

# Sqn Ldr Mukund Sharma vs Union Of India And Ors on 18 January, 2019

**Author: Sanjeev Narula**

**Bench: S.Muralidhar, Sanjeev Narula**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 6629/2017 & CM Appls. 27543/2017, 27544/2017 &  
27545/2017

SQN LDR MUKUND SHARMA

..... Petitioner

Through: Mr. Shiv Kumar Pandey, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through:

Ms. Suman Chauhan and Mr. Jivesh  
Tiwari, Advocates for R-1 to R-4.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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18.01.2019

SANJEEV NARULA, J:

1. The Petitioner who is a Squadron Leader (Sqn Ldr) with the Indian Air Force (IAF) has impugned the transfer order being no. PO/651 dated 14th July 2017 in the present petition under Article 226 of the Constitution of India.

2. Briefly stated, the facts of the case are that the Petitioner is a permanent commissioned officer of the Indian Air Force. His service conditions are governed by the Indian Air Force Act, 1950 and the Rules and Regulations of Indian Air Force. During his service career, Petitioner was promoted as Flight Lieutenant on 16th December 2009 and thereafter as Sqn Ldr on 16th December 2013. After completion of training at Air Force Academy, Hyderabad, the Petitioner has been subjected to several postings in the country. Earlier w.e.f. 15th July 2013 he was posted from 9 BRD, Air Force Pune to 14 Wing, Air Force Chabua. As per the posting order, the tenure was specified as three years subject to service exigency. He was then posted back to 14 Wing, Air Force w.e.f. 7th January 2014 to perform duties as ASIO to meet overall organizational requirements consistent with operational charter in meeting the objectives of service. Petitioner submitted that he has been subjected to a total of five postings during his first eight years of service as an Officer and the same is violative of para 4 of AirHQ Human Resource Policy, 2006, reiterated in para 7 of Posting Policy 2015.

3. Petitioner further submitted that on 12th July 2017 he came to know that he had been posted out to 13 BRD AF Palam vide posting order being no. PO/605. He argued that Respondent No. 5 (AVM Mohan Rao ,VM VSM Air Officer Commanding 1 ADCC HQ WAC IAF) was biased against him on account of Petitioner's legal action before the Supreme Court, and he got the said posting order cancelled by wielding pressure on Respondent No. 4 (DPO-1(Lgs) Air Head Quarters) and Respondent No. 6 (Gp Capt Sandeep Rawat. Lgs DPO-1 LGS [Then] C/o Air HQ). In this regard, he also made reference to an application for Redressal of Grievances dated 5th February 2015. Within 48 hours of issuing the posting order, Respondent No. 4 and 6 rescinded the earlier order and issued another posting order being PO/651 dated 14th July 2017 whereby Petitioner was posted from ED AF Chennai to 35 Wing AF Suratgarh w.e.f. 14th August 2017. He submitted that under the subsequent posting order, Respondent No. 7 (Gp Capt[ TS ] V Sharma (20091)Lgs HQ SWAC (U)) has been posted to 13 BRD AF Palam in his place. He submitted that the name of proforma of Respondent No. 7 does not figure in the original transfer order dated 12th July 2017 and he has been posted in place of the Petitioner within 48 hours and this indicates that there is a mala fide motive in the action of the Respondents. The posting order is in violation of para 191 of the Regulations for the Air Force, 1964 (the Air Force Regulations). He further submitted that his earlier posting was also shortened to a period less than the specified tenure of three years. The premature posting was done due to mala fide and arbitrary acts of Respondents No. 3 to 5.

4. The Respondents on the other hand, denied all the allegations of the Petitioner and have urged that Petitioner does not have any legal right to continue at a particular place of posting. Respondents further submitted that the posting given to the Petitioner is based on his career profile and service requirements. There is no mala fide intention or bias in cancellation of the Petitioner's posting from Chennai to Palam and his subsequent re-posting to 35 Wg AF, is based on vacancies arising in chain postings at that point of time.

5. We have heard learned counsels for the parties. The Respondents in their counter affidavit have explained that Petitioner's posting from 23 ED, Chennai to 13 BRD, Palam was cancelled on account of service requirements. Senior Air and Administrative Staff Officer (SAASO), Head Quarter Maintenance Command (HQ MC) had requested Assistant Chief of Air Staff (Personnel Officer) (ACAS PO) for posting of an officer with adequate experience in the rank of Wing Commander/Group Captain Time Scale (TS). The request was deliberated upon and considered feasible and on this account the Petitioner's posting was cancelled and suitable officer, Group Captain (TS) V Sharma was posted to 13 BRD, in place of the Petitioner. For this reason, he was posted to 35 WG based on vacancies arising in chain postings at that particular point of time. The Petitioner's posting at 23 ED (Chennai) is a peace posting with normal tenure. The postings on the basis of his career profile shown as under:

Unit/Geographical Area	Tenure	Reasons as obtained from 'P' file'
27 Wg (Bhuj)	6M	First posting
49 Wg/12 FBSU (Naliya)	2Y 9M	Posted to Naliya (100 Kms) and shown as lateral shifting to accommodate posting of then Sqn Ldr K Hundal

