



2023:DHC:8179



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

% **Date of order: 18th October, 2023**

+ W.P.(C) 10069/2023 & CM APPL. 38736/2023 & CM APPL.
54423/2023

PADAM KUMAR Petitioner

Through: Appearance not given

versus

NATIONAL HIGHWAYS AND INFRASTRUCTURE

DEVELOPMENT CORPORATION LTD & ORS. Respondents

Through: Mr. Prasenjit Keswani, Advocate for
NHIDCL
Mr. Subhash Tanwar, CGSC with Mr.
Rahul Kumar Sharma, Govt. Pleader
for UOI

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

“a) Setting aside/Quashing the Impugned Orders dated 05.07.2023, 07.07.2023 and 25.07.2023, transferring the Petitioner, forcing Petitioner to handover charge and disengaging/removing the Petitioner from service respectively with malafide intent, force, pressure and under duress being arbitrary, unfair, illegal and violative of the principles of



natural justice and fundamental rights guaranteed to the Petitioner under Articles 14 and 21 of the Constitution of India;
b) Issue appropriate directions declaring the resignation dt. 21.07.2023 rendered by the Petitioner under duress tantamounts to 'constructive dismissal',
c) Issue appropriate directions to Respondent No. 1 for reinstatement of the Petitioner as ED - RO - Ladakh with all consequential benefits and back wages as Petitioner has always been ready and willing to work; and
d) Direct Respondents to take appropriate action on the Representations dt. 31.05.2023 and 27.06.2023 of the Petitioner in a time bound manner by passing a speaking order;
e) Pass any such other and such further orders as this Hon'ble Court may deem and proper in the interest of justice."

2. The petitioner is a retired officer from Border Road Organization ('BRO' hereinafter) and was last working as the Chief Engineer in BRO. The respondent no. 1 ('respondent Corporation' hereinafter) is a Central Public Undertaking of the Ministry of Road Transport and Highways, Government of India, and is engaged in promoting, surveying, establishing, building, operating and maintaining the national highways including the interconnecting road in parts of the country which share international boundaries.

3. In the year 2022, the respondent Corporation invited applications for the post of Executive Director and selected petitioner for the said post. Pursuant to his selection, the petitioner was issued an appointment letter dated 2nd January, 2023 for appointment in the respondent Corporation on a contractual basis for an initial period of two years. The said appointment



letter prescribed for a probation period of first 180 days of the employment and also provided discretion to the respondent Corporation to remove the employee without assigning any reasons, or providing notice period for the same.

4. After acceptance of the terms and conditions prescribed in the appointment letter, the petitioner started serving in the Ladakh region and was transferred to Port Blair *vide* transfer order dated 5th July, 2023 with directions to join the said location immediately. Thereafter, the petitioner sent a representation requesting roll back of the said transfer and subsequently requested for an extension to join at the transferred location.

5. During the said chain of events, the respondent Corporation also received a 'secret' communication from the Intelligence Bureau ('IB' hereinafter), wherein, the conduct of the petitioner during his service with the BRO was termed as a case of concerning national security where the petitioner was under strict investigation for being in touch with some suspicious female persons, being a person from across the border.

6. Thereafter, the petitioner was investigated by the IB officials which led to his resignation on 21st July, 2023 and the petitioner was relieved from the job with an immediate effect.

7. Aggrieved by the said chain of events, the petitioner has preferred the instant petition alleging collusion on part of the respondents leading to forceful resignation.

8. The learned counsel appearing on behalf of the petitioner submits that the petitioner was first maliciously transferred by the respondents and was



subsequently forced to resign by the officials of the respondent Corporation.

9. It is submitted that the petitioner had raised objections to the illegal and unprofessional conduct of one of the officials and is therefore, getting punished for the said act.

10. It is submitted that the officials of the respondent Corporation forced him to resign on pretext of his image getting maligned, if the adverse IB report is made public.

11. It is submitted that the petitioner had sent multiple representations and is yet to receive any reply to the said representations therefore, leading to violation of principles of natural justice.

12. It is submitted that the petitioner has an outstanding grading in the Annual performance report ('APR' hereinafter) for preceding 5 years of retirement in June 2021 and retired with an unblemished record in over 35 years of service in BRO.

13. It is also submitted that the petitioner had objected to the manner of appointment of the engineers for the Ladakh project and therefore, the respondent Corporation has acted with *malafide* intent by taking offense to the complaint/representation filed by the petitioner.

14. It is further submitted that the petitioner was confronted by two unknown people as investigators from IB, who without any prior intimation interrogated him regarding online chats with a person suspected to be a spy and the petitioner had duly co-operated by handing over his mobile phone for forensic analysis, however, no concrete evidence was found by the agency.



