

(2022) 10 DEL CK 0069

In the Delhi High Court

Case No : Letter Patent Appeal No. 383 Of 2021, Civil Miscellaneous Application
No. 36851, 36853 Of 2021, 2859 Of 2022, CAV No. 45, 46 Of 2021

Sanjeev Kapoor

APPELLANT

Vs

Ntpc Ltd. & Anr.

RESPONDENT

Date of Decision : 14-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(p)

Citation : (2022) 10 DEL CK 0069

Hon'ble Judges : Satish Chandra Sharma, CJ;Subramonium Prasad, J

Bench : Division Bench

Advocate : Om Prakash Gupta, Sanjoy Ghose, Urvi Mohan

Final Decision : Dismissed

Judgement

Subramonium Prasad, J

1. The instant appeal has been filed impugning the Judgment dated 27.09.2021 passed by the learned Single Judge in W.P.(C) 14006/2019, wherein the learned Single Judge refused to interfere with the Transfer Order bearing Order No.319/2019 dated 06.12.2019 issued by National Thermal Power Corporation Ltd. i.e. Respondent No.1 herein, transferring the Appellant from the post of Junior Chemist at NTPC, Faridabad, Haryana to the post of Junior Officer, Energy Efficiency Monitor Group (hereinafter referred as "EEMG") at the Regional Inspection Office, Chennai, Tamil Nadu (hereinafter referred as "RIO, Chennai").

2. Shorn of details, the facts leading to the present LPA are as under:-

i. The Appellant joined National Thermal Power Corporation (NTPC) as Assistant (DM Plant) Chemistry Section at NTPC-Anta Gas Power Project, Rajasthan on 15.07.1991 on the basis of an advertisement for a vacancy at the Anta Gas Power Project.

ii. On promotion, the post of the Appellant was re-designated as Junior Chemist

and the Appellant continued on that post at Anta Gas Power Project from 15.07.1991 to 11.05.2012. The Appellant was transferred to Commercial Office of Respondent No.1 located at Jaipur, Rajasthan.

iii. It is stated that on 26.12.2014, the Appellant was once again transferred from Jaipur to Faridabad, Haryana w.e.f. 31.12.2014.

iv. It is stated that vide Order dated 11.12.2019, the Appellant was transferred from NTPC, Faridabad to RIO, Chennai. The Appellant filed W.P.(C) 14006/2019 challenging his transfer order to RIO, Chennai on the following grounds:-

"(i) The impugned transfer order is arbitrary in changing the petitioner's cadre without willingness, inasmuch as he is appointed in the Chemist Cadre and could not have been posted outside the Chemist Cadre.

(ii) The transfer order is in violation of Rule 2.6 of the Transfer Policy which states that workmen being promoted/laterally appointed from the grade of workman to supervisor may be transferred within the Region.

(iii) The impugned order is in violation of principles of Equal Opportunity Policy and Human Rights Policy of NTPC ignoring conditions of his physically challenged dependent parents who are living in Jaipur.

(iv) The impugned order is in violation of NTPC's delegation of power, inasmuch as a worker can be transferred within the region by Executive Director.

(v) There is no vacancy of his cadre in RIO, Chennai.

(vi) Before issuing the impugned order, there is no consent of the Second Head and the approval of the Head of the Department, i.e., General Manager, Faridabad. The petitioner is handling all the Chemistry related activities as there is no other workman in Chemistry Division at Faridabad Plant and there exists a requirement of Chemistry personnel at NTPC-Faridabad.

(vii) The petitioner has vide his email dated October 17, 2019 highlighted the irregularities and excess payment of Profit Related Payment ('PRP', for short) and acted as a whistle blower. Thus, the petitioner has been issued impugned transfer order against the Transfer Policy, Promotion Policy, Whistle Blower Policy with malafide intentions."

v. The learned Single Judge vide the judgment impugned herein had rejected all the grounds raised by the Appellant and upheld the transfer. The learned Single Judge held that the Appellant is bound to serve anywhere in India or abroad in any office/project unit or any industrial institute under the administrative control of Government of India as per the decision of the management in terms of his appointment letter dated 20.06.1991. Such a stipulation is wide enough to include any other institute not only of NTPC but even those which are under the administrative control of Government of India. The Rules provide for discretion with the management in a given case to transfer an employee within the region. There is no requirement to mandatorily effect an intra-region transfer under the

extant NTPC Transfer Policy. In fact, the terms of appointment read with Clause 8 of the NTPC Service Rules stipulates that an employee is to serve any part of the country or abroad, which is a sufficient indication that the petitioner can be transferred to Chennai also.

vi. Further, the learned Single Judge held that the argument of the Appellant that the Transfer Order causes prejudice as it affects his seniority, promotion, emoluments etc. is unmerited as he has been transferred from Junior Chemist Grade-III (W9) to Junior Officer EEMG (W9), i.e., a transfer to an equivalent post. The transfer is not to a different grade.

vii. It is this judgment which is under challenge in the instant LPA.

