

W.P.No.9013/2020
(Mahendra Singh Amb Vs. State of M.P. and others)

HIGH COURT OF MADHYA PRADESH :

BENCH AT GWALIOR

Writ Petition No.9013/2020

Mahendra Singh Amb ...PETITIONER

versus

State of Madhya Pradesh & others ...RESPONDENTS

CORAM :

Hon'ble Shri Justice Vishal Mishra

Shri D.P. Singh, learned counsel for the petitioner.

Shri M.P.S. Raghuvanshi, learned Additional Advocate General for the
respondent/State.

Whether approved for reporting : Yes/No

Reserved on : **5.11.2020**
Date of decision : **15.12.2020**

ORDER

(15.12.2020)

Per Vishal Mishra , J.

Heard through Video Conferencing.

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(1) The present petition is being filed challenging the order dated 23.6.2020 passed by the respondent no.1, whereby the petitioner has been transferred from District Datia to District Morena. It is submitted that the transfer of the petitioner is within a short span of 9 months, therefore, the same falls under the purview of frequent transfers. It is further argued that the transfer of the petitioner is made just to accommodate the respondent no.4 as the respondent no.4 is politically influential person and just to post him at Datia the petitioner has been subjected to transfer.

(2) The petitioner was initially appointed as Asstt. Statistical Officer in the year 1994 and thereafter was promoted to the post of Child Development Project Officer in the year 1998. He was made Asstt. Director in the year 2013. And from the date of initial appointment the petitioner is discharging his duties with utmost devotion and sincerity. The petitioner could not be further promoted owing to the interim order passed by the Hon'ble Supreme Court with respect to the cases of promotions and in pursuance to the same the State Government has not convened the D.P.C. On 20th December, 2013 the petitioner was posted at Morena in the office of Joint Director and was transferred in December, 2015 to District Bhind, where he continued to work up to September, 2019. Thereafter the petitioner has been transferred from District Bhind to District Datia

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vide order dated 14.9.2019 Annexure P/2. In pursuance to the transfer order the petitioner was relieved from District Bhind on 18.9.2019 and assumed the charge of the D.P.O on 19th September, 2019. It is submitted that within a short span of 9 months the petitioner has again been subjected to transfer by the impugned order, just to accommodate the respondent no.4, who is a politically influential person. It is argued that the entire country is going through the phase of pandemic COVID-19 and the petitioner was working at District Datia with utmost devotion and sincerity and was taking care of the Woman and Child Development Department, wherein various beneficiaries were in flow during this COVID-19 pandemic, but all of a sudden the petitioner has been subjected to transfer on political instructions with an ulterior motive to accommodate the respondent no.4, who has already worked at District Datia for last several years.

(3) The petitioner has further pointed out that the transfer order is in-violation of clause 11.11 of the transfer policy, wherein it is categorically mentioned that in case of complaints transfer being made on the complaints the same should be considered only when the complaint is investigated and final opinion is given regarding the guilt of the employee. The petitioner has also preferred a detailed representation to the respondents authorities highlighting all the facts

and requested the authorities to cancel the transfer order.

(4) The respondents by filing a return has denied all the averments of the petitioner and has argued that transfer is an incident of service and the transfer of the petitioner is being made on administrative grounds. It is not a case of frequent transfer as the petitioner has worked in Morena 2 ½ years prior to his transfer. There was a requirement of work of the petitioner at District Morena, therefore, he has been subjected to transfer on administrative grounds. Even otherwise, the transfer is an incident of service as has been held by the Hon'ble Supreme Court in large number of cases for which the reliance has been placed on the judgments passed by the Hon'ble Supreme Court in the case of **Union of India and others Vs. S.L. Abbas, AIR 1993 SC 2444, Rajendra Roy Vs. Union of India, (1993) 1 SCC 148, National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan, (2001) 8 SCC 574, State Bank of India Vs. Anjan Sanyal, (2001) 5 SCC 508, Gujarat Electricity Board Vs. Atmaram Sungaomal Poshani, (1989) 2 SCC 602. Airports Authority of India Vs. Rajeev Rataan Pandey, (2009) 8 SCC 337.** It is argued that the Division Bench of this Court in the case of **R.S. Chaudhary and others Vs. State of M.P. and others, 2007 ILR M.P. 1329** has categorically held that transfer in-violation of condition of the transfer policy if the only remedy which could be

