
(2015) 04 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8502 of 2015

Venakteswarlu Gudde

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 04 AP CK 0004

Hon'ble Judges : Ramesh Ranganathan, J; M. Satyanarayana Murthy, J

Bench : Division Bench

Advocate : A. Satya Prasad, Learned Senior Counsel for Pratyusha Appari, for the Appellant; B. Narayana Reddy, Learned Assistant Solicitor General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, J.—The order, under challenge in this Writ Petition, was passed by the Central Administrative Tribunal, Hyderabad bench ("Tribunal" for short) in O.A. No. 021/01306/2014/2014 dated 10.03.2015 dismissing the O.A. filed by the petitioner. The proceeding under challenge before the Tribunal was the office memorandum dated 07.11.2014 whereby the Administrative Officer of the National Geophysical Research Institute, Hyderabad (NGRI) informed the petitioner that the Joint Secretary (Administration) of the Council for Scientific and Industrial Research (CSIR) had approved his transfer from NGRI to the Central Institute of Medicinal and Aromatic Plants Research Centre (CIMAP) at Hyderabad in the same capacity; and the Acting Director, NGRI had accorded approval for the petitioner being relieved from NGRI with effect from 07.11.2014 to enable him to join CIMAP. The petitioner was informed that, as the transfer was in public interest, he would be entitled for joining time etc.

2. Facts, to the extent necessary, are that the petitioner was initially appointed by the CSIR as Assistant Grade-I, and was posted at the National Environment Engineering Research Institute (NEERI) at Nagpur. He joined thereat on

15.03.1999. On completion of four years of service he was transferred, at his request in the year 2003, and was posted at NGRI Hyderabad. The petitioner appeared for selection to the post of Section Officer (G) and, on his passing the examination, was selected and appointed as a Section Officer. The petitioner claims to have sought for his retention at Hyderabad, but was posted as Section Officer (G) at the Structural Engineering Research Centre (SERC), Chennai. The petitioner joined SERC on 11.02.2005. He was transferred thereafter to the Central Electrochemical Research Institute (CECRI) Karaikudi, in the State of Tamilnadu, on 29.12.2006. Questioning the order of transfer, he filed O.A. No. 112 of 2007 before the Central Administrative Tribunal, Madras Bench. The CAT, Madras bench passed an interim order directing the respondents to consider the petitioner's representation for his retention at Chennai. After considering his representation the respondents, by letter dated 15.03.2007, modified the earlier transfer order and retained the petitioner at SERC, Chennai. The CAT, Chennai, by order dated 26.03.2007, closed the O.A. as infructuous.

3. The petitioner was, thereafter, transferred to the Indian Institute of Chemical Technology (IICT), Hyderabad on 07.07.2010, and was relieved on 05.08.2010 to enable him to join duty thereat. When he reported at the IICT, Hyderabad on 06.08.2010, the petitioner was informed that he was transferred to the Centre for Cellular and Molecular Biology (CCMB), Hyderabad. The petitioner joined at CCMB, Hyderabad on 06.08.2010. On the ground that Sri Anantaraao, who was promoted and posted at NGRI, did not join thereat, the petitioner was transferred to NGRI, Hyderabad on 03.01.2012. The petitioner filed O.A. No. 68 of 2012 before CAT, Hyderabad bench questioning his transfer to NGRI. The said O.A. was dismissed by CAT, Hyderabad bench which, in its order dated 23.01.2012, observed that the petitioner's grievance was regarding his transfer to a place half a kilometre from his present place of work; and the O.A. as filed was atrocious and without merit. The petitioner joined duty at NGRI on 23.01.2012.

4. Thereafter, by the impugned proceedings dated 07.11.2014, the petitioner was transferred to CIMAP at Hyderabad, located at a distance of less than two kilometres from NGRI. Aggrieved thereby, the petitioner filed the present O.A. and the Tribunal, by its order dated 11.11.2014, initially directed the respondents to maintain status quo. On the ground that he was already relieved, and the order of the Tribunal did not allow him to function at NGRI, the respondent did not permit the petitioner to join duty at NGRI. The petitioner filed C.C. No. 171 of 2014 alleging violation of the order of status quo passed by the Tribunal. The respondents filed their counter, in the said Contempt Case, stating that the representation submitted by the petitioner on 17.11.2014 was considered and his request was rejected on the ground that, on the date when the order was passed by the Tribunal directing maintenance of status quo, he had already been relieved and it was, therefore, not possible to take him back on duty at NGRI. On the O.A. being dismissed thereafter, the petitioner has now invoked the jurisdiction of this Court.

