

(2014) 05 MP CK 0091

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2124 of 2014

Kishore Singh Baghel

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 08-05-2014

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(a)(d), 13(2)

Citation : (2015) 1 ESC 41 : (2014) 142 FLR 772 : (2014) 2 JLJ 326 : (2014) 3 MPLJ 402

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : Ajay Bagadiya, learned Counsel, Advocate for the Appellant; C.S. Ujjaniya, learned Government Advocate for the Respondents No. 1, 2, Mr. Varun K. Chopra, learned Counsel for the Respondent No. 3 alongwith Mr. Anand Agrawal and Mr. Sourabh Suran, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

S.C. Sharma, J.—The petitioner before this court who is holding the post of Transport Inspector in the Transport Department of the State of Madhya Pradesh has filed this present petition being aggrieved by the order dated 20-02-2014, by which he has been transferred from Check post Sendhwa to Check post Jhabua and the respondent No. 3 has been posted in place of the petitioner.

2. The facts of the case reveal that the petitioner was appointed as a Transport Sub-Inspector in the Transport Department in the year 1989, vide order dated 09-08-1989 and he was promoted to the post of Transport Inspector, vide order dated 31-12-2002. The petitioner vide order dated 31-07-2013, was posted from Check post Malthaon to Check post Sendhwa and by the impugned order he has been transferred from Check post Sendhwa to Check post Jhabua. In his place respondent No. 3 Mr. T.P.S. Bhadoriya, who was posted in the Transport office, Bhopal has been posted at the Check post Sendhwa.

3. The petitioner has raised various grounds before this court and his contention

is that his children are studying at Satya Sai School, Indore. The petitioner is also aggrieved in the present writ petition in the matter of seniority vis-?-vis respondents No. 4 and 5. However, at the outset the learned counsel for the petitioner has confined his prayer only to the extent the petitioner has been transferred from Check post Sendhwa to the Check post Jhabua and to the extent the respondent No. 3 has been transferred from the Transport Office, Bhopal to the Check post Sendhwa.

4. The petitioner has prayed for liberty to file a fresh writ petition, so far as the question of seniority vis-?-vis respondents No. 4 and 5 is concerned.

5. The petitioner has raised other grounds also and his contention is that a criminal case has been registered against the Respondent No. 3 by the Lokayukta Establishment on 23-11-2011 at Crime No. 133/2011 and, therefore, by no stretch of imagination the respondent No. 3 could have been posted to the check post which is a very sensitive check post, keeping in view the Circular dated 19-12-1994. He has also drawn the attention of this court towards the interim order passed by the Gwalior Bench in Writ Petition No. 5595/2013 (Praveen Nahar Vs. State of M.P. and others) dated 23-08-2013, wherein it has been observed by the learned Single Judge that the respondent No. 3 T.P.S. Bhadoriya should not have been posted to the sensitive check posts. Petitioner's contention is that inspite of there being an observation made by the Gwalior Bench of this court, a prime posting (field posting) has been granted to the respondent No. 3 and the transfer order has been passed solely with a view to accommodate the respondent No. 3, who is facing a criminal case (who is under cloud).

6. Learned counsel has drawn the attention of this court towards the various affidavits filed by the Transport Commissioner as directed by this court and his contention is that the Transport Commissioner in his first affidavit has admitted the pendency of the Lokayukta Case i.e. Crime No. 133/2011 and his contention is that once a criminal case was pending for offences under the Prevention of Corruption Act, 1988, the Transport Commissioner in all fairness should not have transferred the respondent No. 3 to a sensitive place (field posting). He has drawn the attention of this court towards the second affidavit filed by the Transport Commissioner and his contention is that the Transport Commissioner has taken a somersault by filing a second affidavit and has stated that there is no departmental enquiry, no complaint about conduct, indiscipline or dereliction of duty is pending against the respondent No. 3 and, therefore, the circular dated 19-12-1994 is not applicable. It has been argued that the present case reflects a colourful exercise of powers on the part of the Transport Commissioner and the transfer order has been passed to accommodate the respondent No. 3, on account of extraneous considerations.

