company (1954) no workmen has been transferred from one unit to another unit except willingness or internal advertisement because every unit has its difference set of service condition in terms of certified standing orders in so many matters and particularly in inter unit transfer matter.

2C. That in the Panchkula Unit also since its inception in the year 1984, till 26.6.2013 no transfer took place without taking willingness of employees as per prevailing practice.

46. *Thus, it is a definite case of the workmen-Union that no workman was transferred from one Unit to another except by taking willingness or internal advertisement. This fact is not controverted by the management in the written statement as well as no question was put to Rajesh Kumar when he appeared in the witness box and reiterated the said averments. Rather the management has simply pleaded that it was a concession given to the employees, and thus, admit the Policy of taking willingness or internal advertisement was followed by the Company for transferring workmen from one Unit to other Unit. Sh. Devinder Kumar, witness of the management while appearing in the witness box has also admitted that the management was transferring workers after obtaining their consent. Thus, it was an established practice of the company to obtain consent of the workmen who are to be*

transferred. There is no dispute that no such rule exists of obtaining consent in the Standing Orders but this practice of obtaining consent has been followed since long and it is not clear why the departure has been made in the present transfers.

47. *When the respondent management was following a uniform policy of obtaining willingness of employees for transfer since the year 1954, it is not made out how the present 15 workers were transferred without obtaining their willingness or by any internal advertisement which further shows that the management has not followed its rules and policy in transferring the present workmen.*

48. *Thus, transfers have not been made as per Clause 8 of the Standing Orders and as per Clause 1.3.4 on settlement arrived at between the parties; and as per admitted practice of obtaining consent of the employees to be transferred and in the circumstances, it is to be held that transfer of the workmen to different places from Panchkula Unit under the guise of following transfer policy is an 'unfair labour practice', is not valid, fair and legal.*

49. *In result, the present reference is accepted and the action of the management in transferring 15 workmen as per Annexure W2 from Panchkula Unit to other Units is held not to be fair, correct and legal and the workmen are entitled to join at the Panchkula Unit. The 11 workmen who joined at different place in view of transfer order be retransferred to Panchkula Unit within one month from the publication of the award, and the four employees, who did not join at their respective place of transfer, be also allowed to join at Panchkula Unit within the same period."*

26. A perusal of the impugned award would manifest that the Tribunal below has spelled out cogent reasons for holding the order of

transfer to be not fair, correct and legal. The said reasons are based on evidence led before the Tribunal below.

27. Further, it has been held in ***B. Varadha Rao v. State of Karnataka (1986) 4 SCC 131*** that the principle, that continued posting at one station is not conducive to good administration, is not applicable to Class III and Class IV employees who stand on a different footing. Hon'ble the Apex Court observed as under:-

“6. One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It, therefore, follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the Government is not conducive to good administration. It creates vested interest and, therefore, we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of Class III and Class IV employees stand on a different footing. We trust that the Government will keep these considerations in view while making an order of transfer...”

28. Similarly, in ***State of Madhya Pradesh v. Shankar Lal, AIR 1980 Supreme Court 643*** it was observed that in case of employees getting small emoluments, the power of transfer is to be sparingly exercised, only under some compelling exigencies and not as a matter of course. It was

further observed that to such employees, transfer will cause tremendous problems and difficulties.

29. From the above referred judicial pronouncements, it is manifest that it is not proper to transfer a lowly paid employee to a distant place as this would result in economic death of such lowly paid employee. A lowly paid employee cannot be expected to maintain himself and his family at two places.

30. In the instant case, the learned counsel(s) for the petitioner (BEL) have not been able to dislodge the findings returned by the Tribunal below. It has also not been brought forth as to what was the compelling exigency/need for the services of the 15 transferred workmen at the place where they had been posted.

31. Furthermore, the peripheries of this court to exercise *Certiorari* jurisdiction stands authoritatively delineated in ***Syed Yakooob v. K. S. Radhakrishnan, AIR 1964 Supreme Court 477***, wherein Hon'ble Supreme Court held as under:

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or in properly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing

with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised. 8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of

law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or

contravened."

32. In view of the above discussion, I am of the considered view that the impugned Award does not call for any interference in exercise of writ jurisdiction by this Court. There is no merit in this petition and the same is accordingly dismissed and the Award passed by the Tribunal below is upheld.

33. The writ petition stands disposed of in afore-stated terms.

34. All pending applications (if any) shall stand closed.

November 09, 2023

gurpreet

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No