
(1992) 08 AHC CK 0095

In the Allahabad High Court

Case No : Second Appeal No's. 3105 of 1978 and 2776 and 10045 of 1979

Laxmi Shanker Misra

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 12-08-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 8, Order 8 Rule 2, Order 9 Rule 12
Constitution of India, 1950 — Article 14, 16, 309, 311, 313

Citation : (1992) 3 AWC 1765

Hon'ble Judges : I.S. Mathur, J

Bench : Single Bench

Advocate : O.P. Singh, M.P. Singh and K.N. Tripathi, for the Appellant; B.H. Zaidi, R.S. Dhawan and B.K. Barman, for the Respondent

Final Decision : Dismissed

Judgement

I.S. Mathur, J.—Second Appeal No. 2776 of 1979, Second Appeal No. 3105 of 1978 and Writ Petition no, 10045 of 1979 are based on similar or connected facts and raise similar questions of law. They were directed to be connected and are being decided by this common judgment.

2. The facts, so far as they are relevant for the disposal of these cases, are that the Plaintiff-Appellant/Petitioner was working as a Grinder "B" in Central Tools Room Section, Ordnance Factory, Kanpur, prior to the institution of the suit No. 462 of 1974. His status was that of a quasi permanent employee. He was served with charge sheet No. 1210/Camp/LB/43 dated 10-1-1967 and No. 1210/Camp/Vig./18 dated 31-1-1969. An inquiry was conducted in respect of the first charge sheet while the second charge sheet was dropped. A third charge sheet was served on the Plaintiff Appellant on 11-2-1972, charging him with gross misconduct; it was alleged that he overstayed after night duty on 18-2-1972 to instigate workers of day shift to go on strike. As a result of this inquiry, his increments were stopped. The Appellant was then served with a transfer order dated 26-2-1972 transferring him to the Training Section. He made a

representation against this order inter alia, on the ground that it would mean a loss of Rs. 250/- per month by way of production bonus. On getting no relief, he filed a suit No. 612 of 1973 in the Court of Munsif City, Kanpur for a declaration that his transfer order was illegal, being by way of punishment, with the allegations that he will get Rs. 250/- per months less emoluments as a result of this transfer and he will not be able to get promotion.

3. The suit was contested by the Respondent Union of India. The allegations made by the Plaintiff-Appellant were denied and it was alleged that the transfer was made in normal course to suit that requirements of various sections and it was not by way of punishment. it was further alleged that the Plaintiff-Appellant was being paid emoluments admissible to him and the order in question was not illegal on any other ground.

4. This suit was dismissed by the Trial Court vide judgment dated 27-4-1976 and the First Appeal was also dismissed by the learned Additional Civil Judge, Kanpur, vide judgment dated 30-4-1977.

5. The Plaintiff Appellant filed second appeal (S.A. No. 3105 of 1978) against the aforesaid judgment raising various questions of law which will be noticed hereinafter.

6. During the pendency of the aforesaid suit and appeal, the Appellant was transferred to Mechanical Section, Ordnance Factory, Kanpur and thereafter he was transferred to the Ordnance Factory, Khameria, Jabalpur vide, order dated 11-12-1973.

7. The Appellant then filed another suit, being suit No. 462 of 1974 for a declaration that the order of his transfer, dated 11-12-73, was illegal and for an injunction that the transfer order be not given effect to.

8. This suit was filed with the allegations that the charge sheets, referred to above, were served on him because of the ill-will of Foreman Sri Rajaram Shah. He was transferred to the Ordnance Factory Khameria, Jabalpur in order to frustrate the suit No. 612 of 1973 in which earlier transfer to the Training Section was challenged. The transfer order was further challenged on the grounds that it is malafide, and discriminatory, as Juniors to him have been retained in the Ordnance Factory, Kanpur. It is hit by Article 16 of the Constitution and was not passed in public interest and that the order is violative of administrative rules and instructions. It was further alleged that it will disturb his family peace, as his wife is Assistant Teacher in Basic Girls Primary School, Khalasi Line, Kanpur and he would not be able to look after his mother and other family members.

9. The Defendant Respondent contested this suit. It was denied that the transfer of the Petitioner was made due to ill will or that he was honourably exonerated in the inquiry. His transfer to the Training Section was not illegal and was not ordered by way of punishment. The order was based merely on the ground of administrative convenience and did not have the effect of reducing him in rank or

diminishing his chance of promotion. His transfer to Ordnance Factory Khameria, Jabalpur was made in the exigency of service and administrative convenience, as per orders received from the Director General Ordnance Factories, Calcutta. It was published in factory order Part-II, 1950 and became effective on 11-12-1973. The Plaintiff Appellant belongs to an All India service and can legally be transferred out of Station and his allegations that he has been transferred to cause him wrongful loss, are incorrect. It was denied that the order is violative of Articles 14 or 16 of the Constitution or of any other right to which the Plaintiff may have been entitled to. It was further alleged that the Plaintiff Appellant was no longer in the rolls of Ordnance Factory Kanpur and was not entitled to an injunction in the terms prayed for.

10. This suit was also dismissed by the learned VI Additional Munsif Kanpur, vide judgment dated 5-5-1978 and the appeal filed against this judgment was dismissed by the learned Vth Additional District Judge, Kanpur, vide his judgment dated 16-8-1979. The plaintiff-appellant has now come up in second appeal (S.A. No. 2776 of 1979) challenging this second order of transfer on various grounds which will be noted hereinafter.