5. Sri A. Satya Prasad, Learned Senior Counsel appearing on behalf of the petitioner, would question the order of transfer on the following grounds: (1) the petitioner's transfer to CIMAP is in violation of the transfer guidelines and is, therefore, arbitrary. The transfer guidelines confer power only on the Director General, CSIR to effect exigent transfers/transfer in public interest for common cadre officers. The impugned order of transfer was passed not by the Director-General CSIR, but by the Joint Secretary (Administration), CSIR who is not competent to pass the order of transfer. The order of transfer is, therefore, illegal. (2) there is no sanctioned post of Section officer available in CIMAP, and transferring a person to a non-existent post amounts to a change in the conditions of his service, and is an act to victimisation. (3) frequent transfers, from one place to another, is arbitrary and in violation of Article 14 of the Constitution of India. (4) no order of transfer was served on the petitioner before the order, relieving him from NGRI, was served on him on 07.11.2014; and this procedure was adopted by the respondents only to deprive him of his right to avail his judicial remedies. Learned Senior Counsel would rely on *Rajendra Roy Vs. Union of India (UOI)* and *Another*, AIR 1993 SC 1236 : AIR 1992 SC 1236 : (1992) 6 JT 732 : (1993) LabIC 446 : (1992) 3 SCALE 218 : (1993) 1 SCC 148 : (1993) 1 SLJ 93 , and *T.S.R. Subramanian and Others Vs. Union of India (UOI) and Others*, (2014) 1 ABR 110 : (2013) 11 AD 431 : AIR 2014 SC 263 : (2013) 14 JT 124 : (2014) LabIC 1542 : (2013) 13 SCALE 340 : (2014) 1 SCT 255 : (2014) 1 SLJ 175 , in this regard.

6. On the other hand Sri M. Srikanth, Learned Counsel for the respondents, would submit that the transfer guidelines are not enforceable; even otherwise, the transfer guidelines do not prohibit the appointing authority i.e., the Joint Secretary (Administration), CSIR from transferring the petitioner from one laboratory in Hyderabad to another; the distance between NGRI and CIMAP is less than two kilometres; the post of Section Officer is a common cadre post, and a sanctioned post; common cadre officers are posted at different laboratories by CSIR based on administrative exigencies; unlike common cadre posts, posts are also sanctioned separately for each of the laboratories under the control of CSIR; it is because the services of a Section Officer was required in CIMAP, was the petitioner transferred thereto; transfer of common cadre officers, from one laboratory to another, is based on administrative exigencies and the requirements of the concerned laboratory; as common cadre officers are posted to different laboratories of CSIR as and when needed, existence of a sanctioned post in each of the laboratories is not a pre-requisite for their being posted thereat; the petitioner cannot be said to have suffered prejudice thereby, as the pay and allowances and other benefits which he is entitled to, on his being posted at CIMAP, would not be less than what he was getting at NGRI; while the impugned transfer order was sent directly to the petitioner from CSIR, New Delhi by post, a copy thereof was sent to NGRI by fax on 05.11.2014; as the relieving order was required to be issued by them, NGRI had served the relieving order on the petitioner directly on 07.11.2014; a copy of the transfer order, issued to the

petitioner by CSIR, New Delhi was received in the office of NGRI, Hyderabad on 10.11.2014; on its receipt the said order was sent by NGRI, to the petitioner's residence, by courier on 11.11.2014; it is in such circumstances that the relieving order was served on the petitioner before the transfer order; and the petitioner cannot take advantage of this error and claim continuance at NGRI till 11.11.2014 or thereafter. Learned Counsel would rely on *State of U.P. and Others Vs. Gobardhan Lal*, AIR 2004 SC 2165 : (2004) 101 FLR 586 : (2004) 5 JT 454 : (2004) 3 LLJ 749 : (2004) 3 SCALE 574 : (2004) 11 SCC 402 : (2005) SCC(L&S) 55 : (2004) 1 SCR 337 : (2004) 3 SLJ 244 : (2004) AIRSCW 4571 : (2004) AIRSCW 2082 : (2004) 3 Supreme 92 : (2004) 6 Supreme 161 ; *Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others*, AIR 1995 SC 813 : (1995) 1 JT 440 : (1995) 1 SCALE 250 : (1995) 2 SCC 532 : (1995) 1 SCR 360 : (1995) 1 UJ 435 ; and *State Bank of India Vs. Anjan Sanyal and Others*, AIR 2001 SC 1748 : (2001) 90 FLR 14 : (2001) 5 JT 203 : (2001) LabIC 1698 : (2001) 1 LLJ 1687 : (2001) 3 SCALE 329 : (2001) 5 SCC 508 : (2001) SCC(L&S) 858 : (2001) 2 SCR 1165 : (2001) 2 SCT 817 : (2001) 3 SLJ 270 : (2001) AIRSCW 1674 : (2001) 3 Supreme 436 .

