
(2007) 03 AHC CK 0234
In the Allahabad High Court

Suresh Chandra Dixit, Modi Prasad, Jeet Lal Singh Yadav and
Ram Abhilash

APPELLANT

Vs

The General Manager, I.T.I. Limited, Naini, The Deputy
General Manager (HR and S), I.T.I. Limited and The General
Manager, I.T.I. Limited, Mankapur

RESPONDENT

Date of Decision : 29-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 5 ADJ 196 : (2008) 2 SLJ 68 : (2007) 2 UPLBEC 1682

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—All these writ petitions involve common questions of facts and law and hence, as requested by learned Counsel for the parties, have been taken together and are being decided by this common judgment.

2. The petitioners working in Indian Telecom Industry, Naini at Allahabad (hereinafter referred to as "ITI Naini") aggrieved by the order dated 28.12.2005 issued by the Manager (Human Resources) (P) ITI Naini transferring them in various sites of GSM project have filed these writ petitions under Article 226 of the Constitution of India.

3. The facts in brief as stated commonly in these writ petitions are that the petitioners are working as employees in various departments of ITI i.e. Digital, Baywiring, Optical, Assembly-T etc. They proceeded on six weeks out door tour programme to attend various sites of GSM project on 8.11.2005 and 12.11.2005 but before completion thereof the respondents have issued the aforesaid order transferring petitioners to various sites of GSM project itself and on return to ITI Naini the petitioners have not been allowed to join thereat. In this regard the petitioners have also made representations dated 4.1.2006, 21.1.2006, 1.2.2006 and 21.3.2006 but the same have not been attended so far. In these

circumstances, these writ petitions have been filed challenging the aforesaid order of transfer. It is contended that from the very perusal of the order it is evident that it is by way of punishment and not a transfer simpliciter. Moreover, the petitioners have been transferred while in many other cases the transfer orders have already been cancelled and/or the persons who are senior or otherwise fit and suitable have not been touched. It is also alleged that the respondents are pressurizing the petitioners to opt for voluntary retirement under the scheme if they are not inclined to proceed on transfer which shows that the order of transfer is mala fide. It is also contended that the orders of transfer have been passed without any consent of the petitioners and under the conditions of service the petitioners could have been transferred from one unit to another but not from one unit to project, hence the impugned orders of transfer are without jurisdiction. Lastly, it is contended that in Writ Petition No. 29158 of 2006, the petitioner No. 1's children are studying in class 7, 10 and 12 and his wife is suffering from chronic disease. Similarly, in respect to petitioner No. 2 his two children have completed their study and are of marriageable age for which he is running to find out a suitable match. His other two children are studying in inter final and class 2 while his wife is suffering from chronic disease and is awaiting for operation of gall bladder therefore the mid term transfer is otherwise causing serious hardship to the petitioners. The petitioners in other writ petitions have also stated their similar hardships.

4. The respondents have filed counter affidavit stating that Indian Telecom Industry Ltd. (hereinafter referred to as "ITI") is a public sector company registered under Indian Companies Act, 1956 having its corporate office at Bangalore and various Industrial units at six places including one at Naini (Allahabad). The ITI limited has incurred a colossal loss over Rs. 1000 crores in last four years and its financial condition is precarious. The company has become sick and is registered under Sick Industries (Special Provisions) Act, 1985 before Board for Industrial and Financial Reconstruction in September, 2004 and its rehabilitation scheme is under consideration. In its efforts to improve its profitability and after approval of the revival package by the Cabinet Committee of Economic Affairs it has bagged certain prestigious contracts including a contract of setting up of Global System for Mobile Network (hereinafter referred to as "GSM") of three million lines in the west zone comprising of four circles of Bharat Sanchar Nigam Ltd. (herein after referred to as "BSNL") namely Maharashtra, Gujarat, Madhya Pradesh and Chhattisgarh. Since the project is time bound, the ITI has to avail its existing staff from various units for posting in the project for speedy completion thereof. The only hope for revival of the company is utilization of due opportunity of GSM installation and other new projects. It requires 1300 employees since the quantum of the project is likely to grow i.e. from three million lines to 18 million lines in near future required for BSNL and Mahanagar Telephone Nigam Limited (hereinafter referred to as "MTNL"). The petitioners and others employees were appointed in ITI with the specific condition that they are transferable throughout India in any other unit, sale or