11. During the pendency of the suit No. 462 of 1974 against the transfer order dated 11-12-1973, an interim injunction order was passed on 11-5-1974 wherein it was directed that the order of transfer be not given effect to. The Petitioner was not taken back and as such, he moved an application for taking action for disobedience of the order with the allegations that the order of injunction has been violated. This application was rejected by the learned VI Additional Munsif, Kanpur, vide, order dated 5-5-1978 and the miscellaneous appeal against this order was also dismissed by the learned Vth Additional District Judge, Kanpur, vide order dated 16-8-1979. The Plaintiff/Petitioner then filed the writ petition no 10045 of 1979 praying that these two orders be quashed and a writ of mandamus be issued commanding the opposite parties first set, namely State of Uttar Pradesh Vth Additional District Judge, Kanpur and the VI Additional Munsif Kanpur to punish the opposite parties 2nd set for flouting the injunction order dated 14-5-1974.

12. On 22-4-1983 the factum of pendency of the aforesaid two appeals was brought to the notice of brother S.K. Dhaon, J and it was urged by the learned Counsel for the Appellant/Petitioner that some of the legal questions that would arise in the second appeal, noted above, will also arise in this writ petition and, in the event of said point being decided in the writ petition, the interest of the Petitioner will be adversely affected in the second appeal. It was prayed that this writ petition and the second appeal may be heard together. This prayer was allowed and it was directed accordingly.

13. On a consideration of the record and the preliminary submissions made by the learned Counsel for the Appellant/Petitioner and the learned Counsel appearing for the Union of India, the following questions of law were formulated:

- (i) Whether the finding regarding transfer order dated 11-12-1973 by D.G.O.F. or at his direction is perverse?
- (ii) Whether the D.G.O.F. had power to pass the impugned order of permanent transfer of the Appellant out of State?
- (iii) Whether the transfer order is violative of Article 26 of the C.S.R. (Civil Service Regulations)?
- (iv) Whether the transfer order dated 11-12-73 is violative of Article 53 of the C.S.R.?
- (v) Whether the instructions under Article 26 and 53 CS.R. are directory or mandatory; effect in either case?
- (vi) Whether the transfer order is malafide for the reasons alleged?
- (vii) Whether the question of public interest is justiciable?
- (viii) Whether the Appellant could be transferred permanently? if not whether the order is severable in regard to the directions about permanent transfer?.

14. The question involved in both the second appeals relates to the legality of the transfers. The law regarding transfer is now well settled. In *Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani*, , the Supreme Court has laid down the legal position thus:

Transfer of a Government Servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employees of Public Undertaking has legal right for being posted a any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matte. Transfer from one place to other is necessary in public interest and efficiency in the public administration Whenever a public servant is transferred, he must comply with the order but, if there be any genuine difficulty in proceeding on transfer. It is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order, if the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out she order of transfer. In the absence of any stay of the transfer order, a public servant has no justification to avoid or evade a transfer order merely on the ground of having made a representation or on the ground of his difficulty in moving from one place to the other.

15. The transfer orders, which are made by the competent authority, in public interest or in the exigency of service, cannot be interfered with unless such orders are violative of any mandatory statutory rules or suffer from malafides *Union of India and Others Vs. H.N. Kirtania*, ; *Mrs. Shilpi Bose and others Vs. State of Bihar and others*, . In the case of *H.N. Kirtania*, the Supreme Court has laid down:

Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafides.

In the case of Shilpi Bose, relied upon by the learned Counsel for Appellant himself, the Supreme Court has observed:

The Court should not interfere in the transfer orders which are made in the public interest and for administrative reasons unless the transfer order are made in violation of any mandatory statutory rules or on the grounds of malafides.

16. The same view has been taken in the other cases relied upon by the learned Counsel for the Appellant and nothing to the contrary has been laid down therein. In *K. N Singh v. General Manager, Chitranjan Locomotive* 1973 (1) SLR 1153, referred to by the learned Counsel for the Appellant the Court has observed as follows:

Unless there is in the impugned orders any violation of the provisions of the Constitution or statutes or rules founded on them having the force of law, or such orders are in excess of powers of the issuing Authority under the law, the Court cannot probe into orders to enquire their propriety or necessity.

The Court further observed:

The administrative orders not otherwise justiciable, thus come under Court's scrutiny if there are allegations of malafide or colourable exercise of powers behind such orders, even though they are free from violation of any constitutional or statutory provisions.

In *Umesh Chandra Tewari v. State of U.P.* 1987 (13) ALR 715, a Division Bench of this Court, observed as follows:

Transfer of a Government employee is an incident of service. Therefore, it cannot be challenged on the ground that rights under Articles 14 or 16 or 311 are violated. However, this power must be exercised honestly, bonafide and reasonably. *E.P. Royappa Vs. State of Tamil Nadu and Another*, .

The Court further observed:

Government is undoubtedly the best Judge as to how best the services of its employees are to be utilised and at what places but the employee too has a right to seek protection that he has been victimised by resorting to transfer for oblique motive or transfer order was unjust and unfair. Its intensity is more severe when the order is passed due to interference by higher authorities who themselves are not entitled to transfer.

