



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

% **Date of order : 26th July, 2023**

+ **W.P.(C) 10395/2020**

SANJEEV KUMAR KASHYAP Petitioner

Through: **Mr.Yogesh Dass, Ms.Anjali and
Ms.Latika Vashisht, Advocates**

versus

UNION OF INDIA AND OTHERS & ORS. Respondents

Through: **Mr.Tanveer Ahmed Ansari,
Sr.Panel Counsel for R-1 and 2
Ms.Nandini Sen, Advocate for R-3
(Through VC)**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226/227 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs: -

“a) Set aside the order/impugned action of rejection Dated 21/07/2020(Annexure P/-14) on the application of the petitioner for transfer from Khetri Copper Complex, Jhunjhunu, Rajasthan to Regional Sales Office, Delhi and direct the respondents to transfer the petitioner to Regional Sales Office, Delhi...

b) Any other order/relief which this Hon’ble Court may deem fit and proper in the peculiar facts and circumstances of the case be issued in favour of the petitioner, in the interest of justice.”

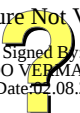


2. Learned Counsel appearing on behalf of the petitioner submitted that the present writ has been filed by the petitioner being aggrieved by the decision of CMD, Hindustan Copper Ltd. (hereinafter “HCL”), respondent No. 3. The respondent No. 3 vide its office order dated 21st July 2020, has rejected the representation dated 23rd April 2020, made by the petitioner for his transfer from Khetri Copper Complex, Jhunjhun, Rajasthan (hereinafter “KCC”) to the Delhi Regional Office.

3. It is submitted that the petitioner is specially-abled with 40% loco motor disability and he had joined the respondent No. 3 organization as Assistant Manager (HR) on 29th February 2016 under the Special Recruitment Drive for PWD-2016, and after a while, he was promoted to the post of Deputy Manager (HR).

4. Learned counsel for the petitioner submitted that the petitioner is a specially-abled person living alone in the state of Rajasthan. The petitioner’s hometown is in Delhi where all of his family members reside. The petitioner being disabled *interalia* other medical grounds, is unable to carry out his day-to-day routine work. Due to the said reasons, the petitioner has made various representations before different authorities for his transfer from the KCC to the Delhi Regional Office.

5. It is submitted that on 28th July, 2018, the petitioner submitted his representation before the Secretary, Ministry of Mines, Government of India for his transfer from KCC to the Delhi Regional Office. In response to his representation, the petitioner received a reply dated 3rd October 2018, from Dy. Manager (HR) HCL *vide* letter Ref. No. Estt/2/5883. In the said reply, the request for transfer of the petitioner was rejected with the remark ‘*No Additional Requirement*’. Respondent rejected the





representation of the petitioner on the ground that, at present, there is no additional requirement for any HR personnel at the Delhi Regional Office.

6. It is further submitted that while the request of the petitioner for transfer was rejected, during the same period, another employee namely Sh. Inder Raj, Deputy Manager (Administrative) was transferred *vide* order dated 10th December 2018. It is submitted that this act of the respondent No. 3 amounts to discrimination.

7. It is submitted that being aggrieved by the abovementioned rejection, the petitioner approached the respondent No. 2 through the Chief Commissioner of Persons with Disabilities under the relevant provisions of Right of Persons with Disabilities Act, 2016, on the ground of discrimination on the part of the respondent No. 2 as well as medical difficulties. Acting upon the petitioner's representation dated 26th December 2018, the learned Chief Commissioner of Persons with Disabilities passed an order dated 17th January 2020, directing the respondent organization to consider the transfer of the petitioner, and to further submit an action taken report within 90 days. The relevant portion of the order is reproduced below:

"10. The Court after hearing both the complainant and respondent recommends that the respondent may consider posting the complainant in their Delhi office if agreed to by the complainant and submit compliance report to this Court within 90 days of date of issuance of this Order."