granted to the petitioner is that the direction is to be given to decided the representation to the authorities. Further in the Division Bench of the case in **Mridul Kumar Sharma Vs. State of M.P., ILR (2015) MP 2556** has held that the representation given by the petitioner with respect to his transfer will only be considered after the petitioner has submitted his joining at the transferred place. In view of the aforesaid laws laid down by the Hon'ble Supreme Court, it is contended that as the transfer is made on administrative grounds, therefore, the interference by this Court in transfer order is not required.

(5) Learned Additional Advocate General has further pointed out that the petitioner is holding a current charge and is having no right to continue on the aforesaid post. The law with respect to holding of current charge is settled by the Hon'ble Supreme Court in the case of **State of Haryana Vs. S.M. Sharma and others, AIR 1993 SC 2273**, wherein the Hon'ble Supreme Court has held that the employee holding a current charge is having no right to ask for his continuance on the said post. The petitioner admittedly is holding a current charge. In these circumstances, the petitioner is having no right to ask to continue on the aforesaid post. Even otherwise by the impugned transfer order the petitioner has been transferred to a vacant regular post at Morena. In such circumstances, transfer of the petitioner

within a period of 9 months on a vacant or regular post cannot be said to be an outcome of malafide and colourable exercise of powers. He has prayed for dismissal of the petition.

(6) By way of rejoinder the petitioner has pointed out the fact that the transfer is being made on a political recommendation. It is further pointed out that on earlier occasion also the transfer order of other employees who were posted at Datia were cancelled subsequently just to accommodate the respondent no.4. In such circumstances, the interference in transfer order should be made. He has relied upon the judgments passed by the Hon'ble Supreme Court in the case of **Manpal Rawat Vs. State of M.P. and others, 2020 (2) M.P.L.J. 88**, and in the case of **T.S.R. Subramanian and others Vs. Union of India and others, (2013) 15 SCC 732** and order passed in W.P.No.11308/2020 Bench at Gwalior.

(7) By refuting the contentions of the rejoinder the learned Additional Advocate General has argued that the recommendation by a political person can be made asking for transfer of a person on the allegations that the work has not satisfactory. He has placed reliance upon the judgment passed by the Hon'ble Supreme Court in the case of **Mohd. Masood Ahmad Vs. State of U.P. and others, 2007 (8) SCC 150** and has argued that the recommendation is permissible. He has further produced the note-sheet of the recommendation made by

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the political person with respect to transfer of the petitioner and has pointed out that the aforesaid recommendation only speaks of the fact that the work of the petitioner is not satisfactory. In such circumstances, he should be transferred. He has prayed for dismissal of the petition.

(8) Heard the learned counsel for the parties and perused the record.

(9) From perusal of the record, it is seen that the petitioner was posted at Morena in the office of Joint Director on 20.12.2013 and after working therefor two years he was subjected to transfer to District Bhind in the year December, 2015, where he worked up to September, 2019. From District Bhind the petitioner has been transferred to District Datia and in pursuance to the transfer order vide order dated 14.9.2019 he was relieved on 18.9.2019 and he assumed the post of D.P.O on current charge on 19th September, 2019. It is not in dispute that the petitioner is working on the current charge to the post of D.P.O. Law is well settled with respect to holding of a post on current charge as has been held by the Hon'ble Supreme Court in the case of **S.M. Sharma (supra)**. The relevant para is as under:

“9. It is only a posting order in respect of two officers. With the posting of Ram Niwas as Executive Engineer Sharma was automatically relieved of the current duty charge (if the post of Executive Engineer. Sharma was neither

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appointed/promoted/posted as Executive Engineer nor was he ever reverted from the said post. He was only holding current duty charge of the post of Executive Engineer. The Chief Administrator never promoted Sharma to the post of Executive Engineer and as such the question of his reversion from the said post did not arise. Under the circumstances the controversy whether the powers of the Board to appoint/promote a person to the post of an Executive Engineer were delegated to the chairman or to the chief Administrator. is wholly irrelevant.

