

(2023) 09 CAT CK 0031
In the Central Administrative Tribunal
Case No : Original Application No. 534 Of 2023

Dinesh Kumar Pandey

APPELLANT

Vs

Union Of India, Through The General Manager, North Central
Railway, Subedarganj, Allahabad & Ors

RESPONDENT

Date of Decision : 29-09-2023

Acts Referred:

Police Act, 1861 — Section 7
Constitution Of India, 1950 — Article 226

Citation : (2023) 09 CAT CK 0031

Hon'ble Judges : Om Prakash, VII, Member (J)

Bench : Single Bench

Advocate : Shyamal Narain, Mahendra Prasad Mishra, R C Sahu, Pramod Kumar Pandey

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. Shri Shyamal Narain, learned counsel for the applicant, Shri Mahendra Prasad Mishra and Shri R C Sahu, learned counsels for the respondents no. 1 to 3 and Shri Pramod Kumar Pandey, learned counsel for the respondent no. 4, were present at the time of hearing.

2. Although the present case was listed under the head of "Orders/Directions" today, the same was heard to be decided finally with the consent of both the parties.

3. The instant original application has been filed seeking following relief:

"a) quash and set aside the impugned transfer order dated 14.01.2023, qua the applicant (Annexure No. A- 1 to Compilation No. I), with all consequential benefits to him.

b) Issue such other suitable orders or directions as might be found just and

proper in the facts and circumstances of the present case.

c) Award the costs of this Original Application in favour of the applicant, throughout.”

4. The compendium of the facts of narrated in the instant original application is that the applicant is disgruntled by the order of transfer dated 14.01.2023 issued by the respondents’ department by virtue of which he has been transferred from his current place of posting at Allahabad (Prayagraj) to Tundla. Attributing the impugned transfer order as illegal, arbitrary and one suffering from both malice-in-fact and malice-in-law, applicant pleads that the same should be repealed thereby directing the respondents to allow the applicant to continue working at his current place of posting.

5. I have heard learned counsel for the parties and gone through the documents on records.

6. Initiating his arguments, learned counsel for the applicant submitted that the applicant had joined the respondents’ department on 01.10.2005 at the rank of Constable with initial posting at Agra where he remained till 2007. In 2007, he was transferred to Allahabad where he remained posted till the date he got transferred to Lucknow i.e., on 20.10.2017. With effect from 06.04.2018, he was again transferred to Allahabad at CORE (Central Organisation For Railway Electrification). Learned counsel further submitted that the applicant is a patient of idiopathic epilepsy and is prone to frequent attacks of seizures and due to severe medical condition, he was medically decategorised from the RPF on the recommendation of a duly constituted Medical Board meeting of which held at Lucknow on 27.07.2018. The Board held the applicant unfit for the post of Constable, but fit for AEMG in Medical Category B-1 and below. Consequent to his medical decategorization, the applicant was allocated the post of Clerk as an alternative employment in the office of the Chief Booking Supervisor / NCR / Allahabad vide order dated 19.06.2019. Further, vide order dated 09.09.2021, the applicant was promoted to the post of Senior Clerk and posted in the Commercial Branch at the office of the DRM/NCR/Allahabad, where he has been working till the issuance of the impugned transfer order under contention.

7. Learned counsel for the applicant further submitted that in November 2022, the applicant was approached by one Shri Y N Mishra seeking illegal gratification in the name of, and for, Shri Shashi Bhushan who was the Senior Divisional Commercial Manager at NCR Allahabad and has been arrayed as respondent no. 4 herein. Shocked at this brazen demand made upon him, the applicant made a written complaint dated 09.11.2022 to respondent no. 4 alleging the misconduct of Shri Y N Mishra. However, to the surprise of the applicant, no action was taken by the authority concerned against Shri Y N Mishra and because of this reason, the applicant was constrained to move a detailed complaint dated 15.11.2022 before the Principal Chief Commercial Manager/NCR HQ/Allahabad. Learned counsel alleged that when respondent no. 4 came to know about the complaint

dated 15.11.2022, he got annoyed and orchestrated a conspiracy to defame and discredit the applicant. He influenced a staff of as many as 28 employees to jointly write scandalous and vicious letters of complaint against the applicant, addressed to him. He also coaxed around 18 employees of the Commercial Branch to jointly write a vicious and scandalous complaint dated 14.12.2022 with the sole purpose of slandering the applicant. Upon being inflicted with such grievousness, the applicant was compelled to send legal notice dated 09.01.2023 to each of the complainants warning them of legal action for their baseless and scandalous accusations leveled upon him. What followed was an even more heinous incident as the applicant was physically assaulted by two of the complainants on 12.01.2023 during which he suffered injuries which he got medically examined on the same day. Applicant lodged a written complaint of the aforesaid incident at P.S. Kotwali, Commissionerate, Prayagraj on 12.01.2023 itself requesting for relevant action to be taken against the miscreants. When no action was taken by the Police, the applicant was constrained to approach the Commissioner of Police by way of a written complaint dated 31.03.2023. However, to the utter misfortune of the applicant, even the written complaint dated 31.03.2023 failed to see the light of the day. Aggrieved still, the applicant moved an application before the Chief Judicial Magistrate, Allahabad seeking the redressal of his grievance and the court was pleased to pass an order dated 10.05.2023 directing the police to inquire into the incident and submit its report by 31.05.2023.

8. Learned counsel for the applicant further submitted that following the date when the applicant got physically assaulted by the complainants, respondent no. 4 in an absolute knee-jerk response, passed the impugned transfer order dated 14.01.2023 against the applicant. Learned counsel further submitted that the impugned transfer order was passed in absolute haste and without an application of mind and is one that suffers from malafide. He also submits that the said order also suffers from the vice of both, malice-in-fact and malice-in-law. Malice-in-fact is evident from the background of events leading up to the applicant's transfer and malice-in-law can be corroborated by the forced and arbitrary invocation of the term "administrative ground" for justifying the same when, in fact, no valid and cogent administrative ground for ousting the applicant from Allahabad can be shown to exist. The applicant has only been transferred on the whim of respondent no. 4.

9. Concluding his submissions, learned counsel for the applicant also submitted that the charge of indiscipline which has been leveled against the applicant is utterly baseless and unsubstantiated and actually scandalizes the applicant. The applicant's professional conduct throughout his service so far has been praiseworthy and unblemished. This fact can be corroborated by a plain reading of the markings recorded in the applicant's last three ACRs wherein he has been awarded "Outstanding" grading. Moreover, a plain reading of those ACRs would also reveal that specifically with regard to the facet of behavior and relation with other staff persons, the applicant has been granted fair grading and exclusively

with regard to the column of discipline, the applicant has been attributed as "very amenable to discipline, very disciplined". Furthermore, the applicant has also been a recipient of several awards and accolades which speak for his professionalism, good official conduct and devotion towards duty. Thus, learned counsel submitted that the impugned transfer order is stigmatic and punitive in nature and one which has been passed in colourable exercise of power therefore the instant original application is liable to be allowed in favour of the applicant and the impugned transfer order must be struck down.