In *Sangam Lal Dube Vs. Director of Education and Another*, , a Bench of this Court observed as follows in this connection:

The fact that the department chose to call it a transfer, based on administrative

grounds will not make the order as such and will not debar the Court from considering the matter on the evidence faeioire it and come to its own conclusion whether the order was passed as a punishment or as an administrative measure.

On the facts of the aforesaid case, the Court held:

In the present case when the order is read alongwith the D.O of the Secretary, it is manifestly clear that the order of transfer was made as a measure of punishment and not merely on administrative grounds. The provisions of Article 311, therefore, are attracted and the Petitioner is entitled to claim protection to be given to aa employee under the said article, if he is able to establish that the order amounts in fact to reduction in rank.

In A.G. Singh v. I.G. of Police 1973 (2) SLR 650, relied upon by the learned Counsel for the Appellant, the Court referred to and reiterated the following observations of the Supreme Court in Jagdish Mitter v. State of U.P. AIR 1971 SC 1224:

...But the orders passed maliciously or on colateral considerations or which invoke penal consequences or denied to the civil servant the guarantee of the constitution or the rules governing his employment, is always open to challenge by appropriate proceeding.

In Damodaran v. State of Kerala 1982 (1) SLR 563 he Kerala High Court has also taken the following view:

Where the power is exercised without due regard to the intent of administration or in the interest of public or the provisions of law or the requirements of justice or where the power is exercised for extraneous or irrelevant considerations or for malafide reasons or as a punishment or as an act of victimisation, in all these cases of perverse exercise or abuse of power, the jurisdiction of this Court is wide enough to strike down the offending order.

In E.P. Royappa Vs. State of Tamil Nadu and Another, , the Supreme Court has observed as follows:

Articles 14 and 16 strike at arbitrariness in state action and ensure fairness and equality of treatment. They require that state action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality.

The learned Counsel for the appellaat also referred to Mansha Ram v. General Manager Tele Communication 1980 AI SLJ 382 , Kundan Sugar Mills Vs. Ziyauddin and Others, , S. Partho Sarthi v. State of Andhra Pradesh 1974 (1) SLR 427 , Union of India (UOI) Vs. Surjit Singh Atwal, , Khem Chand v. Union of India AIR 1938 SC 300 , Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, ; Air Gas Mazdoor Sangh v. Indian Air Gases Ltd. 1977 AI SLJ 613, Kartar Singh v. Director Land Records 1980 (3) SLR 11 and Devi Prasad v.

Director Panchayat Uttar Pradesh 1974 (2) SLR 200. However, none of these cases would appear to be relevant in regard to the matters being inquired into in these appeals or writ petition.

17. In Mansha Ram's case the Court has observed that the concerned authority must give a reasoned finding in imposing any punishment. Kundan Sugar Mills case relates to the matter of transfer of an employee from one business concern of the employer to his newly opened new business without there being any such right Parthsarthi's case relates to a departmental inquiry Surjeet Singh Atwal's case relates to the interpretation of Order VI, Rule 8 and Order VIII Rule 2 Civil Procedure Code, in Khem Chand v. Union of India, the matter for consideration related to second opportunity under Article 311, in Srilekha Vidyarthi's case it has been observed that Article 14 applies even in contractual matter. In Air Gas Mazdoor Sangh's case, it has been observed that transfer in absence of any provision is invalid-in Kartar Singh's case it was found that there was only district seniority of Kanoongo and, accordingly, they could not be transferred outside the district, and, in Devi Prasad's case the transfer was made to lower post which was held to be illegal.

18. A perusal of the decisions of the Supreme Court and other Courts, including decisions relied upon by the learned Counsel for the Appellant, clearly indicate that transfer is an incident of service and an employee has no right to be posted at any particular place. Transfer is a matter of administrative exigency and there is no question of any hostile discrimination or violation of Articles 14 or 16 or 311 of the Constitution in transferring a person on an equivalent post Government is the best Judge as to how best services of its employees are to be utilised and at what place. Transfer of a public servant made on administrative grounds or in public interest should not be interfered with, unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on the grounds of malafides.

19. Indeed, as noted above, the only grounds on which a transfer order can be challenged could be

- (i) violation of any statutory rules;
- (ii) illegality;
- (iii) malafides.

20. In the present case, so far as the Second Appeal no 3105 of 1978 Laxmi Shanker Misra v. Union of India is concerned, it would appear to have become redundant or infructuous because, subsequent to the transfer order dated 26-2-1973, the Appellant WAS transferred to Ordnance factory, Khameria, Jabalpur, vide order dated 11-12-1973, which is the subject matter of the S.A. 2776 of 1979. Moreover, there would appear to be no merit in the Second Appeal no 3105 of 1978 Both the Courts below have given concurrent findings of fact that the transfer order was made by the Competent Authority and further that it

does not suffer from any illegality or violation of any statutory rules. The submission made on behalf of the Appellant before the trial court and the first appellate court that the order was passed on account of malafide, has rightly been rejected by both the Courts below on a finding of fact that no malafides have been alleged against or could be attributed to the General Manager who passed the order. It has not been shown in this second appeal that this finding of fact is perverse. In this connection it may be observed that, in order to prove the plea of malafide or bias, the Plaintiff-Appellant had to make and prove specific allegations. In this case there was only a vague allegation about the alleged malafides on the part of the Foreman of the section, where the Appellant was posted, but as noted by the Courts below, there was not even an allegation of malafide against the General Manager who passed the impugned order. Since there was no illegality and there is a concurrent finding of fact in regard to malafide, the said order of transfer, dated 26-2-1972, could not be successfully challenged in the second appeal.

