



2023:DHC:8809



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

% **Date of order: 22nd November, 2023**

+ **W.P.(C) 14754/2023 & CM APPL. 58693/2023 & CM APPL. 58694/2023 & CM APPL. 58748/2023**

UMESH CHANDRA SINGH Petitioner

Through: **Mr. Nitin K. Gupta and Mr. Rahul Sinha, Advocates**

versus

UNION OF INDIA & ORS. Respondents

Through: **Mr. Chetan Sharma ASG with Farmaan Ali, SPC and Ms. Vidhi Gupta, GP, Mr. Adarsh Tripathi, Mr. Amit Gupta, Mr. Saurabh Tripathi, Mr. Vikramaditya Singh and Mr. Vikram Singh Baid, Advocates**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

“i. Set aside the impugned order/decision dt. 08.02.2023 issued by the Respondent No. 3-Director (HR) of NTPC Ltd as being “extraneous and in blatant & flagrant defiance of” the direction of the Order dt. 18.10.2022 of this Hon’ble Court in W.P.(C) No. 6918/2022, as well as being (a) in breach of the Offer of Appointment to the ‘Post of Scientist’ of the Petitioner



dt. 22.03.2005 issued in terms of the Advt. No. 07/04 of NTPC, (b) running afoul of the Job Rotation Policy of NTPC and its primacy/supremacy over transfer/posting as established by the DOP of NTPC, and (c) infraction of the 4-factor in unison formula enunciated by the constitution bench of the Hon'ble Supreme Court of India in the P K Roy case [1968 AIR 850];

ii. Issue a writ of mandamus or certiorari or any other appropriate writ, order, or direction declaring the deployment of petitioner in the functions of "Operation & Maintenance (O&M)" including its cognate function of "FES", and "Safety" as (a) penalty deployment akin to reduction in rank (b) ultravires to Statutory Regulations framed under Electricity Act 2003 and Statutory Rules framed under Factories Act 1948 and (c) outrageous infringement of the fundamental rights guaranteed under Article 14, 16, 19, & 21 read with Articles 309-311 of the Constitution of India, and thereafter declare the out-of-cadre annual assessment (PMS Rating) made during this period as non est factum in the eye of the law;

iii. Issue a writ of mandamus or certiorari or any other appropriate writ order or direction to the respondents to assign 'work/duties' to the petitioner in consonance/commensurate with the job-profile of the Post of his recruitment by (a) harmonious reading of the Offer of appointment, (b) strictly adhering to the Job Rotation Policy of NTPC and its primacy/supremacy over transfer/posting as cogently established by the DOP of NTPC, and (c) considering all the four factor in unison as enunciated in the decision of the Hon'ble Supreme Court in Union of India vs. P.K. Roy [1968 AIR 850], and

iv. Pass an order awarding compensation in favour of the petitioner and against the respondents no. 2 and 3 for causing



immense distress, mental agony and harassment for last 8 years;

v. Award cost of litigations in favour of the Petitioner and against respondents No. 2 and 3; and

vi. Pass any order or such further orders/directions as this Hon'ble Court deems fit and proper in the interest of justice."

2. The facts leading to the filing of the instant petition are as follows:
 - a. The respondents issued an employment notice vide advertisement no. 07/04 on 30th October 2004, for recruitment of Scientists/Technologists for the specialized area/domain of 'Fracture Mechanics, creep & Fatigue analysis' among other posts.
 - b. Subsequently, the petitioner was appointed vide Appointment Order no. 07/2005, on 13th May 2005, to the post of 'Scientist' at E4 level pay scale w.e.f. 11th May 2005, and was posted in the Energy Technologies (ET) department of NTPC. It is stated that the above said department, on 3rd February 2009, upon its merger with the then R&D department was renamed as NTPC Energy Technology Research Alliance (hereinafter "NETRA"), and as on date NETRA is the sole R&D Centre in the respondent company NTPC, and is situated at Greater Noida (U.P.).
 - c. Thereafter, the petitioner was promoted to the next level E5



w.e.f. 1st January 2010. Meanwhile, vide corporate circular no. CHRC-710/2012, the NTPC changed the basis of designation from ‘nature of duty based’ to ‘pay scale based’ across the respondent company, and accordingly re-designated the petitioner as a Senior Manager (NETRA) from Scientist – E5 (NETRA).