7. On the other hand, learned counsel appearing for the respondent No. 3 has vehemently argued before this court that this court does not have a jurisdiction to decide the issue as the petitioner does not have a locus in the matter. He has placed reliance upon the judgment delivered in the case of Mrs. Shilpi Bose and

others Vs. State of Bihar and others, and his contention is that in light of the aforesaid judgment, the question of interference by this court, in the peculiar facts and circumstances of the case does not arise. He has also placed reliance upon a judgment delivered by the apex court in the case of Rajendra Singh Vs. State of U.P. and Others, and his contention is that a Government servant has no vested right to remain posted strictly at a place of his choice nor he can insist that he must be posted at one place or the other. He has further stated that no Government can function if the government servant insists that once appointed or posted in a particular place or position, he should be permitted to continue at a such place or position as long as he desires. He prays for dismissal of the writ petition.

8. Detailed and exhaustive reply has been filed by the State Government (respondents No. 1 and 2) and the respondents No. 1 and 2 have defended the transfer order. In the reply it has been stated that there is no departmental enquiry pending against the respondent No. 3 and the petitioner has been posted, keeping in view the administrative exigencies. It is also been stated that the Circular dated 19-12-2004 is not applicable against the respondent No. 3. It has been further stated that the respondents No. 1 and 2 have not received any information from the Lokayukta that the Lokayukta has concluded the enquiry. It has been further stated that the Transport Department is the revenue generating department and, therefore, it cannot be said that the Sendhwa or any other Check post is a sensitive post. Respondents have prayed for dismissal of the writ petition. The learned Government Advocate has fairly stated before this court that in the Transport Department policy dated 05-07-2005 is in existence and transfers are being done, keeping in view the policy framed by the State Government.

9. This court has also directed the Transport Commissioner to file an affidavit as that the transfer order was passed inspite of there being an observation made against the respondent No. 3 by the Gwalior Bench in Writ Petition No. 5595/2013 (Praveen Nahar Vs. State of M.P. and others) dated 23-08-2013. The Transport Commissioner has filed two affidavits and in the first affidavit he has admitted that a criminal case i.e. Crime No. 133/2011 has been registered by the Lokayukta against the respondent No. 3 and in the second affidavit it has been stated that no departmental enquiry or disciplinary proceedings are pending against the respondent No. 3. The first affidavit was filed by the Transport Commissioner on 25-03-2014. The second affidavit was filed by the Transport Commissioner on 29-04-2014. In paragraph-2 it has been stated that, "as per the circular dated 19-12-1994 issued by the General Administration Department, those employees against whom the prosecution is pending consideration or against whom the case of major penalty is pending, should not be given the posting in fields". It has been further stated in the same paragraph that no departmental enquiry or criminal case in court is pending against the respondent No. 3. It has been further stated that the transfer order has rightly been passed, in the peculiar facts and circumstances of the case.

10. Heard learned counsel for the parties and perused the record. The matter is being disposed of with the consent of the parties at the admission stage itself.

11. The present writ petition is arising out of the order dated 20-02-2014 passed by the Respondent No. 2, Transport Commissioner, State of Madhya Pradesh. The petitioner as well as the respondent No. 3 are working on the post of Transport Inspector. It is an admitted fact that the petitioner was transferred from the Check post Malthaon to Check post Sendhwa on 31-07-2013 and by the impugned order he has been transferred out from Sendhwa to Jhabua and by the same order, which is Annexure-P-3 dated 20-02-2014. The respondent No. 3 has been posted from Bhopal to Check post Sendhwa. The Transport Department of the State Government has issued a policy dated 05-07-2005 in order to ensure transparency in the matter of posting of its employees in the office as well as at Check post, which are certainly very sensitive check posts and the policy provides that it is a rotational policy. A person who is posted at a Check post is posted for a period of six months and after expiry of the period of six months, he is posted out of the check posts to some office posting/headquarter posting and the rotation has to be done after every six months. The clause-3 provides that in case any person is having a suspicious conduct (is under cloud) he will not be posted at a sensitive posting (field posting). The policy issued by the State Government which is applicable right from 2005 as informed to this court by the learned Government Advocate reads as under:-

12. The State Government has issued another Circular dated 19-12-1994 which restrains persons of doubtful integrity to be given field postings. The Circular dated 19-12-1994 reads as under:-

13. In the present case, it is again not in dispute that a case has been registered against the respondent No. 3 by the Lokayukta Establishment. The Superintendent of Police, Special Police Force Establishment (Lokayukta) vide letter dated 28-01-2012 has categorically informed the Deputy Secretary (Transport Department) about the registration of a criminal case u/s. 13(1)(a) (d), 13(2) of the Prevention of Corruption Act, 1988 against the respondent No. 3, T.P.S. Bhadoriya. Relevant paragraph of the aforesaid letter reads as under:-

14. It is an admitted fact that a criminal case under the Act of 1988 has been registered against the respondent No. 3. It is pertinent to note that the respondent No. 3 was earlier also posted against a field posting by the Transport Commissioner and against the posting a writ petition was preferred before the Gwalior Bench. The Gwalior Bench vide order dated 23-08-2013 passed in Writ Petition No. 5595/2013 (Praveen Nahar Vs. State of M.P. and others) held as under:-

Parties are heard on the question of interim relief.

