

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.C.T.111 of 2022

**Jugal Krishna Paul
Versus
Union of India and others**

For the appellant : Mr. Bharat Bhusan,
Mr. Jugal Krishna Paul (in person)

For the State respondent No.1 : Mr. Kumar Jyoti Tewari,
Mr. Narendra Prasad Gupta.

For the C.G.S.T. : Mr. Vipul Kundalia,
Mr. Abhradip Maity,
Mr. Anindya Karar.

Heard on : November 6, 2024.

Judgment on : November 7, 2024

Madhuresh Prasad, J.:

1. Heard learned counsel for the petitioner as well as the learned counsel for the Union of India and for the Department/C.G.S.T.
2. The petitioner before this court is aggrieved by a transfer order passed on 02.02.2022 transferring him from his posting as Superintendent HQ T&R, Haldia at the office situated in Kolkata, to the office of the Superintendent in the Siliguri Commissionerate.
3. The brief factual background giving rise to the present writ petition is that the petitioner was first transferred on 31.01.2022 to

the post of Superintendent, HQ T&R, Haldia Commissionerate. Thereafter on 02.02.2022 another transfer order was issued transferring him from the Haldia Commissionerate to the Siliguri Commissionerate. He immediately assailed the order as being actuated by *mala fide*, on extraneous consideration and otherwise contrary to the transfer policy and procedure prescribed for transfers. The petitioner had filed an original application being O.A. 214 of 2022. The Administrative Tribunal passed an interim order on 04.02.2022 that the present petitioner be not released till 09.02.2022 to which date the matter was adjourned. This interim order continued till final disposal of the case.

4. The proceedings before the Tribunal culminated into passing of two separate orders dated 08.04.2022, one by the Judicial Member and another by the Administrative Member of the Division Bench of the Tribunal. While the learned Judicial Member found the transfer order to be unsustainable as being penal in nature, the Administrative Member was of the opinion that the indiscipline behaviour of the petitioner was not to be encouraged and perpetuated. Such being the administrative exigency, the transfer order transferring the petitioner to Siliguri Commissionerate was upheld by the order of the Administrative Member.

5. The matter thereafter was referred to a third Member (Judicial). The third Member to whom the matter was referred finally disposed of the case by agreeing with the view earlier taken by the Administrative Member. The third Judicial Member by order dated

17.10.2022 has held the order of transfer to be valid in law, and this is the majority view. The Judicial Member has recorded in his order that maintenance of efficiency is a part of accountability of the government servant. The authority is required to be given some discretion for manning the department, so as to avoid a chaotic situation in the department; and every such reason behind the transfer order cannot be branded as a punitive case, as in the present case.

6. We consider it appropriate to reproduce paragraph 10 of the judgment passed by the Judicial Member on 17.10.2022, which reads as follows:

“10. Every employee is to maintain discipline and avoid insubordination in the working sphere of any organization. Similarly, maintaining efficiency is part of the accountability of the government servant. If free hands are not given to the authority manning the department, a time will come there would a chaotic situation in the department. Each and every action behind the transfer cannot be branded as a punitive one as in the present case. It may further be noted that 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. Further, in the case of S.C. Saxena v. Union of India and others, (2006) 9 SCC 583, the Hon'ble Supreme Court has been pleased to observe that a Government servant cannot disobey the transfer by not reporting at the place of posting. It is his duty to first report for work and if he has some difficulty / personal problem, he can make a representation after joining at his new place of posting. The Supreme Court has deprecated the practice of not reporting at the place of posting and indulging in litigation. The Court held as under:

"We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of

posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Apart therefrom, if the appellant really had some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted. We too decline to believe the story of his remaining sick. Assuming there was some sickness, we are not satisfied that it prevented him from joining duty either at Tezpur or at Amritsar. The medical certificate issued by Dr. Ram Monohar Lohia Hospital Hospital proves this point. In the circumstances, we too are of the opinion that the appellant was guilty of the misconduct of unauthorisedly remaining absent from duty."

7. Another fact which is not in dispute and which forms part of the record is the information made available to the petitioner under the Right to Information Act by the Assistant Commissioner (CPI) by letter dated 10.03.2022. Thus, copies of the office records and relevant physical file forming the basis of the transfer orders, in question, has been supplied to the petitioner.

8. Since the issue arising for consideration is whether the transfer order is punitive and actuated by *mala fide* or not, these files and office records require consideration.

9. The learned counsel for the petitioner has at the very outset drawn our attention to noting of the Additional Commissioner dated 02.02.2022, in these records. From a bare reading of the same it is apparent that based on such notings proposing the petitioner's transfer to Durgapur (Audit), the Principal Chief Commissioner has directed the petitioner's transfer to Siliguri Commissionerate.

