

**(2012) 12 MP CK 0040**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No's. 8092 and 8093 of 2012**

K.K. Arya

APPELLANT

Vs

M.P. Madhya Kshetra Vidyut Vitran Company Ltd. and Others

RESPONDENT

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**Date of Decision : 19-12-2012**

**Acts Referred:**

**Citation : (2013) ILR (MP) 780 : (2013) LLR 415 : (2013) 1 MPLJ 288**

**Hon'ble Judges : Sujoy Paul, J**

**Bench : Single Bench**

**Advocate : Prashant Sharma, for the Appellant; Vivek Jain, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Sujoy Paul, J.—Since the similar issues are involved in these matters, with the consent of parties, matters are finally heard analogously and decided by this common order. The only difference in W.P. No. 8092/2012 is that the petitioner of this case is an Office Bearer of a recognized association and he is claiming immunity from transfer being an Office Bearer. The other things are similar in nature. Shri Prashant Sharma, learned counsel for the petitioners, submits that the transfer order dated 17-10-2012 is bad in law and liable to be set aside for following reasons:--

(i) As per circular dated 22-9-2012 (Annexure P-19), the powers are delegated for the purpose of transfer of different category of employees. He submits that as per Part-A section (v), the General Manager (Establishment) has no authority jurisdiction and competence to issue the transfer order. He further submits that transfer order can be issued only by CE-CGM (Regional Office) after obtaining approval from the MD.

(ii) The order is mala fide and is punitive in nature.

(iii) In W.P. No. 8092/2012, the petitioner could not have been transferred being an Office Bearer.

To elaborate, learned counsel for the petitioner submits that as per schedule of powers, the note sheet could have been initiated by CE-CGM (Regional Office) alone and after obtaining approval from MD, orders could have been passed by the same authority i.e. CE-CGM (Regional Office). By drawing the attention of this Court, Shri Sharma submits that Annexure R-5 contains signature/approval of MD but the recommendation/ note-sheet is not initiated by CGM (Regional Level), whereas it is done by CGM (HR & A), an authority who is sitting in the Head Quarter. The transfer order is criticized on the ground that it is neither initiated by the competent authority nor issued by the same authority. Merely because the MD has given approval, the transfer order cannot be permitted to stand unless it fulfils all the requirements of the said circular. By placing reliance on a communication dated 11-10-2012 (Annexure-X) filed with an affidavit, Shri Sharma submits that the contents of this letter shows that CGM (Gwalior Region) was annoyed with the petitioner and he as a punitive measure, recommended the transfer of the petitioner outside Gwalior and this recommendation is acted upon by the respondents; Accordingly, the impugned order has a punitive element and it is mala fide in nature, Shri Sharma submits,

2. Lastly for the petitioner in W.P. No. 8092/2012, Shri Sharma submits that as per the transfer policy dated 16-3-2012 (Annexure R-3), the petitioner being a Circle Secretary has an immunity for additional three years in addition to the normal tenure of posting.

3. Per Contra, Shri Vivek Jain, learned counsel for the respondents, controverted the stand of the petitioner and supported the order.

4. Learned counsel for the employer produced certain note-sheets and it is stated that the decision to transfer the petitioner was taken by the competent authority i.e. Managing Director and merely because the transfer order contains the signature of GM, it will not vitiate the transfer order. In other words, Shri Jain submits that the note-sheets were initiated and placed before the competent authority (MD) who approved the transfer of the petitioner and in obedience of that approval, the transfer order Annexure P-1 is passed. No fault can be found in the said transfer order. By placing reliance on the Supreme Court judgment reported in A. Sudhakar Vs. Post Master General, Hyderabad and Another, . Shri Jain submits that even in quasi judicial proceeding, if the higher authority passes an order, it will not be vitiated unless a right of appeal of the employee is taken away by the said decision. He submits that in the present matter, there is no right of appeal etc. and if something can be done in a quasi juridical proceedings it can always be done in administrative matters. In nutshell, transfer is approved by the competent authority i.e. MD. It is hyper technicality to submit that transfer order should be issued by CGM (Regional) only. Learned counsel for the employer submits that note-sheet will indicate that transfer order is passed in administrative exigency and public interest. It has not been done on the request and at the instance of the CGM (Gwalior Region). In other words, it is stated that the confidential letter dated 11-10-2012 (Annexure-X) is not the basis for

transferring the petitioner and transfer is based on an administrative exigency. By filing affidavit of respondent No. 3, the allegations of mala fide were specifically denied by the employer.

5. At the cost of repetition, Shri Jain submits that the transfer file makes it crystal clear that the reason or the transfer of the petitioner is the administrative exigency. In absence of establishing that transfer is based on any mala fides, mere allegations will not serve any purpose and no interference is warranted. Lastly, he submits that the petitioner in W.P. No. 8092/2012 is posted at Gwalior since more than 20 years and, therefore, no further immunity can be given to him.

