

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

106**CWP-21183-2024****Date of decision 31.08.2024**

Ashok Kumar

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Harminder Singh, Advocate for the petitioner.

Mr. Rajesh Sehgal, Addl. A.G., Punjab.

Mr. S.S. Behl, Advocate for respondent No.3
(through video conferencing).**NAMIT KUMAR, J. (ORAL)**

1. The petitioner has approached this Court by filing the instant petition under Articles 226/227 of the Constitution of India, praying for issuance of a writ in the nature of certiorari, quashing the order dated 12.08.2024 (Annexure P-7), passed by respondent No.1, whereby the petitioner has been transferred from Gurdaspur to Nawanshahr.

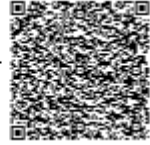
2. The brief facts, as have been pleaded in the petition, are that the petitioner joined as Inspector in the year 1999 in Municipal Council, Jalalabad and thereafter, he remained posted at Faridkot, Hoshiarpur, Qadian and thereafter he was transferred to Gurdaspur. In the year 2015, he was promoted as Superintendent and performed his duties as such at M.C. Batala upto 2018 and thereafter, he was transferred to Gurdaspur from where he was transferred to Dhariwal (additional charge of Dinanagar) vide order dated 04.07.2022 and again

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he was transferred back from Dhariwal to Gurdaspur vide order dated 15.09.2022. On 14.02.2023, he was transferred from Gurdaspur to Sujanpur.

3. Learned counsel for the petitioner submits that the present transfer of the petitioner is due to political interference by the local politicians of the ruling party. He submits that the petitioner has been transferred six times in a short span of two years as he was transferred on 04.07.2022 from Gurdaspur to Dhariwal (additional charge of Dinnanagar); on 15.09.2022 from Dhariwal to Gurdaspur; on 14.02.2023 from Gurdaspur to Sujanpur; on 02.03.2023 from Sujanpur to Gurdaspur; on 02.08.2024 from Gurdaspur to Patti (cancelled as no such post was available at Patti) and on 12.08.2024 from Gurdaspur to Nawanshahr. He further submits that the impugned transfer of the petitioner is against the transfer policy dated 23.04.2018 (Annexure P-5) as the minimum stay at a particular place of posting is 02 years. He further submits that the wife of the petitioner is also working at Gurdaspur, therefore, being a couple case, the transfer of the petitioner is against Clause 2(a) of the abovesaid policy. He further submits that the distance between Gurdaspur to Nawanshahr is 150 kms. and the family of the petitioner is residing at Gurdaspur, therefore, the great prejudice would be caused to the petitioner in case he is to serve at Nawanshahr. He further submits that the impugned transfer is a mid-term transfer, therefore, the same is liable to be set aside.

4. Per contra, learned State counsel and learned counsel for respondent No.3, on receipt of advance copy of the writ petition, have

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produced a letter dated 30.08.2024 issued by respondent No.2-Directorate, Local Government, Punjab, Chandigarh, which is taken on record. In the said letter it has been stated that the petitioner has served for about 25 years and he remained posted at Gurdaspur for about 20 years and 09 months and there is no infirmity in the impugned transfer order as the same has been issued on administrative grounds and with the approval of the competent authority. Para 4 of the said letter reads as under :-

“4. In this regarding it is pertinent to mention here that the petitioner has concealed an untoward fact in the writ petition that as per the order dated 15-09-2022 during his transfer from Municipal Council Gurdaspur to Dhaliwal (he was given additional Charge of Executive Office of Municipal Council Dinanagar). He was arrested by Vigilance Department on dated : 26-11-2022 in the case of Municipal Council Dinanagar (for making payments of fake bills). The employee has been in police custody for more than 48 hours, due to which he was put under suspension vide order No. S3-DLG-GB-(Superintendent)-2022/12 dated 02-12- 2022. After this vide this office orders No. S3-DLG-GB-(Superintendent) -2023/18 dated 14-03-2023 the employee was reinstated during pending enquiry and posted at Municipal Council Sujampur.