service office, other departments or any other posts. The ITI head office i.e. the corporate office issued a letter dated 15.10.2005 to ITI Naini with the directive to select competent persons for deployment at GSM project sites so as to complete the project within stipulated time. A copy of the letter has been enclosed as Annexure-CA-6 which provides that the persons selected for the said purpose must possess trade certificate and diploma qualification in CAT A to H and grade 1 to 4. There after on 14.11.2005 the corporate office issued another letter directing the ITI Naini unit to issue transfer orders for 300 persons posting them at different locations of GSM project. In order to select such person certain guidelines were also laid down by the corporate office and communicated to various units including ITI Naini vide letter dated 8.12.2005 a copy whereof is Annexure-CA-8 to the counter affidavit. It is in furtherance of the aforesaid guidelines and the directions issued by the corporate office the respondents, ITI Naini has issued the orders of transfer of several persons including petitioners strictly in accordance with the guidelines laid down by the corporate office and since the petitioners are being sought to be transferred in accordance with the conditions of their service the same is neither illegal nor is otherwise assailable. It is further stated that similar order of transfer issued by the Rai Bareilly unit, was challenged before the Lucknow Bench of this Court in Writ Petition No. 39 of 2006 and 41 of 2006 but the Division Bench declined to interfere with the order of transfer except of emitting the petitioners to make a representation which is to be considered by the competent authority. Similarly another Writ Petition No. 26564 of 2005 (Virendra Nath Srivastava v. Union of India and Ors.) from ITI Naini unit came up for consideration and Hon'ble Single Judge vide judgment dated 5.4.2004 has dismissed the same. It is further stated that in some matters where ex-parte interim orders have been passed by this Court at the time of admission of the writ petition, in one of such matters the respondents preferred SLP before the Apex Court and the interim order of this Court has been stayed by the Apex Court. The allegations of forcing of compulsory voluntary retirement upon the petitioners have also been denied.

5. The petitioners have filed rejoinder affidavit wherein the averments already made in the writ petition have been reiterated.

6. I have heard Sri S.K. Garg and Sri Gyan Prakash, learned Counsels for the petitioners and Sri Y.K. Sinha and Sri H.P. Dubey, learned Counsels appearing for the respondents. The learned Counsels for the petitioners have argued at great length and the rival submissions advanced by the parties give rise to the following questions to be answered by this Court:

1. Whether the petitioners' service is transferable from one unit to another unit only or it can be transferred from one place to another and the impugned order of transfer is permissible under the conditions of service.
2. Whether the impugned order of transfer is by way of punishment.
3. Whether the order of transfer is inconsistent to the transfer policy, and if so,

would it provide a cause of action to the petitioners to assail the order of transfer in a Court of law.

4. Whether the transfer of the petitioners is arbitrary.

5. Whether the transfer of the petitioners is a result of bias and mala fide.

7. I propose to deal the aforesaid issues as under:

Issue No. 1

8. From the pleadings of the parties and the documents available on record it is evident that the petitioners are liable to be transferred from one place to another or to any other position since the condition of appointment making their service transferable is worded in wide terms. The appointment letters of three petitioners in Writ Petition No. 29158 of 2006 have been placed on record as Annexure-CA-2 and the condition of appointment making service transferable as mentioned in the appointment letter of the aforesaid three petitioners is reproduced as under:

Petitioner No. 1: vkidk LFkkukUrj.k Hkkjro"kZ esa dEiuh dh nwljh bdkb;kas] fodz; ,oa lsodk;Zky;ks] vU; foHkkxks vFkok vU; inks ij fd;k tk ldsxk A

Petitioner No. 2: vkidk LFkkukUrj.k Hkkjro"kZ esa dEiuh dh nwljh bdkb;kas] fodz; ,oa lsodk;Zky;ks] vU; foHkkxks vFkok vU; inks ij fd;k tk ldsxk A

Petitioner No. 3: vkidk LFkkukUrj.k Hkkjro"kZ esa dEiuh dh nwljh bdkb;kas] fodz; ,oa lsodk;Zky;ks] vU; foHkkxks vFkok vU; inks ij fd;k tk ldsxk A

9. It is not disputed that the appointment letter of other petitioners are similarly worded. The English translation of the aforesaid condition of appointment as reproduced in this Court's judgment in Virendra Nath Srivastava (Supra) is as under:

You will be liable to be transferred to any of our Sales and Service Offices in India or Departments or to any other position in the Company.

