



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.19879 of 2022 (O&M)
Date of decision: 28.10.2024

Ashwani Kumar

....Petitioner

Versus

Chairman-cum-Managing Director, PSPCL and others

....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. N.P.S. Mann, Advocate for the petitioner.

Mr. Pratap Singh Gill, Advocate for respondents – PSPCL.

NAMIT KUMAR J. (Oral)

CM-13719-CWP-2022

Allowed as prayed for.

CWP No.19879 of 2022

1. The petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ of certiorari, quashing the order dated 18.08.2022 (Annexure P-4), whereby the petitioner has been transferred from DS Sub-Division-1, Balachaur under : (DS Div. Garhshankar) to DS Division East, Jalandhar under: (DS Circle, Jalandhar).

2. It is the case of the petitioner that he was working as Lower Division Clerk (LDC) in Domestic Service (DS) Division, Garhshankar which falls in DS Circle Nawanshahar and vide order dated 16.05.2022, he was transferred from DS Division Garshankar to Commercial Unit, DS Special Division, Janta Nagar, Ludhiana, against a vacant post.

Thereafter, the petitioner made a representation in respect of said



transfer and the same was accepted and vide order dated 07.07.2022, the transfer order dated 16.05.2022, was cancelled and the petitioner came back to Garshankar. He was again then transferred to Distribution Sub-Division Balachaur No.1, vide order dated 12.07.2022, where the petitioner had already joined, however, again vide order dated 18.08.2022, the petitioner has again been transferred from Distribution Sub-Division Balachaur-1, District Hoshiarpur to Distribution Division East, Jalandhar, which has been impugned in the present petition.

3. Learned counsel for the petitioner has submitted that the transfer of the petitioner is on account of mala fide of the respondents as the village of the petitioner falls in Garshankar constituency and the frequent transfers of the petitioner are only due to the reason that the defeated Congress party leader Sh. Amarpreet Singh Lally, who contested the assembly election held in February, 2022, lost the said election is nourishing a grudge against the petitioner as the petitioner and his family members have not voted in his favour and not supported him in elections.

4. Per contra, learned counsel for the respondents has submitted that firstly the transfer of the petitioner has been made in public interest as Jalandhar Station has much heavy load than Garshankar Station and more manpower is required at Jalandhar Station. He has further submitted that the allegations of the petitioner are totally vague as no person has been impleaded as party respondent against whom the mala fide has been alleged.



5. I have heard learned counsel for the parties and perused the relevant record with their able assistance.

6. Law on the issue is well settled that the transfer is an incident of service and no employee has a right to be remained posted at a particular place of posting and the transfer policy is mere guideline and is not legally enforceable under Article 226 of the Constitution of India. A Division Bench of this Court in ***Union of India Vs. Ashok Kumar and another : 2008 (1) SCT 704***, while considering the similar issue has held as under :-

“7. xx xx xx xx xx Apart from the said fact, the question which is required to be examined is whether such posting and transfer policy confers any enforceable right in favour of respondent No.1 so as to challenge his transfer purportedly made on administrative ground before the Tribunal. Guidelines have been framed by the authorities to regulate their internal working and with a view to deal with different situations evenly. Such guidelines are not statutory in nature. Any departure from the said guidelines by itself does not give right to an employee to successfully challenge his transfer. The transfer can be challenged on limited grounds i.e., when the same is not within the cadre or the authority is not competent to order transfer or it is in violation of the statutory rules or actuated by mala fide. The transfer is normal incidence of service and an employee has no right to resist his transfer on the basis of alleged violation of the guidelines. The issue is not res integra. In ***Bank of India v Jagjit Singh Mehta, 1992(1) SCT 161 : AIR 1992 SC 519***, Hon'ble Supreme Court was seized of the guidelines for posting husband and wife at one station even if their employers be different. The Court found that the only thing required in terms of the guidelines is that the departmental authorities should consider this aspect along with the exigencies of administration. Thus, no right is conferred on an employee to remain at the same



place even if administrative exigency and transfer policy do not permit it.

8. In **Union of India v. S.L. Abbas, 1995(4) SCT 455 : AIR 1993 SC 2444**, Hon'ble Supreme Court held to the following effect :-

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer of vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guidelines, however, do not confer upon the Government employee a legally enforceable right".

9. In **State of U.P. v. Gobardhan Lal, 2004(2) SCT 368 : AIR 2004 SC 2165**, Hon'ble Supreme Court held that no government servant can 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. The 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. The order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable right unless shown to be vitiated by mala fides or is made in violation of any statutory provision.



10. In *National Hydroelectric Power Corporation Limited v. Shri Bhagwan*, 2002(1) SCT 236 :

AIR 2001 SC 3309, Hon'ble Supreme Court held that unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned.

11. In *S.L. Abbas's case (supra)*, Hon'ble Supreme Court has held that the jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service matters. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Article 323-A of the Constitution. The Central Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer.

12. A Full Bench of this Court in ***Jagir Singh Kanungo v. The State of Punjab through the Secretary Vigilance, Punjab, Chandigarh*, 1993(2) SCT 128 : 1993(1) Punjab Law Reporter 376**, has the occasion to interpret the guidelines issued by the State of Punjab for conclusion of the inquiry proceedings in a time bound manner. It was held that if the enquiry proceedings are not completed within the aforesaid period, no right accrues to the employee to approach the Court of law for enforcement of those guidelines. It was held to the following effect :-

“.....If the State Government have issued certain guidelines for the guidance of the various departments or the disciplinary authorities to impress upon them the necessity of finalising the departmental proceedings expeditiously or even within a fixed period, it does not mean that after the expiry of that period, a right in law accrues to the employee to approach the Court of law for the enforcement of those guide-lines...”



Keeping in view the aforesaid parameters and the scope of the jurisdiction of the Tribunal in an application under section 19 of the Act, we are of the opinion that the order passed by the Tribunal setting aside the order of transfer is illegal exercise of the jurisdiction by the Tribunal. The guidelines are not statutory and do not confer any legally enforceable right on the basis of which an employee can challenge his transfer. No doubt, normally the guidelines are to be adhered to by the administrative authorities but their non-adherence will entitle an employee to bring such facts to the notice of the superior authorities but does not confer any right to seek quashing of the transfer either in an application under section 19 of the Act or under Article 226 of the Constitution of India. Under section 19 of the Act or under Article 226 of the Constitution, transfer order can be interfered with if it is shown to be vitiated by mala fide or in violation of the statutory provisions or having been passed by an authority not competent to pass such an order. Since none of the three conditions are satisfied in the case set up by respondent No.1, the order passed by the Tribunal cannot be sustained in law.”

7. To the same effect is the Division Bench judgment of this Court in ***Mool Chand Tewatia Vs. Union of India and others : 2016 (2) SCT 427***, wherein it has been held that the transfer in an incidence of service and the Courts are not to interfere unless the Courts finds that the transfer is due to mala fide or against the service rules.

8. In the present case, no person against whom the mala fide has been alleged has been made the party respondent. Nothing has been placed on record to support the averments made in the petition qua having any grudge against the petitioner. Further notice of motion in the present case was issued on 05.09.2022 and status quo with regard to place of posting of the petitioner was ordered to be maintained. The

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petitioner has already continued at the present place of posting for the last more than two years under the interim orders passed by this Court. Since the transfer is an incidence of service, the employee has no right to remain at a particular station.

9. In view of the above factual position and settled principles of law, I find no merit in the present petition and the same is accordingly dismissed.

28.10.2024

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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No