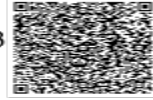


2025:PHHC:073573-DB



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

LPA-410-2025 (O&M)

Reserved on: 23.05.2025

Pronounced on: 28.05.2025

BHARAT ELECTRONICS LIMITED

.....Appellant

Versus

PRESIDING OFFICER CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-2 & Ors.

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE ALOK JAIN**

Present:- Mr. Pawan Kumar Mutneja, Sr. Advocate, with
Ms. Suverna Mutneja, Advocate and
Mr. Viranjeet Singh Mahal, Advocate,
for the appellant.

Mr. Vikas Mohan Gupta, Advocate
for respondent No.2.

SUDHIR SINGH, J.

Challenge in the instant intra Court appeal is to
the order dated 09.11.2023 passed by the learned Single
Judge, whereby the writ petition filed by the appellant was
dismissed. Challenge is also to the order dated 20.12.2024,

whereby the review application filed by the appellant was also dismissed.

2 Before the learned Single Judge, the appellant had sought quashing of the award dated 03.07.2017 (Annexure P-20 with the writ petition), passed by the Central Government Industrial Tribunal-cum-Labour Court-2, Chandigarh (for short 'the Labour Court'), whereby while answering the reference in favour of the workmen, their transfer from Panchkula to other units was held not to be fair, correct and legal.

3. The facts of the case are that the appellant (Bharat Electronics Limited) (hereinafter referred to as 'the BEL'), which is a Government of India enterprise, issued a transfer order dated 26.06.2013 transferring 15 employees from Panchkula to Ghaziabad, Chennai, Machlipatnam and Navi Mumbai. The Bharat Electronics Workers' Union, Panchkula (respondent No.2) raised a dispute against the said transfer and the Government of India, Ministry of Labour, vide order dated 22.10.2013 referred the dispute for adjudication to the Labour Court at Chandigarh. The said reference was challenged by way of CWP-111-2014, which was dismissed on 09.01.2014, but LPA-590-2014 against the said order was partly allowed on 16.09.2015 holding the reference contrary to the standing orders and the said reference order was set aside with liberty to the appropriate

Government to take a fresh decision in accordance with law. Thereafter, Government of India, through Ministry of Labour made another reference. Pursuant to the revised reference, the appellant-Management relieved the transferees and directed them to join at their respective places of posting. The challenge to the revised reference by respondent No.2-Union, remained unsuccessful until the Hon'ble Supreme Court. In the claim statement before the Labour Court, filed on behalf of 15 workmen, it was pleaded that since the inception of the Panchkula unit of the appellant-Management, no workman was transferred to outside Panchkula without obtaining his willingness and as per the prevailing practice. The transfer order was stated to be *mala fide*. It was also pleaded that the working conditions of each unit were different; that there were no inter unit transfer Rules for transferring the non-executive employees. The issue regarding knowledge of the local language was also raised. The said claim of the Union/workmen was contested by the appellant-Management, wherein it was asserted that the condition of transfer was clearly mentioned in the certified standing orders of the Panchkula Unit as also in the appointment letters of the transferred workmen. It was further asserted that in view of the settlement dated 19.05.2010, the Union was estopped from challenging the transfer orders. It was

further asserted that Clause 1.3 of the settlement provided for redeployment of manpower wherever required and that a meeting of the joint standing Committee was held on 13.05.2013 at Bangalore, wherein the representatives of the Union, including respondent No.2-Union, had participated and various issues were discussed, including the one relating to Panchkula Unit. It was further the case of the appellant-Management that transfer proposal dated 17.06.2013 was mooted keeping in view the workload, order book position and need of optimization of manpower and deployment in various units. It was further the case of the appellant-Management that transfer was an incidence of service and did not amount to change in the conditions of service and the condition of transfer had specifically been provided in the appointment letter. The Labour Court, after hearing the rival contention of the parties and taking into consideration the material on record, answered the reference in favour of the workmen, which led to the filing of the writ petition by the appellant-Management, that was dismissed by the impugned order passed by the learned Single Judge.