It is also to be mentioned here that the employee joined as Inspector on 28-04-1999. The employee has about 25 years of service so far, out of which the employee has served about 20 years and 9 months at Municipal Council Gurdaspur. The details of which are as follows :-

- * From 30-06-2002 to 02-05-2016 (about 13 years 10 months) posted as Inspector at Municipal Council Gurdaspur.*
- * From : 25-05-2017 to 16-07-2020 as Superintendent and from : 17-07-2020 to 02-12-2022 as Current Duty Charge Executive Officer posted at Municipal Council Gurdaspur. (5 years 6 months)*



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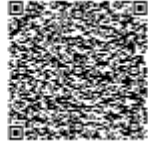
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* *From 02-03-2023 to 12-08-2024 as Superintendent (Worked at Municipal Council Gurdaspur. (1 year 5 months)”*

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,

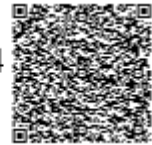


no right is conferred on an employee to remain at the same place even if administrative exigency and transfer policy do not permit it.

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 provisions.*



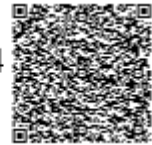
10. In **National Hydroelectric Power Corporation Limited v. Shri Bhagwan, 2002(1) SCT 236 : AIR 2001 SC 3309**, Hon'ble Supreme Court held that unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such 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...”

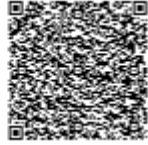
Keeping in view the aforesaid parameters and the scope of the jurisdiction of the Tribunal in an application



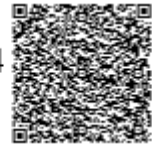
under section 19 of the Act, we are of the opinion that the order passed by the Tribunal setting aside the order of transfer is illegal exercise of the jurisdiction by the Tribunal. The guidelines are not statutory and do not confer any legally enforceable right on the basis of which an employee can 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. A Division Bench of this Court in the case of **Parveen Kumar Vs. State of Punjab and others : 2008(4) SCT 596**, while examining the question of couple case has held as under :-

*“7. The claim of the petitioner on the ground that it is a couple case is also without merit. In the present case, the wife of the petitioner is not a Government employee and therefore, the instructions relied upon by the petitioner would not strictly be applicable even if the spirit of the same is to be kept in view. Even otherwise these are in the nature of guidelines. In **Bank of India v. Jagjit Singh Mehta, 1992(1) SCT 161: AIR 1992 SC 519** it was observed by the Supreme Court that there can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India services, the*



hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all-India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of all-India service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. In addition, in the said case, the respondent therein voluntarily gave an undertaking that he was prepared to be posted at any place in India and on that basis got promotion from the clerical cadre to the officers' grade and thereafter he sought to be relieved of that necessary incident of all-India service on the ground that his wife has to remain at Chandigarh. No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees. Therefore, the petitioner cannot as a matter of right claim any right to be posted at any particular station and neither is the administration under any obligation to give him the right to choose the place of his posting although it is desirable that the instructions and policy issued by the government for the transfer of its employees are adhered to but these nevertheless do not confer any right on the petitioner so as to claim a legally enforceable right.



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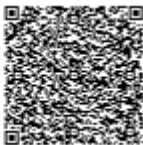
8. *As regards the allegation of mala fide or that the transfer is politically motivated and a pre-planned transfer, it is not in dispute that an order of transfer may be assailed on the ground of mala fide. In the present case, however, there is no mala fide alleged against any person. It is not alleged as to whether anyone has been ill disposed towards the petitioner so as to see that he is transferred and that too in a pre-planned and politically motivated manner. Therefore, in the absence of any allegation against any particular official and in the absence of impleading such person eo nomine so as to enable him to answer the charge, it is evident that there is no allegation of mala fide, which would warrant interference of this Court.”*

8. 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.

9. In the present case, concededly, the petitioner has remained posted in his home district for 21 years and 9 months out of 25 years of his total service. Moreso, the grievance raised by the petitioner qua his transfer in last two years of his service is concerned, the same is also within the boundaries of district Gurdaspur. Further, the contention that the impugned order is in violation of the transfer policy is also not acceptable because of the fact that transfer policies are just guidelines and not legally enforceable.

10. 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.

11. However, petitioner would be at liberty to raise his



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grievance before the authority concerned, if so advised and the same shall be considered by the concerned quarter expeditiously.

31.08.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No