- d. It has been stated by the petitioner that he became eligible for his next promotion, i.e., to Level E6 upon completion of 4 years of service in the earlier level i.e., E5. However, he was denied the benefits of the same by reducing his performance appraisal score (hereinafter “PMS score”) of the assessment year 2013, from 93.04 to 90.39 to promote someone junior to the petitioner. The issue of lowering of PMS score was raised by the petitioner vide a representation dated 23rd April 2015, but the same remained unanswered.
- e. The respondent, thereafter, issued Office Order no. 423/2015-16, thereby, transferring the petitioner from NETRA, Greater Noida to Operations and Maintenance Department (Mechanical Maintenance), KBUNL, Kanti, Bihar. The petitioner protested against the said transfer and made representation before the appropriate authority, however, the same was not accepted. Thereafter, the petitioner filed a petition before this Court, being W.P.(C) no. 738/2016 challenging the said transfer. Since no interim



order was passed in his favour, the petitioner joined the place of his posting and the above said writ petition was disposed of as having become infructuous vide order dated 23rd May 2016. The LPA filed by the petitioner, being LPA no. 380/2016 was dismissed on 3rd June 2016, insofar as the challenge to the transfer order was concerned, and the SLP (C) No. 20295/2016, filed by the petitioner against the same was also dismissed vide order dated 5th August 2016.

- f. Subsequently, vide Corporate Circular CHRC no. 849/2018, the Grade serial numbering of E5 was renumbered/ changed to E6 due to introduction/addition of a new pay-scale w.e.f. 1st June 2018. Meanwhile, the petitioner underwent multiple rounds of litigation challenging his transfer and posting to the places where R&D function is not there, wherein, he contended that he was illegally assigned prohibited nature of work.
- g. Thereafter, in terms of the order dated 30th June 2021, passed by the Hon'ble Supreme Court in SLP (C) No. 7278/2021, the petitioner joined NTPC Kudgi, Karnataka. The petitioner submitted his joining report dated 9th July 2021, wherein, he stated that his joining is without prejudice (i) unlawful change of specialized function (widely known as 'CADRE' in Service jurisprudence) from the R&D to non-R&D, and (ii) violation of Statute (Rule 88 – A of



Karnataka Factories Rules, 1969).

- h. The respondent/NTPC then issued Office Order no. 067, dated 22nd September 2021, denying back wages to the petitioner, for the period of 19th January 2021, to 8th July 2021. On 4th April 2022, performance bucket 'unsatisfactorily' was communicated by the respondent to the petitioner for the assessment year 2021. It has been stated by the petitioner that a copy of the 'final filled PMS form/special appraisal report of the year 2021', was not provided to the petitioner despite repeated requests.
- i. Aggrieved by the above, the petitioner filed a writ petition bearing W.P (C) no. 6918/2022 for redressal of his grievances. A Coordinate bench of this Court, vide order dated 18th October 2022, while disposing of the said petition, directed the petitioner to make representation to the respondents.
- j. Accordingly, the petitioner made a representation dated 10th November 2022, pursuant to which the respondent no. 3 passed the impugned order dated 8th February 2023, thereby, changing the department of posting of the petitioner from 'Safety' to 'Field Engineering Services' (hereinafter "FES"). Thereafter, the petitioner sent a reconsideration request to the respondent on 14th February 2023, and further met the respondent no. 3, but to no avail.



- k. Thereafter, performance bucket 'Unsatisfactory' was communicated by the respondent/NTPC for the assessment year 2022, to the petitioner. It has been stated by the petitioner that a copy of the 'final filled PMS form/special appraisal report of the year 2022', was not provided to the petitioner despite repeated requests.
- l. Being aggrieved by the same, the petitioner filed another writ petition bearing W.P (C) no. 7787/2023, for redressal of his grievances. The same is pending for adjudication. In the said writ, vide order dated 30th May 2023, the petitioner was granted liberty by the Coordinate Bench of this Court to take recourse to the other reliefs sought therein.
- m. Consequently, the petitioner made a representation dated 12th June 2023, requesting the respondent to provide him the complete details of the post of his current deployment at NTPC Kudgi including the functional designation, job-profile, and the perquisites of minimum qualifications, nature of training, and nature & years of experience required to perform the duty of this post. Since, the respondent did not respond to the above said representation, the petitioner sent a reminder dated 25th July 2023, but to no avail. Hence, the petitioner has approached this Court under its extraordinary writ jurisdiction seeking setting aside of impugned order dated 8th February 2023, by virtue of which



the department of posting of the petitioner was changed from 'Safety' to 'Field Engineering Services'.