10. A bare perusal of the above makes it clear that the petitioners services are transferable throughout India from one unit to another or any Sales or Service Offices or Department or to any other position. The GSM project of ITI Ltd. is a kind of work charge unit created by the company as a result of getting the said contract and in order to complete the said project it has identified various sites and for administrative functioning, has made its head office at Mankapur unit but ultimately is to be governed by the ITI's corporate office. From the language and condition of appointment making service transferable it is evident that the petitioners can be transferred to any position or post also irrespective of site, unit or office of ITI. It is consistent with the very nature of the work, which has to be discharged by the company itself. Therefore, it cannot be said that the aforesaid condition of appointment does not empower the respondents to transfer petitioners to the aforesaid project or to various sites of the said project.

11. In National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and

others, a similar argument was raised that the employees of the Corporation cannot be transferred to the Project but it was held that the corporate office and Project constitute different units and employees can be transferred from one place to other being an incidence of service and no exception can be taken to such transfer order. Therefore, I was hold that the petitioners are transferable in accordance with the terms of their agreement. Issue No. I is decided accordingly.

Issue No. 2

12. The learned Counsel for the petitioners sought to heavily rely upon the language of impugned orders of transfer in order to show that it is by way of punishment. It is submitted that the petitioners were sent at six weeks tour of various sites of GSM project and while they were on tour the impugned orders of transfer were passed wherein it is mentioned that the concerned employees, if they request to carry household goods may be relieved for one week to meet their family members and report back to the sites which show that it is a kind of punishment imposed upon the petitioners. I am unable to agree. The respondents have clearly explained the circumstances in which they had to take effective steps for completion of the GSM project. Annexure-CA-6 to the counter affidavit mentions that GSM project is an ambitious and prestigious one for company necessary for its sustenance, and has to be completed within a time bound programme so as to enable the company to secure more orders for the said purpose. The deployment of requisite staff in such a time bound project, therefore, has also to be completed at a greater pace. The orders of transfer state that the transferred staff be immediately required to join at the transferred place and may be allowed only a week's time, if requested to meet their families which show the anxiety of the respondents to get the requisite staff available at the earliest and their continuous availability for completion of the work. Such an anxiety of the employer is natural and cannot be read as if it is a punishment to the employees. Moreover, besides paying transfer allowances and other charges necessary for transfer, the respondents have also permitted the transferred employees to retain the company accommodation which has already been allotted to them so that their family may not be dislodged as a result of the aforesaid transfer. This also shows the equitable approach on the part of the respondents for the welfare of the employees and their family. The Court specifically enquired from the learned Counsels for the petitioners but despite repeated query they could not show anything that the impugned orders of transfer result in any loss or reduction in status, pay, or other allowances or benefits to the petitioners. There is no pleading and not even a whisper in the entire writ petition on this aspect. In these circumstances, it cannot be said that the impugned order of transfer is by way of punishment.

13. At this stage, learned Counsel for the petitioners sought to argue that the seniority of the petitioners is unit based and in case they are transferred from ITI, Naini unit to any other unit, it would affect their position in seniority at the place of transfer which in the consequence may likely affect their chances of

promotion and, therefore, the order of transfer is penal in nature. It is submitted that the petitioners are enjoying a particular place in seniority at I.T.I. Nairn Unit and in case they are transferred to G.S.M. Project, it would affect their position of seniority which is not permissible. The submission in my view is misconceived. It is not disputed between the parties that at the place of transfer, the petitioners shall join with the benefit of length of service and for the purpose of seniority, length of service rendered by them at the earlier unit shall be given due credit. That being so, once the service is transferable from one unit to another throughout the country, the order of transfer is not open to challenge on the ground that it is likely to affect the chances of promotion at the earlier unit where the incumbents were working. A similar argument assailing the order of transfer came up for consideration before the Apex Court in *National Hydro Electric Power Corporation Ltd. v. Sri Bhagwan and Ors.* (supra) and the Apex Court held in para 5 of the judgment as under:

