

(2013) 07 AHC CK 0120

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 36766 of 2013

Dharmendra Kumar Saxena

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (2013) 7 ADJ 53 : (2014) 2 ALJ 34 : (2013) 6 AWC 5514 : (2013) 3 UPLBEC 2356

Hon'ble Judges : P.K.S. Baghel, J

Bench : Single Bench

Advocate : G.P. Singh, for the Appellant;

Final Decision : Disposed Of

Judgement

P.K.S. Baghel, J.—The writ jurisdiction of this Court under Article 226 of the Constitution of India is invoked by a Government servant against his transfer order dated 10th May, 2013 passed by the respondent No. 2 i.e. Director, Fisheries, U.P., Lucknow, whereby petitioner has been transferred from the office of Assistant Director, Fisheries, Bareilly to the office of Assistant Director, Fisheries, Maharajganj. Short question, which arises for determination, is that what would be the effect of violation of transfer policy/executive instruction in the matter of transfer of officers and employees of the State Government. For this purpose, few facts, which would be relevant for considering the issue arises in the present case, may be set out.

2. The petitioner is an Assistant Fisheries Development Officer. In the year 2005 he was transferred to the office of Assistant Director, Fisheries, District J.P. Nagar and after about one year he was transferred to District Moradabad. In the year 2009 he was transferred from District Moradabad to District Pilibhit. After sometime, he was attached to the Assistant Director, Fisheries, District Shahjahanpur, from where he was again transferred to the office of Assistant Director, Fisheries, District Bareilly on 31st July, 2012. By the impugned order,

the petitioner has been transferred from the office of Assistant Director, Fisheries, District Bareilly to the office of Assistant Director, Fisheries, District Maharajganj, which is about 600 Kms. away from district Bareilly.

3. Learned Counsel for the petitioner submits that transfer of the petitioner is in violation of the transfer policy of the State Government as the petitioner has been transferred four times within a short span of time and he will reach his age of superannuation on 30th April, 2016. He has made several representations that his wife is seriously ill and she is undergoing treatment at Bareilly. He has filed several medical certificates in support of the said fact.

4. In the transfer policy of the State Government it is provided that officers of Group-A and Group-B, who have completed six years" service in a district, shall be transferred and if they have completed ten years" service in the same Division, then such officer may be transferred out of the Division after completion of 10 years. It is submitted that the petitioner has been transferred four times within a short span of three years and he has not completed 6 years in the district. It is also provided in the transfer policy that if an officer/employee has some personal difficulty like illness, education of children, etc., adjustment can be made. A copy of the transfer policy/executive instructions dated 18th April, 2013 of the State Government has been placed on record.

5. Legal position in the matter of transfer of Government servant is too well-settled to require any reiteration.

6. Before advertng to the core question of the case, I find it helpful to refer some decisions of the Supreme Court on this issue. From a perusal of those judgments, the principle, which emerges, is that a Government servant has no vested right to ask to continue at a place of his choice. Transfer is an incident of service. Government is the sole authority to take a decision regarding posting/transfer of an officer/employee in administrative exigency and in public interest. The Court cannot examine whether transfer is in public interest or not because it requires factual adjudication. The Court cannot act as an appellate authority and substitute its finding for that of the Government. There would be a chaos in the administration if Courts start interfering in the transfer matter in a routine manner.

7. Transfer of an officer/employee is inherent in terms of the appointment and in absence of its provision in the relevant Service Rule, it is implicit as an essential condition of service subject to contrary provision in the rule. Fundamental Rule 15 provides that "the President may transfer a Government servant from one post to another". One common thread running from almost all the cases is that in transfer matters each case should be decided upon the facts and circumstances of the case concerned.

8. In the case of Shanti Kumari Vs. Regional Deputy Director, Health Services, Patna Division, Patna and Others, , the petitioner was Auxiliary Nurse Midwife posted at Bowstead Zanana Hospital at Barh. She was transferred to Urban

Family Welfare Centre, Danapur. She challenged her transfer in Patna High Court by filing writ petition, which was dismissed in limine. In her SLP the Supreme Court declined to interfere with order of High Court but authorities were directed to consider her grievance and until decision was taken, her transfer order was stayed. The Supreme Court ruled as under:

2. ...Transfer of a Government servant may be due to exigencies of service or due to administrative reasons. The Courts cannot interfere in such matters....