Petitioner has filed this petition seeking the writ of mandamus to the respondents to allow him to work at check post, Morena in pursuance to the order Annexure P/1. Petitioner was posted to work on the said check post of Morena from

Regional Transport office, Gwalior. In obedience of this order, petitioner was relived and he admittedly joined on the transferred place of Morena. The order dated 01-08-2013 shows that the petitioner was relived from Regional Transport office Gwalior to join at transferred place. Thereafter, petitioner submitted his joining at Morena. Grievance of the petitioner is that after executing the said order Annexure P/1 by the order dated 03-08-2013 Annexure P/1-A he was directed to join at Bhopal and in lieu thereof by the order of same date Annexure P/1-B, respondent No. 4 is posted at Morena.

Shri D.K. Katare, learned counsel for the petitioner submits that posting of respondent No. 4 runs contrary to rotation posting policy of the department. It is further contended that shifting of petitioner from Gwalior to Morena and from Morena to Bhopal amounts to change of his headquarter, therefore, falls within the ambit of "transfer". It is further contended that as per the policy Annexure P/12 dated 19th December, 1994, respondent No. 4 should not have been posted at a sensitive place of check-post because he is under cloud of an enquiry and investigation by Lokayukta is going on against respondent No. 4. By placing reliance on the document dated 26-11-2012 Annexure P/13, it is contended that respondent No. 4 is under cloud and such person should not have been posted at a sensitive check post. To bolster his submission, reliance is also placed on Annexure P/4 dated 05-07-2005. In paragraphs 3 and 4 of this policy it is directed that employee whose conduct is under cloud, should not be posted at a sensitive place.

Per contra, Shri M.P.S. Raghuvanshi supported the orders and submits that executed order Annexure P/1 is not cancelled while separate orders Annexure P/1-A and Annexure P/1-B are passed. It is further submitted that petitioner is more energetic person and that is the reason to transfer him at Bhopal. To support his submission, photocopies of relevant pages of transfer file were shown to the court. The said photocopies are of note-sheet dated 03-08-2013. In addition, it is contended that transfer is in administrative exigency, therefore, no interference is warranted. It is further contended that petitioner was also posted contrary to the rotation policy which shows that it was only guidelines and its violation does not render the order as illegal. Shri D.S. Raghuvanshi, Advocate for respondent No. 4 borrowed the same arguments.

I have heard learned counsel for the parties.

Upon the stand of parties it is not clear that whether shifting of petitioner from Gwalior to Morena and from Morena to Bhopal and likewise shifting/posting of respondent No. 4 from Bhopal to Morena amounts to change in the headquarter or not. Thus, I deem it proper to direct respondent No. 2/3 to file an affidavit making it clear whether the aforesaid change of posting amounts to change of headquarter and resultantly amounts to transfer. Affidavit must be based on relevant legal provisions and must disclose the same. Let it be done within fifteen days.

Presently, it is clear that the petitioner had executed the order Annexure P/1. In the opinion of this Court, prima-facie whether order Annexure P/1 is cancelled or the petitioner is further shifted by a separate order, net result will be his movement from Morena to Bhopal within a short span of time. Considering the aforesaid, and further considering the fact that in view of circular, prima-facie it was not proper to post respondent No. 4 at a sensitive place because preliminary enquiry is going on against him in Lokayukt, I deem it proper to pass an interim order in favour of petitioner.

In view of the aforesaid, an interim measure, till next date of hearing, orders dated 03-08-2013 Annexure P/1-A and Annexure P/1-B shall remain stayed. Petitioner be permitted to work at the check post, Morena, pursuant to the order dated 31st July, 2013.

Registry is directed to list this matter immediately after filing of aforesaid affidavit by the official respondent. Respondent No. 4, if advised, may file his return in the Meanwhile.

certified copy as per rules.