10. Shri Mahendra Prasad Mishra and Shri R C Sahu, learned counsels for the respondents no. 1 to 3 vehemently opposed the prayer made by the applicant and by way their counter affidavit, it was argued that vide a complaint letter dated 09.12.2022, 28 employees of the Commercial Branch of the respondents' office collectively informed the Senior Divisional Commercial Manager / Prayagraj that the applicant is spoiling the office environment. Words containing indecent remarks and street slurs are used by the applicant. It was demanded that strict action should be taken against the applicant in order to avoid any untoward incident in the office. Furthermore, in another complaint letter dated 14.12.2022, 18 employees of the Commercial Branch collectively informed the Principal Chief Commercial Manager / Prayagraj and Divisional Railway Manager / Prayagraj that the applicant in the working hours of the office passes indecent comments, sings chorus of obscene Bhojpuri songs, uses abusive words and caste-specific words against the employees of the branch, especially women thereby tarnishing the office decorum. Once it came to the notice of the competent authority of the department that some mishap has taken place on 12.01.2023 particularly between the applicant and one Pankaj Pandey / Office superintendent, both of them were transferred vide Office Order 940/E/EC-1 TRANSFER MINISTERIAL dated 14.01.2023 on administrative grounds by the Assistant Personnel Officer, North Central Railway, Prayagraj as per recommendation of three members committee and approval of Competent Authority i.e., ADRM/NCR/PRYJ specifically in accordance with the provisions enshrined in Railway Board's letter dated 10.06.2014. The said transfer order was passed strictly in terms of the departmental rules and regulations governing the subject and no illegality or infirmity can be attributed to the same. In compliance with the above transfer order, both the applicant and Shri Pankaj Pandey were spared from the office and the information was also communicated to them on their respective WhatsApp numbers and through registered post to the addresses of their respective railway residence. Shri Pankaj Pandey has even joined Mirzapur Railway Station on 28.01.2023 itself and thus the transfer order dated 14.01.2023 stands partially complied. The applicant is yet to join at his new place of posting and is currently on sick leave.

11. Learned counsels for Respondents no. 1 to 3 further submitted that applicant's claim that certain illegal gratification was sought from him by Shri Y N Mishra in the name of respondent no. 4 is absolutely false and baseless. There is no relation between Y N Mishra and respondent no. 4. The applicant deliberately

made a false complaint against respondent no. 4 by fabricating a story to take out his anger on Y N Mishra as he is having some personal grudges against him. As regards to the contention of the applicant that he moved a complaint dated 15.11.2022 before the Principal Chief Commercial Manager / NCR HQ/Allahabad, learned counsels submitted that no such complaint was received by the respondents' office in a proper manner. Furthermore, learned counsels also submitted that the onus of keeping up with the office decorum rests with the competent officers of the department and in any case of indiscipline and indecency displayed by any of the staff members, it is pertinent upon the officers concerned to transfer the person responsible for the act to other units of the office and therefore, no illegality can be attributed to the said action. In the instant case of the applicant, he was transferred along with one other person after two complaints collectively signed by several employees were received. Also, since one more person has also been transferred along with the applicant, it cannot be alleged by the applicant that any sort of personal grudge or mistreatment has been leveled against him. The allegations made against the applicant were of a very serious nature including complaints that he made indecent / vulgar remarks on the women and also made caste-specific comments. It was liable on the part of the respondents to have taken prompt action against the applicant and the same was done accordingly. Learned counsels also submitted that during his working in the RPF department of Railway, the applicant was punished several times for different reasons which proved his indiscipline and misbehavior.

12. Learned counsels for Respondents no. 1 to 3 further submitted that above all, it can be ascertained from the impugned transfer order that it was passed specifically and exclusively on administrative grounds. The Competent Authority has taken that decision without having any biases against the applicant and both the applicant as well as Shri Pankaj Kumar Pandey were transferred to different locations on administrative grounds. As regards to the order dated 12.07.2023 passed by the Chief Judicial Magistrate, Prayagraj, learned counsels submitted that the order dated 12.07.2023 speaks more in against of the applicant than his favour.

13. Shri Pramod Kumar Pandey, learned counsel for the respondent no. 4 also vehemently denied the claim of the applicant and by way of his counter affidavit, he submitted that applicant's transfer was not done on account of any personal grudge or enmity but in public interest and administrative demand. The transfer of an employee is an exigency of service and it is always open for the employer to utilize the services of his employee as the employer is the best judge of suitability of his employee and thus, the transfer order in the instant case was passed by the employer on administrative ground and there is no material to establish that the transfer order in any way is malafide or punitive in nature. Learned counsel also submitted that the controversy raised in the present original application stands well settled in view of the law laid down by the Apex Court in the case of S.C. Saxena Vs. Union of India and others reported in

[2006(9) SCC 583] in which it has been held that if an employee has been transferred, he must join immediately at his transferred place and after his joining he can make representation, but in the present case the applicant has not joined at his transferred place as yet and thus the original application of the applicant is liable to be dismissed accordingly. Learned counsel also submitted that the applicant is highly mistaken in leveling malicious and frivolous allegations against the respondent no. 4. It is wholly false and incorrect to say that the answering respondent is infamous for any shady or corrupt practices. The applicant must have come with some cogent and strong proof in support of his allegations against the answering respondent which has not been done anyway. The answering respondent is an IRTS officer and has worked on different posts in North Central Railway since long and his image has always been very lucid and honest.

14. Learned counsel for the applicant vehemently opposed the averments of the respondents and by way of his rejoinder affidavit filed against the counter reply of respondent no. 1 to 3, he submits that even a bare glance at the names and signatures shown in the complaints dated 09.12.2022 and 14.12.2022 show that most of them are in the same handwriting and it is obvious that just one or few persons have written all the names and made the signatures for others. In other words, the complaints dated 09.12.2022 and 14.12.2022 are forged, fabricated and manufactured and were consciously created in furtherance of a conspiracy hatched against the applicant by a handful of persons at the behest of respondent no. 4. Learned counsel also submitted that what stands out as the most bizarre amongst the series of unprofessional conducts of the respondents is the fact that respondents did not pay any heed to even call-out the complainants for the purpose of examining their statements before arriving at the decision of imposing the punishment of transfer upon the applicant. In accordance with the principle of natural justice and rules of professionalism, it was imperative upon the competent authority amongst the respondents to have called out all the complainants for the purpose of examining and cross-examining their statements, conducted a full fledged inquiry and only then, imposed any sort of punishment upon the applicant including that of the transfer. Learned counsel further submitted that the applicant was transferred consequent to the mishap took place on 12.01.2023 which said to have deteriorated the office atmosphere however, there is not even a hint of whisper in the entire counter reply as to whether any attempt had been made by the respondents to ascertain if any such incident had actually taken place or to fix the responsibility of the alleged incident on the person concerned. In the instant case, the respondents seem to have simply shrugged off their duty of ascertaining the truth by passing a blind and illegal transfer order to just do away with the matter.

