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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment dated: 29th August, 2016.

+ W.P.(C) 7615/2016 & CM No. 31395/2016
MAHANAGAR TELEPHONE NIGAM
LIMITED AND ANR. Petitioners
Through : Ms. Sangita Rai, Advocate.
versus
ANIL KUMAR AND ANR. Respondents
Through : Nemo.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (ORAL)

W.P.(C) 7615/2016

1. Challenge in this writ petition is to the order dated 8th August, 2016 passed by the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal'), by which the OA No. 1167/2016 filed by the respondents herein was allowed and the order of their transfer stands quashed.

2. It is well settled that a government servant has no right to stay in a particular post and transfer is an incident of service. We may also, however add, that normally Courts do not interfere in the transfer orders, if they are made in public interest. The rider is of course that unless, the transfer has been made in violation of any statute or on the grounds of malafide. In this case, the Tribunal has quashed the order of transfer on the ground of malafide.

3. The necessary facts to be noticed are that the respondent No. 1 joined the MTNL in the year 1978 while the respondent No. 2 joined the MTNL in the year 1994. Both these respondents had filed a police complaint on 22nd February, 2016 against the petitioner No. 2. On 2nd March, 2016, the name of respondent No. 1 was struck off from the strength of Vishwas Nagar, where he was working as a Phone Mechanic with instructions to report to DE (OD-III) LXR for further duties. While the name of respondent No. 2 was struck off from the strength of Karkardooma on 17th March, 2016 with instructions to report to DE(OD-I) LXR for further duties. The transfers stated to have been made in the interest of service and on administration exigencies.

4. Learned counsel for the petitioners submits that the learned Tribunal has exceeded its jurisdiction and failed to appreciate the fact that the petitioners are the Competent Authority to decide when and where an employee is to be transferred from the place of his present posting. She also submits that the Court cannot sit in judgment as an appeal over the order passed by the competent authority in the matters relating to transfers.

5. Counsel for petitioners also contends that the competent authority has passed the order of transfer of both the respondent employees as per clause 19 of the certified standing orders framed by the MTNL under Section 3 (1) of the Industrial Employment (Standing Orders) Act, 1946. The orders have also been passed by the competent authority keeping in mind, the smooth functioning and working of the department and thus, the transfer orders cannot be treated as having been issued on account of malice by the petitioner No. 2 or merely because of the fact that the respondents had filed a police complaint against him especially when no copy of the complaint has been marked to the CMD. Counsel further submits that mere allegations

made by the respondents cannot be taken as proved and thus the order on transfer cannot be vitiated by filing a false and frivolous police complaint.

6. We have heard counsel for petitioners and also examined the material placed on record as also the impugned order, which has been passed by the Tribunal. The learned Tribunal has quashed the orders of transfer on the ground that the orders of transfer have been issued out of malice and not in public interest. The Tribunal has noticed that the applicants (respondents herein) had lodged a police complaint against the petitioner No. 2 herein on 22nd February, 2016, in which they alleged that the petitioner No. 2 was involved in extorting money from them and was threatening them with transfer and involvement in disciplinary proceedings in case they refuse to pay. Two days after filing of the police complaint dated 22nd February, 2016, the applicant No. 1 (respondent No. 1 herein) was transferred. Similarly, the respondent No. 2 was also transferred. Before the Tribunal, the petitioners had taken a plea that the petitioners herein at the time, when the order of transfer was made, were not aware about the police complaint having been lodged by the respondents but this submission turned out to be false as a charge sheet dated 02.03.2016 was available on the record with a clear mention about lodging of the police complaint in article III, whereas, the transfer order of applicant No. 2 was first made on 5th March, 2016. Thus, the Tribunal came to the conclusion that it is clear that the petitioners herein were well aware of the police complaint lodged by the respondents.

7. The Tribunal also noticed that as per the official record of the respondents, there was no note sheet which would show any reason as to why, the respondents herein had been transferred.

8. The learned counsel for the petitioners has laboured hard to contend that the transfer orders were made in public interest and relied upon the

judgment in the case of *State of U.P. and others v. Gobardhan Lal*, (2004) 11 SCC 402 more particularly, paragraphs Nos. 7, 8 and 9 in support of her submissions that courts should normally not interfere in orders of transfer and that the grounds of malafides are required to be proved. The relevant paragraphs of the judgment read 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 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.

