



2023:DHC:8829



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

% **Date of order: 23rd November, 2023**

+ **W.P.(C) 15176/2023**

VINOD KUMAR JHA

..... Petitioner

Through: Mr.____, Advocate (Appearance not given)

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms.Nidhi Banga, SPC for UOI with
Mr.Abhishek Khannna, GP for R-1
Mr.Yogendra Kumar Verma,
Advocate for R-2 to 5

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 60675/2023 (Exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

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

"i. issue a writ in the nature of mandamus whereby direct the respondent and pass an order to quash and set aside the



"operating para related to rejection of request of interzonal transfer" of the petitioner ; the impugned Letter dated 04.09.23 ; issued by Asst. General Manager [Personnel], FCI and ;
ii. issue a writ in the nature of mandamus whereby direct the respondent and pass an order whereby direct the respondent authorities to transfer the petitioner permanently; from Western Zone [Mumbai] to North Zone [Chandigarh] ;
iii. issue a writ in the nature of mandamus whereby direct the respondent to keep one vacancy reserve for the petitioner; till the disposal of the present petition.
iv. Pass any such other order[s] in the interest of justice."

2. The brief facts necessary for the adjudication of the instant petition have been reproduced herein:

- a) The petitioner is an ex-serviceman, having served for 20 years with the Indian Air Force.
- b) On 3rd September, 2022 the Food Corporation of India (hereinafter "FCI") invited applications for various posts vide advertisement No. 01/2022-FCI Category III, which included a separate category for ex-servicemen.
- c) The petitioner applied for the post of Assistant Grade-III (technical) in the category of ESM-1 (Ex-servicemen) and provided his posting preference at Western Zone (Madhya Pradesh).
- d) Thereafter, the petitioner appeared for the examination of the said post and the result for the same was declared on 5th March, 2023 whereby, the petitioner had duly qualified for the post of Assistant Grade-III (technical) in the category of ESM-1 (Ex-



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servicemen).

- e) Subsequently, an appointment letter bearing ref. No. RO MH-35.0019/3/2022-pers-RO MH DT.22.07.23 was issued to the petitioner, whereby, he was posted at the Western Zone (Maharashtra).
- f) On 23rd July, 2023, the petitioner conveyed his consent to join the post of Assistant Grade-III (technical) in the category of ESM-1 (Ex-servicemen)
- g) Thereafter, vide letter dated 23rd July, 2023 the petitioner made a representation to the AGM (Recruitment), FCI, Maharashtra, (hereinafter “respondent no.3”), thereby, requesting to be posted as per his preference i.e., Madhya Pradesh.
- h) Pursuant to the aforesaid letter, the petitioner made another representation, thereby, seeking an extension of the joining time and change of zone against the post of Assistant Grade-III (technical) in the category of ESM-1 (Ex-servicemen), due to the demise of his wife.
- i) Subsequently, the petitioner made representations dated 10th August, 2023 and 26th August, 2023, thereby, requesting change of zone from Western Zone to North Zone.
- j) Thereafter, vide email dated 4th September, 2023 the FCI accepted the request of the petitioner, thereby, extending the time to join the FCI to 24th January, 2024, however, the change



of zones from western to north was not granted.

k) Aggrieved by not being transfer of zones, the petitioner has preferred the instant petition.

3. Learned counsel appearing on behalf of the petitioner submitted that the non-grant of internal-zonal transfer by the FCI is in violation of principles of natural justice and is contrary to the provisions of law as well as the statutory provisions governing the FCI.

4. It is submitted that the FCI has not taken into consideration, the rare situation of the petitioner and inhumanely denied the request of internal-zonal transfer.

5. It is submitted that the candidates appearing for the examination of the post of Assistant Grade-III (technical) in the category of ESM-1 (Ex-servicemen), have a choice of posting given by them, on merit however, the petitioner was not granted the posting of his choice despite securing first rank in the examination for the said post.

6. It is submitted that the respondent authorities failed to consider their own guidelines namely Guidelines Regulating Inter-Zonal Transfer On Permanent Basis, especially para 9.1 which stated that inter zonal transfer policy on permanent basis, from one unit of seniority to another as defined under Regulation 4 of the FCI [Staff] Regulations, 1971 .