15. Learned counsel for the applicant further submitted that the matter under contention is liable to be decided in accordance with Railway Board's letter dated 10.06.2014 which rules that there has to be a duly constituted Placement Committee to recommend transfer / petitions of all Railway servants as per the

Apex Court's decision (given in Writ Petition (C) 82/2011). The composition of the Placement Committee for Group 'C' officials in Railway Divisional Office (which is relevant to the case at hand), has been enshrined in Para 2 (iv) of the Railway Board instructions, and the designated Competent Authority for accepting the recommendations of the Placement Committee has been mentioned as the DRM/ADRM. The functions of the Placement Committee have been mentioned in Para 3 of the Railway Board instructions and the same is liable to be kept in mind while dealing with the issue of transfer. It was in compliance of the aforesaid Railway Board instructions that the DRM, NCR, Allahabad had issued the letter dated 29.12.2016 which the respondents have appended as part of Annexure No. CR-4 (filed along with the counter). As per this letter, the Placement Committee for considering / recommending transfers in the Commercial Branch comprises the Sr. DCM as the Cadre Controlling Officer, the Sr. D.P.O. and the Sr. DOM/Co. and the Accepting Authority for supervisors is the DRM and for Non-supervisors, the ADRM. It transpires from a close reading of Annexure CR-4 in its entirety, that the proposal for the applicant's transfer (and that of Shri Pankaj Kumar Pandey), had been moved by respondent no. 4 vide some letter dated 13.01.2023, no copy of which has been brought on record, perhaps deliberately and for obvious oblique motives. Thereafter, this proposal appears to have been put up before the members of the aforesaid Placement Committee, not for consideration or recommendation, but for acceptance, whereupon, only two of the Members of the designated Three Member Committee, namely, the Senior DCM/PRYJ/NCR, Shri Shashi Bhushan (a respondent in this O.A. and who, curiously, was also the author of the proposal), and the Senior D.P.O./PRYJ/NCR, Sri Manish Khare, have simply written one word, Accepted/Agreed in respect of the proposal, without any discussion, conference or deliberation showing conscious application of mind. Strikingly, the proposal doesn't appear to have even been put up before the third member of the Placement Committee, namely, the Sr. DOM/Co., and, without any acceptance or concurrence of the said third member, the proposal appears to have been put before the ADRM/G/PRYJ/NCR, Sri Sanjay Singh, the designated Competent Authority for approval, who has approved the same with a cryptic single word, 'Approved'. Learned counsel thus submitted that it is clear from the above that the impugned transfer order dated 14.01.2023, apart from being punitive, is also procedurally flawed and in utter violation of both the Hon'ble Supreme Court's directions, and the Railway Board instructions dated 10.06.2014, not to mention, the D.R.M. Allahabad's letter dated 29.12.2016. It is well-settled in law that when a thing is required to be done in a particular way it must be done in that way alone and all other ways of doing it stand precluded altogether. Learned counsel further submitted that the very presence of the Sr. D.C.M. in the Placement Committee for considering and recommending upon a proposal of which he himself was the author is also highly questionable, abhorrent to natural justice and patently illegal.

16. As regards to the averment made by the respondents' that the transfer order

dated 14.01.2023 stands partially complied with as Shri Pankaj Kumar Pandey has already joined at his new place of posting while the applicant has still abstaining joining, learned counsel for the applicant contested that the case of applicant and Shri Pankaj Kumar Pandey cannot be compared with. He further submitted that by way of the transfer order dated 14.01.2023, respondent no. 4 has cleverly tried to create a picture of impartiality as Pankaj Kumar Pandey has been transferred to his home district i.e., Mirzapur whereas the applicant has been shunted out to distant Tundla.

17. As regards to the submission of respondents' counsel no. 4 through his counter reply, learned counsel for the applicant by placing reliance upon the rejoinder affidavit filed by him submitted that as far as the forged complaints dated 09.12.2022 and 14.12.2022 are concerned, it has nowhere been ever suggested, let alone pleaded, by the respondents - either official or private - that any attempt, or even a casual or basic inquiry, was ever made to ask any of the complainants whether the complaints in question, or the allegations made therein, had actually been made by him/her. It is, therefore, truly astounding that the uncorroborated allegations contained in the said complaints were relied upon by the respondents particularly, respondent no. 4, to first saddle the applicant with the stigmatic charge of being undisciplined, and then punish him with a wholly unnecessary and out-of-turn punitive transfer. Learned counsel further submitted that the ground of indiscipline which has been cited by the respondents to impose the order of transfer upon the applicant does not go in consonance with the ACRs grading of the applicant.

18. As regards to the ruling of the Apex Court in the case of SC Saxena (supra) which has been relied upon by the respondents, learned counsel for the applicant submitted that the said judgment does not amount to a blanket or unqualified ban, either in letter, or spirit, or all on any judicial challenge to an order of transfer, no matter how illegal, unless the transferred employee has not joined at his new place of posting. A close reading of the facts, context and operative portion of the said judgment would show that the observations of the Apex Court, as made in para 6 of the same, essentially, and primarily, relate to cases where an employee is resisting or challenging his transfer merely on grounds of personal difficulties, inconvenience or hardships, and not when the challenge is on grounds that are purely legal or those on which even the Apex Court has held that transfers can be interfered with by courts and tribunals, e.g. when the transfer order has been issued malafide, without jurisdiction, in violation of some statutory rule or is punitive in nature or has the effect of reducing the status or pay of the incumbent. Furthermore, as regards to the order dated 12.07.2023 passed by the Chief Judicial Magistrate, Prayagraj, learned counsel for the applicant submitted that the said order has not attained finality and can hardly be described as a conclusive or authoritative negation or adjudication of the case set up by the applicant. The applicant has already preferred a Criminal Revision against the order dated 12.07.2023 before the competent criminal court at Allahabad (bearing Criminal Revision No. 10896/2023), and the same has also

been admitted by the Revisional Court and lower court records have been summoned by it for further adjudication. As such, since the criminal complaint of the applicant is very much alive and under adjudication before a higher court of law, the observations made in the order dated 12.07.2023 by the lower court cannot be said to have become final or conclusive.