9. In *B. Varadha Rao Vs. State of Karnataka and Others*, , the Supreme Court had the occasion to consider a short point whether an order of transfer is appealable under Rule 19 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, and the Supreme Court held in paragraphs-4 and 6 as under:

4. ...It is well understood that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, nontransferable post....

6. ...But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the Government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of class III and class IV employees stand on a different footing. We trust that the Government will keep these considerations in view while making an order of transfer.

10. The Supreme Court in the case of *Mrs. Shilpi Bose and others Vs. State of Bihar and others*, , was dealing with the case of transfer of some lady teachers in Primary Schools in the State of Bihar. They were transferred, on their own request, to places where their husbands were posted. The transfer orders were made by the District Education Establishment Committee. The teachers, who were displaced, challenged the transfer order before the Patna High Court on the ground that District Education Establishment Committee had no jurisdiction. Patna High Court allowed the petition, set aside the transfer order and directed for re-posting of the respondents. Ultimately, the matter was carried to the Supreme Court and the Supreme Court set aside the judgment of the Patna High Court and held as under:

4. In our opinion, the Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala

fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.

11. The law laid down in *Shilpi Bose (supra)* was again reiterated by the Supreme Court in the case of *Union of India and Others Vs. S.L. Abbas, ,* and observed 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....

12. In the case of *N.K. Singh Vs. Union of India and others, ,* the appellant Sri N.K. Singh was an I.P.S. Officer. He was allocated to State cadre of Orissa. He was I.G., C.I.D. in Orissa. His services were placed on deputation to Ministry of Home Affairs and was posted as Joint Director in Central Bureau of Investigation (C.B.I.). He was In-charge of a Special Investigation Group conducting some sensitive investigation. He was abruptly transferred to Boarder Security Force (B.S.F.) in an equivalent post of I.G.P. He challenged his transfer order on the ground of mala fide against the then Prime Minister Shri Chandrashekhar and the then Union Law Minister Dr. Subramanyam Swami. The grievance of the appellant therein was that he was In-charge of a Special Investigation Group investigating into St. Kitts affair. Therefore, he was eased out from the C.B.I. to scuttle the fair investigation. Against this background, the Supreme Court ruled as under:

6. Shri Ram Jethmalani, learned counsel for the appellant did not dispute that the scope of judicial review in matters of transfer of a Government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision or guideline regulating such transfers amounting to arbitrariness. In reply, the learned Additional Solicitor General and the learned counsel for Respondent 2 did not dispute the above principle, but they urged that no such ground is made out; and there is no foundation to indicate any prejudice to public interest.

24. ...Challenge in Courts of a transfer when the career prospects remain

unaffected and there is no detriment to the Government servant must be eschewed and interference by Courts should be rare, only when a judicially manageable and permissible ground is made out. This litigation was ill-advised.

13. The Supreme Court again dealt with the matter of transfer in the case of State of U.P. and Others Vs. Gobardhan Lal, . Said case arose out of the judgment of a Division Bench of the Allahabad High Court (2000 All LJ 1466), wherein the High Court had issued some general directions in the matter of transfers. The Government servants were given liberty to file representation against their transfer directly to the Chief Secretary and further direction was issued to the State Government to constitute Civil Service Board for dealing with transfers and postings of Class-I officers. The Supreme Court found that the High Court fell in serious error and such general direction will leave an impression that the Courts are attempting to take over the reign of the executive administration. In paragraph-8 of the judgement, the Supreme Court held as follows:

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.

14. In the case of Mohd. Masood Ahmad Vs. State of U.P. and Others, , the Supreme Court has elaborately considered the well-settled principle again and observed as under:

4. ...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....

15. In the aforesaid case i.e. Mohd. Masood Ahmad (supra) the Supreme Court approved the view taken by the Allahabad High Court wherein this Court had refused to interfere in the transfer cases. The Supreme Court observed as under:

7. ...Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in Vijay Pal Singh v. State of U.P., 1997 (3) ESC 1668, and Onkar Nath Tewari Vs. Chief Engineer, Minor Irrigation Deptt. and Others, , 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.

16. Similar view has been reiterated by the Supreme Court in the case of *Rajendra Singh Vs. State of U.P. and Others*, , and 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 [see *State of U.P. and Others Vs. Gobardhan Lal*,).