7. Before examining the rival submissions it is necessary to consider the scope of interference by Courts/Tribunals with orders of transfer of a Government servant or an employee of a public sector undertaking. Transfer of an employee, appointed to a class or category of transferable posts, from one place to another is not only an incident, but a condition, of service necessary too in public interest and efficiency in public administration. No government servant has a legal right to be posted forever at any one particular place or a place of his choice. (*Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and Others*, (2004) 9 JT 185 : (2004) 8 SCALE 188 : (2004) 12 SCC 299 ; *Major General J.K. Bansal Vs. Union of India (UOI) and Others*, AIR 2005 SC 3341 : (2005) 107 FLR 37 : (2005) 8 JT 11 : (2005) 7 SCC 227 : (2005) SCC(L&S) 932 ; *Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another*, AIR 2004 SC 1632 : (2004) 2 JT 371 : (2004) 2 LLJ 1057 : (2004) 2 SCALE 430 : (2004) 4 SCC 245 : (2004) SCC(L&S) 631 : (2004) 3 SCR 356 : (2004) 2 SLJ 446 : (2004) AIRSCW 955 ; *National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others*, (2001) 7 AD 501 : AIR 2001 SC 3309 : (2001) 91 FLR 259 : (2001) 7 JT 515 : (2001) LabIC 3360 : (2001) 2 LLJ 1243 : (2001) 6 SCALE 228 : (2001) 8 SCC 574 : (2002) 1 SCT 236 : (2002) 1 SLJ 86 : (2001) AIRSCW 3548 : (2001) 6 Supreme 883). Transfer of a public servant, on administrative grounds or in public interest, should not be interfered with unless there are strong and compelling grounds rendering the transfer order improper and unjustifiable. (*Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others*, AIR 1995 SC 813 : (1995) 1 JT 440 : (1995) 1 SCALE 250 : (1995) 2 SCC 532 : (1995) 1 SCR 360 : (1995) 1 UJ 435). Who should be transferred, and posted where, is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any operative guidelines or rules, Courts should not,

ordinarily, interfere with it. (Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and Others, (2004) 9 JT 185 : (2004) 8 SCALE 188 : (2004) 12 SCC 299 ; Union of India and Others Vs. S.L. Abbas, AIR 1993 SC 2444 : (1993) 3 JT 678 : (1993) LabIC 1311 : (1993) 2 LLJ 626 : (1993) 2 SCALE 718 : (1993) 4 SCC 357 ; Major General J.K. Bansal Vs. Union of India (UOI) and Others, AIR 2005 SC 3341 : (2005) 107 FLR 37 : (2005) 8 JT 11 : (2005) 7 SCC 227 : (2005) SCC(L&S) 932 ; Abani Kanta Ray Vs. State of Orissa and Others, (1995) 71 FLR 1134 : (1995) 7 JT 467 : (1995) 6 SCALE 41 : (1995) 4 SCC 169 Supp : (1995) 4 SCC 169 : (1995) 4 SCR 333 Supp ; Union of India and Others Vs. S.L. Abbas, AIR 1993 SC 2444 : (1993) 3 JT 678 : (1993) LabIC 1311 : (1993) 2 LLJ 626 : (1993) 2 SCALE 718 : (1993) 4 SCC 357).

8. A government servant, or an employee of a public undertaking, has no legal right to insist on being posted at any particular place. A person holding a transferable post, unless specifically provided in his service conditions, has no choice in the matter of posting. (Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others, AIR 1995 SC 813 : (1995) 1 JT 440 : (1995) 1 SCALE 250 : (1995) 2 SCC 532 : (1995) 1 SCR 360 : (1995) 1 UJ 435). Unless there is a term to the contrary in the contract of service, a transfer order is a normal incidence of service. (Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi, AIR 2004 SC 1373 : (2004) 4 CTC 544 : (2004) 1 JT 58 : (2004) 1 LLJ 1041 : (2004) 1 SCALE 280 : (2004) 3 SCC 172 : (2004) SCC(L&S) 453 : (2004) 1 SCR 166 : (2004) 2 SLJ 134). In a transferable post, an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department, and not the Court. (Rajendra Roy). Unless the order of transfer is shown to be an outcome of a malafide exercise of power or as violative of any statutory provision (an Act or rule) or is passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or for every type of grievance sought to be made. (State of U.P. and Others Vs. Gobardhan Lal, AIR 2004 SC 2165 : (2004) 101 FLR 586 : (2004) 5 JT 454 : (2004) 3 LLJ 749 : (2004) 3 SCALE 574 : (2004) 11 SCC 402 : (2005) SCC(L&S) 55 : (2004) 1 SCR 337 : (2004) 3 SLJ 244 : (2004) AIRSCW 4571 : (2004) AIRSCW 2082 : (2004) 3 Supreme 92 : (2004) 6 Supreme 161).