3. Learned counsel appearing on behalf of the petitioner submitted that the impugned order is bad in law as the same is violative of the principles of natural justice and infringe upon the petitioner's fundamental and legal rights.
4. It is submitted that the perfunctory and misleading act of the respondent is just a routine matter of administrative transfer/posting of the petitioner, *firstly* from Delhi NCR (Greater Noida) to Bihar (Kanti) and then to Karnataka (Kudgi).
5. It is also submitted that the postings, i.e., the allocation of department and thereby, assignment of tasks/functions, made in these transfers is not on the same post as that of the recruitment of the petitioner on the equivalent post.
6. It is submitted that the impugned decision of the respondent company is unlawful and illegal since it is against the settled principles of law of service jurisprudence where the change of functional cadre is impermissible.
7. It is submitted that the act of the respondent by passing the impugned order dated 8th February 2023, has caused prejudice to the petitioner. The petitioner has been posted in the Operations & Management (hereinafter "O&M") functioning which includes its cognate function such as FES, safety function etc.
8. It is submitted that the respondent has taken the above decision despite the fact that the petitioner is a well qualified scientist appointed for



the purpose of R&D work which has been his domain and profile since beginning.

9. It is submitted that the respondents have continuously ignored and overlooked the fact that the function (nature of work) of the petitioner cannot be changed under the garb of administrative transfer.

10. It is submitted that the case of the petitioner since the beginning as not been against the transfer from NETRA, Grater Noida to Kanti, Bihar to Kudgi, Karnataka, but only against the unlawful and illegal change of functional cadre of the petitioner as a consequence.

11. It is submitted that while passing the impugned order, the respondent no. 3 has failed to appreciate that the postings through the transfer orders have not been on the same post or even on an equivalent post as delineated by the Hon'ble Supreme Court in *Union of India v. P.K. Roy, 1967 SCC OnLine SC 23*.

12. It is submitted that the unlawful postings of the petitioner have led to no assignment of work, or assignment of derogatory works, or assignment of statutorily-prohibited work, culminating into complete spoiling of his annual performance report, and thus, ruining his service career and record.

13. It is also submitted that the respondent NTPC has failed to appreciate that the 're-designation' and 'changing of post' are two entirely different things. In case of re-designation, the prerequisites (i.e., minimum educational qualifications, nature of training, nature and duration of experience required) remains the same, whereas, in this case of illegal job rotation effectuated under the garb of administrative transfers, the



prerequisites are 'distinctly different' and merely pay-scale (salary) is same. Hence it is unquestionably a case of 'changing of post', and the same cannot be termed as 're-designation' by any stretch of imagination., thereby, making the acts of the respondent illegal and arbitrary in nature.

14. It is further submitted that the respondent NTPC has committed gross illegality by not examining the actual work assigned to the petitioner and has not assigned the work to the petitioner in consonance with the job profile of the post of his recruitment.

15. In view of the foregoing submission, it is submitted that the instant petition may be allowed and the impugned order may be set aside.

16. *Per Contra* the learned counsel appearing on behalf of the respondents submitted that the instant petition is liable to be dismissed being devoid of any merits.

17. It is submitted that the impugned order is in consonance with the appointment order of the petitioner and the service rules of NTPC. Terms of the appointment order of the petitioner clearly stipulates that his designation could be changed depending on the work assigned to the petitioner from time to time.

18. It is submitted that the petitioner is abusing the process of law by way of filing meritless petitions without any material cause and grievance and has been engaging in multiple rounds of litigation.

19. It is submitted that the petitioner's grievances with respect to his transfer and postings has been already addressed before the Coordinate Benches of this Court and the various writs filed by him have been



dismissed being devoid of any merits.

20. It is submitted that the respondents have neither violated any principles of natural justice, nor have they infringed upon petitioner's fundamental or legal rights.

21. In view of the foregoing submissions, it is submitted that the present petition may be dismissed being bereft of any merits.

22. Heard the parties and perused the record.

23. Summarily, the case of the petitioner is confined to the sole issue that the by virtue of the transfer order the respondents have violated the settled principle of service law. The petitioner has urged that his appointment was a specialized recruitment as a Scientist with specific educational qualifications and in a specialized domain of research, but upon transfer, the petitioner would be tasked with the assignments, wherein, he would be required to carry out the functions which have no relationship with his qualifications, experience, or job profile of a Scientist.

24. The petitioner has submitted that he applied for the advertised post since it was clearly indicated therein, that he would be required to work in a specialized domain and accordingly the appointment letter was issued. The petitioner was not recruited nor can be forced into carrying out any other functions such as House Keeping or Mechanical Maintenance or Operation or such like jobs in the Safety Department. Merely by changing the nomenclature to a more generic one, the job profile of the petitioner cannot be changed contrary to his qualifications and experience and the purpose for which he was recruited. There is no provision in the Transfer Policy which



empowers the NTPC to change the functions of a specialist like the petitioner.