15. Therefore, in light of the foregoing submissions, the learned counsel appearing for the petitioner submits that the present petition may be allowed and reliefs be granted, as prayed.

16. *Per Contra*, the learned counsel appearing for the respondents vehemently opposed the petition submitting to the effect that the present petition is a gross misuse of law and devoid of any merit.

17. It is submitted that the petitioner was engaged with the respondent Corporation *vide* appointment agreement dated 2nd January, 2023 and had duly accepted the terms and conditions laid down in the said agreement.

18. It is submitted that the petitioner's position is a transferable post and was duly mentioned in clause 2 and 20 of the said agreement. Therefore, the petitioner cannot oppose the said transfer which he duly agreed to while signing the above said employment agreement.

19. It is submitted that the same agreement also provided for a probation period of 6 months, where the respondent Corporation was empowered to terminate his services, if found unsatisfactory, without any notice or reasons.

20. It is submitted that the petitioner was transferred from Ladakh to Port Blair with an immediate effect *vide* order dated 6th July, 2023 and was directed to report to the new location immediately, however, the petitioner chose to defy the said order resulting in subordination and ultimately affected the efficiency of the respondent Corporation.

21. It is also submitted that the respondent Corporation received a secret communication regarding petitioner being in touch with a 'female friend' whose activities are suspicious in nature and therefore, the petitioner was



questioned by the IB officials.

22. It is further submitted that the services of the petitioner has been terminated on account of his own conduct and the allegations of *malafide* against the officers of respondent Corporation are completely misplaced and preposterous.

23. Therefore, in light of the foregoing submissions, the learned counsel appearing for the respondents submits that the present petition being devoid of any merit, may be dismissed with exemplary cost.

24. Heard the learned counsel for the parties and perused the records.

25. It is the case of the petitioner that he was a whistleblower to the alleged wrongful appointment of Engineers and therefore, was transferred by the respondent Corporation by acting maliciously.

26. As per material on record, the said contentions of the petitioner have been opposed by the respondent Corporation where the Corporation has cited various clauses of the employment agreement signed between the parties and termed the transfer and the subsequent resignation/removal legal.

27. Therefore, this Court needs to determine the petitioners' case mainly on two issues, namely, whether the petitioner can be transferred by the respondent Corporation without providing him the opportunity to be heard, i.e. non-adherence to the principles of natural justice, and secondly, whether the petitioner's services can be terminated by the respondent Corporation without providing him reasons for the same.

28. Coming to the first issue, i.e. the issue of transfer of the petitioner. It is pertinent to analyze and interpret the employment agreement signed



between the parties. Sub-cause b) of clause 2 of the employment agreement talks about the temporary nature of the position and location. The said sub-clause is reproduced herein:

“i. Clause 2 Position.

a....

b.....During the term period of this agreement the company may change the employee’s above mentioned post (Position) or location based on the company operation or working requirement or according to the employees working capacity and performance, including but not limited to adjustment made to the employees job description or workplace, promotion, work transfer at the same level and demotion, etc. or adjustment made to the employees responsibilities without any change to the employees post (or position)

c...”

29. Clause 20 of the above said agreement also specifically deals with the transferable nature of the job. The said clause is as under:

“20. Liability to Serve anywhere

a. The contract employer can be posted/transferred anywhere in India at the discretion of NHDICL

b. Air travel by entitled class by govt. of India orders for the applicable pay level from the old place of posting to the new place of posting is admissible. No TA/DA or lump sum amount is admissible on first place of engagement.

c. For approved our program TA/DA will be admissible as per rules/ entitlement.



d. Marking attendance through Aadhar enabled Biometric Attendance system (AEBAS will be mandatory for the employer.”

30. On perusal of both the clauses of the employment agreement, it is clear that the respondent Corporation had duly mentioned about the transferable nature of the job, and the petitioner had agreed to the said terms while signing the agreement. Therefore, *prima facie* the impugned transfer order is well within the powers of the respondent Corporation.

31. Having dealt with the said aspect the consideration left before this Court in this issue is whether the respondent Corporation had violated the principles of natural justice by not providing opportunity to the petitioner who had sought stay on his transfer order.

32. In order to deal with the issue, it is pertinent for this Court to refer to the settled position of law regarding the adherence to principles of natural justice. The principles of natural justice is one of the basic rules to be adhered to by the authorities while dealing with an administrative issue, however, the issue of transfer of the employees is not subject to adherence to the said principle.