7. It is further submitted that as per the internal-zonal policy, the case of the petitioner is covered by the guidelines governing 'Widower and Single Parent'.

8. It is submitted that the respondent authorities ought to have shown



some compassion, thereby, approving the request for transfer, given the fact that the petitioner's wife had passed away and he was solely responsible for the upbringing of his child.

9. In view of the foregoing submissions, it is prayed that the instant petition may be allowed, and the operative portion of letter dated 4th September, 2023 may be quashed.

10. Per contra, learned counsel appearing on behalf of the respondents vehemently opposed the arguments advanced on behalf of the petitioner.

11. It is submitted that the non-grant of permission for inter-zonal transfer was not in contradiction with the principles of natural justice or the statutory laws governing the FCI.

12. It is submitted that vide letter dated 3rd August, 2023 the petitioner had duly provided his consent, thereby, conveying his willingness to join the FCI at the post of Assistant Grade-III (technical) in the category of ESM-1 (Ex-servicemen), in the Western Zone (Maharashtra).

13. It is submitted that it was only after conveying his consent for the post of Assistant Grade-III, that the petitioner made requests for inter-zonal transfer to the North Zone.

14. It is submitted that transfer is an incidence of service and that an employee has no vested right to claim a posting of his choice and further that the employers are well aware of the administrative requirements of the organisation and the postings are made in accordance with the said requirements.

15. It is also submitted that in light of the personal difficulties being faced



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by the petitioner, he was granted an extension to join the service, making his joining date 24th January, 2024.

16. It is further submitted the petitioner cannot seek transfer since he is yet to join the post of Assistant Grade-III (technical) in the category of ESM-1 (Ex-servicemen) and the posting at Western Zone (Maharashtra) was his first posting and hence the petitioner cannot pray for grant of transfer.

17. In view of the foregoing submissions, it is prayed that the present petition may be dismissed, being devoid of any merit.

18. Heard the parties and perused the record.

19. It is the case of the petitioner that he applied for the post of Assistant Grade-III (technical) in the category of ESM-1 (Ex-servicemen). It is contended that while applying for the said post, the petitioner was given a choice to exercise his option to be posted in the Western Zone (Madhya Pradesh), however, the posting provided to him was at Western Zone (Maharashtra). It is further contended that the petitioner made several representations to change the posting from Madhya Pradesh to Maharashtra, however, due to non-response at the hands of the respondents, the petitioner accepted the posting at Western Zone (Madhya Pradesh). It is contended that due to the sudden demise of his wife, the petitioner requested the respondents for extension of joining date and to shift the posting to Northern Zone from Western Zone and vide letter dated 4th September, 2023 the respondent partially allowed the same, thereby, extending the joining date of the petitioner, however, not accepting the transfer request extended by the petitioner. Aggrieved by the arbitrary denial of transfer at the hands of the



respondents, the petitioner has preferred the instant petition, thereby, praying to quash the operative part of the letter dated 4th September, 2023.

20. In rival contentions, it was contended on behalf of the respondent, that the denial of inter-zonal transfer was done in due compliance with the law and statutes governing the FCI. It is contended that the petitioner had duly accepted the offer extended by the FCI, thereby, expressing his consent and the request for the inter-zonal transfer, was made at a later stage. It is further contended that transfer is an incidence of service and that an employee has no vested right to claim a posting of his choice, therefore the instant petition is devoid of merit.

21. Before delving into the merits of the case, it is imperative to explore the power of this Court while issuing a writ of mandamus. The law regarding the scope of mandamus issued by High Courts, is fairly well settled. A writ of mandamus may be issued but remains limited to cases wherein there exists a legal right in the petitioner with a corresponding legal duty in the respondent even then the Courts will refrain from interfering unless a clear-cut case for interference is made out.

22. Mandamus is one of the prerogative writs issued by the High Court or the Supreme Court in the manner of command to any authority that falls under the definition of “State” as per Article 12 of the Constitution of India for the purpose of fulfilling their constitutional/ statutory/ public duty. It is used as a last resort in cases where the Court is satisfied that without its intervention there will be denial to justice to the party invoking such writ.