9 BRD (Pune)	2Y 4M	(25930) Lgs on co-location grounds to Bhuj. Posted to a Metro City on routine posting
14 Wg (Chabua)	1Y 10M approx)	(2Y Routine Posting
23 ED (Chennai)	2Y 3M	Posted to a Metro City on routine posting

6. The counsel for the Respondents, referring to above noted posting profile, submitted that the Officer so far, in his career of ten years has two limited area tenures i.e. (Laliya and Chabua) and two normal tenure metro city postings i.e. (Chennai and Pune). It was further submitted that tenure of posting at a particular place would vary according to numerous factors such as co-location request, compassionate ground posting, new raisings etc. and therefore the cap of maximum tenure of three years at a particular place may not be feasible each time. Respondents have also pointed out they have given a minimum tenure of two years at Chabua for stability and continuity. Further para 7 of the policy relied upon by the Petitioner specifically provides as under:

"7. Normal Tenure. It shall be the endeavour of the Dte of PO to provide stability and continuity to the officers at a place of posting. However, due to overriding organisational factors listed in Para 6 above, the tenure of certain officers may have to be extended or truncated at a particular station. Notwithstanding the aforesaid, it shall be endeavoured to grant a tenure of at least two years in case of a normal tenure. Also, during the first eight years of an officer's career, it would be endeavoured to restrict number of postings to a maximum of two postings, subject to service exigencies. Besides a normal tenure, other classifications of tenure based on area or nature of job are enumerated in succeeding paragraphs."

7. As per Appendix B to the said policy, 14 WG (Chabua) is a limited tenure station without choice posting and the ceiling of three years has been stipulated for the posting out of Officers serving in 14 WG. The said provision under para 7 does not prohibit posting out of an Officer before completion of three years, if it is necessary to do so on account of exigency in service.

8. We further note that the Petitioner has earlier filed a writ petition before Guwahati High Court seeking interim stay of the posting, the said Writ Appeal 115/2015 in WP(C) 2542/2015 decided by the Division Bench of Guwahati High Court vide order dated 14th July 2015 reads as under:

"8. We have considered the rival submissions and have found reason to conclude that the order impugned in this appeal does not suffer from any infirmity. Being so, the present proceeding is found devoid of merit and as such, same is dismissed. No cost."

9. Though the Petitioner has alleged mala fide and bias against Respondents No. 3, 4, 5 and 6, however the facts of the case do not indicate any ground for us to embark upon an inquiry on this aspect. The law on the aspect of the "mala fide" has been elucidated by the Supreme Court in a number of decisions, the relevant portions of which are being reproduced hereunder:

State of U.P. v. Gobardhan Lal, (2004) 11 SCC 402 "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."

Rajendra Roy v. Union of India and Anr. (1993) 1 SCC 148 "7. After considering the respective contentions of the parties, it appears to us that the appellant has not been able to substantiate that the impugned order of transfer was passed mala fide against him for an oblique purpose and/or for wrecking vengeance against him because the respondent No. 2 was anxious to get rid of him and he seized the opportunity of transferring him from Delhi to Calcutta by transferring Shri Patra back to Orissa from Calcutta. It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. We are in agreement with the Central Administrative Tribunal that the appellant has not been able to lay any firm foundation to substantiate the case of malice or mala fide against the respondents is passing the impugned order of transfer. It does not appear to us that the appellant has been moved out just to get rid of him and the impugned order of transfer was passed mala fide by seizing an opportunity to transfer Shri Patra to Orissa from Calcutta. It may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions. In this case, we are unable to draw any inference of mala fide action in transferring the appellant from the facts pleaded before the Tribunal."

Bareilly Electricity Supply CO. Ltd v. Sirajuddin and Anr. (1960) 1 LLJ 556 "The failure of the Appellant to give specific reason for the retransfer of the Respondent appears to be the sole basis on which the conclusion of mala fides is founded. It is hardly necessary to emphasise that the findings of mala fides can be made by Industrial Tribunals only after sufficient reliable evidence is led in support of it. Such a finding should not be made lightheartedly or in a casual manner as has been done by the Tribunal in the present case."

10. Simply because the Petitioner has alleged mala fides, does not mean that the action of the Respondent is indeed so. It is observed from the aforementioned judgments that there has to be cogent material brought on record to show that the posting was indeed tainted with malice. Merely the fact

that the Petitioner's posting was cancelled within 48 hours of the original order being passed, cannot singularly be the ground to attribute malice. The Respondents have explained the circumstances for cancelling the earlier posting order. We cannot substitute the decision of the Respondents with our views.

11. In absence of any vested right in favour of the Petitioner, we find no ground for interference in the posting order of the Respondents and accordingly writ petition is dismissed with no order as to costs.

12. The pending applications are also disposed of.

SANJEEV NARULA, J S.MURALIDHAR, J JANUARY 18, 2019 nk