9. The very questions involved, as found noticed by the High Court in these cases, being disputed questions of facts, there was hardly any scope for the High Court to generalise the situations based on its own appreciation and understanding of the prevailing circumstances as disclosed from some write ups in journals or newspaper reports. Conditions of service or rights, which are personal to the parties concerned, are to be governed by rules as also the inbuilt powers of supervision and control in the hierarchy of the administration of State or any Authority as well as the basic concepts and well-recognised powers and jurisdiction inherent in the various authorities in the hierarchy. All that cannot be obliterated by sweeping observations and directions unmindful of the anarchy which it may create in ensuring an effective supervision and control and running of administration merely on certain assumed notions of orderliness expected from the authorities effecting transfers. Even as the position stands, avenues are open for being availed of by anyone aggrieved, with the concerned authorities, the

Courts and Tribunals, as the case may be, to seek relief even in relation to an order of transfer or appointment or promotion or any order passed in disciplinary proceedings on certain well-settled and recognized grounds or reasons, when properly approached and sought to be vindicated in the manner known to and in accordance with law. No such generalised directions as have been given by the High Court could ever be given leaving room for an inevitable impression that the Courts are attempting to take over the reigns of executive administration. Attempting to undertake an exercise of the nature could even be assailed as an onslaught and encroachment on the respective fields or areas of jurisdiction earmarked for the various other limbs of the State. Giving room for such an impression should be avoided with utmost care and seriously and zealously courts endeavour to safeguard the rights of parties.”

9. There is no quarrel to the proposition which is sought to be made by the learned counsel for the petitioners but the issue is whether the observation of the Supreme Court in ***State of U.P. and others*** (*supra*) are applicable to the facts of the present case or not.

10. The law in respect of the challenge to transfer orders is well settled. The courts should generally not interfere with transfer orders as they are a mere incidence of service, but may interfere when transfer is made in violation of any statute or is actuated by *mala fide*. In ***Abani Kanta Ray v. State of Orissa., 1995 Supp (4) SCC 169***, the Supreme Court observed as under:

“It is settled law that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer. (See N.K. Singh v. Union of India).”

11. In ***Union of India and Ors. v. Janardan Debanath & Anr.***, (2004) 4 SCC 245, the Supreme Court held as under:

“No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally 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 employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned.”

(Emphasis Supplied)

12. In ***Somesh Tiwari v. Union of India & Ors.***, AIR 2009 SC 1399 it has been observed as under:

“19. 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.

20. 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.

(Emphasis Supplied)

13. In this case, as has been observed by the Tribunal that initially, three persons had lodged a police complaint against the petitioner No. 2 at the Police Station, Anand Vihar on 22nd February, 2016. The Tribunal also noticed that within two days of lodging of the police complaint by three persons, all the three persons stood transferred. However, out of the three complainants, one Mr. Krishan Kumar has subsequently given a letter withdrawing his police complaint and hence, he was spared by the petitioner No.2. This observation by the Tribunal which finds mention in the impugned order has not been denied or clarified in the present petition. In fact, we find that the grounds in the writ petition have not addressed the question of malafide, which has been raised by the respondents before the Tribunal. Although, the petition is supported by the affidavit of the petitioner No. 2 which, in our view, should have been filed by another officer, as specific allegations were raised against this officer and the grounds of the writ petition should have at least, clarified the following points :

- (i) as to whether, the three complaints were lodged with the police or not;
- (ii) as to whether the three orders of transfer were subsequently issued;
- (iii) as to whether Mr. Krishan Kumar, the third complainant withdrew his complaint;
- (iv) as to whether after the withdrawal of complaint by Mr. Krishan Kumar, his transfer orders were withdrawn or not;
- (v) as to what steps were taken by the higher authorities to examine the complaints made by the two respondents.

14. It has been submitted before us that copies of the complaints were not marked to the higher authorities, hence should not have been relied upon. In our view, the copies of the complaints may or may not have been marked to the CMD but once, the matter had reached the Court and specific allegation was made against petitioner No.2, it cannot be said that the senior officers were not aware of the stand taken by the two respondents in the O.A. There is nothing on record to show that the CMD or any other higher officer above the petitioner No. 2 took note of the police complaint when two employees of MTNL had the courage to specifically make allegations of extortion of money by a senior officer. The department was duty bound to look into the matter and, if there was any truth in the complaints, they should have ordered an independent inquiry and, if there was no truth in the complaint, then the note sheet of the file would have given the reasons as to why after the third complainant withdrew his complaint and why his orders of transfer were withdrawn and the note sheet would have also revealed as to what was the exigency or public interest in passing the transfer orders of the respondents or what was the basis of passing of the transfer orders of respondents and these reasons should have been at least mentioned in the record maintained by the petitioners. We are not able to get any satisfactory answer with regard to the above queries. The law on transfer of an employee is well settled. The courts should not interfere with the orders on transfer unless the same suffers from malafide. However, in the facts of the present case and in the absence of any clarification from the petitioners to dispel the stand taken by the respondents as noticed by the Tribunal and even in the writ petition, we are left with no option but to dismiss this writ petition.

15. We also direct the CMD of the petitioner No. 1 to look into the police complaints made by the respondents, examine them and if there is any truth in them, take appropriate action in accordance with law.

16. In view of the above, the writ petition being devoid of merits is hereby dismissed with costs of Rs. 10,000/- to be deposited by the petitioners with the Delhi High Court Legal Services Committee.

CM No. 31395/2016 (Stay)

17. In view of the order passed in the writ petition, the stay application stands dismissed being infrutuous.

**G.S.SISTANI
(JUDGE)**

**I.S. MEHTA
(JUDGE)**

AUGUST 29, 2016/j

