



2023:DHC:8825



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

% **Date of order: 17th November, 2023**

+ **W.P.(C) 14836/2023 and CM APPL. Nos.59017/2023 & 59018/2023**

DILIP KUMAR SRIVASTAVA

..... Petitioner

Through: **Mr.A.K.Behera, Senior Advocate
with Mr.Anil Kumar Srivastava and
Mr.Amarendra Pratap Singh,
Advocates**

versus

NATIONAL CAPITAL REGION TRANSPORT CORPORATION

..... Respondents

Through: **Mr.Rajesh Katyal, Mr.V.S.R.Krishna,
Mr.V.Shashank Kumar, Advocates
along with Mr.Anurag Singh,
DGM/NCRTC**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. No. 59017/202

Exemption allowed subject to just exceptions.

The application stands disposed of.

W.P.(C) 14836/2023

1. The petitioner vide the present petition under Articles 226/227 of the Constitution of India, seeks the following reliefs:

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
Signing Date: 13.12.2023
11:12:13

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“(a) Call for the records of the case.

(b) Quash and set aside the order dated 03/11/2023 (issued by email on the Petitioner on 04/11/2023 at 01:15 pm).

(c) Direct the respondent to give consequential benefits of prayer (b) above to the petitioner.

(d) Pass such other and/or further orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.

(e) Direct the respondent to pay the cost of the litigation.”

2. The brief facts of the instant petition are as follows:

- a) The petitioner joined as a Direct Recruit at Indian Railways Services of Electrical Engineers (hereinafter “IRSEE”) on 28th December 1998, and was promoted to various positions during his tenure with IRSEE from the year 1998, to the year 2022.
- b) On 31st March 2022, the National Capital Region Transport Corporation (NCRTC)/respondent, issued a vacancy notice No. 12/2022, for filling up the post of Group General Manager (Operations) on deputation basis.
- c) The petitioner applied for the same and on 08th June 2022, and he was communicated that he has been selected on deputation with the respondent as a Group General Manager (Operations), for a period of five years or until further order.
- d) In view of this the Ministry of Railway, Railway Board directed the concerned controlling officer, i.e., the General Manager (P) (Central Organisation for Railways



Electrification Pragyaraj), to relieve the petitioner so that he could take his new role with the respondent organization. Accordingly, the petitioner was relieved and he joined the aforesaid position from the forenoon of 5th July 2022.

- e) The petitioner was then given an additional responsibility as a Chief Executive Officer of NETRA, a subsidiary of respondent 10th August 2022.
 - f) Thereafter, as per the impugned office order dated 3rd November 2023, the petitioner was transferred from the position of Group General Manager to the position of GGM/Design-OHE and PSI, and was directed to report to report to D/E& RS.
 - g) Aggrieved by the said transfer order, the petitioner has filed the instant petition seeking setting aside of the same.
3. Learned counsel for the petitioner submitted that the impugned order is bad in law as the same is violative of the principles of natural justice, and the said impugned order impugns the petitioner's fundamental and legal rights.
4. It is submitted that the impugned order by virtue of which the petitioner has been transferred to a different position does not disclose any reason for such transfer and in the absence of any reason, the said transfer order is arbitrary and illegal in nature.
5. It is submitted that there is a gross abuse of power on behalf of the respondent since despite the petitioner being appointed specifically for the



post of Group General Manager (Operations), the petitioner is being removed from the said position.

6. It is contended that the impugned order is passed in violation of the prescribed process of selection and appointment to the post of Group General Manager.

7. It is further contended that the petitioner being on deputation, cannot be subjected to a separate order passed in future by the competent authority after removing him from the post he was appointed with the concurrence of the Ministry of Railways, Railway Board.

8. It is submitted that the impugned order passed by the respondent is bad in law and has been passed with *mala fide* intentions.

9. In view of the foregoing reasons, it is prayed that the petition may be allowed and the reliefs as prayed by the petitioner may be granted.

10. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the instant petition and submitted that the same is liable to be dismissed, being devoid of any merits.

11. It is submitted that the impugned transfer order passed by the respondent is not arbitrary or illegal since the said order has been passed by the respondent by way of exercising their administrative discretion in accordance with the statutory rules.

12. It is contended that the petitioner does not have a vested right in seeking direction that the petitioner shall not be transferred since, the transfer is at the discretion of the authorities and has been done as per law.

13. It is submitted that the petitioner is abusing the due process of law by



way of filing instant writ petition since he has not been able to advance any submissions that would warrant the interference of this Court.

14. Hence, in view of the foregoing submissions, the respondent prayed that the instant petition be dismissed being devoid of any merit.

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

16. It is the case of the petitioner that he was appointed for the specific position of Group General Manager (Operations) and has been wrongly transferred to the position of Design for OHE and PSI. The respondent had no reason to transfer the petitioner and the impugned order has passed with *mala fide* intentions since the same is in violation of the settled principles of law, and against the prescribed selection process/appointment.