21. The learned Counsel for the Appellant submitted that the impugned order dated 26-2-1972, had the effect of causing loss to the extent of Rs. 250/- per month by way of production bonus. Assuming this to be correct, this could not be the ground for successfully challenging the transfer order if, as found above, the order was made by the competent authority and such a transfer could be made in accordance with rules. There are a number of deputation posts or special posts within the service carrying some allowance or special pay but no employee could claim, as of right, that he should be appointed or continued on these special posts and if he is transferred from such a post there could be no question of hostile discrimination or of violation of Articles 14, 16 or 311 of the constitution and he cannot have a valid cause of action for challenging such an order.

22. The learned Counsel for the Appellant, however, vehemently challenged the validity of the second transfer order, dated 11-12-1973, under which the Petitioner was transferred from the Ordnance Factory, Kanpur to Ordnance Factory, Sthameria, Jabalpur. According to the learned Counsel, this order is illegal for the following reasons;

- (i) Order has not been passed by the competent authority;
- (ii) Transfer order is violative of Articles 14, 16 and 311 of the Constitution;
- (iii) It is violative of Articles 26 and 53 of the Civil Services Regulations and the instructions contained thereunder.
- (iv) The transfer is against public interest;

23. I have given anxious consideration to all these submissions made by the learned Counsel but I find myself unable to agree with him. In regard to his first submission, namely, that the transfer has not been made by the competent authority, the learned Counsel submitted that transfer from one Ordnance factory to another could be made by the Director General, Ordnance Factories

(hereinafter to be referred to as DGOF) but has been made by the General Manager. The first appellate Court has observed and, in my opinion, quite rightly that no such plea has been taken by the Appellant in the plaint, either directly or indirectly. The Appellant did not do so inspite of the fact that it was specifically alleged by the Respondents, in para 12 of the written statement, that the transfer order was passed as per orders received from Director General, Ordnance Factories, Calcutta. No rejoinder was filed to this averment nor the plaint was sought to be amended to incorporate the plea that the order was not passed by the D.G.O.F. In fact even in the interrogatories, dated 22-8-75 (Paper no 30 C 2 of the record of the trial Court), the only interrogatory required to be answered in this regard was as to whether the transfer of an employee from one Ordnance Factory to another Ordnance Factory can only be made by D.G.O.F.

24. Since no plea was raised in the plaint, inspite of specific averment in the written statement, challenging the factual assertion of the Respondent that the order of transfer was passed by the D.G.O.F., such a plea should not have been allowed to be raised by the First appellate court. However, it appears that this plea was allowed to be raised by the First appellate court by way of abundant caution even though it has been observed that, in the plaint, transfer order has not been alleged to be bad on the ground that it had not been passed by the Director General. A finding of fact has been recorded by the first appellate Court that this order was passed in pursuance of the orders of the D.G.O.F. dated 1-12-73, and, by the impugned order dated 11-12-73, this order of the Director General was merely conveyed. In the impugned order reference has been made to the letter of the D.G.O.F. dated 1-12-1973 in this context it may also be pointed out that, by an application dated 1-3-1976, the Appellant sought discovery of certain documents, under Order XI Rule 12 Civil Procedure Code, including the transfer orders dated 10-12-73 and 11-12-73, but he did not seek discovery of the order dated 1-12-1973 of the D.G.O.F. On the pleadings of the parties and the facts on record, the finding of fact arrived at by the first appellate Court cannot be said to be perverse or incorrect and cannot be interfered with in second appeal.

25. It was not disputed, even in arguments in second appeal, that the Appellant belong to an All India Service and could be transferred anywhere in India under the order of the competent authority, in the exigency of the service or public interest. It has also not been disputed that the D.G.O.F. was the competent authority to pass transfer order, transferring an employee from one Ordnance Factory to another. In fact, interrogatory No 22, served by the Appellant on the Respondent, would itself indicate that it was not disputed by the Appellant that the D.G.O.F. could transfer an employee from one Ordnance Factory to another. This interrogatory reads as follows:

22. It is not a fact that transfer of an employee from one Ordnance Factory to another Ordnance Factory can only be made by the Director General of Ordnance Factories?.

Accordingly, the finding of fact of first appellate Court that the Director General of Ordnance Factories was the competent authority to pass the impugned order of transfer, dated 11-12-1973, and it was in fact, passed in pursuance of the orders of the Director General, dated 1-12-1973, must be held to be based on sound footing, and the submissions to the contrary, made by the learned Counsel for the Appellant, must be found to be without substance.

26. The submission of learned Counsel that transfer order is violative of Articles 14, 16 or 311 of the Constitution must also be found to be without substance. As has already been noted above, since the transfer of a government employee is an incident of service, it cannot be challenged on the ground that rights under Articles 14, 16 or 311 of the Constitution are violated. Even in the decision, *Umesh Chandra Tewari v. State of U.P.* 1987 (13) ALR 715, relied upon by the learned Counsel for the Appellant and referred to above, the Court has categorically observed:

Transfer of a government employee is an incident of service. Therefore it cannot be challenged on the ground that rights under Articles 14, 16 or 311 are violated.