4. Learned Senior counsel for the appellant has vehemently argued that Clause 8 of the Industrial Employment (Standing Orders) Act, 1946, clearly provided the condition of transfer. It was further stipulated that a

workman may be transferred according to exigencies of work from one unit to another where, in the opinion of the Management, his services are required. While referring to the decision of the Joint Standing Committee, held at Bangalore in 2013, it is argued that in the said meeting, the representatives of the respondent-Union, namely, Sh. Rajesh Kumar, General Secretary, was also present and various discussions had taken place and the issue of Panchkula unit was also discussed and the transfer proposal was mooted pursuant to the said resolution of the meeting. It is further argued that the transfer order(s) dated 26.06.2013 was issued with the specific condition that the persons transferred shall be entitled to all the applicable inter unit transfer benefits. It is further argued that respondent No.2 had initiated various litigations in order to defeat the execution and implementation of the said transfer order(s).

5. The learned Senior Counsel appearing for the appellant-Management has argued that it is settled principle of law that in the transfer matters, the Courts are not to interfere as the same are based on administrative exigencies. It is further argued that 12 out of the 15 transferred employees had already accepted the transfer orders and one is stated to have died, whereas there are only two workmen, who are adamant in not joining their

place(s) of posting citing one or the other reason. It is further argued that when it has specifically been mentioned in the Rules and the Standing Orders/Standing Committee's decision that the employees can be transferred from one unit to the other, there is no logic in the stand of the employees in not joining the place of positing.

6. On the other hand, learned counsel appearing for the respondent No.2, has argued that the learned Single Judge is perfectly justified in dismissing the writ petition filed by the appellant-Management. It is also argued that though transfer is an incidence of service, yet the fact remains that since the inception of the Panchkula Unit, no transfers were effected except the one in respect of the respondent-workmen. It is also argued that the transfer orders are nothing, but a clear *mala fide* intention on the part of the appellant-Management as they are being sent to the places, where not only the service conditions are different, but the language problem is also a big issue. It is also argued that the workmen, who are two in number, are to attain the age of superannuation in next two to three months and therefore, transferring them outside Panchkula-Unit is very harsh. Accordingly, a prayer for dismissal of the LPA has been made.

7. We have heard learned counsel for the parties and have also gone through the impugned order passed by the learned Single Judge.

8. The only question that arises for consideration by this Court is whether the order passed by the learned Single Judge requires any interference by this Court.

9. In order to determine the aforesaid question we are to take into consideration whether the order of transfer is a punishment or it is right of an employer to effect the transfer of its employees, according to the administrative requirements and exigencies. In the instant case, the sole grievance of the workmen is that they had been transferred to other places against the standing orders and the transfer so ordered does not only put them into changed service conditions, but it also creates language problem for them. It may be noticed that in a plethora of judgments the Hon'ble Supreme Court has held that transfer is an inherent power of an employer so as to decide the posting of the suitable employees according to the administrative requirements. In other words to seek posting at a particular place is not an indefeasible right of an employee. The individual convenience of an employee in service is subject to overarching needs of the administration.

10. It is settled law that the transfer order can be challenged on the grounds of mala-fide; violation of any statutory right and the same being detrimental to the employees, holding transferrable post. **In Sri Pubi Lombi Vs. The State of Arunchal Pradesh and others,** (2024)3 SCR 407, while considering the said aspects, it was held by the Hon'ble Supreme Court as under:-

“10. In view of the foregoing enunciation of law by judicial decisions of this Court, it is clear that in absence of (i) pleadings regarding *mala-fide*; (ii) non-joining the person against whom allegations are made; (iii) violation of any statutory provision and (iv) the allegation of the transfer being detrimental to the employee who is holding a transferrable post, judicial interference is not warranted. In the sequel of the said settled norms, the scope of judicial review is not permissible by the Courts in exercise of the jurisdiction under Article 226 of the Constitution of India.”

