

**(2022) 12 DEL CK 0077**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 16255 Of 2022

Santosh Kumar Sahu

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

**Date of Decision :** 08-12-2022

**Acts Referred:**

**Citation :** (2022) 12 DEL CK 0077

**Hon'ble Judges :** Prathiba M. Singh, J

**Bench :** Single Bench

**Advocate :** Shree Prakash Sinha, Rakesh Mishra, Risabh Gupta Lorraine, Satya Ranjan Swain, A.P. Singh, Akanksha Das, Akshada Mujwar

## Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.

CM APPLs.50855/2022 (for stay) & 50856/2022 (for direction)

2. The present petition has been filed by the Petitioner- Santosh Kumar Sahu, seeking a direction for setting aside a transfer order dated 29th September, 2022 issued by Respondent No.2 - Air India Engineering Services Ltd. (hereinafter 'AIESL').

3. The Petitioner was appointed as a Trainee Engineer- Support Services in AIESL by order dated 1st July, 2017. After successfully completing the requisite training period, vide appointment notification dated 31st August, 2018, he was appointed to the Engineering Department of AIESL as a Dy. Engineer- Support Services. He has served AIESL in Delhi since then.

4. The grievance of the Petitioner in the present petition is that, vide order dated 29th September, 2022, he was transferred with immediate effect to Trivandrum. Further, his relieving order dated 30th September, 2022 has called upon him to join on 3rd September, 2022 (sic) 3rd October, 2022. Ld. Counsel for the Petitioner submits that the transfer order is coercive in nature. He claims that the

said order constitutes overreaching of the Court process. He further claims that it is also contrary to the prevalent policy and is malicious.

5. In support of these submissions, Id. Counsel refers to order dated 21st July, 2022 passed by the Id. Single Judge of this Court in W.P.(C) 10599/2022 titled Santosh Kumar Sahu v. Union of India. Id. counsel submits that even before the transfer orders were issued, a large number of AIESL employees were asked to vacate their accommodation in Vasant Vihar. This was challenged by the said employees in W.P.(C) 10599/2022, out of whom, Petitioner was one of the aggrieved employees. In the said petition, the Union of India clearly made a statement that there is no intention to initiate the proceedings for eviction except in accordance with law under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

6. On the last date of hearing, it was submitted by Id. counsel for the Petitioner that reasonable notice and time for joining was also not given to the Petitioner. The entire process of transfer shows that the same was in hurried manner so as to punish the Petitioner for having filed the writ petition being W.P.(C) 10599/2022. It was also submitted that the wife and two daughters of the Petitioner are staying in Delhi. The Petitioner's wife is also working at AIESL and the daughters are in the middle of their school's academic session. Id. counsel for the Respondent was, accordingly, directed to seek instructions.

7. Mr. A.P. Singh, Id. counsel for the Respondent Nos.2 & 3 i.e., AIESL under instructions from Mr. Sanjay Sharma, General Manager (Engg.), Northern Region, AIESL has sought instructions. Id. Counsel submits that the services of the Petitioner are required in Trivandrum for service/maintenance of various aircrafts which are located at the Trivandrum airport. It is his submission that the Petitioner is one of the qualified European Union Aviation Safety Agency (EASA) persons, who can undertake service and maintenance in this regard. He further submits that the fact that the family is located in Delhi would not be a ground to oppose transfer, inasmuch as in most transfer cases, officials concerned would be having families at the place from which transfer is made. It is further submitted by Mr. Singh, Id. counsel that the Petitioner has taken medical leaves and has not even reported on duty. In these circumstances, the Petitioner ought to be directed to join in new posting on urgent basis. Mr. Sinha, Id. counsel for the Petitioner on the other hand submits that several other EASA qualified engineers with AIESL and it is his case that the transfer is malicious and vindictive. It is his further submission that the Respondents have even stopped paying Petitioner's salary.