3. The prime contention of Mr. Om Prakash Gupta, learned Counsel for the Appellant, is that the Appellant was appointed in the Chemist Cadre and he could not be transferred to a post which does not belong to his cadre. He further states that as per the transfer policy, the Appellant could not have been transferred from NTPC, Faridabad to RIO, Chennai as he could have been transferred only within the same region.

4. Per contra, Mr. Sanjoy Ghose, learned Senior Counsel for the Respondents, submits that the Respondent Organisation has two cadres, namely, Executive Cadre and the Non-Executive Cadre, which consists of workmen. He contends that there are promotional avenues available to the Appellant. Mr. Ghose submits that the Appellant joined Respondent Organisation on 20.06.1991 as Assistant Grade-IV at Grade W4 and promoted on 01.01.1996 to Grade W5, 01.01.2000 to Grade W6, 01.07.2004 to Grade W7 and 01.01.2009 to Grade W8, 06.01.2020 to Grade W9. He states that the Appellant who, at present, posted as Junior Chemist Grade-III (W9) in the Energy Efficiency Monitor Group (EEMG) department at RIO, Chennai and his transfer to RIO, Chennai is on Grade W9, is entitled to promotion to Grade W10 and then to the Executive Cadre. He states that the transfer of the Appellant was done due to administrative exigencies and in accordance with the promotion policies and practices.

5. Heard Mr. Om Prakash Gupta, learned Counsel for the Appellant, Mr. Sanjoy Ghose, learned Senior Counsel for the Respondents, and perused the material on record.

6. A perusal of the facts reveal that the Appellant was appointed on 20.06.1991 as Assistant Grade-IV and that he was liable to be transferred in India or abroad on any project or unit under the administrative control of the Respondent Organisation.

7. Affidavit dated 14.01.2022 has been filed by the Respondents to demonstrate that the promotional avenues of the Appellant are not affected by the transfer which has been challenged by the Appellant herein shows that the apprehension of the Appellant is unfounded. Paragraph 2 of the said affidavit reads as under:-

"2. That Pursuant thereto, the Respondents crave indulgence of this Hon'ble

Court to submit as follows:

i. Promotional Avenue(s) available to the Appellant

a. That the Respondent/ NTPC Ltd. has employees in two cadres, namely, the Executive cadre and the Workman or Non-Executive cadre. The Workman/Non-Executive Cadre starts from Grade WO to WSG. However, the employee may move to Executive cadre after WIO with 1 year of service, subject to meeting qualification criteria and fulfilment of other eligibility conditions.

b. That in so far as the Appellant is concerned, it is submitted that he falls in the Workman/Non-executive cadre.

c. That the Appellant joined the services of NTPC Ltd. as on 20.06.1991 as Assistant Grade IV (W4), and thereafter, got promoted to W5 on 01.01.1996, to W6 on 01.01.2000, to W7 on 01.07.2004, to W8 on 01.07.2009 and to W9 on 06.01.2020.

d. That it is hereby clarified that the Appellant is at present posted as Junior Chemist Gr. III (W9), in the EEMG department at RIO, Chennai and that his transfer to RIO, Chennai is in this Grade W9 itself that he presently holds.

e. That the Appellant was transferred to RIO, Chennai on account of the requirements of NTPC Ltd. as well as in consonance with the Memorandum of Settlement dated 26.10.2018 (a registered settlement under Section 2(p) of the Industrial Disputes Act, 1947, and binding on ail workmen employees - entered into between the workers' union and the NTPC Management) which permits transfer and multi-tasking and manpower optimisation for the purposes of productivity and cost effectiveness. [Para 4-5, counter affidavit filed by NTPC before the Ld. Single Judge]

f. That as per NTPC's promotion practices and policies, it is submitted that while the Appellant has been posted as Junior Officer. EEMG, RIO. Chennai in Grade W9, the next promotional avenue to the Appellant could be Grade W10 and then to Grade W11,subject to fulfilling other eligibility conditions.