23. The quintessential elements for issuing a writ of mandamus are firstly,



the petitioner has claimed relief by invoking such writ has a legal right, secondly, the authority against whom the writ is seeking to be enforced has a legal duty towards such petitioner and has refused relief to petitioner, thirdly, such relief is claimed with a *bona fide* intention and fourthly, the petitioner has no alternative remedy.

24. The Court must be hyper vigilant while issuing a writ of mandamus since the same is an extraordinary remedy to be invoked only upon special occasions and in exceptional circumstances. It is invoked to supplement the deficiency in law, if any, and cannot be invoked as an appellate mechanism against the decision of any Court, Tribunal, or Authority which is exercising statutory power. The writ of mandamus is an invincible weapon in cases, where there is a failure of justice or exercise of power in an illegal way or arbitrary manner. The same has been reiterated by the Hon'ble Supreme Court in the judgment of ***Oriental Bank of Commerce v. Sunder Lal Jain, (2008) 2 SCC 280.***

25. Adverting back to the facts of the instant petition, it is contended by the petitioner, that he was initially not granted the posting of his choice and upon providing his consent for the posting at Western Zone (Maharashtra), his subsequent request to shift his posting to the Northern Zone (Chandigarh) was declined by the respondent/FCI. The respondent/FCI extended the joining time of the petitioner in light of the personal difficulties that were being faced by the petitioner. However, the petitioner is aggrieved by the fact that his request to transfer to the Northern Zone (Chandigarh) was declined by the respondent/FCI.



26. It is a well settled principle of law that matters pertaining to transfer are a matter of incidence and do not require the Court's intervention, unless the said transfer has been done illegally or in contravention with certain statutory provisions. The aforesaid principle has been discussed time and again by different Courts. The Hon'ble Supreme Court in case titled *Novartis India Ltd. v. State of W.B.*, (2009) 3 SCC 124, held the following:

"34. There cannot be any doubt whatsoever that ordinarily an employee who has been transferred should, subject to just exceptions, join at his transferred place. Ordinarily in an industrial undertaking indiscipline should not be encouraged. This Court in SBI v. Anjan Sanyal [(2001) 5 SCC 508 : 2001 SCC (L&S) 858 : JT (2001) 5 SC 203] observed that the conduct of an employee in a transfer case is material as he cannot get a premium for his disobedience. There are, however, certain exceptional situations in this case. Admittedly the respondents were challenging the right of the employer to order transfer of the employee particularly when they hold some posts in the association. The dispute was sub judice. They were in their late fifties. They had served the company for a period of more than 25 years. It is true that they did not join at their transferred posts within a reasonable time. It may also in an ordinary situation be held that seven months is too long a period to join at the transferred place. There cannot furthermore be any doubt that the transfer is an incidence of service. Unless an order of transfer is passed contrary to the provisions of the statutory rule or settlement, the same should not be interfered with."

27. A bare reading of the aforesaid extract makes it evident that any matter pertaining to transfer is in fact not to be interfered with by the Courts



unless the same is *mala fide* or illegal in nature. Courts may only interfere when there is a *mala fide* exercise of power or the transfer has been done in contravention with statutory provisions. It is also well settled that such matters pertaining to transfer are those which are to be dealt with by the management of the said organisation and do not warrant the Courts intervention.

28. Further, it is the duty of the employee to join the place of transfer, since the organisation ordering such transfer has taken into consideration the administrative requirements and deficiencies in their department before sanctioning such transfer. Court cannot overstep by way of intervening in the transfer matters of the organisation since it is the organisation which knows the best for its employees and working of the organisation. Moreover, every organization should have a fair and impartial transfer policy which should be known to each employee. The responsibility for effecting transfers is usually entrusted to an executive with power to prescribe the conditions under which requests for transfers are approved.