15. The Gwalior Bench in light of the Criminal case registered against the respondent No. 3 has granted an interim order and has also held that in light of the circular dated 19-12-1994, prima-facie the posting of T.P.S. Bhadoriya to Morena Check post was not proper. It is noteworthy to mention that during the pendency of the writ petition, the impugned posting order was issued and it was brought to the notice of the learned Single Judge that subsequent posting order has been issued and in those circumstances the Gwalior Bench has passed the following order:-

Counsel for the petitioner submits that challenge made to the impugned transfer order passed by the respondents"/authorities" to the extent it relates to the petitioner was stayed by this court vide order dated 23-08-2013 and the petitioner is still continuing at the present place of posting. It is further submitted that respondent No. 4 who was transferred in place of the petitioner has been in fact accommodated and transferred to some other place. That being so, petitioner may be permitted to continue at the present place of posting.

State's counsel and the counsel for respondent No. 4 jointly submits that as on date, there is no administrative exigency to transfer the petitioner from the present place of posting. Under such circumstances, the impugned transfer order to the extent of petitioner may be set aside.

In view of above, noting survives for adjudication in this petition. Accordingly, the impugned transfer order vide orders dated 31-07-2013 (Annexure-P-1), dated 03-08-2013 (Annexure-P/1A) and dated 03-08-2013 (Annexure-P/1B) to the extent it relates to petitioner alone stand set aside.

The petition stands disposed of to the extent indicated hereinabove.

Certified copy as per rules.

16. This court is of the considered opinion that at the time the transfer order was passed i.e. on 20-02-2014, the order passed by the Gwalior Bench dated 23-08-2013 was very much in existence and in all fairness such a transfer order could not have been passed in light of the findings arrived at by the learned Single Judge, vide order dated 23-08-2013.

17. The present case reflects very sorry state of affairs in which contradictory affidavits have been filed by the Transport Commissioner. The first affidavit of the Transport Commissioner which is on record dated 25-03-2014 in paragraphs 3 and 4 reads as under:-

3. That I state that a preliminary inquiry against respondent No. 3 is pending before the Lokayukta vide Case No. 133/2011.

4. That, so far as circular dated 05-07-2005 issued by the Transport Department is concerned, I state that respondent No. 3 is a RTI and he has been posted from Regional Office, Bhopal to check post Sendhwa after his completing six months' tenure at Bhopal office. The order of posting has been issued by me in the capacity of Commissioner, Transport, Sendhwa which comes within District Barwani is not a home town of respondent No. 3. There is no complaint regarding integrity or dereliction in duty or any indiscipline against respondent No. 3. There is no departmental enquiry or disciplinary proceedings pending against the respondent No. 3.

18. The Transport Commissioner in the first affidavit has admitted that preliminary enquiry is pending against the respondent No. 3 by the Lokayukta in respect of Crime No. 133/2011 and it has been stated that the respondent No. 3 has rightly been posted. He has referred to some Circular dated 19-12-1996 and his contention is that the respondent No. 3 has rightly been posted to Sendhwa. The Transport Commissioner has filed a second affidavit. Paragraph 5 of the second affidavit reads as under:-

5. That, as per the circular dated 19-12-1994 issued by the General Administration Department, pertains to only those employees against whom the prosecution is pending consideration or against whom the case of major penalty is pending, should not be given the positing in fields. Sensitive posts in this connection be ear-marked. The copy of the circular dated 19-12-1994 is filed alongwith the Reply filed on behalf of State.

It is submitted that no departmental enquiry or criminal case in court is pending against the respondent No. 3 at present.

It is also submitted that as per letter dated 26-11-2012 issued by the Lokayukta Police to the Deputy Secretary, Transport Department, Bhopal, the Lokayukta has sought some information regarding the respondent No. 3 and four other officers. The disciplinary proceedings or D.E. is pending against the respondent No. 3. In view of the above, the posting of the respondent No. 3 has been ordered. The

copy of the Guideline dated 05-07-2005 is also filed alongwith the reply filed on behalf of State.

19. Learned Transport Commissioner has stated in his affidavit that the respondent No. 3 is an excellent worker and he has rightly been posted to Sendhwa. It has been also stated that no criminal case in court is pending against him and no departmental enquiry is pending against him.