9. Courts should not, ordinarily, interfere with a transfer order made in public interest and for administrative reasons. A government servant holding a transferable post has no vested right to remain posted at one place, and is liable to be transferred from one place to the other. Transfer orders, issued by the competent authority, do not violate any of his legal rights. (Mrs. Shilpi Bose and others Vs. State of Bihar and others, AIR 1991 SC 532 : (1991) LabIC 360 : (1991) 2 LLJ 591 : (1991) 2 SCC 659 Supp ; Major General J.K. Bansal Vs. Union of India (UOI) and Others, AIR 2005 SC 3341 : (2005) 107 FLR 37 : (2005) 8 JT 11 : (2005) 7 SCC 227 : (2005) SCC(L&S) 932). Transfer is an incident of service and is made in administrative exigencies, and such orders should not be interfered with except where the transfer has been made in a vindictive manner.

(Public Services Tribunal Bar Association Vs. State of U.P. and Another, AIR 2003 SC 1115 : (2003) 96 FLR 1048 : (2003) 1 JT 534 : (2003) 1 SCALE 564 : (2003) 4 SCC 104 : (2003) 1 SCR 666 : (2003) 2 SLJ 14 : (2003) AIRSCW 653 : (2003) 4 Supreme 316 ; Tushar D. Bhatt Vs. State of Gujarat and Another, (2009) 123 FLR 431 : (2009) 2 JT 474 : (2009) 2 SCALE 501 : (2009) 11 SCC 678 : (2009) 2 SCC(L&S) 668 : (2009) 4 SCR 229 : (2009) 3 SLJ 88).

10. Whenever a public servant is transferred, he must comply with the order. If, however, there be any genuine difficulty in proceeding on transfer, it is open to him to make a 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 public servant concerned must carry out the order of transfer. He would not be justified in avoiding or evading the 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. If he fails to comply with the transfer order, he would expose himself to disciplinary action under the relevant rules. (Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, AIR 1989 SC 1433 : (1989) 59 FLR 474 : (1989) 3 JT 20 : (1989) 2 LLJ 470 : (1989) 1 SCALE 907 : (1989) 1 SCALE 1483 : (1989) 2 SCC 602 : (1989) 2 SCR 357 : (1989) 3 SLJ 68 : (1989) 2 UJ 222 ; Tushar D. Bhatt Vs. State of Gujarat and Another, (2009) 123 FLR 431 : (2009) 2 JT 474 : (2009) 2 SCALE 501 : (2009) 11 SCC 678 : (2009) 2 SCC(L&S) 668 : (2009) 4 SCR 229 : (2009) 3 SLJ 88). When an employee does not join at his transferred place, he commits a misconduct. (Novartis India Ltd. Vs. State of West Bengal and Others, (2009) 120 FLR 618 : (2008) 13 JT 12 : (2009) 2 LLJ 9 : (2008) 15 SCALE 470 : (2009) 3 SCC 124 : (2009) 1 SCC(L&S) 595 : (2009) 2 SLJ 252 : (2009) 1 SLR 675). Non-compliance with the transfer order amounts to refusal to obey the orders passed by superiors for which the employer can reasonably be expected to take appropriate action against the employee concerned. (Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi, AIR 2004 SC 1373 : (2004) 4 CTC 544 : (2004) 1 JT 58 : (2004) 1 LLJ 1041 : (2004) 1 SCALE 280 : (2004) 3 SCC 172 : (2004) SCC(L&S) 453 : (2004) 1 SCR 166 : (2004) 2 SLJ 134).

11. Order of transfer should not be interfered with lightly by a Court of law in the exercise of its discretionary jurisdiction, unless the Court finds that either the order is malafide or that the service rules prohibit such transfer or that the authority, who issued the order, had not the competence to pass the order. (State Bank of India Vs. Anjan Sanyal and Others, AIR 2001 SC 1748 : (2001) 90 FLR 14 : (2001) 5 JT 203 : (2001) LabIC 1698 : (2001) 1 LLJ 1687 : (2001) 3 SCALE 329 : (2001) 5 SCC 508 : (2001) SCC(L&S) 858 : (2001) 2 SCR 1165 : (2001) 2 SCT 817 : (2001) 3 SLJ 270 : (2001) AIRSCW 1674 : (2001) 3 Supreme 436). A challenge to an order of transfer should, normally, not be countenanced by Courts or Tribunals as though they are appellate authorities over such orders. Courts or Tribunals cannot substitute their own decisions, in the matter of transfer, for that of the competent authorities. (State of U.P. and Others Vs. Gobardhan Lal, AIR 2004 SC 2165 : (2004) 101 FLR 586 : (2004) 5