11. The Hon'ble Supreme Court in **Union of India & Ors. Vs. S.L. Abbas,** 1993 4 SCC 357, has held that an order of transfer is an incidence of Government service and that who should be transferred where, is a matter for the appropriate Authority to decide and unless the order of transfer is vitiated by mala fide or is made in violation of

any statutory provisions, the Court cannot interfere with the same. It would held as under:-

“6. An order of transfer is an incident of Government service. Fundamental Rule 11 says that “the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority”. Fundamental Rule 15 says that “the President may transfer a Government servant from one post to another”. That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that the order of his transfer is vitiated by mala fides on the part of the authority making the order, though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed “mischief” to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a setback some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions

are in the nature of guidelines. They do not have statutory force.

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is 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 guideline however does not confer upon the Government employee a legally enforceable right.

xx xx xx

10. The said observations in fact tend to negative the respondent's contentions instead of supporting them. The judgment also does not support the respondents' contention that if such an order is questioned in a Court or the Tribunal, the authority is obliged to justify the transfer by

adducing the reasons therefor. It does not also say that the Court or the Tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can it be characterized as mala fide for that reason. To reiterate, the order of transfer can be questioned in a Court or Tribunal only where it is passed mala fide or where it is made in violation of the statutory provisions.”

12. In **SK. Nausad Rahaman & Ors. Vs. Union of India & Ors.**, 2022 12 SCC, the Hon’ble Supreme Court while considering the issue of transfer of an employee reiterated its constant view and has held as under:-

“24. First and foremost, transfer in an all-India Service is an incident of service. Whether, and if so where, an employee should be posted are matters which are governed by the exigencies of service. An employee has no fundamental right or, for that matter, a vested right to claim a transfer or posting of their choice.

25. Second, executive instructions and administrative directions concerning transfers and postings do not confer an indefeasible right to claim a transfer or posting. Individual convenience of persons who are employed in the service is subject to the overarching needs of the administration.”

It was further held that the power of judicial review cannot be exercised to interfere with the policy decision of the administrative authorities to effect the transfer of the employees.

13. As noticed above, the transfer order can be challenged on the grounds of *mala fide*; extreme hardship to an employee in exceptional cases and discrimination. However, in the instant case, it may be noticed that soon after the transfer orders were passed by the appellant, the Association of the workmen had started litigation and the said litigation is still continuing. Out of the 15 employees transferred by the appellant, as many as 12 have already joined, one is stated to have died, whereas the remaining two have not joined as such. The grounds for seeking the setting aside of the impugned transfer orders is that since the inception of the appellant-Unit at Panchkula no workmen has been transferred and secondly, the transfer of the workmen at different places in the country shall change their service conditions and also create a language problem for them. However, we find that the respondent-workmen have already deferred the implementation of the transfer order for a period of nearly 12 years. They could not establish any *mala fide* on the part of the appellant-Management nor their cases have been proved to be the ones falling under the exceptional circumstances so as to

halt their transfer. It may also be observed that if the other transferred employees have already joined their place(s) of posting, what has prevented the respondent-workmen from joining their places of posting, is beyond common understanding and it is not forthcoming as to how they would suffer any discrimination if the transfer order is implemented.

14. No other point has been urged.

15. In view of the above, the present appeal is allowed. The impugned orders dated 09.11.2023 and 20.12.2024, passed by the learned Single Judge, are set aside. As a consequence thereof, the award dated 03.07.2017 passed by the Labour Court is set aside. The workmen may join their respective places of posting. Since the transfer order(s) remained stayed due to pendency of the litigation, the appellant-Management shall not take any coercive action against the workmen.

16. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[ALOK JAIN]
JUDGE

28.05.2025

himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No