10. It would be appropriate to reproduce the said notings as heavy reliance has been placed on the same by the learned counsel for the petitioner. The relevant extract of the files are thus being quoted:

*"F. NO. II(3)27-ET/Supdt/Pr.CCO/CGST&CX/Kol/18.
Sub: Threatening by Shri Koushik Roy, Superintendent
regarding transfer order of three Superintendents.
Ref: Letter dated 02.02.2022 submitted by the Additional
Commissioner, Haldia CGST&CX Commissionerate.*

*In the letter in reference, the Additional Commissioner, Haldia CGST&CX Commissionerate has submitted a written complaint addressed to the Principal Chief Commissioner, Kolkata CGST&CX Zone, against Shri Koushik Roy, Superintendent and three other Superintendents presently working in Haldia CGST&CX Commissionerate.
The letter is put up for perusal and further necessary order please.*

*SIGNED/ 02.02.2022.
(DIBYENDU DAS), AC.*

Additional Commissioner

Noting above may please be seen. One letter received from Shri P. C. Nayak, ADC Haldia Commissionerate regarding threatening by Shri Koushik Roy, Supdt. in his chamber with two other Superintendent (name not known) on 02.02.2021. They were threatening P. C. Nayak, At Haldia regarding transfer Order of 4 Superintendents issued by him in Haldia Commissionerate. In his letter, he mentioned that one Superintendent by name Shri Jugal Krishna Pal, who was working at HQ Adjudication section and he was not doing any work. Similarly, two officers of anti-evasion namely Smarajit Bandopadhyay and Tapas Kr. Chattopadhyay posted in HQ, AE are also not working and creating lots of problem for officers at A/E section at Haldia Commissionerate. Shri P.C. Nayak, ADC, Haldia requested to take n/a against these officers It is to submit that Shri Koushik Roy, Supdt. is posted in Pr. CCO Office and explanation is being called for from him in another file. It is proposed that the these three officers moved out from Haldia Commissionerate for smooth function of Haldia offices and also to set example that such misconduct and non-compliance not to be tolerated in any count. These 3 officers may be transferred as proposed below:-

- (1) Smarajit Bandyopadhyay - Haldia to Siliguri*
- (2) Tapas Kr. Chattopadhyay - Haldia to Siliguri*
- (3) Jugal Krishna Pal - Haldia to Durgapur (Audit)*

Put up for your perusal, approval and further direction please.

SIGNED
ADC, 02.02.2022

Pr. CC

(a) Immediately explanation of Mr. Koushik Roy should be called for (Today itself) asking for him to explain his conduct as alleged by Mr. Mayak, ADC [Haldia]. Such atrocious behaviour by a Govt. Servant need to be condemned to the heaviest possible manner. Mr. Nayak is a very Senior officer who feels threatened because of aggressive behaviour of Mr. Koushik Roy.

(b) Had he taken any permission from his superior officer? He should be asked to give his replies by 11.30 AM of 04.02.2022 In respect of proposal at (A) pre page-

(a) Officer at Sl. No. (1) and Mr. Jugal Krishna Pal are transferred to Siliguri Commissionerate.

(b) Mr. Koushik Roy is transferred to Durgapur Audit

(c) Officer at Sl. No. 2 is posted to Siliguri Appeal.

Please issue the orders today. Stand relieved on 04.02.2022

[Today)

SIGNED
PCC/02.02.2022

ADC/CCO

- In view of above direction, further course of action may be taken.

- explanation may be called from Shri Koushik Roy (AC-BK)

- Office order may be put up for (b).

SIGNED
ADC, 02.02.2022

AC(BK)/AC(DD)"

11. By referring to the same, the learned counsel for petitioner submits that *mala fide* is writ large. The Additional Commissioner, Haldia has given a written complaint dated 02.02.2022 against another Superintendent as well as the present Superintendent and two others regarding their alleged insubordination and acts of misconduct in the office. The letter and the notings thereupon, reveals that there is an allegation against the petitioner and the two others of not working in the offices where they have been posted. On the basis of such allegations, it contains a proposal of another Additional Commissioner, on the same date that the three officers

including the petitioner be moved out from the Haldia Commissionerate for smooth functioning and also to set example that such misconduct and non-compliance is not to be tolerated in any count. The noting proposes that the three officers be transferred as proposed below, wherein the proposals regarding the petitioner's transfer is from Haldia to Durgapur (Audit).

12. The Principle Chief Commissioner on the very same date i.e. on 02.02.2022, has proceeded to direct that the present petitioner be transferred to the Siliguri Commissionerate.

13. It is submitted by the learned counsel for the petitioner placing reliance on the decision of the Apex Court in the case of **Somesh Tewari Vs. The Union of India and others** reported in **(2009) 2 SCC 592** that the file notings are a clear indication of the malice in law forming the basis for the petitioner's transfer. The allegations/unverified misconduct forms the basis of the transfer order. The transfer order is thus unsustainable. He therefore submits that the initial decision of the Judicial Member setting aside the transfer order is required to be upheld. The other two decisions to the contrary are, therefore, unsustainable and liable to be set aside.

14. The learned senior Standing counsel for the Department, on the other hand, submits that the transfers have been effected to ensure smooth functioning of the office as it is apparent from the material being relied upon by the petitioner himself that the petitioner was not discharging his duties. The transfer is, therefore, nothing more than

in the interest of administrative exigency. The mala fide which the petitioner is trying to attribute is clearly unsustainable.