JT 454 : (2004) 3 LLJ 749 : (2004) 3 SCALE 574 : (2004) 11 SCC 402 : (2005) SCC(L&S) 55 : (2004) 1 SCR 337 : (2004) 3 SLJ 244 : (2004) AIRSCW 4571 : (2004) AIRSCW 2082 : (2004) 3 Supreme 92 : (2004) 6 Supreme 161 ; Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and Others, (2004) 9 JT 185 : (2004) 8 SCALE 188 : (2004) 12 SCC 299 ; Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, AIR 2004 SC 1632 : (2004) 2 JT 371 : (2004) 2 LLJ 1057 : (2004) 2 SCALE 430 : (2004) 4 SCC 245 : (2004) SCC(L&S) 631 : (2004) 3 SCR 356 : (2004) 2 SLJ 446 : (2004) AIRSCW 955 ; National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, (2001) 7 AD 501 : AIR 2001 SC 3309 : (2001) 91 FLR 259 : (2001) 7 JT 515 : (2001) LabIC 3360 : (2001) 2 LLJ 1243 : (2001) 6 SCALE 228 : (2001) 8 SCC 574 : (2002) 1 SCT 236 : (2002) 1 SLJ 86 : (2001) AIRSCW 3548 : (2001) 6 Supreme 883 ; Union of India and Others Vs. S.L. Abbas, AIR 1993 SC 2444 : (1993) 3 JT 678 : (1993) LabIC 1311 : (1993) 2 LLJ 626 : (1993) 2 SCALE 718 : (1993) 4 SCC 357 ; B.C. Chaturvedi Vs. Union of India and others, AIR 1996 SC 484 : (1995) 8 JT 65 : (1996) LabIC 462 : (1996) 1 LLJ 1231 : (1995) 6 SCALE 188 : (1995) 6 SCC 749 : (1995) 4 SCR 644 Supp : (1996) 1 UJ 80 ; National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, (2001) 7 AD 501 : AIR 2001 SC 3309 : (2001) 91 FLR 259 : (2001) 7 JT 515 : (2001) LabIC 3360 : (2001) 2 LLJ 1243 : (2001) 6 SCALE 228 : (2001) 8 SCC 574 : (2002) 1 SCT 236 : (2002) 1 SLJ 86 : (2001) AIRSCW 3548 : (2001) 6 Supreme 883 ; Major General J.K. Bansal Vs. Union of India (UOI) and Others, AIR 2005 SC 3341 : (2005) 107 FLR 37 : (2005) 8 JT 11 : (2005) 7 SCC 227 : (2005) SCC(L&S) 932). Bearing these aspects in mind, let us now examine whether, the facts of the present case, warrant interference by this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India.

12. The CSIR is the parent organisation under whose control several laboratories/institutions function in different parts of the country. While these laboratories also have their own cadre strength, common cadre officers of the CSIR are posted at these laboratories based on the functional needs and the periodic requirements of the laboratory/institution concerned. The petitioner is a common cadre officer of the CSIR and his appointing authority is the Joint Secretary (Administration), CSIR. The transfer guidelines issued by the CSIR called the "Guidelines for Transfer and Posting of Common Cadre Officers of CSIR", on which reliance is placed on behalf of the petitioner, do not have statutory sanction. Executive instructions, issued by the Government/public authorities with regard to transfers, are in the nature of guidelines and do not have statutory force. (Union of India and Others Vs. S.L. Abbas, AIR 1993 SC 2444 : (1993) 3 JT 678 : (1993) LabIC 1311 : (1993) 2 LLJ 626 : (1993) 2 SCALE 718 : (1993) 4 SCC 357). Transfer guidelines do not enable an employee to claim a posting of his choice as of right, if the authorities do not consider it feasible. This aspect should be considered, along with the exigencies of administration, (Bank of India Vs. Jagjit Singh Mehta, AIR 1992 SC 519 : (1992) 1 BC 191 : (1991) 4 JT 460 : (1992) 1 LLJ 329 : (1991) 2 SCALE 1108 : (1992) 1 SCC 306 : (1991) 2