We are also unable to agree with the learned Counsel for the respondents that Rule 4.1.1 of the Seniority Rules interdicts any transfer of the employees from one Office or Project or Unit to any one of the other as long as the seniority of such an employee is protected based on the length of service with reference to the date of promotion or appointment to the grade concerned irrespective of the date of transfer. We also consider it to be a mere submission in vain, the one urged on the basis of alleged adverse consequences detrimental to their seniority resulting from such transfer....

14. Moreover, mere chance of promotion is not a condition of service guaranteed to an employee but he has only a right of consideration for promotion as and when any vacancy occur and he is within the zone of consideration and field of eligibility, then only he is entitled to be considered. Mere withholding or deferment of a chance of promotion, cannot be a ground to vitiate an otherwise valid order of transfer made in accordance with the conditions of service applicable to the concerned employee. Issue No. 2 is, therefore, answered in negative.

Issue No. 3

15. Sri Gyan Prakash, learned Counsel appearing for the petitioners stated that ITI Naini unit has laid down certain guidelines for posting at GSM project circulated by its office note dated 25.11.2005 and though the petitioners are not covered under any of the criteria provided therein still they have been transferred which is inconsistent to the transfer policy adopted by the respondents. On the contrary the respondents have relied upon the guidelines provided by the corporate office vide circular dated 8.12.2005 in order to show that in making transfer of the petitioners, the guidelines laid down in the corporate office's circular dated 8.12.2005 has been followed. The guidelines laid down in ITI Naini unit's office order dated 25.11.2005, Anneuxre-8 to the Writ Petition No. 18801 of 2006 reads as under:

Further to discussion held on 7.11.2005 at the level of AGM-N regarding the requirement of additional manpower for GSM work please find attached the list of personnel from Cat. "E" to Grade 4 working under your control. While furnishing the list of personnel for pasting at GSM project following criteria may taken into consideration.

- a. Officers/Non-officers having balance services of more than one years or less than 6 years.
- b. Officers and non officers should be nominated in the ratio of 2:1 (Two Officers one Non officers)
- c. Female Officers/Non Officers should not be nominated.
- d. No officers/No officers having chronic decease be nominated.

That list is being sent to facilitate you to nominate personnel for the GSM work. Please nominate 30% of the population of your department the basis of the above criteria and forward the list of nominated personal to DGM-HRD by 28.11.2005.

16. However, the guidelines laid down in the corporate office's circular dated 8.12.2005 reads as under:

Guidelines for transfer of Personnel to projects.

During the discussions in the Plant Heads Meeting held on 3 rd/rth Dec. 2005 the issue on a uniform policy on selection/identification of the employees for deputation/transfer to various projects was discussed. The norms adapted by Naini Plant Management based on an understanding arrived with the recognised Union that was presented by AGM, Naini is indicated herebelow. These norms have been prepared by Naini keeping in view the manpower profile of the Plant viz., age/service profile, total strength/ ratio of officers to Non-officers and other local conditions.

1. Employees to be selected/identified in the ratio of 2:1 from among group A and group B. Group A- To comprise of employees with left over service of more than 1 year to 4 years. Group B- To comprise of employees with more than 4 years, in view of the existing ratio of manpower.
2. Officers to Non-Officers to be selected in the ratio of 2:1.
3. Female employees not to be deputed except those who volunteer for transfer.
4. No sitting representatives of Union/s to be nominated.

While other Plants may frame norms on arriving at an understanding with the Union/s, the above guidelines may be kept in view for the purpose of maintaining uniformity. Ratio of it served categories may also be followed while finalizing the transfer list.