19. In support of his claim, learned counsel for the applicant placed reliance upon the following case laws:

i. Judgment dated 03.05.2012 passed by the Hon'ble High Court of Allahabad in Writ Petition No. 2450 of 2009 titled Sabhapati Pathak Vs State of UP and others.

ii. Judgment dated 10.01.2022 passed by the Hon'ble High Court of Madras in Writ Petition No. 357 of 2002 titled Gandhimati Vs. The District Collector.

iii. Judgment dated 20.05.2004 passed by the Hon'ble High Court of Himachal Pradesh in CWP No. 304 of 2004 titled Shobh Ram Vs. State of HP and another.

iv. Judgment dated 14.10.2014 passed by the Hon'ble High Court of Madras in WP No. 289 of 2014 titled P. Arivazhagi Vs. the District Collector.

v. Judgment dated 07.02.1992 passed by the Hon'ble High Court of Allahabad in Special Appeal No. 13 of 1992 titled Regional Manager, Region – II, State Bank of India, Zonal Office, Meerut and others Vs. Pradeep Goel.

vi. Judgment dated 16.12.2008 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 7308 of 2008 titled Somesh Tiwari Vs Union of India and others.

vii. Judgment dated 26.08.1986 passed by the Hon'ble Supreme Court of India in the case of B Varadha Rao Vs. State of Karnataka and others reported in AIR 1986 SC 1955.

viii. Judgment dated 20.11.2008 passed by the Hon'ble High Court of Uttarakhand in Special Appeal No. 143 of 2008 titled Smt. Damyanti Bisht Vs. State of Uttarakhand and others.

ix. Judgment dated 03.12.2019 passed by the Hon'ble High Court of Madhya Pradesh in Writ Petition No. 21175 of 2019 titled Sanjay Upadhyay Vs. State of M.P. and others.

x. Judgment dated 31.07.2023 passed by the Hon'ble High Court of Allahabad in Writ A No. 18054 of 2021 titled Dinesh Kumar Sharma and 2 others Vs. Union of India and 5 others.

20. Similarly, learned counsels for the respondents placed reliance upon the following case laws:

i. Judgment dated 19.09.2011 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 7936 of 2011 titled The Registrar General High Court of Judicature at Madras Vs. R Perachi and others.

ii. Judgment dated 11.01.2016 passed by the Hon'ble High Court of Allahabad in Special Appeal No. 969 of 2015 titled Union of India and others Vs. Vishnu Kant Pal.

21. I have considered the rival contentions advanced by the learned counsels appearing for the parties and gone through the documents on record and carefully perused the counter, supplementary counter and rejoinder replies filed so far. I have also meticulously gone through the judgments relied upon by the counsels.

22. As the facts of the case have already been narrated above in detail, the same are not reiterated for the sake of brevity. Before I delve into the controversy prevailing in the instant case to decide the same on merits, it is important to make a mention of the chain of events that have taken place in the case chronologically. When the case was first listed before this Tribunal on 10.07.2023, the same was admitted but the prayer for interim relief was rejected. Aggrieved by the same, the applicant approached the Hon'ble High Court of Allahabad. The Hon'ble High Court, vide its order dated 21.07.2023 set aside the order of the Tribunal thereby remitting the matter back to the Tribunal to pass a fresh order. For the sake of clarity, the operative portion of the order dated 21.07.2023 is quoted herein below:

"8. While we may not be required to make any observation as to the true merits raised by the petitioner in the OA which is still pending before the Tribunal, we do find that there is vital inaccuracy in the facts as recorded by the Tribunal, especially in para 4 of the order impugned. Those facts may not be entirely correct. As to the grounds of malafide pleaded, it cannot be denied that the party against whom malafide has been alleged had been made party respondent. Prima facie, it also appears that facts have been pleaded and document was annexed, in support of thereof.

9. Seen in that light, the impugned order does not make reference or consideration of all relevant facts. Though transfer orders are not to be lightly interfered, in any case any party who comes before the Court or Tribunal is entitled to due consideration of his grounds of challenge.

10. Since, we are sitting in judicial review and the matter on merits is still before the Tribunal, we do not propose to pass any further order as may affect the consideration to be made by the Tribunal. Only on the procedural aspect, we do feel that the correct decision on facts may have survived for further consideration before the Tribunal.

11. Accordingly, the order dated 10.07.2023 passed by the Tribunal is set aside and the matter is remitted to the Tribunal to pass a fresh order. We would request the Tribunal to take up the stay application expeditiously, if possible, within two weeks from today.

12. It may also be open to the Tribunal to conclude the proceeding on the OA as

early as possible, subject to the Union cooperating and filing their counter within on or before next date fixed by the Tribunal for disposal of the application for interim relief.

13. The writ petition is disposed of.”

Thus, the above quotation clearly establishes that there was a clear direction of the Hon’ble High Court to decide the matter as expeditiously as possible. Accordingly, since the pleadings stand complete, the matter is being decided finally with the consent of parties.

23. Similarly, for the sake of meticulous reasoning and analysis, it is also equally important to reproduce the relevant portions of case laws as have been relied upon by the counsel appearing for the parties during the course of hearing.

24. Stressing upon his claim that the transfer must be done on absolute administrative grounds and not merely as a form of penalty, learned counsel for the applicant has relied upon the judgment of Hon’ble High Court of Allahabad in case Sabhapati Pathak (supra). The relied upon portion is quoted herein below:

“7. Ex facie it does not show that it is a transfer not a consequence of departmental enquiry but something for other reasons. In fact the counter affidavit of respondent No. 3 corroborate this fact that after receiving enquiry report and considering the recommendation of the enquiry officer the petitioner has been transferred. A transfer on administrative ground for various reasons is permissible and normally is not interfered by the Court. The term administrative ground / exigency includes within its purview transfer to avoid shuffle between two employees at a particular place or to make an atmosphere more conducive which is being poisoned by both the employees and sometime not to allow an employee to do something wrong at a particular place. But then the order of transfer must show that the power of transfer has been exercised for administrative reasons without making the order of transfer a penalty.

10. However, it is made clear that since three years have passed, this order shall not preclude the respondents from passing a fresh order as and when the circumstances required in accordance with law since it cannot be said that the petitioner has any vested right to continue at a particular place according to his own choice but privilege is that of competent transferring authority to pass appropriate authority in accordance with law in his own wisdom.”

For a similar claim, learned counsel for the applicant has also relied upon the judgment of Hon’ble Madras High Court in the case of Gandhimati (supra). The relied upon portion is quoted herein below:

“5. Though the grounds raised in the writ petition doe not disclose any reason, to interfere with the impugned order, but, on notice, counter has been filed, wherein the stand taken is, that irregularities were noticed in the working of the petitioner. The order of transfer, is therefore cannot be an order on administrative grounds, but was passed, as punishment on account of

irregularities, without giving opportunity to submit her explanation to alleged irregularities.

6. The order of transfer cannot be passed by way of punishment, without giving an opportunity to the petitioner, to defend herself against the allegations.