10. Sharma was given the current duty charge of the post of Executive Engineer under the orders of the Chief Administrator and the said charge was also withdrawn by the same authority. We have already reproduced above Rule 4(2) of the General Rules and Rule 13 of the Service Rules. We are of the view that the Chief Administrator, in the facts and circumstances of this case. was within his powers to issue the two orders dated June 13, 1991 and January 6, 1992.

11. We are constrained to say that the High Court extended its extraordinary jurisdiction under Article 226 of the Constitution of India to a frivolity. No one has a right to ask for or stick to a current duty charge. The impugned order did not cause any financial loss or prejudice of any kind to Sharma. He had no cause of action whatsoever to invoke the writ jurisdiction of the High Court. It was a patient misuse of the process of the Court.

Thus, from the aforesaid it is apparently clear that the petitioner is having no right to claim for holding a post of current charge.

(10) The next ground which is raised by the petitioner regarding his frequent transfer on the recommendation of a political person just to accommodate respondent no.4 is concerned, it is seen from the record

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that the petitioner has been subjected to transfer on administrative grounds by impugned order within a period of nine months from his earlier transfer order. The fact remains that the petitioner was holding a current charge post and by the impugned order he has been transferred on a vacant and regular post. The ground just to accommodate the respondent no.4 on a recommendation of a political Minister is concerned the law has also settled by the Hon'ble Supreme Court in the case of **Mohd. Masood Ahmad (supra)**, wherein the Hon'ble Supreme Court has held as under:

“4. The petitioner-appellant, who was an Executive Officer, Nagar Palika Parishad Muzaffarnagar, had in his writ petition challenged his transfer by the State Government by order dated 21.6.2005 as Executive Officer, Nagar Palika Parishad Mawana, District Meerut. Since the petitioner was on a transferable post, in our opinion, the High Court has rightly dismissed the writ petition since transfer is an exigency of service and is an administrative decision. Interference by the Courts with transfer orders should only be in very rare cases. As repeatedly held in several decisions, transfer is an exigency of service vide B.Varadha Rao vs. State of Karnataka AIR 1986 SC 1955, Shilpi Bose vs. State of Bihar AIR 1991 SC 532, Union of India vs. N.P. Thomas AIR 1993 SC 1605, Union of

India vs. S.L. Abbas AIR 1993 SC 2444, etc.

7. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in Rajendra Rao vs. Union of India (1993) 1 SCC 148; (AIR 1993 SC 1236), National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan (2001) 8 SCC 574; (AIR 2001 SC 3309), State Bank of India vs. Anjan Sanyal (2001) 5 SCC 508; (AIR 2001 SC 1748). Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in Vijay Pal Singh vs. State of U.P. (1997) 3 ESC 1668; (1998) All LJ 70) and Onkarnath Tiwari vs. The Chief Engineer, Minor Irrigation Department, U.P. Lucknow (1997) 3 ESC 1866; (1998 All LJ 245), has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders.

8. Learned counsel for the appellant submitted that the impugned transfer order of the appellant from Muzaffarnagar to Mawana, District Meerut was

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made at the instance of an MLA. On the other hand, it has been stated in the counter affidavit filed on behalf of respondent Nos. 1 & 2 that the appellant has been transferred due to complaints against him. In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official the State government is certainly within its jurisdiction to transfer such an employee. There can be no hard and fast rule that every transfer at the instance of an M.P. or MLA would be vitiated. It all depends on the facts & circumstances of an individual case. In the present case, we see no infirmity in the impugned transfer order.”

From the aforesaid it is apparently clear that if the work of a person is not found to be satisfactory then the recommendation can be made by the political person for transferring the employee. In such circumstances, the petitioner has been transferred.