While on the subject we would like to stress that an decided in the Unit Heads Meeting, the transfer order in respect of employees being deputed as per out instructions vide ION of even reference dated 14.11.2005 should be issued immediately to ensure that employees positioned in the respective place of posting positively by 31.12.2005.

17. The respondents have specifically pleaded that the impugned orders of transfer have been issued by selecting the persons strictly in accordance with the guidelines as contained in letter dated 8.12.2005 issued by the corporate office. Para 52 of the counter affidavit in Writ Petition No. 29158 of 2005 is reproduced as under:

That in reply to the contents of para 35 of the writ petition it is submitted that the personnel have been selected for transfer strictly in accordance with the guidelines as contained in the letter dated 8.12.2005 issued from Corporate Office. It is wholly wrong to state that there is any, discrimination between the Muslim and Yadav on account of fact that the head of the department of Cos turner Support Service is Yadav by caste. The averments made in paragraph under reply are totally misleading and ill founded and as such are denied. It is stated that the personnel's have been selected for transfer strictly in accordance with the guidelines issued by the Corporate Office vide order dated 8.12.2005. It is further submitted that the selection has not been made in religion or caste basis. It is the competence and skill of an employee on the basis whereof he has been selected for transfer. Any averments made by the petitioner contrary to this is totally misleading and as such denied.

(emphasis added)

18. The petitioners have replied the aforesaid paragraph in para 24 of the rejoinder affidavit which reads as under:

That the contents of paragraph Nos. 52, 53 and 54 of the counter affidavit are material of records and the averments made in para 52 of the counter affidavit are not correctly stated hence denied. In reply it is submitted that in the present case the transfer order of the petitioners has not been passed by the management with clean hands and has been passed only with mala fide and ulterior motive from the selected persons as stated in detailed in preceding paragraphs of the rejoinder affidavit and therefore, the transfer order of petitioners is liable to be quashed.

19. In reply to the petitioners averments with respect to ITI Naini units letter dated 25.11.2005, in para 16 of the counter affidavit in Writ Petition No. 18801 of 2006, it has been stated that the persons have been selected and sought to be transferred as per guidelines contained in the corporate office's letter dated 8.12.2005. The petitioners have replied the same in para 11 of the rejoinder affidavit in Writ Petition No. 18801 of 2006 as under:

That in reply to contents of paragraph No. 16 of the counter affidavit, it is stated

here that Naini unit has framed it's transferred policy vide dated 25.11.2005. The Naini units has not framed any other transferred policy thereafter. The unit has to follow it's policy. It is further stated here that the contents of para 16 of the counter affidavit is not correct in relation to selection of candidate for sending to project. The respondents has not " prepared any list of selected candidates and also has not made clear to send them by way of ascending of descending order. The respondents are using pick and choose policy.

20. Thus from the aforesaid pleadings it is evident that the respondents have categorically taken a stand that the persons have been selected and are being transferred as per the guidelines laid down by corporate office's circular dated 8.12.2005. The petitioners though have vaguely denied the same but have not said anything to demonstrate that the said guidelines have not been followed. So far as reference to the ITI unit's letter dated 25.11.2005 is concerned, in my view once the corporate office has issued an order, the guidelines if any laid down at the unit level would stand superseded. In fact the respondents have also taken the said stand as is evident from the averments made in para 44 of the counter affidavit in Writ Petition No. 18801 of 2006 which reads as under:

That the contents of paragraph No. 27 of the writ petition are not admitted as stated. It is stated that a detailed reply in this behalf has already been given in the preceding paragraphs of this Counter Affidavit. However, it may be stated that in place of the inter office note dated 25.11.2005, another letter has been issued by the Corporate Office on 8.12.2005 and now the transfers are being effected strictly in accordance with the guidelines contained in the circular dated 8.12.2005.

21. Thus, it cannot be said that the orders of transfer of the petitioners in any manner are inconsistent to the guidelines laid down by the respondents corporate office circular dated 8.12.2005 and reliance placed on letter dated 25.11.2005 has no substance in view of subsequent order issued by the higher authority i.e. the Corporate Office of ITI.