7. It is now well settled law, that it is open to the Court to lift the veil to see whether the order though said to be passed on administrative ground but in fact is punitive in nature. This is one such example, where though the order of transfer is shown to be on administrative ground, but the stand in counter shows, that it was on account of irregularities in the working of the petitioner.

8. The impugned order of transfer, therefore, cannot be sustained in law, as it was not open to the respondent, to pass an order of transfer by way of punishment."

25. Similarly, stressing upon his claim that punishment of transfer cannot be imposed upon any employee without conducting any inquiry and without affording an opportunity of hearing to that employee, learned counsel for the applicant has relied upon the judgment of the Hon'ble Madras High Court in case P. Arivazhagi (supra). The relied upon portion is quoted herein below:

"4. It is not in dispute that as seen from the counter affidavit the petitioner was transferred as a punishment and also to avoid quarrel with the school authorities. Therefore, the said order has been passed both by way of punishment and also on administrative grounds. Now coming to the impugned order, it states that the petitioner is warned for her conduct. However, without conducting any enquiry and without hearing the petitioner three punishments have been imposed. Admittedly, these three punishments have got civil consequences. Therefore, even on this ground the order impugned cannot be sustained."

26. Similarly, stressing upon his claim that transfer cannot be enforced as a punishment upon an employee for alleged misconduct, learned counsel for the applicant has relied upon the judgment of Hon'ble High Court of Allahabad passed in the case of Pradeep Goel (supra). The relied upon portion is quoted herein below:

"10. It is true that transfer is an incidence of service and it is open to the employer to transfer his employee holding transferable posts from one place to another. But transfer cannot be resorted to by way of punishment on account of some alleged misconduct. If the employee is guilty of some misconduct, it is open to the employer to take action against him in accordance with law. But the transfer is not a remedy and cannot be used as a substitute for punishment. The Supreme Court in the case of State of U.P. Vs. Jagdeo Singh (1984 Suppl. SCC 413) has held that transfer by way of punishment is not permissible. In this case a Station House Officer was found negligent in discharge of his duties as a consequence of which he was transferred. This Court quashed the transfer order which was upheld by the Supreme Court. The relevant extract from the judgment

of the Supreme Court is quoted below:

"We must make it clear that any and every transfer of a police officer from one police station to another will not amount to punishment, even if it involves the loss of a special emolument. If a police officer is transferred from one charge to another in ordinary course of administrative exigencies, the provisions of sec. 7 of the police act will not be attracted because a transfer simpliciter is not punishment. It is only when the transfer is made by way of punishment, as in the instant case, that Section 7 would come into play."

11. A Division Bench of this Court in *State of U.P. vs. Shesh Mani Tripathi* (1191 (2) UPLBEC 1303) has also held that transfer on the basis of the complaint against a Government servant cannot be sustained because, as observed by the Division Bench "In case the complaint is found to be correct, it is open to the Government to take action against the officer concerned but transfer is no solution to this problem."

Stressing upon the same claim as above, learned counsel for the applicant has also relied upon the Apex Court's judgment passed in the case of *Somesh Tiwari* (supra). The relied upon portion is quoted herein below:

"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."

27. Similarly, stressing upon his claim that no transfer can be enforced upon an employee as a form of punishment especially in absence of any concrete proof or without any disciplinary proceedings, learned counsel for the applicant has relied upon the judgment passed by the Hon'ble High Court of Allahabad in the case of *Dinesh Kumar Sharma* (supra). The relied upon portion is quoted herein below:

"6. We are more concerned that the further order dated 17.12.2020 passed pursuant to the earlier order of the Tribunal dated 15.9.2020, clearly specifies grounds of indiscipline and bad behaviour to be the reason that occasioned the transfer order. At present, no material is shown to exist as may establish any disciplinary proceedings having been initiated against the petitioners over a long period of almost two years, since the issuance of the original transfer order dated

10.7.2019. It may be too late in the day to allow the respondents to revisit that position, now.

7. It is too far and settled by way of principle, though transfer orders are not readily interfered with by this Court as transfer is an exigency of service and transfer orders normally arise due to administrative exigency, yet, it is equally well settled that an order that may be stigmatic and punitive may not be passed ex-parte."

28. Similarly, stressing upon his claim that transfer cannot be done malafide with solely an oblique motive, learned counsel for the applicant has relied upon the judgment of the Hon'ble High Court of Allahabad passed in the case of B. Varadha Rao (supra). The relied upon portion is quoted herein below:

"5. It is no doubt true that if the power of transfer is abused, the exercise of the power is vitiated. But it is one thing to say that an order of transfer which is not made in public interest but for collateral purposes and with oblique motives is vitiated by abuse of powers, and an altogether different thing to say that such an order per se made in the exigencies of service varies any condition of service, express or implied to the disadvantage of the concerned Government servant. The petitioner who appeared in person placed reliance, as he did in the High Court, on the decision of the Bombay High Court in Seshrao Nagorao Umap v. State of Maharashtra and Ors. (1985)2 LLJ 73. We do not see how the decision can be of any avail to the question at issue. The learned Judges were dealing with a petition under Article 226 of the Constitution by which a Medical Officer challenged his order of transfer on the ground that it was not only mala fide but was issued in colourable exercise of power and therefore wholly illegal and void. It was contended by the petitioner that he was being transferred contrary to the Government policy with a view to accommodate one Dr. Section 4P. Patil because of the political influence he wielded. In allowing the writ petition, the learned Judges observed that it was no doubt true that the Government has power to transfer its employees employed in a transferable post but this power has to be exercised bona fide to meet the exigencies of the administration. If the power is exercised mala fide, then obviously the order of transfer is liable to be struck down. They relied on the observations made by this Court in E.P. Royappa v. State of Tamil Nadu and Anr. . for the positivistic view that 'equality is antithetic to arbitrariness' and held that the observations equally apply to the policy regarding the transfer of public servants. It was observed:

It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons

to justify such; transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair.

The observation that transfer is also an implied condition of service is just an observation in passing. It certainly cannot be relied upon in support of the contention that an order of transfer ipso facto varies to the disadvantage of a Government service, any of his conditions of service making the impugned order appealable under Rule 19(1)(a) of the Rules."

For the above claim, learned counsel for the applicant has also placed reliance upon the judgment passed by the Hon'ble High Court of Madhya Pradesh in the case of Sanjay Upadhyay (supra). The relied upon portion is quoted herein below:

"10. Undisputedly, transfer is an incident of service and interference in transfer matters in a writ petition in normal course is not permissible but it does not mean that if an employee is frequently transferred by the authority and not allowing him to continue or complete his normal tenure at one place, the High Court cannot examine the validity of the order. The scope of interference in transfer matters is very limited for the reason that transfer is considered to be an administrative exercise and is an incident of service therefore, if administrative exigency arises, the employer has every right to transfer the employee but on several occasions, the Supreme Court as well as the High Court has considered this aspect that if an employee is arbitrarily transferred frequently then the conduct of the authorities is considered to be mala fide action on their part and in such a circumstance, the High Court has every right to interfere in the matter."