8. The Court has considered the submissions of the parties. The question is whether the transfer of the Petitioner is liable to be stayed or not. After hearing Mr. Singh, Id. Counsel for AIESL, it is not in dispute that the Petitioner is a duly qualified person, whose transfer is being directed for the needs of the organisation. The Court is of the opinion that the employer has the freedom to transfer an employee whose services are required in a particular place. Transfer

orders ought not be interfered with easily. Moreover, the fact that there may be other qualified persons, who could be transferred, would not be a ground to stop the transfer of a particular official. Recently, a Id. single judge of this Court in *Umesh Chandra Singh v. Union of India* [W.P.(C) No. 9039/2020, date of decision 4th January, 2021] summed the legal position in respect of court's interference in transfer orders in the following words:

34. Mr. Mehta has during his arguments specifically taken a stand on instructions that the Petitioner is giving an impression as if the work of House Keeping or such like work in the Safety Department is akin to the job of House Keeping in Hotels and that the nature of work is far from a job requiring Engineering skills, but this is incorrect. It is clarified that the work in a Safety Department requires a special Engineering skill as it involves safety of a Thermal Power Plant, which can only be executed by a trained and experienced person as it includes safety, cleaning and maintenance of boilers, switches, gas, etc. and any minor negligence or error can result in mishappening and do require engineering knowledge and skill. It is beyond a doubt that it is for the NTPC to decide as to how the Petitioner has to be best utilized keeping in view his qualifications and experience. If the Competent Authority has taken a considered decision to utilize the skills and expertise of the Petitioner in the Safety Department, keeping in view the technical nature of the work executed therein, there is no reason for the Court to intervene and substitute its decision, more particularly when the Court has no expertise to decide how an Engineer can be utilized by the employer. These are decisions best left to the employer and are beyond the limited scope of interference in transfer matters while exercising power of judicial review.

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43. From the conspectus of the arguments made and the pleadings, this Court is of the opinion that the impugned transfer is a routine transfer made purely in the interest of administrative exigencies and there is nothing unusual or malafide. While this Court has no doubt about the technical qualifications, experience, expertise and calibre and credential of the Petitioner yet it can only be observed that it is for the NTPC to decide how to best utilise the services of the Petitioner. The Courts have been repeatedly observing that in the absence of malafides or policy violations or a detrimental effect on the career of the employee, the challenge to the Transfer Order must be eschewed and interference should be minimal.

9. The reason why this Court had directed Id. counsel for AIESL to seek instruction was due to the presence of his family and young children in Delhi, which has been again considered but the transfer directions are maintained. It is submitted by Id. Counsel for AIESL that if the wife of the Petitioner who is also working with AIESL wishes to be posted at Trivandrum, the same would be considered expeditiously.

10. In view of the above facts, at this stage, prima facie, this Court cannot arrive at an opinion that the transfer of the Petitioner to Trivandrum is malicious and vindictive on the basis of material on record and the submissions made. Accordingly, the Petitioner is directed to report in the new posting in Trivandrum on 20th December, 2022. This date is being fixed on the basis of the request made by the Petitioner's counsel on medical grounds.

11. Insofar as the salary for the preceding months which has not been released is concerned, the Petitioner shall complete all the formalities for his transfer as well as medical leaves, upon which the amount shall be released within 3 days thereafter.

12. Insofar as the accommodation where the Petitioner is residing is concerned, the order dated 21st July, 2022 in W.P.(C) 10599/2022 records that the Respondents would take appropriate action under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for evicting of the occupants. If any final orders are passed in the said proceedings against the Petitioner's family, who is occupying the premises prior to 31st March, 2023, the Petitioner is free to move this Court in W.P.(C) 10599/2022.

13. Insofar as the wife of the Petitioner is concerned, Mr. Singh for AIESL has submitted that if the Petitioner's wife wishes to seek transfer to the same location, the same shall be considered on a preferential basis by the Respondent. Ordered accordingly.

14. CM APPLs.50855/2022 & 50856/2022 are disposed of.

W.P.(C)16255/2022

15. Let the counter affidavit be filed within 6 weeks. Rejoinder thereto be filed within 4 weeks thereafter.

16. List on 25th April, 2023.