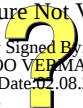
8. It is further submitted that the respondent failed to comply with the order dated 17th January 2020, of the learned Chief Commissioner of Persons with Disabilities. Subsequently, the petitioner again made a



representation dated 10th February 2020, in pursuance of the order dated 17th January 2020. In response to the said letter, the respondent No. 3 declined the request for transfer reiterating their earlier stand *inter alia* exigency of work and dearth of qualified HR personnel at KCC including that the HCL is not in a position to spare the petitioner from KCC and transfer him to Delhi Regional Office.

9. It is submitted that since the grievances of the petitioner remained unaddressed, the petitioner was left with no choice but to make yet another representation before the CMD, HCL. In the said representation letter dated 23rd April 2020, the petitioner had stated all the reasons for his transfer including his physical condition, current medical treatment, unfavourable infrastructure for persons with disabilities etc. It is further submitted that the said transfer request of the petitioner was wrongfully rejected *vide* letter dated 21st July 2020.

10. Learned counsel further submitted that vide office memorandums dated 10th May 1990 and 31st March 2014, guidelines have been issued for providing certain facilities in respect of persons with disabilities who are already employed in government for efficient performance of their duties. It is also submitted that the respondent No. 3 have grossly violated the guidelines prescribed under the abovestated office memorandums, wherein the preference in transfer of posting, should have been given to person with disabilities rather than a normal employee. It is further submitted that as per the said office memorandums, it has been mandated in para No. 1 and para No. 2, that persons who are physically handicapped may be given 'posting' near their native places within the region and the request from physically handicapped employees for





‘transfer’ to or near their native places, may also be given preference.

11. It is submitted that the petitioner has been subjected to discrimination as his eligibility for being transferred was not considered, instead Sh. Inder Raj, Deputy Manager (Administrative) was transferred. It is also submitted that the petitioner having 40% locomotive disability has been forced to work in an atmosphere which is hostile to the condition favourable to the petitioner.

12. In view of the foregoing paragraphs, the learned counsel for the petitioner submitted that the instant petition may be allowed by issuing the writ of certiorari against the respondents, thereby setting aside and quashing the order dated 21st July 2020 of the respondent No. 3.

13. *Per contra*, learned counsel appearing on behalf of the respondent No. 3 vehemently opposed the averments made by the petitioner and submitted that the present petition has been filed with the sole purpose of harassing the respondent and to coerce them to transfer the petitioner as per his desire. The present petition is nothing but an abuse of the process of law.

14. It is submitted that the head office of the respondent No. 3 is situated in Kolkata at 1, Ashutosh Chowdhury Avenue, Kolkata-700019, which decides on every appointment, placement, transfer etc. of its employees. Therefore, this Court lacks the territorial jurisdiction to entertain the present writ petition.

15. It is submitted that it is only due to the consideration given to the petitioner, being specially-abled, that he was posted to the Unit nearest to his hometown i.e., Delhi.

16. It is also submitted that the petitioner had sought transfer to Delhi



and his request was duly considered and was further rejected, because the KCC is not only the place best suited for the company but also a place best suited for the petitioner, considering his qualifications and needs of the company.

17. It is further submitted that on perusal of the transfer request by the petitioner, it was found that at the relevant time there was no additional requirement of HR personnel at the Delhi Regional Office. Moreover, the petitioner being a qualified HR, is much required at KCC in the interest of HCL, as there is an acute dearth of qualified HR professional at KCC.

18. It is submitted that the office infrastructure at KCC is disabled friendly. In addition, the petitioner's office is also on the ground floor. Hence, the respondent has been extending all the possible cooperation to the petitioner. It is also submitted HCL has its own hospital in KCC. Pursuant to this, the petitioner will have no difficulty in availing any specific medical treatment that he may require.