29. Similarly, stressing upon his claim that transfer of an employee can only be enforced after due verification and confirmation of the factors / grounds / considerations warranting the transfer of the person concerned, learned counsel for the applicant has relied upon the judgment passed by the Hon'ble High Court of Uttarakhand in the case of Smt. Damyanti Bisht (supra). The relied upon portion is quoted herein below:

"13. In the present appeal as well as in the writ petition, the only ground which was raised against the impugned transfer orders was that they were passed on administrative ground and, therefore, per se were bad in law. The learned Single Judge, in the judgment impugned in the Special Appeal, in our considered opinion, has taken the correct view that the transfer order on administrative ground per se is not bad in law. We agree with him. We accordingly over-rule the view adopted by the Division Bench in the interlocutory order dated 1st July, 2008 in the aforesaid Writ Petition. We, while upholding the aforesaid view, substitute our own opinion by laying down that even though a transfer order on administrative ground per se is not bad in law, no person can be transferred on

an administrative ground unless before issuing the transfer order, the Authority competent to transfer has arrived at and recorded his satisfaction, upon due verification and confirmation, about the existence and truthfulness of anyone of the three factors / grounds / considerations warranting the transfer of the person concerned."

30. As far as the claim of learned counsels for the respondents is concerned, stressing upon the fact that transferring an employee is a sole prerogative of the employer and leaves very little or no scope of judicial intervention, learned counsels for the respondents have relied upon the judgment of the Apex Court passed in the case of R Perachi (supra). The relied upon portion is quoted herein below:

"21. We have considered the submissions of both the counsel. As far as the action of transfer against the first respondent was concerned, the same was on the basis of the report of the Registrar (Vigilance). Besides, the District Judge had also opined that retention of the appellant in his district was undesirable from the point of view of administration. Thus, it involved interdistrict transfer. The respondent no.1 had not disputed the power of the High Court to transfer him outside the district, nor did the division bench interfere therein on that ground. This is apart from the fact that transfer is an incident of service, and one cannot make a grievance if a transfer is made on the administrative grounds, and without attaching any stigma which was so done in the present case.

22. In the context of transfer of a govt. servant we may refer to the dicta of this Court in N.K. Singh Vs. Union of India reported in [AIR 1995 SC 423] where this Court observed in para 22 as follows:-

22..... Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

23. In State of Madhya Pradesh Vs. S.S. Kourav reported in [AIR 1995 SC 1056], the Administrative Tribunal had interfered with the transfer order of the respondent and directed him to be posted at a particular place. It is relevant to note that while setting aside the order of the tribunal this Court observed in para 4 of its judgment as follows:-

"4.....The Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place."

We may mention that this Court has reiterated the legal position recently in *Airports Authority of India Vs. Rajeev Ratan Pandey* reported in [2009 (8) SCC 337] that 'in a matter of transfer of a govt. employee, the scope of judicial review is limited and the 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.'

24. The Division Bench has however interfered with the order of transfer on the ground that the transfer order was passed by the then Chief Justice unilaterally, and he did not have the competence therefor. In rebuttal, the appellant relied upon a Full Court Resolution dated 19.7.1993, and the text thereof was placed before this Court. Item 3 thereof was regarding services of Judicial Officers, and Ministerial and Menial Staff. The subject of "Vigilance Cell" alongwith certain other subjects was specifically included therein as falling within the jurisdiction of the Chief Justice alone. It was submitted that all residuary subjects not allocated to the committee of Judges or any individual Judge, remain within the jurisdiction of Chief Justice. Further, the Chief Justice has to supervise the administration in the subordinate Courts also and has to take the decisions in emergencies, on all necessary matters. It was also submitted on behalf of the appellant that the Division Bench erred in not accepting the propositions emanating from the judgment of the other Division Bench in the case of *A.K. Vasudevan* (supra) which judgment had been left undisturbed by this Court when a Special Leave Petition against the same was dismissed.

30. The first respondent was contending that his transfer was punitive only because his promotional chances were affected. This controversy is no longer res-integra. In *Paresh Chandra Nandi Vs. Controller of Stores, N.F. Railway* [AIR 1971 SC 359] the situation was almost similar though the grievance of the appellant was that on account of transfer of respondents 4 to 8 into his department alongwith their lien, his chances for promotion were materially affected. The appellant was working in the stores department of the North East Frontier Railway. This Court however, noted that the transfer was effected under the relevant rules on administrative grounds, and it did not affect his pay in any way. The court held that the transfer of a permanent employee alongwith the consequent transfer of his lien cannot be challenged when the transfer is to a

permanent post in the same cadre not carrying less pay, even if such transfer materially affects chances for promotion. In the present case the pay, position and seniority of the first respondent was not affected by the impugned transfer, and therefore, the same could not be said to be punitive merely because his promotional chances got affected due to the transfer. Hence, there was no question of providing him any opportunity of hearing at that stage before effecting the transfer, and the order of transfer could not be faulted on that count as well.

32. As can be seen from these judgments, they were all rendered in altogether different context. In the present case we are concerned with a Sheristadar who has been transferred on receiving a complaint, although an anonymous one, but against whom a departmental inquiry is pending. He has been transferred to another district though retaining him in the same cadre with the same pay as well as his seniority. Such an action was fully justified and within the authority of the High Court. No observations were made against him, nor was any stigma attached. The reliance on the above three judgments to interfere in such an order clearly shows a non-application of mind by the Division Bench to the problem which the High Court Administration was faced with, and which was being attended in accordance with the relevant rules. In *Centre for Public Interest Litigation (supra)*, the grievance was with respect to the likely appointment of respondent No. 3 to the post of Chief Secretary, Uttar Pradesh when she was facing criminal prosecution. This Court had therefore directed that she be transferred to some other post in the cadre/grade to which she belonged. It was in this context that the Court made a general observation that, postings in sensitive posts should be made in transparent manner so that there is no scope for making grievance, though grievances can be made for ulterior motive with the intention of damaging the reputation of an officer who is likely to be appointed in a sensitive post. These observations have also no application in the present case since all that has happened is that first respondent has been transferred from one district to another in view of a complaint received against him and a pending inquiry. It cannot be said that the action was with a view to deny him any post. In fact the first respondent himself had stated in his Writ Petition to the High Court that there was no malafide exercise in his transfer."