33. In any case, the aspect of transfer of an employee is well settled where the Courts are advised not to interfere with the transfers until and unless the said transfer order is illegal. The said principle was discussed by the Hon'ble Supreme Court in *Union of India v. H.N. Kirtania*, (1989) 3 SCC 445. The relevant part of the said order is reproduced herein:



5. After hearing learned counsel for the parties we do not find any valid justification for the High Court for entertaining a writ petition against the order of transfer made against an employee of the Central Government holding transferable post. Further there was no valid justification for issuing injunction order against the Central Government. The respondent being a Central Government employee held a transferable post and he was liable to be transferred from one place to the other in the country, he has no legal right to insist for his posting at Calcutta or at any other place of his choice. We do not approve of the cavalier manner in which the impugned orders have been issued without considering the correct legal position. Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides. There was no good ground for interfering with the respondent's transfer.

34. In ***Mohd. Masood Ahmad v. State of U.P.***, (2007) 8 SCC 150, the Hon'ble Supreme Court reiterated the settled position of law and held as under:

“4. The petitioner-appellant, who was an Executive Officer, Nagar Palika Parishad, Muzaffarnagar, had in his writ petition challenged his transfer by the State Government by order dated 21-6-2005 as Executive Officer, Nagar Palika Parishad, Mawana, District Meerut. Since the petitioner was on a transferable post, in our opinion, the High Court has rightly dismissed the writ petition since transfer is an exigency of service and is an administrative decision. Interference by the courts



with transfer orders should only be in very rare cases. As repeatedly held in several decisions, transfer is an exigency of service vide B. Varadha Rao v. State of Karnataka [(1986) 4 SCC 131 : 1986 SCC (L&S) 750 : (1986) 1 ATC 558 : AIR 1986 SC 1955] , Shilpi Bose v. State of Bihar [1991 Supp (2) SCC 659 : 1992 SCC (L&S) 127 : (1991) 17 ATC 935 : AIR 1991 SC 532] , Union of India v. N.P. Thomas [1993 Supp (1) SCC 704 : 1993 SCC (L&S) 237 : (1993) 23 ATC 775 : AIR 1993 SC 1605] , Union of India v. S.L. Abbas [(1993) 4 SCC 357 : 1994 SCC (L&S) 230 : (1993) 25 ATC 844 : AIR 1993 SC 2444] .

5. In State of Punjab v. Joginder Singh Dhatt [AIR 1993 SC 2486] this Court observed (vide p. 2486, para 3 of the said AIR):

“3. We have heard learned counsel for the parties. This Court has time and again expressed its disapproval of the courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the Constitution of India in a matter where, on the face of it, no injustice was caused.”

6. In Abani Kanta Ray v. State of Orissa [1995 Supp (4) SCC 169 : 1996 SCC (L&S) 175 : (1996) 32 ATC 107 : 1996 Lab IC 982] this Court observed (vide SCC p. 174, para 10):

“10. It is settled law that a transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiated by mala



fides or infraction of any professed norm or principle governing the transfer. (See N.K. Singh v. Union of India [(1994) 6 SCC 98 : 1994 SCC (L&S) 1304 : (1994) 28 ATC 246] .)”

7. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in Rajendra Roy v. Union of India [(1993) 1 SCC 148 : 1993 SCC (L&S) 138 : (1993) 23 ATC 426 : AIR 1993 SC 1236] , National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan [(2001) 8 SCC 574 : 2002 SCC (L&S) 21 : AIR 2001 SC 3309] , State Bank of India v. Anjan Sanyal [(2001) 5 SCC 508 : 2001 SCC (L&S) 858 : AIR 2001 SC 1748] . Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in Vijay Pal Singh v. State of U.P. [(1997) 3 ESC 1668 : 1998 All LJ 70] and Onkar Nath Tiwari v. Chief Engineer, Minor Irrigation Deptt. [(1997) 3 ESC 1866 : 1998 All LJ 245] has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under Article 226 unless the court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders.”

35. On perusal of the aforesaid judicial dicta, it is crystal clear that this Court need not interfere with the transfer orders as the same are part of the administrative decisions which cannot be dealt with by the writ Court under Article 226 of the Constitution of India.

36. The said decisions laid down by the Hon’ble Supreme Court clarifies



that the writ Courts do not need to delve into questioning of the transfers of employees when the job is of such a nature where transfers are inevitable and are done on a regular routine basis.

37. Even though the above said judicial dictum provides for a very limited scope on issuance of writ in the said cases, however, the Courts have provided for exception in the cases, where the said transfer is either illegal or done with *malafide* intention.

38. In the instant case, clause 2 and 20 of the agreement signed between the parties duly empowers the respondent Corporation to transfer the petitioner as and when the need for such transfer would arise.