19. It is further submitted that as per the office memorandums dated 10th May 1990 and 31st March 2014, the petitioner being Group-A officer is eligible for All India Transfer. However, the petitioner was posted in KCC, which is nearest to his hometown i.e., Delhi, only after considering his disability status. The same is in compliance of the abovementioned office memorandums. Henceforth, no discriminatory act has been done towards the petitioner.

20. It is also submitted that Sh. Inder Raj, Deputy Manager (Administrative) is in the administrative department of the respondent organization, hence his transfer was purely due to the reasons and that the work profile required personnel posted in Delhi, includes administrative



duties. The said duties would have caused great inconvenience to the petitioner. Considering the same, the transfer request of the petitioner was rejected.

21. It is further submitted that the petitioner has been given promotion as per the rules of the respondent company and no discrimination of any sort has been made merely on the ground of disability of the petitioner.

22. It is therefore submitted that the writ petition is baseless and devoid of merit. The grounds raised are frivolous and not substantial. Hence, the petition is liable to be dismissed.

23. The matter was heard at length with arguments having been advanced by the learned counsels on both sides. This Court has also perused the entire material on record.

24. Before delving upon the merits of the case, it is imperative to discuss the scope of judicial review with regard to interference of Court with the power of an employer to transfer an employee and basic precepts of service jurisprudence.

25. In the matter of ***Gujarat Electricity Board v. Atmaram Sungomal Poshani***, (1989) 2 SCC 602, the Hon'ble Supreme Court has discussed the extent of grounds upon which a Court may interfere with the transfer of a government employee. It observed as follows:

“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....”

26. The Hon’ble Supreme Court in the matter of ***Gujarat Electricity Board (Supra)*** critically dealt with the extent of powers a Court may exercise, while adjudicating upon an issue that involves a question on transfer of a government employee. It was held that a Court must not interfere unless absolutely necessary.

27. It is observed that an employee in service does not have any legal right to be transferred to a place of their choice. A transfer order is issued by scrutinizing the relevant facts and circumstances which includes *interalia* the matters of public interest and efficiency in the public administration.

28. Furthermore, the Hon’ble Supreme Court on the aspect of judicial interference w.r.t issue of transfer, in ***Tushar D. Bhatt v. State of Gujarat, (2009) 11 SCC 678***, has held that:

“16. The legal position has been crystallised in a number of judgments that transfer is an incidence of service and transfers are made according to administrative exigencies.”

29. Transfer being an incidence of service nowhere establishes a fundamental right on an employee or any vested right to claim a transfer of their choice. Executive orders and administrative directives pertaining to transfers do not establish an unassailable right to claim a transfer. Individual convenience of those engaged in the service, is subject to the administration's overriding needs, as it is only for the purpose of effective



function of a public body. The needs of the administration take precedence above the preferences of individual service members.

30. In *State of U.P. v. Gobardhan Lal*, (2004) 11 SCC 402, the Hon'ble Supreme Court observed as follows

“7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.”

31. Perusing the aforementioned judgments, it is apparent that a Court in a challenge to an order of a transfer matter, should normally abstain



itself from interfering. In the pretext of imparting justice, a Court might grossly interfere with the needs and functioning of an administrative body. It is for this reason that the Courts should avoid in substituting their own decisions in the matter of transfer.

32. In *State of Uttar Pradesh v. Dr. V.N. Prasad*, 1995 Supp (2) SCC 151, it was held by the Hon'ble Supreme Court that nature of evidence to establish *malafide* in passing the transfer order has to be strong and convincing. It was further held that in the absence of *prima facie* material to establish *malafide* of the transfer order presumption of *bonafide* would be drawn.

33. A Coordinate bench of this Court in the matter of *Anil Dhall v. Union of India*, 1999 SCC OnLine Del 665, held as follows:

“7. Before dealing with the aforesaid contention it may be stated that law relating to transfers is now well settled by catena of judgments pronounced by Supreme Court. Transfer is an administrative function. An employer is the best judge about the requirement and posting of its employees. Courts are not to interfere with the discretion of the employer in such matters. Scope of judicial review is very limited and the transfer can be challenged only under two circumstances, namely: (a) when the transfer is an act of malafides on the part of the respondents; (b) when it is made in violation of statutory provisions.”