22. Coming to the alternative argument, even if it is assumed that there is some infraction of the guidelines laid down by ITI Naini, whether it would provide a cause of action to vitiate an order of transfer.

23. The answer is clearly no and is no more res integra. It is well established that the guidelines laid down for transfer are only for general guidance of the authorities concerned and infraction thereof, if any, would not provide any cause of action to an employee to assail the order of transfer in a Court of law.

24. In Mrs. Shilpi Bose and others Vs. State of Bihar and others, the Hon''ble Apex Court held as under:

A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to other. Transfer orders issued by the competent authority do not violate any of his

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

25. In the case of Union of India and Others Vs. S.L. Abbas, the Apex Court held as under:

The said guideline however does not confer upon the Government employee a legally enforceable right.

26. Same view has been expressed by a Division Bench of this Court in Special Appeal No. 1293 of 2005, Gulzar Singh v. State of U.P. and others decided on 7.11.2005. Thus also even if it is assumed that there is some infraction of the transfer policy laid down by the respondents, the order of transfer would not stand vitiated for that reason alone.

Issue No. 4 & 5

27. Both can be dealt together. The petitioners have argued that in respect to certain persons the orders of transfer were issued but subsequently have been cancelled which show that transfer of petitioners is arbitrary. This by itself cannot be accepted. There may be more than one reason to transfer a person or not which is within the realm of the discretion of the administrative authority. Unless an order of transfer is vitiated on account of mala fide or is in violation of statutory provisions, the same cannot be interfered by the Court. Who should be posted and transferred is a matter for the appropriate authority to decide and not a matter of juridical review. In S.L. Abbas (Supra) the Apex Court in para 7 of the of the judgment observed as under:

Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it.

28. In National Hydro-Electric Power Corporation Ltd. (Supra) the Hon"ble Apex Court held as under:

It is by now well settled and often reiterated by this Court that no Government servant or employee of public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned.

(emphasis added)

29. In the case of *State of U.P. v. Gobardhan Lal* AIR 2004 SC 2166 the Hon''ble Apex Court held as under:

It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order or transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the office or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

(emphasis added)

30. A transfer is an incidence of service. It is well accepted principle of service jurisprudence. In the matter of transfer the competent authority has wide discretion and the competent administrative authority is the only best judge to decide how to distribute and utilize the service of its employees in the best possible manner. The only restriction is that such power must be exercised honestly, bonafide and reasonably. In *E.P. Royappa Vs. State of Tamil Nadu and Another*, the Apex Court held:

It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The government is the best judge to decide how to distribute and utilize the services of its employees. However, this power must be exercised honestly, bonafide and reasonably.

31. In *B. Varadha Rao Vs. State of Karnataka and Others*, the Hon''ble Apex Court in the case of *B. Varadha Rao v. State of Karnataka and Ors.* held as under:

It is well understood that transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary

incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post.

32. In *Mrs. Shilpi Bose and Ors. v. State of Bihar and Ors.* (Supra) the Hon'ble Apex Court held as under:

If the courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders.

33. In the same judgment the Hon'ble Apex Court also held that a transfer order, even if, is issued to accommodate a public servant to avoid hardship, the same can not and should not be interfered by the Court merely because transfer orders were passed on the request of the concerned employees. No person has a vested right to remain posted to a particular place, and unless the transfer order is passed in violation of any mandatory rule, the High Court had no jurisdiction to interfere with the transfer orders. Relevant observation is quoted as under:

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

(emphasis added)

34. Though the allegations of mala fide have been levelled by the petitioners but there is no authority impleaded eo-nomine against whom mala fide is alleged and in the absence thereof the allegations of mala fide can neither be entertained nor can be looked into. Where a mala fide is alleged the authority who has passed the order and is said to have exercised the power with mala fide has to be impleaded eo-nomine failing which the Court shall not even entertain the allegations of mala fide.

35. In *State of Bihar v. P.P. Sharma* 1992 (1) SCC 222 in para 55 of the judgment, the Apex Court held as under:

It is a settled law that the persons against whom mala fides or bias was imputed should be impleaded eo nomine as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry

into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to contemning a person without an opportunity. Admittedly, both R.K. Singh and G.N. Sharma were not impleaded. On this ground alone the High Court should have stowed enquiry into the allegation of mala fides or bias alleged against them.