17. Before delving into the merits of the case, it is pertinent to reiterate the scope of writ Courts in the matters pertaining transfer of an employee.

18. It is well settled that the Court should not interfere with transfers of employees as the matter pertains to the administrative authorities of the concerned institution and interfering with the same would lead to disarray in the internal processes of such institutions.

19. Moreover, the employee being transferred has no vested right to continue at the same job, and the same has to be decided by the concerned authority. The Courts intervention is only limited to cases where there has been violation of a mandatory statutory rule. Furthermore, the Courts should not exercise their power under Article 226 of the Constitution of India even when there has been a clear violation of some executive directions issued by the concerned department, instead it should encourage the aggrieved to



approach the higher authorities of the same department.

20. The Hon'ble Supreme Court in ***Punjab and Sind Bank & Ors. vs. Durgesh Kuwar, 2020 SCC OnLine SC 774***, expounded the same principle stating to the extent that transfer is an incidence of service and at the end, is a matter that is to be decided by the administrative authority and in the event no *mala fide* is established, no interference by the Court is warranted. The relevant portion of the judgment has been reproduced herein below:

“17. We must begin our analysis of the rival submissions by adverting 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.”

21. Furthermore, the Division Bench of this Court in the judgment of ***Amarjeet Singh Dagar v. Union of India, 2022 SCC OnLine Del 694***, has reiterated the aforesaid principle of law, the relevant portion of which is as follows:

“23. At the outset, it must be emphasised 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 any mandatory statutory rule or on the ground of mala fide. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order, instead, the affected party should approach the higher authorities in the concerned department. If the courts continue to interfere with day-to-day transfer orders issued by the Government and/or its subordinate Authorities, there will be complete chaos in the administration which would not be conducive to the public interest. Interference under Article 226 of the Constitution of India is permitted 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 concerned authorities, which are in the best position to assess the necessities of the administrative requirements of the situation. The courts must maintain judicial restraint in such matters. (Refer : Shilpi Bose v. State of Bihar [Shilpi Bose v. State of Bihar, 1991 Supp (2) SCC 659 : 1992 SCC (L&S) 127] ; Mohd. Masood Ahmad v. State of U.P. [Mohd. Masood Ahmad v. State of U.P., (2007) 8 SCC 150 : (2007) 2 SCC (L&S) 806] ; State of Haryana v. Kashmir Singh [State of Haryana v. Kashmir Singh, (2010) 13 SCC 306 : (2011) 1 SCC (L&S) 376] ; and Amod Kumar v. Union of India [Amod Kumar v. Union of India, (2018) 18 SCC 478 : (2019) 2 SCC (L&S) 286]).”

22. In light of the judgments mentioned in the preceding paragraphs, it is observed that, for transfers to be termed as *mala fide*, there needs to be impeccable proof on record to establish the said *mala fide* intention. The



employees cannot at their own whims and fancies claim that a transfer may not be done on the ground that the same may cause inconvenience to the concerned party.

23. The Court under its extraordinary power under Article 226 may **intervene only where there is a grave injustice caused to the party before this Court and if a mala fide intention established.** The statutory authority may transfer employee as per its own needs. Any transfer policies issued by the State or employer lack legal authority as the same is issued as a mere guideline for the department personnel. The Courts cannot interfere merely because of personal inconvenience caused to the employee as the same would fall under the domain of the employer.

24. The impugned order dated 3rd November 2023, challenged before this Court is reproduced herein below:

“Shri Manvendra Singh (Emp. No. 7043), GGM/ S& T and CEO NETRA in addition to his existing duties with effect from 03.11.2023

2. Separate orders shall be issued for Shri Dilip Kumar Srivastava (Emp. 7045) Group General Manager in due course

3. This issues with the approval of the Competent Authority”

25. As per the impugned order dated 3rd November 2023, one Shri Manvendra Singh has been allotted the duties of GGM/ S& T and CEO NETRA, in addition to his existing duties w.e.f. 3rd November 2023. It is duly noted by this Court that the aforesaid action has been taken by the respondent with the approval of the competent authority.



26. Bearing in mind the fact of the instant petition, this Court is of the opinion that there has been no *mala fide* or arbitrariness at the hands of the respondents. Matters pertaining to transfer are, in fact, incidences of service and do not warrant any interference by this Court.

27. In the instant petition, the respondent has the authority and discretion to transfer the petitioner as per the requirement of the respondent. In view of the same, this Court discerns no material to establish the propositions put forth by the petitioner.

28. In light of the above discussions of facts and law, it is hereby, held that there is no irregularity in the actions of the respondent which goes to the root of the matter and invites the intervention of this Court while exercising its writ jurisdiction.

29. In view of the discussion in the foregoing paragraphs, I do not find any merit in the instant petition and is liable to be dismissed

30. Accordingly, the instant petition stands dismissed.

31. Pending applications, if any, also stands dismissed.

32. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 17, 2023

SV/db/ryp

Click here to check corrigendum, if any