25. It has been further argued on behalf of the petitioner that by an order of transfer, the employer, i.e., the respondent no. 3 cannot change the cadre of an employee or affect his status. It has been submitted that evidently the area of operation of duties, scope of work, etc. that was earlier assigned to the petitioner at KBUNL, Kanti, Bihar was in complete derogation of the job profile as a Scientist, and the petitioner would be required to perform similar functions at the new post of 'Field Engineering Services', at Kudgi, since there is no work of research and development. Therefore, the transfer order is illegal as it has resulted in degrading the status of the petitioner as a Scientist and while the petitioner cannot resist a transfer order, however, he can only be transferred to a post of equivalent status which would not result in the change of his cadre.

26. Another contention strenuously urged and labored upon by learned counsel for the petitioner is that the Transfer Order is in violation of Clause 7 of the Job Rotation Policy dated 30th September 2017, which categorically excludes Scientists at NETRA from provisions of job rotation, due to their specialized qualifications and skills. Clause 7 provides a list of various functions which are excluded from job rotation and despite the said stipulation, vide the impugned order NTPC has erroneously excluded the petitioner from deriving benefit under the said Policy, on the ground that petitioner has been working at E5 level.

27. In rival contentions, it has been submitted on behalf of the



respondents that there has been no violation of nay fundamental or legal rights of the petitioner and that he has been transferred as per the settled law and service rules of NTPC. Furthermore, the issue of transferability of the petitioner in the background of him being a Scientist has already attained finality in view of the orders passed by the Courts in the previous round of litigations between the parties.

28. It has been further contended that the petitioner's initial order of transfer to Bihar was unsuccessfully challenged by him in a writ petition bearing W.P.(C) no.738/2016. LPA as well as the SLP against the said order were dismissed by the Division Bench of this Court and also by the Hon'ble Supreme Court, respectively. Writ Petition seeking direction for being transferred to NETRA in view of the Job Rotation Policy dated 30th September 2017, was dismissed vide order dated 22nd October 2018. In writ petition W.P. (C) no. 1289/2019, the petitioner again sought directions to be transferred to NETRA and the grounds raised covered the aspect that petitioner being a Scientist could not have been transferred. This said petition was also dismissed by order dated 6th February 2020, and the Contempt Petition alleging violation of the said order was dismissed as withdrawn. In view of these orders, it is not open to the petitioner to assail the impugned order on the same grounds, yet again. Moreover, the plea of the petitioner was also decided again in LPA bearing LPA no. 139/2021, wherein, the Division Bench of this Court dismissed the appeal of the petitioner since it found the same to be meritless, thereby, holding that no employee has a vested right to be posted at a particular place.



29. The facts necessary for the adjudication of the instant petition have been elucidated hereinabove, therefore, at this juncture; this Court shall proceed to analyze the issue raised herein.

30. The Hon'ble Supreme Court in the judgment of ***Punjab and Sind Bank & Ors. vs. Durgesh Kuwar, 2020 SCC OnLine SC 774***, has elaborated upon the principle of extent of interference of a Court in cases where a transfer order is under challenge. The relevant extracts of the same has been reproduced as under:

“17. We must begin our analysis of the rival submissions by advertng to the settled principle that transfer is an exigency of service. An employee cannot have a choice of postings. Administrative circulars and guidelines are indicators of the manner in which the transfer policy has to be implemented. However, an administrative circular may not in itself confer a vested right which can be enforceable by a writ of mandamus. Unless an order of transfer is established to be mala fide or contrary to a statutory provision or has been issued by an authority not competent to order transfer, the Court in exercise of judicial review would not be inclined to interfere. These principles emerge from the judgments which have been relied upon by the appellants in support of their submissions and to which we have already made a reference above. There can be no dispute about the position in law.”

31. A similar view has also been taken by a Division Bench of Bombay High Court in the judgment passed in the matter of ***Dattatray Krishnaji Pawar v. Union of India, 2022 SCC OnLine Bom 1329***, wherein, the following was observed:

“19. Next, we find no substance in the contention of Mr.



Nagrani that the petitioner had been transferred in breach of the transfer policy. The Supreme Court in its decision (1993) 4 SCC 357, Union of India v. S.L. Abbas has held that executive instructions such as for transfer of Government servants are in the nature of guidelines and do not confer a legally enforceable right. In such decision, it has also been held that an order of transfer is an incident of Government service and that it is a matter for the appropriate authority to decide, who should be transferred where. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. In such view of the matter, the contention of Mr. Nagrani based on the transfer policy is rejected.”