36. In AIR 1996 SC 326 J.N. Banavalikar v. Municipal Corporation of Delhi in para 21 of the judgment, it has been held as under:

Further in the absence of impleadment of the...the person who had allegedly passed mala fide order in order to favour such junior doctor, any contention of mala fide action in fact i.e. malice in fact should not be countenanced by the Court.

37. In All India State Bank Officers' Federation and Others Vs. Union of India (UOI) and Others, the Hon''ble Apex Court has said where a person, who has passed the order and against whom the plea of mala fide has been taken has not been impleaded, the petitioner cannot be allowed to raise the allegations of mala fide and held as under:

The persons against whom mala fides are alleged must be made a party to the proceeding. Board of Directors of the Bank sought to favour respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of the mala fide, which allegations, in fact, are without merit.

38. Recently in Federation of Railway Officers Association and Others Vs. Union of India (UOI), it has been held as under:

That allegations regarding mala fides cannot be vaguely made and it must be specified and clear. In this context, the concerned Minister who is stated to be involved in the formation of New Zone at Haziyr is not made a party who can meet the allegations.

39. Same view has been taken following the aforesaid authorities, by a Division Bench of this Court in Writ Petition No. 68143 of 2005, R.K. Pandey v. New India Insurance Company Ltd. and Ors. decided on 31.1.2006. Moreover from the pleadings in writ petitions I do not find sufficient material to substantiate the plea of mala fide. If in case of certain persons, orders of transfer have been cancelled, the same by itself would not make the orders of transfer of others to be mala fide. Heavy onus lies upon a person who alleged mala fide against individual to prove the allegations of mala fide S. Pratap Singh Vs. The State of Punjab, . In State of U.P. v. Gobardhan Lal (Supra) while examining the plea of mala fide the Court held:

Even the allegation of mala fide when made such has to inspire confidence in the Court or are based on concrete materials and are not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises.

40. The issues Nos. 4 and 5 thus are also answered in negative.

41. Before parting, this Court find it necessary in the facts and circumstances of there writ petitions to make certain observations. The petitioners are the employees of a public sector undertaking like I.T.I., Though they are not holders of civil post, but are the employees of a public sector corporation wherein the hard earned money of taxpayers is at stakes. They should realize their duties and obligation to the Corporation in particular and public at large in general and behave like a diligent and devoted employee. The Corporation, as stated, is already under colossal losses, struggling for its survival. Its good health is necessary for providing livelihood to the petitioner employees also. If the ITI itself fails, the petitioner employees are also bound to face similar consequences. The ITI is making all out efforts to survive and in furtherance whereof has bagged certain contracts, execution whereof in time is crucial for its continuance of getting more contracts and for its sustenance. The petitioner employees instead of being motivated by their personal interest of avoiding dislocation from a place where they were working for long, ought to have shown more sense of responsibility by extending their helping hand to I.T.I., extending their support for timely execution of work for which they were sought to be deployed. Instead, by concealing the fact that under the conditions of their service they are transferable throughout the country, the writ petitions have been filed by these petitioners and on account of non disclosure of full facts they were able to obtain interim orders which hampered the very objective of I.T.I., of their deployment in GSM project. These kinds of activities are detrimental and subservient to the interest of not only the Undertaking itself but also to the public at large. This Court deprecate such conducts of the petitioners, particularly, non-disclosure of the fact that under the letters of appointment, services of the petitioners were liable to be transferred throughout India. The petitioners are, therefore, also guilty of concealment of material fact and this is another reason, disentitling them for any equitable relief under Article 226 of the Constitution besides lack of merit on various issues as already discussed above.

42. In view of the aforesaid I do not find any illegality in the orders of transfer warranting any interference in the extra ordinary jurisdiction under Article 226 of the Constitution of India. The writ petitions, therefore, lack merit and are dismissed. Interim orders, if any, are vacated.

43. The petitioners shall be liable to pay costs which is quantified at Rs. 2000/- per writ petition.