SCC 492 Supp : (1991) 2 SCR 492 Supp : (1992) 1 SLJ 81 ; Union of India and Others Vs. S.L. Abbas, AIR 1993 SC 2444 : (1993) 3 JT 678 : (1993) LabIC 1311 : (1993) 2 LLJ 626 : (1993) 2 SCALE 718 : (1993) 4 SCC 357), by the authority ordering the transfer and he should keep in mind the guidelines issued by the Government/public authorities on the subject. Guidelines regarding transfer do not confer upon the Government employee a legally enforceable right. (Union of India and Others Vs. S.L. Abbas, AIR 1993 SC 2444 : (1993) 3 JT 678 : (1993) LabIC 1311 : (1993) 2 LLJ 626 : (1993) 2 SCALE 718 : (1993) 4 SCC 357 ; Major General J.K. Bansal Vs. Union of India (UOI) and Others, AIR 2005 SC 3341 : (2005) 107 FLR 37 : (2005) 8 JT 11 : (2005) 7 SCC 227 : (2005) SCC(L&S) 932). Administrative guidelines, regulating transfers or containing transfer policies, may at best afford an opportunity to the officer or servant concerned to approach their higher authorities for redress, but cannot have the consequence of depriving or denying the competent authority of his power to transfer a particular officer/servant to any place in public interest, and as is found necessitated by the exigencies of service, as long as the official status of the employee is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. (State of U.P. and Others Vs. Gobardhan Lal, AIR 2004 SC 2165 : (2004) 101 FLR 586 : (2004) 5 JT 454 : (2004) 3 LLJ 749 : (2004) 3 SCALE 574 : (2004) 11 SCC 402 : (2005) SCC(L&S) 55 : (2004) 1 SCR 337 : (2004) 3 SLJ 244 : (2004) AIRSCW 4571 : (2004) AIRSCW 2082 : (2004) 3 Supreme 92 : (2004) 6 Supreme 161). Courts or Tribunals would not quash orders of transfer merely because administrative instructions/guidelines are not followed. (Union of India and Others Vs. S.L. Abbas, AIR 1993 SC 2444 : (1993) 3 JT 678 : (1993) LabIC 1311 : (1993) 2 LLJ 626 : (1993) 2 SCALE 718 : (1993) 4 SCC 357). An order of transfer, made even in transgression of administrative guidelines, cannot be interfered with, as they do not confer any legally enforceable right unless it is shown to be vitiated by malafides or is made in violation of any statutory provision (State of U.P. and Others Vs. Gobardhan Lal, AIR 2004 SC 2165 : (2004) 101 FLR 586 : (2004) 5 JT 454 : (2004) 3 LLJ 749 : (2004) 3 SCALE 574 : (2004) 11 SCC 402 : (2005) SCC(L&S) 55 : (2004) 1 SCR 337 : (2004) 3 SLJ 244 : (2004) AIRSCW 4571 : (2004) AIRSCW 2082 : (2004) 3 Supreme 92 : (2004) 6 Supreme 161) and, instead, the affected party should be relegated to approach the higher authorities in the department. (Mrs. Shilpi Bose and others Vs. State of Bihar and others, AIR 1991 SC 532 : (1991) LabIC 360 : (1991) 2 LLJ 591 : (1991) 2 SCC 659 Supp ; Major General J.K. Bansal Vs. Union of India (UOI) and Others, AIR 2005 SC 3341 : (2005) 107 FLR 37 : (2005) 8 JT 11 : (2005) 7 SCC 227 : (2005) SCC(L&S) 932) .

13. Even otherwise these transfer guidelines do not disable the appointing authority (for employees in the cadre of Section Officers - the Joint Secretary (Administration)) from effecting transfer of common cadre officers. The transfer guidelines classify "transfers" into various categories ie (1) normal transfer; (2) exigent transfer/transfer in public interest; (3) transfer on compassionate

grounds; (4) transfer on request etc. Different norms are prescribed for each kind of transfer. For exigent transfer/transfer in public interest, these guidelines enable orders of transfer to be passed on administrative grounds in public interest i.e., functional needs or any other extraordinary reason in public interest. It also provides that, notwithstanding any provision of these guidelines, the common cadre officers are liable to be transferred at any time to any laboratory/institution/headquarters or its units by the Director General, CSIR in public interest (i.e., functional needs or any other extra-ordinary reason in public interest) to be recorded in writing. The power conferred on the Director General, CSIR, to transfer common cadre officers in public interest, is notwithstanding anything to the contrary in the transfer guidelines. Irrespective of what these guidelines stipulate, the Director General, CSIR has the power to transfer common cadre officers in public interest. The only fetter placed on the exercise of such power is that reasons, for effecting such transfers, should be recorded in writing.

14. Exigent transfers have been defined, under the guidelines, as transfer on administrative grounds or in public interest i.e., functional needs or any other extra-ordinary reason in public interest. The Joint Secretary (Administration), CSIR, who is the appointing authority for common cadre officers in the category of Section Officers, is entitled to effect transfers based on the functional needs of the organisation and in public interest. The Controller (Administration) CIMAP had, by his letter dated 29.10.2014, informed the Joint Secretary (Administration), CSIR that an administrative personnel, at the level of Section Officer (G), was required at their Research Institute at Hyderabad. The Controller (Administration), CIMAP requested the Joint Secretary (Administration), CSIR to post a Section Officer (G) of CSIR at its research centre at Hyderabad. Transfer of the petitioner is based on the functional needs of CIMAP, and is in the public interest of effective functioning of a central government laboratory/institution.