g. That additionally, the promotional avenue available to the Appellant which could also be, in future, to a position which would require his expertise and experience as a Chemist, is protected. In this event, his next promotion would be from Jr. Chemist, Grade III (W9) to Jr. Chemist, Grade II (WIO) in the Chemistry branch/area.

h. That it is hereby clarified that while promotion from Grade W9 to WIG may be treated as a broader head of Grade promotion, the promotion from Jr. Chemist, Grade III (W9) to Jr. Chemist Grade II (WIG), would be a Grade and department/ area specific promotion, specific to the Chemistry branch/area which has its own hierarchy for functional purposes.

(a copy of the NTPC channel of promotion for Chemistry branch/area along with the relevant extract of the NTPC HR Manual (to reflect the applicable pay-scale)

is annexed herewith and marked as Annexure -A Colly.)

i. That it is submitted that the Appellant's transfer is merely an act of organisational re-designation, and his status as W9 - Workman/Non- Executive cadre has not been changed or affected in any manner. To iterate, at the cost of prolixity, it is submitted that the Appellant would be eligible for future promotion(s) to WIO - Workman cadre, which could also be as Jr. Chemist Grade 11 (WIO) in the Chemistry branch/area (as per the Chemistry branch/area hierarchy).

j. That it is also submitted that the Appellant is not the only employee to have been transferred from one department to another. NTPC Ltd has effected several such inter-departmental transfers of its employees, subject to its requirements from time to time.

ii. Job functions and profile of EEMG, RIO, Chennai

a. That further, it is submitted that the Energy Efficiency Monitoring Group (EEMG), RIO, Chennai has inter alia, the following functions:

1. Conducting pep talks;
2. Ensuring compliance with relevant SoPs;
3. Ensuring compliance with applicable norms;
4. Preparation of Management Information System (MIS) coordination with the authorities in generating the MIS related to EEMG (similar to Chemistry);
5. Interaction with OS (Operation Services) Department.

b. Additional responsibilities and supporting role to other projects

1. In addition to the above-mentioned functions of EEMG, the Appellant may be required to assist in inspecting the chemistry related work done in the concerned region, owing to his experience and expertise in this field.

2. Furthermore, the Appellant may also be required to extend support to projects in the concerned region.

3. To elaborate, in addition to holding charge as Jr. Chemist, Grade 111 in EEMG, RIO, Chennai, the Appellant may be required to extend support to and resolve issues related to EEMG in projects in nearby areas.

4. To illustrate, there are 05 states in Southern Region of NTPC, whose Regional HQ is Secunderabad. There are 06 projects/ stations in Southern Region.

5. The State of Telangana has 02 power plants and Andhra Pradesh Kerala and Karnataka have 01 each.

6. In the Southern Region (SR), NTPC Ltd. has 06 Regional inspection Offices (RIOs) located in the vicinity of the vendors from whom materials are sourced.

Materials include chemicals as well.

7. Regional HQ offices and Regional Inspection Offices (RIOs) have a supportive role for ensuring uninterrupted operation of power plants. RIOs help in constant follow-up, monitoring and quality inspection of materials offered by vendors, which if taken by each project separately, would entail huge cost in terms of time, money and manpower availability at the concerned project/ stations.

8. That additionally, it is also clarified that the supportive role of RIOs is not limited to region-specific projects but extends to orders of materials (including chemicals) placed on vendors within the reach of RIO, Chennai by NTPC Projects from all over the country.

9. If an order is placed on a vendor located in the vicinity of concerned RIO, the concerned RIO is assigned the said inspection by the respective indenter of material from power project/ station/ offices, and it becomes their responsibility to carry out the inspection.