32. Upon perusal of the above said judgments, it is apparent that a Court shall interfere with an order of transfer only where the Court finds either the transfer order is *mala fide* or that the service rules prohibit such transfer or that the Authorities issuing the order were not competent to pass the same. It must be remembered that transfer ordinarily is an incidence of service and must be left to the discretion of the Authorities concerned, which are in the best position to assess the necessities of the administrative requirements of the situation.

33. It is a settled law that an employee in a transferable job has no vested right to remain posted at one place. The Courts should not readily interfere with the transfer order which is made in the public interest and for administrative reasons, unless the transfer order is made in violation of a Statute or there exists a *mala fide*.

34. This Court is of the view that in the event the Courts continue to



intervene with the day-to-day transfer orders issued by the Government or any administrative department, then there will be a complete chaos in the administration which would not be conducive to the public interest.

35. Now adverting to the facts of the matter in hand.

36. The petitioner was appointed as a Scientist based on certain specialized qualifications. His grievance is limited to the aspect that upon his transfer to the post of FES, the petitioner would be required to carry out the functions which have no relationship with his specialized qualifications or experience, and that the same is against the service rules of NTPC. The argument is elaborated by contending that a Scientist cannot be made to work against non-scientific posts, and working in FES is changing the entire nature of work of the petitioner including his status and is derogatory in terms of job profile.

37. It is observed that the Coordinate Bench of this Court and even the Division Bench of this Court have already decided upon similar issues among the same parties, wherein, the petitioner's earlier transfer orders were challenged unsuccessfully. The contentions advanced by the petitioner in the present writ are also the same as advanced by him before the Coordinate Bench and the Division Bench of this Court, and the same were rejected taking into consideration the jurisprudence behind the scope of interference of Courts with the transfer orders and the standard terms and conditions of appointment of the petitioner.

38. There is no doubt that as per the advertisement, the educational qualifications required were in the field of Mechanical/Chemical



Engineering and the petitioner, as indicated from the appointment letter, was appointed to the post of ‘Scientist’ at E4 level.

39. However, it was clearly stipulated in Clause 8 of the Standard Terms and Conditions of Appointment, appended to the appointment letter, that the designation of the petitioner could be changed depending upon the work assigned from time to time. Furthermore, by virtue of Clause 9 of the terms of appointment, the petitioner was well informed that the postings in NTPC were transferrable and the company reserved the right to post him at any Office/Projects/Subsidiary/Joint Venture or any other Government Department, etc. in India or abroad. Clause 8 and 9 have been reproduced for reference:

“8. Your designation upon joining the Company will be as already mentioned, however, it can be changed depending on work assigned to you from time to time.

9. Since the postings in the Company are transferable, the Company reserves the right to post you at any of its Offices/Projects/Subsidiaries/Joint Ventures or any Government department/statutory body/public sector undertaking anywhere in India or abroad.”

40. Upon bare perusal of the above said terms, this Court has observed that the terms of service conditions were clearly known to the petitioner when the appointment letter was issued in the year 2005. The same was accepted by the petitioner and taking into consideration the petitioner’s acceptance of the said service conditions, at this stage, he cannot claim that he has a right to remain posted at a particular place. The terms and conditions of the petitioner’s appointment enable the respondent NTPC to



post him as per the administrative exigencies and requirements.

41. Transfer being an incident of service of the petitioner, cannot be challenged upon the ground that the post upon which the petitioner is transferred does not match his qualification or experience. There cannot be a doubt that an employee must be deployed against posts where his educational qualifications and experience as well as expertise can be best utilized, however, it is equally settled in law that it is the prerogative and the domain of an employer to decide as to where and how an employee has to be transferred and deployed as per the administrative requirements and exigencies.

42. In light of the record available before this Court including observations made by the Division Bench of this Court in the judgment dated 6th April 2021, in LPA no. 139/2021, this Court is of the considered view that it is neither the role of a Court, nor its expertise to substitute its own decision or wisdom in deciding the place of posting of an employee, unless the transfer is mala fide or violative of a Policy or a Statutory Rule. It is for the respondent NTPC to decide as to how the petitioner can be best utilized keeping in view his qualifications and experience. This Court has no expertise to decide how an employee can be best utilized by its employer.

43. In view of the discussions of facts and law, this Court finds no force in the propositions put forth by the petitioner. It is hereby, held that there is no infirmity in the impugned order challenged by the petitioner, therefore, the present writ petition is liable to be dismissed since the same is not a fit case for interference under the extraordinary writ jurisdiction of this Court.



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44. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.

45. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 22, 2023

gs/ryp/av

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
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