31. Similarly, stressing upon their claim that it is for the employer to make suitable arrangements to ensure that the interest of the office and workforce in general is not compromised with and for that purpose the employer may transfer an employee, learned counsels for the respondents have relied upon the judgment passed by the Hon'ble High Court of Allahabad in the case of *Vishnu Kant Pal (supra)*. The relied upon portion is quoted herein below:

"10. The issue is as to whether the learned Single Judge was justified in holding that this statement in the counter affidavit would indicate that the order of transfer is "stigmatic" on the ground that it accuses the respondent of being involved in the theft of cables. With great respect, the impugned order confounds

the order of transfer with the 'observation' which we have extracted above. At the highest, the statement which was made in the counter affidavit would indicate that a report had been submitted by the Senior Divisional Mechanical Engineer (Diesel) on the administrative side. Even if, the order of transfer was passed upon the receipt of the report, we are emphatically of the view that the transfer cannot be regarded as being stigmatic. The authorities are entitled to issue such orders of transfer on administrative grounds. Even assuming that a complaint is received against an employee, it is for the employer to make suitable arrangements to ensure that the interest of the employer – in the present case, a public employer such as the North Central Railway is duly taken care of by assigning suitable duties to the employee.”

32. The main grounds upon which learned counsel for the applicant is demonstrating this case are that the impugned transfer order is absolutely punitive in nature and clearly the one passed on the grounds of malafide and colourable exercise of power. It has been alleged that while passing such an ill-fated order, the respondents completely ignored and overlooked the fact that the applicant is a patient of idiopathic epilepsy, suffers frequent seizures and thus requires regular medical treatment. It has also been alleged that for the sole purpose of transferring the applicant, a fabricated story was concocted by the respondents’ authority especially at the end of respondent no. 4 as a stigmatizing charge of indiscipline was leveled against him. Learned counsel for the applicant has further alleged that during the course of passing the impugned transfer order, no inquiry was conducted and no show cause notice or charge sheet was ever issued to the applicant. Further, as regards to the complaints dated 09.12.2022 and 14.12.2022, it has been alleged that no complainants were examined or cross-examined during the course of issuance of the impugned transfer order and at no stage, their statements were recorded.

33. Further, in support of the applicant’s case, learned counsel for the applicant also drew strength from the fact that spuriously the applicant was attributed the tag of being undisciplined only for the sole ill-purpose of transferring him. He has averred that the charge of indiscipline does not go well with applicant’s previous ACRs wherein he was given outstanding remarks including the remark like “disciplined and very amenable to discipline” and even the latest ACR of the applicant boasts the same sort of remarks. It was argued that the applicant is a sincere and disciplined employee having an absolute respect for the office decorum and propriety. It has also been alleged by the applicant that respondents have been continuously changing their stand with regard to the applicant’s case. Even with regard to the committee formed to look into the matter, it has been alleged that no cogent and significant deliberation was made by the committee. The committee meeting itself was defective as only two of the three committee members participated and made their recommendations and therefore the committee decision is itself an illegal one liable to be rendered as injudicious. However, the major contention of the applicant is that he should not have been subjected to the punishment of transfer. Even before he was to be

transferred, the respondents must have conducted an impartial and full-fledged inquiry but no such inquiry was ever conducted. Moreover, the applicant has been attributed as undisciplined which is a highly slanderous and stigmatizing charge.

34. On the contrary, respondents have argued that the transfer of the applicant was made due to administrative exigency. Transferring an employee is the sole prerogative of the employer with very limited or almost no scope for judicial intervention. It was also averred that as far as the instant case of the applicant is concerned, he has not been subjected to any sort of individual malice or mistreatment through the transfer order. A bare perusal of the impugned transfer order shows that one Shri Pankaj Kumar Pandey was also transferred along with the applicant and no complaint or any unsatisfactory plea has been advanced by him till date. Pankaj Kumar Pandey has already joined at his new place of posting. On the contrary, the applicant has not joined till date despite the fact that the transfer order dates back to the month of January, 2023 and just because of this reason, the transfer order stands partially complied. It was also averred by the respondents that several judicial forums including the Apex Court have time and again clearly spoken on the issue of transfer thereby asserting that transfer is an inherent aspect of the service with very little scope for judicial intervention. It was further averred that the applicant's claim that no preliminary inquiry was conducted before passing the transfer order does not hold water as a committee was duly constituted in accordance with the statutory departmental provisions to look into the issue meticulously and the transfer order was prepared only on the recommendations of that committee. Therefore, it cannot be held that the impugned transfer order suffers from illegality or arbitrariness and the same is not at all bad in the eyes of law. Respondents have also refuted applicant's claim that transfer of an undisciplined employee cannot be held as a remedy submitting that it is upon the respondents to ensure that the sanctity, propriety and decorum of the department is kept up with.

35. Tracing the brief history of the case, respondents have also submitted that when this case came up for hearing on the issue of interim relief, the same was rightly denied and the same view is liable to be resorted to at this stage also. As regards to the issue of quorum of the committee constituted to look into the case, respondents have averred that even if two of the three members were present at the time when the committee deliberated upon the case, the committee's report cannot be held as illegal or injudicious. Furthermore, it was also argued that the applicant does not suffer from any reduction in pay or designation due to the instant transfer. As regards to the grading on ACRs, it was argued that having been given good grading on ACRs does not grant the applicant a free pass to engage in any type of misconduct or hooliganism and thus, ratings accorded to the applicant in his ACRs have nothing to do with the controversy prevailing herein.

36. It is an accepted fact that judicial forums have very limited scope to interfere

in the matters pertaining to the executive and departmental issues dealing with administration. Transfer of an employee is one such issue. However, time and again, it has also been held by several courts that even the absolute administrative issues like transfer must be carried out in accordance with the statutory provisions and rules. As far as the instant case of the applicant is concerned, he was transferred on 14.01.2023 citing administrative reasons. However, a deeper picture reveals that the transfer was made following a brawl incident dated 12.01.2023. Further, respondents have averred that the applicant was transferred due to him being undisciplined and in this regard, two complaints dated 09.12.2022 and 14.12.2022 were made against him by several of his coworkers. It need not be reiterated that transfer cannot be held as a remedy or cure of indiscipline. It makes very little or no sense whatsoever in sending an undisciplined employee from one office to another just for the sake of throwing him off. A scurrilous and indecent employee is a scurrilous and indecent employee anywhere and everywhere immaterial to his or her place of posting. Even if it is accepted that the only resort available with the respondents to ensure appropriate office decorum was to transfer the applicant, it must have been done following a reasonable and cogent inquiry. All the complainants in the complaints dated 09.12.2022 and 14.12.2022 must have been examined and cross-examined by the respondents. A proper and full-fledged inquiry must have been conducted thereby giving the applicant a fair and proper opportunity of hearing. This view finds strength from the law laid down by the Hon'ble High Court of Madras in the case of P. Arivazhagi (supra) the relevant portion of which has already been quoted above. However, no such inquiry was conducted in the matter. The transfer order was passed solely post recommendations made by the three member placement committee constituted for the purpose. It is pertinent to mention here that respondent no.4 against whom allegations have been leveled had also participated in the committee proceedings as a member. It was incumbent upon the respondents to have clarified the misconduct of the applicant before imposing the transfer order upon him. Further, even in case the complaint was found to be correct, it was well open to the respondents to take suitable and necessary disciplinary action against the applicant but transfer was never a solution to this problem. This view finds strength from the law laid down by the Hon'ble High Court of Allahabad in the case of Pradeep Goel (supra) and by the Apex Court in the case of Somesh Tiwari (supra) the relevant portions of which have already been quoted above. The Tribunal is of the view that transfer in the instant case was done hastily without adhering proper heed to the rules of the statutes and principle of natural justice. It was enforced upon the applicant clearly as a form of punishment without conducting any disciplinary proceedings or issuing any show cause notice. This act of the respondents was definitely bad in the eyes of law. This view of the Tribunal also finds strength from the law laid by the Hon'ble High Court of Allahabad in the case of Dinesh Kumar Sharma (supra) the relevant portion of which has already been quoted above.