(11) From the perusal of the note-sheets, it is apparently clear that no specific allegation with respect to the illegalities or irregularities being committed by the petitioner is mentioned, rather it is only mentioned that the work of the petitioner is not satisfactory, therefore,

his transfer is recommended. In such circumstances, it cannot be said that inquiry is required on a particular complaint made against the petitioner and only after obtaining the result of the inquiry and finding the guilt of the petitioner, the petitioner should have been transferred. Rather it is a case where a general allegations are made against the petitioner that his work is not satisfactory, therefore, the recommendation is made by the Minister to transfer the petitioner and in pursuance to the same the petitioner was holding the current charge has been subjected to transfer by the impugned order.

(12) Law is well settled with respect to transfer by the Hon'ble Supreme Court in large number of cases. In the case of **S.L. Abbas (supra)** the Hon'ble Supreme Court has 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 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 set-back 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 malafides 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.”

(13) Further in the case of **Rajendra Roy (supra)**, **National**

Hydroelectric Power Corporation Ltd. (supra), Anjan Sanyal (supra), the Hon'ble Supreme Court has considered the scope of judicial review with respect to transfer against which the petitions are being filed under Article 226 of the Constitution of India and has stated that the transfer is a part of service condition of an employee which should not be interfered ordinarily by a court of law in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India unless the court finds that either the order is malafide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass transfer orders.

(14) In the case of **Gujarat Electricity Board (supra)** the Hon'ble Supreme Court has held as under:

“4. Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the Public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on

transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant rules.....”

In the case of **Rajendra Singh (supra)** the Hon'ble Supreme Court has held as under:

“8. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. 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 contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should

continue in such place or position as long as he desires.”

In the case of **Rajeev Ratan Pandey (supra)**, the Hon'ble Apex Court has held as under:

“10. In the writ petition, the transfer order has been assailed by the present Respondent No. 1 on the sole ground that it was violative of transfer policy framed by the appellant. The High Court, did not, even find any contravention of transfer policy in transferring the Respondent No. 1 from Lucknow to Calicut. In a matter of transfer of a government employee, scope of judicial review is limited and High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer.”

In the case of **Gobardhan Lal (supra)**, the Hon'ble Supreme Court has held as under:

“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

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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.”

(15) From the aforesaid it is apparently clear that the transfer is a condition of service and normally the Court should refrain from interfering into transfer orders until and unless the same are being an outcome of malafides or are passed by an incompetent authority or are changing the service conditions of the employee or disturbing the seniority etc. None of the grounds are available to the petitioner which are being available to the petitioner.

(16) The petitioner has pointed that the transfer order is violative of

clause 11.11 of the transfer policy. In such circumstances, the Division Bench of this Court has considered the aforesaid aspect in the case of **R.S. Chaudhary (supra)** has held that in case transfer is alleged to be contrary to the policy, the appropriate remedy of the petitioner is to approach the authority themselves by filing a representation seeking cancellation/ modification of the order of transfer.

(17) Further the Division Bench of this Court recently in the case of **Mridul Kumar (supra)** has held as under:

"5. Be that as it may, in the present case, it is not as if the two writ petitions were kept pending and inconsistent "interim relief" granted therein. In fact, both the writ petitions have been finally disposed of. However, in one case limited protection has been given to the writ petitioner therein by another Bench. In our opinion, in the light of the principle expounded by the Supreme Court, referred to above, the Court must eschew from issuing such direction

- as it inevitably results in dictating the concerned Authority in respect of administrative matter within his domain. Accordingly, the decision pressed into service, cannot be treated as a binding precedent on the matter in issue and will be of no avail to the appellant."

(18) Considering the aforesaid laws laid down by the Division Bench of this Court the only relief which could have been granted to the petitioner is that the petitioner could have preferred a detailed representation to the respondents authorities against his transfer order

alleging all the grounds and in turn the authorities can be directed to decide the representation by a speaking order.

(19) In such circumstances, no relief can be extended to the petitioner who was holding the post of current charge and has been subjected to transfer on a vacant and regular post in District Bhind.

Accordingly, the petition sans merit and is hereby dismissed.

E-copy/Certified copy as per rules/directions.

(Vishal Mishra)
Judge

*Pawar**