39. Therefore, the impugned transfer orders cannot be termed to be illegal in any manner as the petitioner was informed about the nature of the job and had still chosen to accept the offer of appointment.

40. Now coming to the issue of *malafide* intention on part of the respondent Corporation. It is contented by the petitioner that he has been transferred as a punishment for being a whistleblower to the irregularity in the appointment of the Engineers in the respondent Corporation. Therefore, this Court needs to refer to the material on record to see if the said *malafide* as alleged by the petitioner is established or not.

41. As per submissions made by the learned counsel for the petitioner, the petitioner had raised the issue of alleged irregularities by writing letters to the officials of the respondent Corporation, however, the respondent Corporation failed to take cognizance of the matter in the said allegations.

42. On referral to the annexures attached by the petitioner, it is indeed



true that the petitioner had written letter to the respondent Corporation regarding the irregularities in the appointment of the said engineers, however, mere non-response to the said letters does not amount to *malafide* on part of the respondent Corporation.

43. Therefore, the transfer of the petitioner was well within the rules prescribed in the appointment letter and the petitioner cannot claim quashing of the said orders by citing *malafide* on part of the respondent Corporation without any concrete proof to substantiate the same.

44. Now coming to the issue of termination of the petitioner. In their reply, the respondent Corporation again referred to the employment agreement signed between the parties and contended that the Corporation is empowered to terminate the services of the petitioner as the same was agreed upon by the parties. The relevant clauses i.e. Clause no. 3 and 13 reads as under:

“Clause 3. Term and probation period

The tenure of the contract employed shall be initially of 2 years or attaining the age of 65 years whichever is earlier. The same may be curtailed at the discretion of NHIDCL by giving him/her 30 days' notice in writing or by paying one month's remuneration in lux of the notice period a....It is submitted and agreed that the first 180 (one hundred eighty) days of employment shall constitute a probationary period ("Probation Period") during which period the employer may, in its absolute discretion, terminate the employee employment, without



assigning any reasons and without notice or payment of one month's remuneration in lien of the notice period.

.....”

Clause 13. Amendment and termination

a. In case the employer terminates the employment without just cause or without assigning any reasons, in that case, the employer shall provide the Employee with advanced notice of termination or compensation in lieu of notice equal to 01 (one) month(s)

b. The employee may terminate his employment at any time by providing the Employer with at least one month at once notice of his intention to resign.

c. In case of death of an employee, his/her employment may be terminated on the last day of the month in which the employee's death occurs; and in case of termination of employment of Just Cause or disability, his/her employment may get terminated with effect from which notice of the company is served upon the employee or is deemed to be served of sub-clause b of clause 15.

d. For purposes of this agreement, "Just Cause" means employees gross misconduct resulting in material damage to the company, willful subordination or disobedience, theft, dishonesty, willful damage or loss of employer's property, bribery and habitual lateness or absence, or any other material breach of this Agreement.”

45. On perusal of the above cited clauses, it is made out that the respondent Corporation had duly mentioned about probation for an initial period of 180 days and had apprised the petitioner about the same. The said



clause of the employment agreement categorically laid down the powers of the respondent Corporation to terminate the employment of the petitioner without providing any notice.

46. Furthermore, the Clause 13 of the agreement talks about termination of the employees where the employer i.e. the respondent Corporation need to give one month compensation to the said employee.

47. In its counter, the respondent Corporation has admitted compliance with the said provision of the employment agreement where the one month salary of the petitioner was duly disbursed.

48. The material on record also suggests involvement of the petitioner with a 'suspicious female friend' leading to an IB inquiry against him. Even though the inquiry is yet to be concluded, the involvement of the petitioner with a person residing in the cross border area raises doubt regarding the credibility of his work.

49. Even though the said involvement of the petitioner with a person from the other nation does not directly imply his involvement with the act of spying/betraying the country, but it certainly depicts his casual approach.

50. The material on record suggests that the petitioner was relieved from his job after the said chain of events where the secret files were passed on by the BRO to the respondent Corporation, aggravating the petitioner to file the present petition.

51. Without getting into the merits of the said allegations, clause 3 and 13 of the employment agreement is sufficient enough to justify the termination/resignation of the petitioner from his services.



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52. The foregoing discussion makes it clear that neither the transfer, nor the termination of the services of the petitioner can be held illegal as the same were duly stipulated in the agreement signed between the parties.

53. Therefore, in light of the above discussion, the petition, being devoid of any merit, stands dismissed. Pending applications, if any, are also dismissed.

54. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 18, 2023
gs/av/ryp

Click here to check corrigendum, if any