15. The earlier orders of transfer of the petitioner from SERC, Chennai to IICT Hyderabad, then to CCMB Hyderabad, from CCMB Hyderabad to NGRI, and now from NGRI to CIMAP have all been effected on the orders of the Joint Secretary (Administration), CSIR. Transfer of the petitioner, from NGRI to CIMAP, is evidently at the request of the Controller (Administration) of CIMAP, and is based on the functional needs of the said institution. Such a transfer cannot, therefore, be said to fall foul of the transfer guidelines.

16. Sri A. Satya Prasad, Learned Senior Counsel appearing for the petitioner, would submit that the Joint Secretary (Administration) CSIR, who lacked jurisdiction to effect exigent transfers of Section Officer in terms of the guidelines, had acted malafide, both in fact and law, in transferring the petitioner. Allegations of malafides, when made, must inspire confidence in the Court and should be based on concrete material. Such allegations ought not to be entertained on the mere making of it, or on consideration borne out of conjectures or surmises. (State of U.P. and Others Vs. Gobardhan Lal, AIR 2004

SC 2165 : (2004) 101 FLR 586 : (2004) 5 JT 454 : (2004) 3 LLJ 749 : (2004) 3 SCALE 574 : (2004) 11 SCC 402 : (2005) SCC(L&S) 55 : (2004) 1 SCR 337 : (2004) 3 SLJ 244 : (2004) AIRSCW 4571 : (2004) AIRSCW 2082 : (2004) 3 Supreme 92 : (2004) 6 Supreme 161) . While a reasonable inference of malafide action can be drawn from the pleadings and antecedent facts and circumstances, there must be firm foundation of facts pleaded and established, and such inference cannot be drawn on the basis of insinuations and vague suggestions. (Rajendra Roy). Vague insinuations in the application filed before the Tribunal, or in the affidavit filed in support of the Writ Petition filed before this Court, would not suffice to hold that the order of transfer is vitiated by malafides of the Joint Secretary (Administration), CSIR. The order of transfer is not vitiated by malafides on the part of the authority making the order, merely because the guidelines, issued by the Government, are not followed. (Union of India and Others Vs. S.L. Abbas, AIR 1993 SC 2444 : (1993) 3 JT 678 : (1993) LabIC 1311 : (1993) 2 LLJ 626 : (1993) 2 SCALE 718 : (1993) 4 SCC 357) .

17. The petitioner has also not chosen to array the person, against whom malice is alleged, as a respondent eo-nominee either before the Tribunal or before this Court. The person against whom malafides or bias is 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 principles of natural justice as it amounts to condemning a person without giving him an opportunity of being heard. (State of Bihar and Another Vs. P.P. Sharma, IAS and Another, AIR 1991 SC 1260 : (1991) 2 CompLJ 197 : (1991) CriLJ 1438 : (1991) 2 Crimes 113 : (1991) 2 JT 147 : (1992) 1 SCC 222 Supp : (1991) 2 SCR 1 .

18. Sri A. Satya Prasad, Learned Senior Counsel, would contend that, as the Joint Secretary had issued the transfer order, being well aware that it is only the Director-General CSIR who could effect exigent transfer or transfer in public interest, the transfer order is vitiated by legal malice. "Malice", in its legal sense, means malice such as may be assumed from the doing of a wrongful act intentionally, but without just cause or excuse or for want of reasonable or probable cause. (Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, AIR 1979 SC 49 : (1979) 1 LLJ 25 : (1979) 2 SCC 491 : (1979) 2 SCR 202 : (1979) 11 UJ 14 . A person, who inflicts an injury upon another person in contravention of the law, is not allowed to say that he did so with an innocent mind. He is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far as the state of his mind is concerned, he acts ignorantly, and in that sense innocently. (Shearer v. Shields (1914) AC 808, 813 ; Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, AIR 1979 SC 49 : (1979) 1 LLJ 25 : (1979) 2 SCC 491 : (1979) 2 SCR 202 : (1979) 11 UJ 14 . As noted hereinabove, the transfer guidelines do not disable the Joint Secretary (Administration) CSIR, who is the appointing authority for common cadre officers in the Section Officer category, from effecting transfer of such officers. The impugned order of transfer has not been

issued by an incompetent authority nor is it an order passed without jurisdiction. The contention of legal malice does not, therefore, merit acceptance.

19. The contention, that the petitioner has been transferred to a non-existent post at CIMAP, is also not tenable. The petitioner herein is a common cadre officer and his posting to a particular laboratory/institution, under the administrative control of CISR, is based on the functional needs of the said institution/laboratory. Posting of common cadre officers does not depend on the sanctioned strength of the concerned laboratory/institution, but on its periodical needs. Once the requirement of the said laboratory/institution, is fulfilled, common cadre officers are then posted elsewhere. The petitioner places reliance upon certain material, downloaded from the website of CIMAP, which contains the names and designations of officers, their residence and their email address, and their telephone numbers. This download, from the website of CIMAP, refers to the names of four Section Officers (G), and contains their office and residence phone numbers and their e-mail addresses. The fact that the four persons mentioned therein are Section Officers (G) does not establish that the sanctioned strength of CIMAP is only four Section Officers (G), or that the four Section Officers working thereat complete the sanctioned strength or, for that matter, that there are no more posts of Section Officers (G) available at CIMAP for the petitioner to be posted thereat. As the petitioner has questioned the action of the respondents, in transferring him to an allegedly non-existent post, the burden is on him to establish that posts are separately sanctioned for each of the laboratories including CIMAP, and it is only to such posts, sanctioned separately for each laboratory/institution, can common cadre officers be posted. The petitioner has failed to discharge this onus, and cannot therefore be heard to contend that he has been transferred to a non-existent post.