It appears the Transport Commissioner has not read the letter of the Lokayukta Establishment dated 26-11-2012 carefully and the Circular of the State Government dated 19-12-1994. The letter of the Lokayukta Establishment makes it very clear that a criminal case has been registered against the respondent No. 3 at Crime No. 33/2011 and, therefore, it definitely means that criminal case is under investigation registered at Crime No. 133/2011 by the Lokayukta Establishment. Rule 9(1) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 provides for suspension of a Government servant against whom any criminal offence is under investigation, enquiry or trial. The disciplinary authority in light of Rule 9 is empowered to place the petitioner under suspension also. The learned Transport Commissioner in respect of an employee against whom the criminal case has been registered is justifying his field posting.

20. In the instant case, this court has also carefully gone through the judgment relied upon by the learned counsel for the Respondent No. 3 Mr. Varun K. Chopra in the case of Shilpi Bose (Mrs) and others (supra), the apex court in paragraphs No. 3 and 4 held as under:-

3. After hearing learned Counsel for the parties and having considered the facts and circumstances of the case, we are of the opinion that the High Court committed serious error in interfering with the transfer Orders of primary school teachers. The High Court held that the District Education Establishment Committee had no jurisdiction to transfer the Primary School teachers on their request. We find no justification for this conclusion. There is no dispute that the District Education Establishment Committee is competent to transfer Primary School teachers from one place to the other but merely because such transfers were made on the request of teachers, the committee is divested of its jurisdiction. The Director of the Primary Education had issued directions that lady teachers posted in distant areas or rural areas may be accommodated to the place of their request to avoid hardship to them. These directions are reasonable, and the District Education Establishment Committee followed the same principles in transferring the appellants on their requests to avoid hardship with was being caused to them. The respondents challenged the validity of the transfer before the High Court on another ground also that Primary School teachers posted in the urban areas were not liable to be transferred to rural areas though the State Government had issued circular on March 30, 1984 permitting transfers from urban areas to rural areas. The High Court did not interfere with the Order of the transfer on this ground instead it held that the transfer Orders were without

jurisdiction as the same had been made on the appellants' request with a view of accommodate them. We fail to appreciate the reasoning recorded by the High Court. If the competent authority issued transfer Orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the Court merely because the transfer Order were passed on the request of the employees concerned. The respondents have continued to be posted at their respective places for the last several years, they have no vested right to remain posted at one place. Since they hold transferable posts they are liable to be transferred from one place to the other. The transfer Orders had been issued by the competent authority which did not violate any mandatory Rule, therefore the High Court had no jurisdiction to interfere with the transfer Orders.

4. In our opinion, the Courts should not interfere with a transfer Order which are 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 malafide. 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 over looked these aspects in interfering with the transfer Orders.

21. The apex court in the aforesaid case as the transfer orders therein had been issued by the competent authority and which did not violate any mandatory rule has held that the High Court has no jurisdiction to interfere with the transfer orders. It has also been observed that the courts should not ordinarily interfere with the order instead affected party should approach the higher authorities in the department. It has been further observed that 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.

22. This court has also carefully gone through the judgment relied upon by the learned counsel for the Respondent No. 3 Mr. Varun K. Chopra in the case of Rajendra Singh and others (supra). The apex court has held that the employee does not have a vested right to remain posted at a place of his choice and the transfer is an incident of service.

23. The Gwalior Bench of this court in the case of Pratap Singh Mandeliya Vs. State of M.P. and Others, in paragraphs 13 to 16 held as under:-

13. In 2003(11) SCC 740 (Sarvesh Kumar Awasthi Vs. U.P. Jal Nigam and others) the Apex Court held that the power of transferring an officer cannot be wielded

arbitrarily, malafide or an exercise against efficient and independent officer or at the instance of politicians. 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.

14. The Allahabad High Court in 1996(1) Labour Law Journal 26 W.P. 1191/2013 (Pawan Kumar Shrivastava Vs. U.P. Electricity Board and others) held that where the transfer order is on political considerations and complaints and not based on administrative exigencies or public interests, it is bad in law. This Court in K.S. Verma Vs. State of M.P. and Others, opined that note sheet/complaint is taken into consideration by the Minister. It is held that this kind of complaint cannot be a foundation for transferring the employee from one place to another. Except a bald complaint lodged by the district head of a political party, no other material brought on record to justify that the petitioner derelicted in his duty. The Court imposed cost also. This case has similarity with the present matter. The record shows that the entire action of transfer is based on bald complaint of Ex-MLA/ Respondent No. 2.