9. The Courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides....

17. In a recent judgment rendered in the case of *State of Haryana and Others Vs. Kashmir Singh and Another etc. etc.*, , the Supreme Court has observed that in the matter of transfer of police personnel, the Courts should be very slow to interfere in their transfer as the competent authorities of the State are in the best position to assess the necessities of the administrative requirements of the situation. The Supreme Court held as under:

12. Transfer ordinarily is an incidence of service, and the Courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. In particular, we are of the opinion that transfer and postings of policemen must be left in the discretion of the State authorities concerned which are in the best position to assess the necessities of the administrative requirements of the situation. The administrative authorities concerned may be of the opinion that more policemen are required in any particular district and/or another range than in another, depending upon their assessment of the law and order situation and/or other considerations. These are purely administrative matters, and it is well-settled that Courts must not ordinarily interfere in administrative matters and should maintain judicial restraint, vide *Tata Cellular Vs. Union of India*, .

However the Supreme Court has carved out few exceptions where Courts can interfere in transfer matters, some of the exceptions are;

(i) If the order is found to be infected by mala fide.

(ii) If there is infraction of any statutory provisions.

(iii) If the power of transfer is abused or transfer is made for some collateral purpose; if it is found that the Government has not used its power bonafidely to

meet the exigency of administration or transfer order has been passed by an authority, who had no power.

(iv) The order of transfer cannot prejudicially affect the status of the employee.

The aforesaid principle emanates from the judgments of the Supreme Court in the cases of Shilpi Bose (supra), S.L. Abbas (supra), U.K. Singh (supra) and B. Varadha Rao (supra).

18. Now I turn to the central question of the case, what would be the effect if an order of transfer is made in violation of the policy decision of the State Government.

19. The Supreme Court in the case of Sarvesh Kumar Awasthi v. U.P. Jal Nigam and others, (2003) 11 SCC 740, by an interim order dated 4th September, 2001, had issued a direction to the Government of Uttar Pradesh to frame the guidelines for transfer. The direction given by the Supreme Court reads as under:

3. In our view, transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For better administration the officers concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration.

4. In this set of circumstances, the Chief Secretary, State of U.P. is directed to file necessary affidavit within six weeks from today pointing out rules and regulations for effecting transfers of officers including higher officers such as District Magistrates. A copy of Annexure A-2 (p. 124 of the paper-book) be also sent to the Chief Secretary, State of U.P. alongwith this order by which the transfers of the officers are effected....

In compliance of the said order, the State of Uttar Pradesh constituted a committee to frame the guidelines in respect of IAS and PCS officers. After several adjournments taken by the parties, learned Solicitor General of India, who appeared on behalf of State of Uttar Pradesh, submitted guidelines before the Supreme Court. On 22nd November, 2002 the Supreme Court passed the following order:

Mr. K.L. Rawal, learned Solicitor General appearing on behalf of State of U.P. submits that the direction issued on the basis of the affidavit dated 26.8.2002 laying down the transfer policy for I.A.S. and P.C.S. officers would be strictly adhered to. In this view of the matter, this petition would not survive and stands disposed of accordingly. If any other officer is having any grievance, it would be open to him to approach the appropriate forum.

On a perusal of the order it is evident that State Government stated before the Court that it will follow its policy strictly.

20. The effect of infraction of policy decision or the executive instructions has been subject-matter of several judgments of the Supreme Court. The Supreme Court in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , had the occasion to deal with the executive orders. The Court observed as under:

10. ...It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Viteralli v. Saton* [359 U.S. 535 : Law Ed (Second series) 1012] where the learned Judge said:

An executive agency must be rigorously held to the standards by which it professes its action to be judged.... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.

21. Similar view was taken by the Supreme Court in its earlier decision in the case of *Union of India (UOI) Vs. K.P. Joseph and Others*, , and held as under:

9. Generally speaking, an administrative Order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in *Sant Ram Sharma Vs. State of Rajasthan and Another*, , that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service.