The fact that transfer order cannot be challenged on the ground of hostile discrimination or for violation of Articles 14, 16 of the Constitution would also appear from the decision of the Supreme Court in *Dr. N.C. Singhal Vs. Union of India (UOI) and Others*, .

27. The observations made in the case of *Sandra Lal*, AIR 1957 All. 70, relied upon by the learned Counsel for the Appellant to the effect, that, If the order of transfer is passed due to punishment, it would be violative of Article 311 of the Constitution could be of no help to the Appellant as, in that case, it was found, as a fact, that the order of transfer amounted to reduction in rank. No such case is made out by the Appellant in regard to the impugned transfer order.

28. It is also not possible to accept the contention of the learned Counsel for the Appellant that the order of transfer is violative of Articles 26 or 53 of the Civil Service Regulations or it must be held to be illegal for violation of any administrative instructions thereunder. Neither of these articles would appear to be relevant for considering as to whether transfer order was illegal. These articles read as follows:

26. First appointment includes the appointment of a person not at the time holding any appointment under government even though he may have previously held such an appointment

53. Unless for special recorded reasons (which must be of public nature) the authority under whose order the transfer takes place permits or requires it to be made in any particular case elsewhere or otherwise, the charge of an office must be made over at its headquarters, both the relieving and relieved officer being present.

It will be seen that Article 56 Civil Services Regulations, in terms, describes or

clarifies first, appointment and Article 53 Civil Services Regulations lays down as to how and where charge of office should be handed over by the transferred employee.

29. The learned Counsel, however, referred to certain administrative instructions or orders, mentioned under Articles 26 and 53 of the Civil Services Regulation-, with the submission that these instructions were mandatory and violation thereof will make the order of transfer illegal. It is difficult to accept such a sweeping statement of law. It is true that, in certain circumstances administrative instructions or orders may be binding on the concerned authorities and may amount to rules under Article 309 of the Constitution. However, it is also settled law that executive instructions in regard to transfer are merely in the nature of guidelines and cannot override the provisions of the Act or the rules made thereunder or under Article 309 of the Constitution and they do not give any justiciable right. The scope of such administrative instruction was considered by the Supreme Court in *B. Varadha Rao Vs. State of Karnataka and Others*, and the Court endorsed the following observations of the High Court:

The norms enunciated by government for the guidance of its Officers in the matter of regulating transfers are more in the nature of guidelines to the Officers who order transfers in the exigencies of administration than vesting of any immunity from transfer on the government servant.

The instructions, in order to be valid and binding, must run subservient to the statutory provisions and not inconsistent with it *Sant Ram Sharma Vs. State of Rajasthan and Another*, It is only when there is a vested right and the rule is silent in regard thereto that the government can step in with the general power of issuing administrative instructions and only such instructions could be binding. It may also be permissible to clarify any ambiguity in the statutory rules by means of administrative instructions, *Sant Ram Sharma Vs. State of Rajasthan and Another*, ; *A.C. Bhargava v. Union of India* 1978 (2) SLR 618 Such administrative instructions cannot, however, whittle down the provisions, scope or extent of the rules and, in case of conflict between the provisions of the rules, made under the proviso to Article 309 of the Constitution or continued under Article 313 thereof, and the administrative instructions, the rules will prevail.

30. The learned Standing Counsel pointed out and it cannot be disputed that besides the transfer being an incident of service rules contained in the Financial Hand Book Volume-II Parts-II to IV, confer clear and unambiguous power on the competent authority to transfer an employee within his jurisdiction. This legal position has been clarified in the administrative instructions contained in para-2 of Clause (3) of the instructions, mentioned under Article 26 of the SCR itself and it may usefully be reproduced. This paragraph reads as follows:

2. Fundamental Rule 11 declares that unless in any case it is otherwise distinctly provided, the whole time of a Government Servant is at the disposal of the Government which pays him and he may be employed in any manner required by

proper authority without claim for additional remuneration whether the services required of him are such as would ordinarily be remunerated from the Consolidated Fund, or from a local Fund. Under F.R. 11, a Government Servants' transfer to "foreign service" cannot be effected against his will. That restriction does not, however, apply to transfer of a Government servant from one post under Government to another which is permissible under F.R. 15. This rule clearly contemplates that transfers may be made to any post within or outside the parent department or service and also that the appointment to the new post may be of any description, e.g. temporary, officiating, substantive, etc. The only restriction laid down in that, save in the circumstances specified in the rule, the transfer shall not be made to post carrying less pay than the pay of the permanent post on which the Government Servant holds an actual or suspended lien. If the transfer is at the Officer's own request or on account of inefficiency or misbehaviour, even a reduction in pay is permissible. This will, of course, be subject to the safeguards laid down in the Constitution, and the disciplinary rules applicable to Officer. Fundamental Rule 15, read with Fundamental Rule 12-A, make it clear that a substantive transfer from a permanent post in any service or department to a permanent post in any other service or department can be so made as to abolish the lien on the original post and to create a lien on the new post.

31. This position, referred to in the administrative instruction under Article 26, is the correct legal position and these rules and legal position, noted above clearly indicate that, subject only to the limitations noted above: there is an unfettered right with the concerned authority to transfer a government servant anywhere within his jurisdiction, in temporary, officiating or substantive capacity. The only condition is that such transfer cannot be made to a post carrying less pay than the pay of the permanent post on which the government servant holds a lien besides, of course; that it should not violate any rules and should not be mala fide. Fundamental Rules 15 and 12-A leave no doubt as to the legal position that substantive transfer from a permanent post in any service or department could be made to a permanent post in any other service or department within the jurisdiction of the competent authority and this could be made irrespective of the wishes of the government servant.