6. Shri Sharma submits that the petitioner of the said case although remained at Gwalior but in different capacities and in the capacity of Assistant Engineer, he is at Gwalior only for two years. Thus, he claims immunity on the basis of said policy.

7. Learned counsel for the parties have not raised any other contention.

8. I have heard the learned counsel for the parties and perused the record.

9. The first contention of the petitioners is regarding competence of transferring authority. A bare perusal of the circular dated 22-9-2012 shows that the powers are delegated to different authorities for the purpose of transfer. A careful reading of this document (Page-62) shows that the Managing Director is competent to approve the transfer of an Assistant Engineer-Manager. Annexure R-5 (Note-sheet) makes it clear that the competent authority/Managing Director has approved the transfer. The circular, Annexure P-19, is silent regarding the procedure by which the note-sheet would be put up before the Managing Director. Therefore, the contention of Shri Prashant Sharma, learned counsel that the note-sheet was not put up by CGM (Regional) and it is put up by CGM (Head Quarter) does not establish any violation. He criticized the order on yet another ground that the order impugned is passed by the General Manager (Establishment) whereas it could be passed as per the said circular only by CGM-CE (Regional Office). A bare perusal of the circular shows that the authority competence to approve is Managing Director. Admittedly, the Managing Director has approved the transfer of the petitioners. I find force in the argument of Shri Vivek Jain that transfer order was not issued by CGM (Gwalior Region) because he made the complaint dated 11-10-2012 (Annexure P-10). To ensure fairness, after approval by the competent authority, the consequential order is passed by General Manager (Establishment).

10. In the opinion of this Court, it cannot be forgotten that the circular dated 22-9-2012 is only an executive instruction, it does not have any statutory force. Accordingly, a violation if any will not render the transfer order as illegal. A Division Bench of this Court in R.S. Chaudhary vs. State of M.P. and others, (2007) ILR 1329 (M.P.) has already taken this view. Apart from this, the basic decision regarding transfer of the petitioner is required to be taken by way of

approval by the Managing Director. He did so. It is apt to refer few lines from a book of "Administrative Law" - Once the discretionary element in the administrative action has been exercised by the proper authority itself, it is then immaterial as to who is entrusted to discharge the mechanical or non-discretionary part of the function, (Chapter-14 Page 449 of Principles of Administrative Law) (Revised by Justice G.P. Singh and Shri Alok Aradhe, Advocate) (As his Lordship then was). The Apex Court in Union of India (UOI) and Another Vs. P.K. Roy and Others, opined as under:--

if the administrative authority named in the statute has and retains in its hands general control over the activities of the person to whom it has entrusted in part the exercise of its statutory power and the control exercised by the administrative authority is of a substantial degree, there is in the eye of law no "delegation" at all and the maxim "delegates non potest delegare" does not apply...In other words, if a statutory authority empowers a delegate to undertake preparatory work and to take an initial decision in matters entrusted to it but retains in its own hands the power to approve or disapprove the decision after it has been taken, the decision will be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority's own

(Emphasis supplied)

In the light of aforesaid, in the considered opinion of this Court, the issuance of transfer order is at best a ministerial act. A basic power and decision to transfer the petitioner was already taken by the competent authority i.e. Managing Director. Hence, no fault can be found in issuance of transfer order on hyper technical and mechanical ground. Thus, this contention is rejected.

11. The second contention of the petitioners is that transfer order is mala fide and is punitive in nature. I have carefully gone through relevant note-sheet which deals with the transfer of the petitioner. There is no material on record nor it is reflected from the relevant transfer file that the reason for transfer of the petitioner is the recommendation of the CGM (Gwalior Region) (Annexure-X) dated 11-10-2012. The allegations of mala fides raised by the petitioner are specifically denied by respondent No. 3. The allegations alone are not sufficient unless the same are proved to the hilt. There is no material which shows that the transfer order is arising out of any malice. Accordingly, this contention is also rejected.

12. The third contention with regard to petitioner of WP. No, 8092/2012 also based on executive instruction. Petitioner is claiming immunity from transfer on the basis of a clause of transfer policy. The said clause has no enforceability and violation thereof will not render the transfer order as illegal. Petitioner is at Gwalior for quite some time. The different capacities in which he is in Gwalior is not relevant. Transfer is a condition of service. Transfer order can be interfered with only if it violates any statutory provision, proved to be mala fide, changes

service condition of an employee to his detriment or is contrary to any law. No such ingredients are available in this petition. Accordingly, I find no reason to interfere in these matters. Resultantly petitions are dismissed. Ad-interim orders are vacated. No costs.