34. In light of the facts of the instant matter, the petitioner is aggrieved by the fact that his request for transfer was rejected by the respondent no. 3 and the said request has been rejected on various occasions by the initial and higher level authorities.

35. Petitioner has placed reliance on the office memorandums dated 10th May 1990 and 31st March 2014. Relevant clause of office



memorandum dated 10th May 1990 has been reproduced herein below:

“The undersigned is directed to say that a suggestion has been made that physically handicapped candidates appointed under the Government should preferable be posted in their naïve district. The matter has been examined carefully. It may not be possible or desirable to lay down that physically handicapped employees belonging to Group A or Group B who have all India Transfer Liability should be posted near their native places. However, in the case of holders of Group C or Group D posts who have been recruited on regional basis and who are physically handicapped, such persons may be given posting, as far as possible, subject to administrative constraints, near their native places within the region.

2. Requests from physically handicapped employees for transfer to or near to their native places may also be given preference.....”

Relevant clause of office memorandum dated 31st March 2014 has been reproduced herein below:

“...H. Preference in transfer/posting

As far as possible, the persons with disabilities may be exempted from the rotational transfer policy/transfer and be allowed to continue in the same job, where they would have achieved the desired performance. Further preference in pace of posting at the time of transfer/promotion may be given to the persons with disability subject to the administration constraints...”

36. On a bare perusal of the aforesaid paragraph, it is perceptible *ex facie* that the petitioner’s current posting at KCC is not in contravention to any of the office memorandums. Furthermore, the respondent no. 3 has dealt with the requests of the petitioner with adequate consideration. It is only after contemplating over the issues faced by the petitioner and



request for transfer thereto, the respondent no. 3 declined such request. In their various responses, the respondent no. 3 has explicitly expressed its view that the qualifications which the petitioner holds are much required at KCC rather than at the Delhi Regional Office.

37. In regard to the allegations of the discriminatory practices, this Court is of the view that the posting of the petitioner at KCC has been done by deliberating over the conditions enumerated in the office memorandums and guidelines issued from time to time. Furthermore, the respondent has rejected the application of the petitioner for transfer from the KCC to the Delhi Regional Office stating that, there is no requirement for any HR personnel. The said stand of the respondent embarks the administrative decision taken after consideration of public interest by proper application of administrative mind.

38. It is held that the questions such as ‘who should be moved and where’, should only be determined by the concerned authority in charge of that particular function. The order of transfer cannot be interfered with by the Court unless, it is tainted by malice or made in violation of any of the requirements of the statutes governing such matters. The authority, while giving the orders relating to transfer, must bear in mind the rules that have been established by the government. Further, if a person makes any kind of representation, the appropriate authority must consider the same having regard to the exigencies of administration.

39. This Court is of the view that to seek indulgence of a Court in the disputes relating to the transfer, the party aggrieved must make out its case showing *malafide* on the part of the authority concerned. Even allegations of *malafide* must be such as to inspire confidence of the Court



or be based on concrete evidence being *sine qua non*. It should not be entertained, if made merely on speculation or hearsay, and unless there are compelling reasons, an order of transfer cannot ordinarily be interfered with. It is for the employer to transfer an employee considering the requirements.

40. In the instant petition, the petitioner has not been able to show any *malafide* on the part of the respondents in rejecting his request of transfer.

41. In view of the above discussion of facts and law, this Court finds no reason to issue the writ of certiorari thereby setting aside the impugned Order dated 21st July 2020.

42. The petition being devoid of any merit is accordingly dismissed.

43. Pending applications, if any, also stand disposed of.

44. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 26, 2023

Dy/RYP

[Click here to check corrigendum, if any](#)