32. Since transfer is a normal incident of service and the Petitioner could be transferred by D.G.O.F. from Ordnance Factory, Kanpur to one at Khamaria Jabalpur even under the statutory rules applicable to him, any administrative instructions in regard to transfer could only be in the nature of guidelines and cannot have a binding effect.

33. In this context and on a consideration of the legal position stated above, the submissions of the learned Counsel for the Appellant that violation of the administrative instructions, contained in para-3 of Clause (3) under Article 26 of the Civil Services Regulations would invalidate the transfer order, must be found to be without substance. The instructions relied upon by the learned Counsel for

the Appellant read as follows:

3. On the other hand, though the power to make such transfer is available, it should be exercised in the public interest and with due care. The following general consideration would have to be borne in mind:

(i) The best utilisation of available man power does not necessarily require permanent transfers. But even if services of an officer are needed in a post outside the parent service or department it is usually sufficient to arrange for his deputation for a limited period.

(ii) Organised separate services for dealing with the needs of different branches of administration provide a steady supply of officers with specialised training and graduated experience who have a sense of departmental loyalty and reasonable assured prospects. Compulsory permanent transfer to and from such services should only be made in cases of proved necessity.

(iii) Other things being equal, the State will get better service from a willing servant than from one who is compelled to carry on the duties of a post against his wishes. So long as the reluctance of an officer is not based on unreasonable or unworthy considerations, public interest would generally be better served by taking some one who is not so reluctant.

(iv) While the public interest is served, the legitimate claims and expectations of individual employees should not be ignored. It is necessary to make sure, not only, that there is no loss of pay but also that the employee's reasonable expectations in the original service or department are preserved, or equal prospects are provided in the service or department to which the employee is transferred. At the same time, the interest of members of the service or Department to which the transfers are made should also be considered.

(v) A transfer to a distant place involves movement not only of the officer concerned but also his dependents. This may well be a serious hardship, especially to the low paid employees.

It is true that, in these instructions, some guidelines have been provided as to when an employee should be transferred permanently. The learned Counsel has particularly relied upon certain directions. The directions relied upon are to the effect that normally a person could be sent on deputation for a limited period and a compulsory permanent transfer to and from services should only be made in case of proved necessity. While public interest is served, the legitimate claims and expectations of an employee be not ignored. A transfer to a distant place will be serious hardship specially to low paid employee.

34. In the first place, as noted above, these instructions are mere guidelines and cannot have any binding force. They are merely directory and not mandatory. If it were held that these instructions are binding upon the concerned authority, it will have the effect of curtailing unambiguous power conferred upon the concerned authority, under the rules, and otherwise as an incident of service to

transfer such a person.

35. Where there is violation of administrative instructions which are merely directory or are by way of guidelines only, the only course open to the employee is to approach the concerned competent authority for redressal of his grievances on the basis of these guidelines and the Courts cannot interfere. In the case of Shilpi Bose AIR 1991 SC 532, the Supreme Court has observed:

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

Also See Gujarat Electricity Board (1980) 2 SCC 602; Shanti Kumari v. Deputy Director of Health Services AIR 1931 SC 1577.

36. In the second place, even assuming for arguments sake, that these instructions are mandatory, there would appear to have been no substantial violation of any of these instructions. The basic idea behind these instructions is that normally an employee, particularly a low paid employee, should not be permanently transferred or posted outside his normal place of posting. However, in these instructions itself, it has been made clear that, though normally sending an employee on deputation may be sufficient, permanent transfer could be made in case of proved necessity". It is also made clear in these instructions that the reluctance of an employee in regard to transfer must not be based on "unreasonable or unworthy consideration. "As will be discussed hereinafter in greater detail, the Respondents would appear to have made an attempt to adjust the Appellant locally, but he resisted that transfer without sufficient reasons and even filed a suit challenging the transfer and pursued it right upto the Second Appeal, which is being disposed of by this Judgment. The reports against the Appellant, which were the subject matter of formal inquiries indicate that he was taking agitational approach and his continuance in the production section of the Ordnance Factory was found by the Authorities to be not in public interest In the place where the Appellant has been transferred, the Appellant would have got same pay, as he was getting on his earlier posting. Posting him at a distant place was due to ndrriristrative compulsion and not on account of arbitrary action or discrimination Accordingly it cannot be said that there was any material violation of the administrative instructions, relied upon by the learned Counsel for the Appellant.

37. In regard to the instructions contined under Artttle 53 Civil Service Regulations, the learned Counsel for the Appellant has referred to the government decision contained in Clause (5) under the heading Government of India Decisions" These instructions cannot be said to be of any help to the Appellant in so far as the validity of me transfer ordsr is concerned. It merely says that concerned employee shall be struck off the strength of previous Urit from the date he is relieved of bis duties The papers on record indicate that the Petitioner was so relieved on 11-12-1973 and his name was struk off from the

Ordnance Factory, Kanpur with effect from the date, and the transfer order became effective from that date.