15. It is further submitted that once a transfer order was issued, the petitioner should have joined his place of posting. Having failed to do so, he is not entitled to any relief as it is a settled law that in the matter of transfer only after complying with the transfer order an employee can assail the same. He has referred to the decision of the Apex Court in the case of **S. C. Saxena Vs. Union of India and others** reported in **(2006) 9 SCC 583**. Specifically paragraph 6 thereof to buttress his said submission.

16. Relying upon this decision in the case of S.C. Saxena (supra) he has also submitted that merely by alleging mala fide, the petitioner cannot succeed in his challenge to the transfer order. The mala fide alleged is required to be shown and proved. Only if the allegations of mala fide is proved, the petitioner may be in a position to assail the transfer order in this ground.

17. We have heard the learned Counsel for the parties and perused the materials on record.

18. The facts which are not in dispute as per submission of the learned Counsel for the parties is that the transfer impugned before the Tribunal was directed on 02.02.2022, i.e. just one day after the petitioner's earlier transfer order (31.01.2022). This frequency of transfer in an appropriate case may, or may not be a ground to assail the second order of transfer dated 02.02.2022. We are also conscious of the legal position that the transfer is an incident of

service and the competent authority should be able to exercise discretion to transfer and employee in administrative exigency. Courts have been slow to interfere in transfer matters even where a transferred employee has assailed the same on the ground of violation of guidelines. The Apex Court has held in the case of **State of Uttar Pradesh and Ors. Vs. Gobardhan Lal** reported in **(2004) 11 SCC 402** which reads 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.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for

strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

19. Having considered the judgement of the Apex Court and settled legal position, we advert to the facts and circumstances in the present case. From bare perusal of the relevant extract of the file wherein the transfer order has been directed, it is apparent that the same was based on a complaint dated 02.02.2022 made by the Additional Commissioner, Haldia against four Superintendents, including the petitioner. It is based on such complaint alleging misconduct and insubordination that a recommendation has been made for the present petitioner's transfer to Durgapur (Audit).

20. Based on such material, the Principal Chief Commissioner on the very same date (02.02.2022) has directed the petitioner's transfer to the Siliguri Commissionerate.

21. It is thus obvious that the transfer is based on a complaint alleging misconduct and insubordination against the present petitioner along with three others. Whether based on such allegation, for which no action otherwise has been taken against the petitioner, he could have been visited the order of transfer is the issue arising for consideration. The law in this regard is also well-settled. Decision of the Apex Court in the case of **Somesh Tiwary** (supra) relied upon by the learned Counsel for the petitioner has clearly laid down the law in this regard. When an order of transfer is passed as has been done in the present case based on such unverified allegations, the

Apex Court has held that such an order of transfer would be suffering with the vice of malice in law.

22. We consider it appropriate to produce paragraph 16 of the said report which reads as follows:

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds—one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”

23. The said decision has been referred to and reiterated by the Apex Court more recently in the case of **Mr. X Vs. Registrar General, High Court of Madhya Pradesh and Another** reported in **(2022) 14 SCC 187**.

24. We therefore have no hesitation in concluding that the transfer is vitiated on the ground of being actuated by malice in law.

25. The submission of the learned Counsel for the respondents therefore that the petitioner is required to establish actual mala fide is clearly unsustainable. Insofar as the other submissions of the learned Counsel for the respondents that the petitioner is required to comply with the transfer order before assailing the same, we find the said submission to be devoid of any substance having regard to the facts and circumstances of the present case. In the instant case, just

two days after the transfer order, the Administrative Tribunal on 04.02.2022 had passed interim order in favour of the petitioner that he was not to be released from his posting. The said interim order continued till final disposal of the matter by the judgment passed by the third Member as late as on 17.10.2022.

26. In view of the settled legal position regarding malice in law, as per the Judgement/(s) of the Apex Court considered above, we find the submission of the learned Counsel for the respondent that the transfer order can be said to be in exigency of service is devoid of any substance whatsoever. If at all the petitioner was creating a chaotic situation in the office by his acts of omission or commission, it was open to the competent authority to proceed in accordance with law which they have not done till date. On the other hand they have resorted to transfer as a tool to teach the petitioner a lesson which is obvious from the notes of the ADC and PCC in the extract of the file relating to the petitioner's transfer noted above. Such a transfer order cannot be sustained in law.

27. We, therefore, find that the majority view of the Central Administrative Tribunal, Kolkata Bench as per the separately recorded orders dated 08.04.2022 by the administrative member refusing to interfere with the transfer order and its affirmation by the order of the 3rd Judge (Judicial Member) dated 07.10.2022 who was considering the matter on reference in view of the difference of opinion, is thus unsustainable.

28. In view of the findings above, we set aside the CAT order passed in O.A. No. 214 of 2024. We also direct quashing of the transfer order dated 02.02.2022 issued by the authorities transferring the petitioner to Siliguri Commissionerate. In view of the quashing of the impugned order of transfer we find the petitioner to be entitled to all consequential benefits on account of quashing of the transfer order dated 02.02.2022.

29. The Writ petition is thus allowed. Pending applications if any stand disposed of.

(Madhuresh Prasad, J.)

30. I agree.

(Supratim Bhattacharya, J.)