20. While frequent transfers of officers, from one place to another, are better avoided as the dislocation caused thereby to the employee and his family would affect his morale and efficiency, there cannot be a thumb rule that, irrespective of the needs of the organisation, an officer should be continued at a particular place of posting, for the prescribed duration, and should not be transferred in the interregnum. In T.S.R. Subramanian and Others Vs. Union of India (UOI) and Others, (2014) 1 ABR 110 : (2013) 11 AD 431 : AIR 2014 SC 263 : (2013) 14 JT 124 : (2014) LabIC 1542 : (2013) 13 SCALE 340 : (2014) 1 SCT 255 : (2014) 1 SLJ 175 the Supreme Court held that Civil Servants do not have stability of tenure, particularly in State Governments where transfers and postings are made frequently at the whims and fancies of the executive head for political and other considerations, and not in public interest; a fixed minimum tenure would not only enable Civil Servants to achieve their professional targets, but also help them function as effective instruments of public policy; repeated shuffling/transfer of officers is deleterious to good governance; minimum assured service tenure ensures efficient service delivery, and increased efficiency; and Civil Servants can also prioritise various social and economic measures intended to implement for the poor and marginalised sections of society. The judgment of the Supreme

Court, in T.S.R. Subramanian and Others Vs. Union of India (UOI) and Others, (2014) 1 ABR 110 : (2013) 11 AD 431 : AIR 2014 SC 263 : (2013) 14 JT 124 : (2014) LabIC 1542 : (2013) 13 SCALE 340 : (2014) 1 SCT 255 : (2014) 1 SLJ 175 , relates to Civil Servants employed under the State Governments, and emphasis is placed on the need to give them a fixed tenure. Common Cadre Officers of CSIR are, however, posted on the basis of the functional needs of different institutions/laboratories. While such officers could have been retained at one place for a specified duration, that does not mean that, even if the functional needs of the organisation so require, no officer should be transferred, and posted at the needed place, before the specified period. The petitioner was transferred to CIMAP, on the request of the Controller (Administration) CIMAP to the Joint Secretary (Administration) CSIR, as his services were required thereat. The decision to transfer him is based on administrative exigencies and the functional requirements of CIMAP and his transfers earlier, without his being retained at a particular place of posting for even two years, would not disable the respondents from transferring him, and posting him at CIMAP. While the earlier transfers were no doubt effected within a span of less than two years of each other, the fact remains that the petitioner's transfers to IICT, CCMB, NGRI and CIMAP are all within Hyderabad city. The distance between NGRI, where the petitioner was working prior to his present transfer, and CIMAP where he has now been transferred to, is said to be less than two kilometres.

21. What is however a cause of concern is the manner in which the petitioner was relieved from the services of NGRI. The unseemly haste shown in relieving him from NGRI, even before the order of transfer was served on him, does give rise to the suspicion that he was relieved hastily only to disable him from availing his legal remedies against the order of transfer. As it is now admitted that the transfer order, issued to the petitioner by CSIR, was received in the office of NGRI only on 10.11.2014, even before which he was relieved on 07.11.2014 based on the fax sent by CSIR to NGRI, the respondents shall treat the petitioner as having continued in the services of NGRI till the order of transfer was sent by NGRI, to his residential address, through courier on 11.11.2014. The petitioner shall be paid his salary and other emoluments till 11.11.2014 by NGRI.

22. Sri M. Srikanth, Learned Counsel for the respondent, would submit that the petitioner being relieved from NGRI, even before the transfer order was served on him, was not a deliberate act but was merely by oversight. Even if this disconcerting event was occasioned by a bona fide error, the respondent shall identify the person responsible for such a lapse, and take suitable action against him. That, however, does not mean that the petitioner should be retained at NGRI when his services are required at CIMAP. We find no justification for the exercise of the extraordinary jurisdiction of this Court, under Article 226 of the Constitution of India, to interdict the order of transfer.

23. Subject to the petitioner, being treated as having continued in the services of NGRI till 11.11.2014, the Writ Petition fails and is, accordingly, dismissed. The

miscellaneous petitions pending, if any, shall also stand dismissed. No costs.