38. The learned Counsel, however, submitted that the Appellant was not permitted to join at Jabalpur Ordnance Factory, Kanpur and he could be deemed to have been taken in that Factory only from the date he joined that Unit. This contention must be rejected for more reasons than one. In the first place, there are no pleadings to this effect. Even if that be true, the Appellant should have represented against the orders, if any, of the Jabalpur Unit and the only cause of action that he would have had was for being permitted to join at Jabalpur. That would not, in any case, invalidate the order of transfer. If, for some reasons, which may be found to be not justified, the Appellant was really not permitted to join at Jabalpur, the authorities could look into the matter and could have given appropriate relief. If the intervening period was more than the period directed for joining and the Appellant could not really join at Jabalpur for no fault on his part, the intervening period could have been declared as a compulsory waiting period and adjusted accordingly.

39. The learned Counsel also referred to the instructions contained in paragraphs (f) and (g) of Clause (8) of the aforesaid Government of India decisions, These instructions read as follows:

8. (f) The individual during the transit period, joining time period will remain on the proforma/nominal strength of the office from which he is transferred. The fact that he draws pay for the transit period from the office to which he is transferred does not cause an excess in the cadre of that office.

(g) The receiving unit will be responsible to initiate disciplinary action against the individual for failure to report on due date after he was relieved by the previous unit.

40. These instructions also do not help the Appellant. So far as instruction contained in paragraph (f) is concerned, that only provides that during the transit period the employee will remain "on the proforma/nominal strength of the office from which he is transferred." This is only for accounting purpose and does not affect the operation of the instructions contained in Clause (5) and (8)(a) of these instructions, according to which the name shall be struck off with effect from the date the employee is relieved of his duties. These are the standing decisions of the Government of India and have validly been passed under the authority conferred by Article 53 Civil Service Regulations itself. That being so, it was not at all necessary that the Appellant should have been present at the time of his being relieved from the duties. Accordingly, the submission of the learned Counsel that there has been a violation of the instructions contained under Article 53 is factually incorrect and legally untenable.

41. The learned Counsel for the Appellant next challenged the order of transfer on the ground that the transfer could be made only in the public interest and there is nothing to indicate that this order of transfer has been made on this

ground. The submission of the learned Counsel for the Appellant is that it must appear that the transfer has really been made in public interest. The expression "public interest" has not been defined either in any rules or in any statute. It is a wide expression and the question of public interest will have to be determined in the context of the particular order. As has been noted by the Supreme Court in *The State of Bihar Vs. Sir Kameshwar Singh*, , the expression could only be defined by a process of judicial inclusion and exclusion. However, a broad test has been formulated and it is that "whatever furthers the general interest of the Community, as opposed to the particular interest of the individuals, must be regarded as public purpose." In the context of public service. It would mean the Interest of public as opposed to personal, political or other extraneous interest. Public Interest demands that an officer or an employee posted at a particular post, must inspire confidence, not only among his fellow employees and superior authorities, but also among the members of the public. If an officer or an employee is found to be causing trouble habitually or hindering working of particular section of the department or unit for extraneous reasons, his transfer from that place must be held to be in public interest.

42. "Public interest" in this context would be justiciable only to this extent that the order should not be based on any extraneous considerations or malafide reasons. The use of the word "public interest" in a particular order would prima facie be sufficient to raise presumption that the order has been passed in public interest. However as has been observed by this Court in *Sangam Lal Dube Vs. Director of Education and Another*, , the fact that the department chose to call it a transfer based on administrative grounds, will not conclusively make the order as such and the Court could go into the background of the order to determine whether the order has been passed on administrative grounds or public interest or it has been passed for any extraneous reasons or is otherwise malafide. In *Umesh Chandra Tewari v. State of U.P.* 1987 (13) ALR 715. also a Division Bench of this Court went behind the order and. on a finding of fact that there was not even a whisper against the Petitioner in the various reports which were basis of his transfer, allowed the petition and quashed the order of transfer.

43. However, as indicated above the inquiry of the Court in this regard will extend only to a consideration whether or not there were admitted or established facts which might indicate that the order was passed for extraneous or malafide reasons. If no such facts are admitted or established, it will not be permissible for the Court to assess and determine the need or propriety of transfer or to substitute its own views or wisdom in place of the views or wisdom of the competent authority. In other words, the inquiry in this regard will be limited to a consideration as to whether, on the facts admitted or proved* the order could be said to have been passed for extraneous reasons or it is otherwise malafide.

44. In the present case, it is no doubt, true that the transfer order has not been passed in the normal course. Normally Class-IV employee is not transferred outside the Unit, as, indeed, is implicit in the directions contained in para 3 of

the instructions under Article 26, referred to above. However, as already noted it is settled law that in order to be successful on the plea of malafides or bias, it is necessary that specific particulars and detailed facts should be pleaded. Mere allegations of malafide are not sufficient. In the present case, all that has been said in the plaint is that certain charge sheets were served on the Petitioner and he was transferred from C.T.R.S., which is the production section, to the Training Section, and thereafter he was transferred to the Ordnance Factory, Khameria, Jabalpur. There are no allegations of personal bias or malafide against either the General Manager or the Director General Ordnance Factories Calcutta who passed the relevant orders. The mere allegation that certain inquiries were held and the transfer orders were passed, could not lead even to the proper allegations, as to the bias or malafides.