22. In the case of *Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others*, , the Supreme Court was dealing with the executive/administrative instructions and held as under:

9. ...Now, it is true that clause (2)(ii) of the memorandum dated October 25, 1965 was in the nature of administrative instruction, not having the force of law, but the State Government could not at its own sweet will depart from it without rational justification and fix an artificial date for commencing the length of continuous service in the case of some individual officers only for the purpose of giving them seniority in contravention of that clause. That would be clearly violative of Articles 14 and 16 of the Constitution. The sweep of Articles 14 and 16 is wide and pervasive. These two articles embody the principle of rationality and they are intended to strike against arbitrary and discriminatory action taken by the "State". Where the State Government departs from a principle of seniority laid down by it, albeit by administrative instructions, and the departure is without

reason and arbitrary, it would directly infringe the guarantee of equality under Articles 14 and 16. It is interesting to notice that in the United States it is now well-settled that an executive agency must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. vide the Judgment of Mr. Justice Frankfurter in *Vitaralli v. Seaton*.

23. From the aforementioned cases, it is evident that the Government is bound by executive orders/policies. The guidelines are made to follow it and not to breach it without any justifiable reasons. Whenever the Government deviates from its policies/guidelines/executive instructions, there must be cogent and strong reasons to justify the order; when transfer order is challenged by way of representation, there must be material on record to establish that the decision was in public interest and it does not violate any statutory provision, otherwise the order may be struck down as being arbitrary and violative of Article 14 of the Constitution. The authorities cannot justify their orders that breach of executive orders do not give legally enforceable right to aggrieved person. As observed by Justice Frankfurter "An executive agency must be rigorously held to the standards by which it professes its action to be judged".

24. It is true that the Supreme Court has consistently taken the view that in transfer matters breach of guidelines/policy/executive orders do not confer upon Government servants any legally enforceable right. But on a careful reading of the judgments of the Supreme Court on this issue, it is also evident that in all those cases the Supreme Court has ruled that in case of breach of executive instructions/orders, the Government Servant can make representation to the appropriate authority and if any such representation is made, the appropriate authority must consider it in proper perspective and in accordance with law. In this regard, some of the relevant observations of the Supreme Court are extracted below:

25. In the case of *Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani*, , the Supreme Court held as under:

4. ...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....

26. The Supreme Court in the case of *Shilpi Bose (supra)* held as under:

4. ...Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department....

27. In *S.L. Abbas (supra)* the Supreme Court has held that the guideline does not confer upon the Government servants a legally enforceable right. However, it was also observed that while ordering transfer, the authorities must keep in mind

the guidelines issued by the Government on the subject. Relevant part of the judgment reads as under:

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....

(Emphasis supplied by me)

28. The Supreme Court in the case of State of U.P. and Others Vs. Siya Ram and Another, , observed as under:

8. Learned counsel for Respondent 1 submitted that the respondent shall file a representation highlighting the various difficulties which may result or have resulted from the transfer and the non-desirability thereof. If such representation is made to the appropriate authorities, it goes without saying that the same shall be considered in its proper perspective and in accordance with law. We do not express any opinion in that regard. The appeal is allowed to the extent indicated with no order as to costs.

29. In Gobardhan Lal (supra) the Supreme Court has observed in respect of the representation against the transfer order in the following terms:

9. ...Even as the position stands, avenues are open for being availed of by anyone aggrieved, with the authorities concerned, 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 recognised 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.

30. The principle which can be discerned from above mentioned and other various decisions of the Supreme Court is that although the breach of guidelines does not give any legally enforceable right in favour of the employee but at the same time the guidelines/transfer policy/Government orders issued to deal with transfer of officers and employees cannot be ignored altogether by the competent authority. While transferring an officer, the broad guidelines

mentioned in the transfer policy, executive orders or guidelines must be kept in the mind.

31. If in the administrative exigency or in public interest, transfer of an officer/employee is necessary, then the competent authority may record the reasons for departing/deviating from the policy or the guidelines. Recording of such reason in the files would facilitate the superior officers to decide the representation of the officer concerned objectively. It is not necessary that while transferring an officer/employee, reasons should be communicated to the concerned officer/employee.

32. In England earlier well established law was that in administrative decisions there was no requirement of law to give reasons [R v. Secretary of State for the Home Department, ex p. V Doody, (1994) 1 AC 531]. In the said case, Lord Mustill delivered his opinion for the House of Lords and held that "the law does not at present recognise a general duty to give reasons for an administrative decision". But recent trend in England has been noticed by Prof. Smith in his book, known as, "Principles of Judicial Review", (1999 Edition), at page 344, as under:

The beneficial effects of a duty to give reasons are many. To have to provide an explanation of the basis for their decision is a salutary discipline for those who have to decide anything that adversely affects others. The giving of reasons is widely regarded as one of the principles of good administration in that it encourages a careful examination of the relevant issues, the elimination of extraneous considerations, and consistency in decision making. Moreover, if published, reasons can provide guidance to others on the body's likely future decisions, and so deter applications which would be unsuccessful. Further, the giving of reasons may protect the body from unjustified challenges, because those adversely affected are more likely to accept a decision if they know why it has been taken. In addition, basic fairness and respect for the individual often requires that those in authority over others should tell them why they are subject to some liability or have been refused some benefit.