10. Therefore, it may be relevant to note that the Appellant's experience and expertise may be of great importance and utility to NTPC Ltd., in ensuring smooth functioning of its projects in the nearby areas in the southern region.

c. That the Appellant, though had been relieved vide office order dated 29.09.2021, has only now joined at RIO, Chennai w.e.f. 13.12.2021, in EEMG department (Energy Efficiency Monitoring Group).

d. That it is submitted that NTPC Ltd. has been battling the Covid-19 pandemic, much like the rest of the country, and has been trying to protect the interests and safety of its employees by following relevant Covid-19 safeguards and operating with limited resources, however, the management of NTPC Ltd. is hopeful to resume full-fledged operations once the situation improves.

e. That as on 13.01.2022, vide office order bearing Ref. No. 01/IS/2022, the Appellant has also been allotted the following important tasks/functions:

1. Inspection of Chemicals to be procured;
2. Refractory related inspection services of NTPC inspection offered materials, and generation of reports thereon for official submissions;
3. To look after official Language (Hindi Rashtrabhasha) activities of Chennai Office;
4. Energy Conservation services pertaining to RIO Chennai office.

(a copy of the office order dated 13.01.2022, bearing Ref. No. 01/IS/2022 is annexed herewith and marked as Annexure- B.)"

8. Though the Appellant has filed a reply to the said affidavit but the same does not throw any light or controvert the affidavit filed by the Respondents.

9. The Respondent is getting the pay scale which is due to him and it is not the contention of the Appellant that he has been put at a lesser pay scale. The Appellant is entitled to the next promotion to the post of Junior Chemist Grade W10. The affidavit filed by the Respondents also brings out the job profile of the Appellant.

10. The scope of interference by a court exercising its jurisdiction under Article 226 of the Constitution of India in matters of transfer is well settled and has been crystallized in a catena of judgments. A writ court cannot substitute the role of the transferor or sit over its decision as an appellate authority and such situations may only warrant interference when they are hit by malafides, based on extraneous considerations as opposed to considerations of public interest and administrative exigencies or are in outright contravention of mandatory provisions governing transfers.

11. In N.K. Singh vs. Union of India, (1994) 6 SCC 98, the Hon'ble Apex Court has observed as under:

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

(emphasis supplied)

12. Similarly, in State of M.P. v. S.S. Kourav, (1995) 3 SCC 270, the Hon'ble Apex Court held as under:

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

6. This Court cannot go into that question of relative hardship. It would be for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration. If there is any such hardship, it would be open to the respondent to make a representation to the Government and it is for the Government to consider and take appropriate decision in that behalf. " (emphasis supplied)

13. In light of the aforementioned pronouncements, it is clear that the discretion of a writ court to interfere in transfer matters must be exercised sparingly. Therefore, what ought to be examined in the facts and circumstances of the present case is whether the transfer of the Appellant is hit by malafides and is based on extraneous considerations or is in contravention of the terms and conditions of the transfer policy governing his employment. Whether or not a transfer order causes inconvenience or personal difficulties to the transferee is not a ground for interference with the transfer order in exercise of this Court's writ jurisdiction.

14. One of the grounds basis which the Appellant is assailing the Impugned Judgment and the transfer order is that the transfer order was in retaliation of the Appellant's actions and initiative as the General Secretary of the employees' union and other proceedings filed by him against denial of entitled promotions. Insofar, findings of malafide in administrative issues, especially transfer orders is concerned, the principle laid down in terms of the judgments of the Hon'ble Apex Court is that there should sufficient and proper evidence and such a finding should not be reached capriciously. In *Union of India v. Ashok Kumar*, (2005) 8 SCC 760, the Hon'ble Apex Court has observed as under: -

"21. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (*S. Pratap Singh v. State of Punjab* [(1964) 4 SCR 733 : AIR 1964 SC 72] .) It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in

E.P. Royappa v. State of T.N. [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555] courts would be slow to draw dubious inferences from incomplete facts placed before them by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. (See Indian Rly. Construction Co. Ltd. v. Ajay Kumar [(2003) 4 SCC 579 : 2003 SCC (L&S) 528]).”

15. The facts do not point out that the transfer of the Appellant was accentuated by malafides. The affidavit filed by the Respondents indicate that the principal ground raised by the Appellant that there is a change in cadre or that all his promotion avenues has been foreclosed are unfounded. The Appellant has been transferred from NTPC, Faridabad to RIO, Chennai at an equivalent post and at the same pay scale. The transfer is not to a different grade. No prejudice has been caused to the Appellant by the transfer. The Appellant has been transferred by the competent authority and it cannot be said that the transfer order is bad in law.

16. As is evident from the judgments, courts do not interfere with routine transfers done for administrative exigencies. This Court, is, therefore, not inclined to interfere with the judgment passed by the learned Single Judge.

17. The LPA is dismissed. Pending applications, if any, stand disposed of.