45. The learned First appellate court has given a finding of fact that the Appellant has failed to prove the allegations of malafides or absence of public interest and, the finding arrived at would appear to be based on evidence on record. It could not be said to be perverse at all. As has been observed by the learned first appellate court, the Petitioner was found guilty in respect of the charge sheet dated 10-1-1967 for using abusive language against his superior officer. Contrary to what the Petitioner has alleged, he was not exonerated in this inquiry. The order (Ext. A-1), dated 25-1-1968 indicates that the charge was found to be fully proved but a lenient view was taken and the Appellant was merely given a warning and that warning was directed to be placed in the record of service. The charge sheet Ext. A-4 contains a charge that the Appellant overstayed with a view to threatening the workers and instigate them not to do the work. Three increments of the Petitioner were directed to be stopped (vide Ext. A-18). The letter, dated 20-10-72 (Ext. 5), of the Manager Administration addressed to the Appellant, refers to Appellant's threat of going on hunger, strike. It also clarifies that the transfer of the Petitioner has been effected due to his undesirable agitational approach in an important Section which tends to disrupt production and subvert discipline. Documents on record further indicate that the Appellant has been writing to the Defence Production Minister directly.

46. It would appear that the General Manager at first tried to shift and adjust the Appellant locally by transferring him from this Section (Production) to the Training Section. But this order was challenged by him in the Court. This suit was dismissed by the trial Court and the first appeal was also dismissed. He has filed Second appeal No 3105 of 1978 against that order. It has already been found above that the order relating to Second Appeal No. 3105 of 1978 cannot be said to be illegal or malafide. The Appellant was then transferred to Ordnance Factory Khameria but he challenged that order also by filing suit No. 462 of 1974. The trial Court and the first appellate Court dismissed the suit and appeal respectively and he has come in the second appeal. In that suit he moved the Court and was granted an injunction order against this transfer vide order dated 11-5-1974. He was, however, not permitted to join again at Kanpur. He then moved the Court for taking action for disobedience of the injunction order which

was dismissed by the trial Court, vide order dated 5-5-1978 and the appeal against that order was also dismissed on 16-8-1979. He filed writ petition (W.P.-10045 of 79) against these orders wherein stay was not given. In spite of this he did not join at Khamera, Jabalpur.

47. Considering the entire background, indicated above, it is quite obvious that the finding of fact of the learned first appellate Court is based on proper material and this is not a case where the impugned order could be said to have been passed without existence of any material or for any extraneous mala fide reasons. The obvious reason was that the Appellant was causing hindrance in the proper working of the Section relating to production. The General Manager and the concerned authorities took quite a lenient view earlier, even though charges were proved against him. They also took recourse to an easier alternative by transferring him locally to the Training Section, but the Appellant challenged that order also and moved the Court for stay of that order. It would appear that there was no option left to the authorities but to transfer him outside Kanpur unit, where the Appellant was working in an important Unit of the Ordnance Factory. If the authorities bona fide thought that the Appellant was causing hindrance in the smooth working of the particular Section or Unit, the transfer of the Appellant from that Section or Unit would obviously be in public interest, and no mala fide could be attributed to it.

48. The learned Counsel for the Appellant, however, laid stress on the instructions contained in paragraph (3) 3 of the instructions under Article 26, which have been reproduced earlier in this Judgment, in support of his submission that these Instructions are guidelines to determine whether the order has been passed in public interest. According to the learned Counsel, the violation of these guidelines must lead to the inference that the order has not been so passed.

49. For the reasons already stated above, I regret my inability to accept this submission. All that has been said in these instructions is that normally there should be no occasion for a permanent transfer particularly of a low paid employee and such transfers should not normally be made to distant places. It has already been indicated above that the alternative, mentioned in these instructions, were substantially attempted by the concerned authorities, and it was only when the Appellant himself placed hindrance in the implementation of those alternatives, he was transferred to Khamera, Jabalpur. Accordingly, the plea of the learned Counsel based on these instructions must be rejected.

50. There would thus appear to be no substance in the two second appeals (S.A. No. 3105 of 1978 and S.A. No. 2776 of 1979) and they are liable to be dismissed.

51. So far as the writ petition (W.P. 10045 of 1979) is concerned, the Petitioner has prayed for quashing the order dated 5-5-78 (A-13), whereby the application of the Petitioner, for taking action against the opposite parties for disobedience of the injunction order, was dismissed by learned VI Addl. Munsif, Kanpur and the

order dated 16-8-1979 whereby the appeal against this order was dismissed by the learned Vth Addl. District Judge, Kanpur. It would appear that an injunction was granted to the Appellant against the order, dated 11-12-1973, on 11-5-1974. However, on a finding that the impugned order had already been implemented before the passing of the injunction order, the learned Munsif rejected the application and the appeal was also dismissed for the same reasons. For the reasons given in those orders and indicated above, there would appear to be no infirmity in the orders passed and there could have been no question of any action being taken for the alleged violation of injunction order. Accordingly, the writ petition is also devoid of merit and is liable to be dismissed.

52. Before parting with these appeals and writ petition, it may be recorded that the learned Counsel for the Appellant and learned Standing Counsel argued the cases ably and fairly and the submissions made by them have been of much assistance to the Court.

53. Second Appeal No. 3105 of 1978, Second Appeal No. 2776 of 1979 and the Writ Petition No. 10045 of 1979 are dismissed.

54. In the circumstances of the case, there shall be no order as to costs.