33. The Supreme Court expanded the horizon of reason in the case of Union of India (UOI) Vs. Mohan Lal Capoor and Others, , and held that reasons are links between the materials on which certain conclusions are based. They indicate how the mind is applied, whether it is administrative matter or quasi-judicial.

34. Then came a Constitution Bench judgment in S.N. Mukherjee Vs. Union of India, . The Court observed that it is in the larger public interest that an administrative authority must record the reason for the order passed by him. The Court has quoted the view of Prof. H.W.R. Wade that "natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice". The Court further held that after the decision of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , many subsidiary rules came to be added to the rules of natural justice, the reason is also one of them.

35. In recent time, the Supreme Court has further enlarged the scope of the

reasons to such an extent that it has termed it heartbeat of every conclusion because it introduces clarity in an order and in its absence the order becomes lifeless. It ensures transparency and fairness in decision-making. It also ensures that aggrieved person must know why his representation/application has been rejected. The need for recording the reasons is greater in a case where the order is passed at original stage. Reference may be made to the judgments of the Supreme Court wherein aforesaid views have been taken, vide, *State of Orissa Vs. Dhaniram Luhar*, *State of Rajasthan Vs. Sohan Lal and Others*, ; *Vishnu Dev Sharma Vs. State of U.P. and Others*, ; *Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela-I Circle and Others*, ; *State of Uttaranchal and Another Vs. Sunil Kumar Singh Negi*, ; *U.P.S.R.T.C. Vs. Jagdish Prasad Gupta*, ; *Ram Phal Vs. The State of Haryana and Others*, ; *State of Himachal Pradesh Vs. Sh. Sada Ram and Another*, ; *The Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Others*, ; and *Sant Lal Gupta and Others Vs. Modern Co-operative Group Housing Society Ltd. and Others*, .

36. In *S.L. Abbas* (supra) the Supreme Court has acknowledged the right of the officer/employee to make representation to the superior authority if the transfer order has been passed in violation of policy or Government orders. Recording of reason would also be helpful in case of judicial review. Every year large number of writ petitions are filed challenging the transfer orders on the ground of mala fide and serious allegations are made that transfer order has been passed for collateral purpose and extraneous reasons. In most of the cases the allegations are that the aggrieved officer has been transferred only to accommodate another officer, who is enjoying political patronage.

37. There is another aspect of the matter. The State Government in compliance of the direction of the Supreme Court in *Sarvesh Kumar Awasthi* (supra) has framed transfer policy. It has filed an affidavit in the Supreme Court that it would adhere with the guidelines strictly. The statement has also been given by the then learned Solicitor General of India to the said effect. I am not oblivious of the fact that transfer policy/executive instructions are amended periodically. Nonetheless the guidelines are basically same except some insignificant changes. The affidavit and the statement are not confined to a particular case or the year, therefore, in my opinion, it is binding on the State Government.

38. After careful consideration of the law laid down by the Supreme Court, I am of the view that this Court cannot interfere with the transfer matter as the Government servant has no vested right to continue at a place of his choice. The Government can transfer the officer/employee in the administrative exigency and in public interest. However, if a transfer is made against the executive instructions or transfer policy, the competent authority must record brief reason in the file for deviating from the transfer policy or executive instructions and the transfer must be necessary in the public interest or administrative exigency. If an officer/employee, who is aggrieved by his/her transfer, makes a representation to the competent authority, his/her representation must be decided objectively by a

reasoned order. Having regard to the facts and circumstances of the case, in my view, end of justice would be subserved by giving liberty to the petitioner to make a representation to the competent authority within a week from the date of receipt of certified copy of this order. In the event such a representation is made, the competent authority shall decide the same as expeditiously as possible preferably within a period of six weeks from the date of communication of the order.

Accordingly, the writ petition is disposed of.

No order as to costs.