37. As regards to the claim of the applicant that the transfer was done by the

respondent no. 4 malafide with the sole intention of eking out personal grudge against the applicant, the Tribunal does not find ample grounds in support of this allegation. However, as regards to the contention of the respondents that just because Shri Pankaj Kumar Pandey who was transferred along with the applicant has already joined at his new place of posting and due to this sole reason, the applicant must also join having being relieved from his present place of posting, the Tribunal is of the considered opinion that it is an improper argument. The applicant was aggrieved by the transfer order which led him to approach this Tribunal through the instant original application and this has nothing to do with Shri Pankaj Kumar Pandey.

38. Further, notwithstanding the reasons advanced by this Tribunal while passing the order dated 10.07.2023 on interim relief, it would be in the fitness of things to retrace the ruling laid down by the Apex Court in the case of S.C. Saxena (supra). In the said judgment, the Apex Court held that once transferred, a government servant cannot disobey the transfer order by not reporting at the new place of posting. It is his duty to first report for work where he is transferred and then make a representation after his joining at the transferred place, as to what may be his personal problem. Such a tendency of not reporting at new place of posting and indulging in litigation needs to be curbed. It is pertinent to mention here that "personal problems" referred above by the Apex Court pertained to the medical problems of the applicant therein. Although the applicant in the instant original application is also suffering from certain medical issues which he counts as one of the many grounds due to which the instant transfer order must be done away with, he is pleading for abnegation of the transfer order primarily because it suffers from malice, impunity, illegality and arbitrariness. Thus, the facts and circumstances of the present case of the applicant and ones pertaining to the case of SC Saxena are in absolute dichotomy and cannot be compared.

39. Rebutting the claim of the applicant, respondents have argued that the grading given in the applicant's ACRs cannot be taken into consideration while deciding the controversy involved herein. Well, the Tribunal is not satisfied with this averment. An ACR is one of the most important official documents on the basis of which conduct, competency and attitude of an employee is ascertained and evaluated. Grading given in ACRs has a lot to do with determining the behavior and conduct of an employee. This must not be misunderstood as any sort of absolve or exoneration being granted to the applicant herein by the Tribunal. It is reiterated that before passing the order of transfer, some inquiry must have been conducted in accordance with the departmental rules and regulations and also in accordance with principles of natural justice. All the complainants must have been examined and cross-examined and the applicant must have been afforded an opportunity of hearing. By not doing that, the respondents have themselves made this whole exercise look as fabricated and concocted.

40. Respondents have placed reliance upon the law laid down by the Apex Court in the case of R Perachi (supra) the relied upon portion of which has already been quoted previously. However, it is pertinent to mention that in the said judgment, the Apex Court has taken a similar view which has already been discussed in the preceding paragraphs that transfer is a basic and necessary incident of the service career with very little or no scope for judicial intervention. But the Apex Court was observant enough to record that the transfer order must not be vitiated either by mala fides or by extraneous consideration without any factual background foundation. And likewise in the instant case of the applicant, the controversy is primarily revolving around the allegation that the transfer was done malafide and was imposed upon the applicant as a form of punishment for his alleged dispute with his coworkers who had made complaints against him. While the issue of mala fide has not been cogently proved, the latter one certainly holds some context. Despite being an administrative exercise pertaining to the executive domain, transfer must be made in accordance with the relevant rules and provisions and should not be merely conducted by the department to shrug off their duty of ascertaining the dispute and making the same to reach its logical end.

41. Respondents have also placed reliance upon the judgment passed by the Hon'ble High Court of Allahabad in the case of Vishnu Kant Pal (supra) which has already been quoted above. The said judgment rules that even assuming that a complaint is received against an employee, it is for the employer to make suitable arrangements to ensure that the interest of the employer / department is duly taken care of by assigning suitable duties to the employee. However, it is pertinent to mention that the department cannot simply resort to transfer as a means to do away with the responsibility of looking into the dispute involved. As has been reiterated earlier in this judgment, an incompetent and scurrilous employee is the same anywhere and everywhere. After a complaint is received, it is the onus of the department to ensure that the complaint is decided to its logical and cogent end. Even though a transfer order on administrative ground per se is not bad in law, no person can be transferred on an administrative ground unless before issuing the transfer order, the Authority competent to transfer has arrived at and recorded its satisfaction, upon due verification and confirmation, about the existence and truthfulness of various factors involved such as credibility, feasibility and reasonability of the controversy warranting the transfer of the person concerned.

42. Thus, in view of the above quoted deliberations, this Tribunal is of the considered opinion that the applicant's transfer was done hastily following a brawl incident dated 12.01.2023. The impugned order passed in this regard was a cryptic, incomplete and non-speaking one as no cogent grounds for transfer were mentioned therein. It only cited "administrative reasons" as a ground for transfer. Tribunal finds it inappropriate and capricious especially when the applicant was adjudged undisciplined and an inquiry was liable to be conducted against him following the due process of law. Therefore, it would be in the

interest of justice that the impugned transfer order dated 14.01.2023 is set aside and is accordingly, set aside with regard to applicant only. It stands intact with regard to Shri Pankaj Kumar Pandey. Respondents are hereby directed to allow the applicant to continue discharging his duties at his present place of posting i.e., Allahabad with all service benefits as accrued to him. The applicant must be considered as continuing his service at Allahabad as if no transfer order (dated 14.01.2023) was ever issued. It is made clear that by way of the instant judgment, the Tribunal has not absolved the applicant of any allegation. It is open for the respondents to conduct a proper and full-fledged inquiry in the matter in case they deem fit but the said inquiry must be done in accordance with the rules and provisions governing the subject matter and also in absolute accordance with the principle of natural justice.

43. Thus, the instant original application stands allowed with above directions.

44. All associated MAs stand disposed of accordingly.

45. No costs.