29. In the instant petition, the petitioner was initially posted at the Western Zone (Maharashtra), despite, his preferred place of posting being Madhya Pradesh. Subsequently, the petitioner represented to the respondent/FCI, thereby, requesting a change in his place of posting, however, at a later stage, the petitioner accepted the initial offer of being posted at Western Zone (Maharashtra). Thereafter, due to certain unfortunate events, the petitioner again represented to the respondent/FCI, thereby, requesting to be transferred to Northern Zone (Chandigarh) and



seeking an extension in the joining time. The respondent/FCI granted the said extension, however, the place of posting remained Western Zone (Maharashtra).

30. At this juncture, it is apposite for this Court to analyse the appointment letter which has been duly signed by the petitioner, thereby, accepting the job at the Western Zone (Maharashtra). The relevant portion of the same has been reproduced herein:

“5) He/She will be liable to serve in any part of India. Presently he/she is posted to Food Corporation of India, Regional Office, Mumbai (Maharashtra Region), 5th Floor, Rajendra Nagar, Dattapada Road, Borivali (East), Mumbai for further deployment.”

31. Hence, the instant case is not related to transfer but the petitioner is seeking a change of the position at which it joined despite consenting to join at the said position by way of appointment letter.

32. The aforesaid clause of the appointment letter explicitly states that the petitioner has consented to serve in any part of India and has duly accepted his posting at the Western Zone (Maharashtra). It is also imperative for this Court to analyse the impugned order dated 4th September, 2023, the operative portion of the same has been reproduced hereunder:

“This is with reference to your email August 16, 2023, requesting for extension to join FCI in the selected post as per appointment letter dated 22.07.2023. In this regard, considering the circumstances of the case, as a one time measure, the Competent Authority has granted you extension to join FCI by 21.01.2024. No further extension shall be granted. You are hereby directed to report for joining for the selected



post on or before 21.01.2024 at FCI, Regional Office, 5th floor, Borivali (E), Mumbai, failing which your candidature shall be treated as cancelled.

However, your request for the change of Zone has not been accepted by the Competent Authority.”

33. The impugned letter dated 4th September, 2023 has accepted the petitioner's request, thereby, extending the joining time of the petitioner and further directing him to join from 21st January, 2024, however, the request of the petitioner to again shift place of work was denied by the competent authority. As discussed above, it is well settled law that such transfer is an incidence of service and does not warrant the Court's intervention, unless the same has been done in contravention of settled statutory laws.

34. In the instant petition, the request of the petitioner to be posted at the Northern Zone (Chandigarh) was denied by the competent authority of the respondent/FCI and such transfer decisions are matters that are to be determined by the respondent/FCI as well. There has been no *mala fide* exercise of powers or non-adherence to the statutory laws at the hands of the respondent/FCI.

35. Further, it is the discretion of the respondent/FCI to take decisions concerning such transfers. Moreover, the petitioner had previously provided his consent, thereby, accepting the posting at Western Zone (Maharashtra), as per letter dated 3rd August, 2023 and a request to change place of work cannot be made at a belated stage, after providing consent for the same initially.



36. At this juncture, it becomes imperative to analyse the powers of this Court under Article 226 of the Constitution of India. Under the said Article, this Court cannot intervene and exceptionally carve out an exception, thereby, directing the respondent to transfer the petitioner to the Northern Zone (Chandigarh) as the same has been done by the respondent/FCI in due consideration of the administrative requirements of the organisation. In light of the same, this Court does not deem fit to intervene in such circumstances wherein, the true and accurate position can only be determined by the organisation.

37. Moreover, mandamus cannot be demanded *ex debitojustitiae*, it may be issued by the Court's discretion. The Courts under Article 226 must refrain from issuing a writ of mandamus in cases there is no such illegality in the functioning of the statutory authorities against which the writ has been preferred.

38. The Court should exercise its power under Article 226 very cautiously and sparingly in exceptional circumstances only in a given case where it is demonstrated that there is something palpably erroneous in the process of recruitment by the statutory authority.

39. In lieu of the foregoing facts and circumstances, this Court does not deem it fit to issue a writ of mandamus or any other writ, since the present matter is an incidence of service and does not warrant this Court's intervention.

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



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41. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 23, 2023

Dy/ds/db

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
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