15. In the light of aforesaid judgments, the transfer order on the basis of such complaint cannot be said to be a fair exercise of power. Such transfer cannot be said to be in administrative exigency or in public interest. Thus, it is clear that transfer order is passed for reasons which are not germane for passing the valid transfer order. On this score alone transfer order is liable to be interfered with.

16. This is settled in law that exercise of power for an extraneous or ulterior purpose amounts to "malice in law". Legal malice or malice in law means something done without lawful excuse. In other words, it is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill-feeling and spite. It is a deliberate act in disregard of the rights of the other(See: State of Andhra Pradesh and Others Vs. Goverdhanlal Pitti, . Where government action is unreasonable or lacking in quality of public interest, though different from that of mala fides, it may in a given case furnish evidence of mala fides (See: Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another,). Even if an order is found to be not vitiated by malice in fact, but still can be held to be invalid, if the same is passed for unauthorized purpose as it would amount to malafide in law [see: Punjab State Electricity Board Ltd. Vs. Zora Singh and Others,]. In Somesh Tiwari Vs. Union of India (UOI) and Others, it is opined that transfer order will be bad in law, if it is issued not based on any W.P. 1191/2013 factors germane to the passing of an order of transfer and based on irrelevant grounds.

24. Keeping in view the aforesaid judgment, as un-due favour has been extended to the respondent No. 3 against whom a criminal case has been registered, by granting a field posting, the transfer order certainly is nothing but a colourful exercise of powers on the behalf of the respondents and such transfer order can

never be said to have been issued on account of administrative exigencies or public interest, inspite of there being an observation by the Gwalior Bench. This court is of the considered opinion that the judgment relied upon by the learned counsel in the case of Shilpi Bose (Mrs) and others (supra), and in the case of Rajendra Singh and others (supra) are of no help to the respondent No. 3.

25. This court after careful consideration of the policy framed by the State Government is of the considered opinion that so far as transfer of the petitioner is concerned as he has completed six months tenure, has rightly been transferred out of Sendhwa on completion of six months tenure, keeping in view the policy framed dated 05-07-2005. Once a policy has been framed, the Department is required to follow the policy otherwise such a policy shall only be a piece of paper and shall lose its sanctity. So far as transfer order of the respondent No. 3 is concerned, the respondent No. 3 is certainly under cloud. The letter of the Lokayukta Establishment, establishes a criminal case has been registered against him and as per policy dated 05-07-2005 as well as Circular of the State Government dated 19-12-1994, by no stretch of imagination he could have been given field posting at Sendhwa, which is certainly a sensitive field posting. Resultantly, the impugned order only to the extent it relates to the respondent No. 3 posting him from Bhopal to Sendhwa is hereby quashed forthwith.

26. The petition is disposed of with the following directions:-

1. The transfer order dated 20-02-2014, by which the respondent No. 3 has been transferred from Bhopal to Sendhwa is quashed, only to the extent it relates to the respondent No. 3.

2. This court has already quashed the transfer order of the respondent No. 3 from Bhopal to Sendhwa and, therefore, the Respondent State as it has been stated that the Sendhwa is a sensitive check post is permitted to post another Transport Inspector, strictly in consonance with the transfer policy dated 05-07-2005, read with executive instructions dated 19-12-1994, as expeditiously as possible, preferably within a period of three days from today.

3. The State Government as well as the Transport Commissioner is directed to review all postings of various Regional Transport Inspectors/employees covered under the Policy dated 05-07-2005 and all those persons, who have completed six months tenure, as provided under the policy should be transferred out to Office postings/other places provided under the policy.

4. The exercise of reviewing the transfers be concluded positively within a period of thirty days.

5. The respondents are also directed not to post a person against whom a criminal case has been registered either by Lokayukta Establishment or any other Government agencies or who is facing any departmental enquiry or who is otherwise under cloud to a field post, keeping in view the policy and circular

dated 05-07-2005/19-12-1994 and the respondents shall act in accordance with the Circulars dated 05-07-2005 and 19-12-1994, while issuing fresh transfers in respect of the employees of the Transport Department.

6. The petitioner is granted a liberty to file an appropriate writ petition so far as the issue of seniority is concerned, vis-?-vis respondents No. 4 and 5.

Resultantly, the writ petition is partly allowed as aforesaid. No order as to costs.

c.c. as per rules.