

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Judgment delivered on: September 27, 2021**

+ W.P.(C) 14006/2019, CM Nos. 55947/2019, 135/2020, 4762/2020

**SHRI SANJEEV KAPOOR**

..... Petitioner

Through: Mr. Om Prakash Gupta, Adv.

versus

**NTPC LTD. AND ANR.**

..... Respondents

Through: Mr. Sanjoy Ghose, Sr. Adv. with Mr. Puneet Taneja, Ms. Laxmi Kumari and Mr. Manmohan Singh, Advs. for NTPC LTD.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**J U D G M E N T**

**V. KAMESWAR RAO, J**

1. The present petition has been filed by the petitioner with the following prayers:

*“It is most respectfully prayed that in view of submissions made herein above this Hon'ble Court may kindly be pleased to :*

- i. Issue an appropriate writ, order or direction to quash the transfer and release of Petitioner from NTPC-Faridabad to RIO Chennai (Tamilnadu) vide order No.319/2019 Date: 06.12.2019 (Annexure-PI).*
- ii. Declare that Change of cadre of petitioner from Jr. Chemist (Chemistry Department) to Jr. Officer (EEMG) is illegal and mala fide.*
- iii. Cost of the present proceeding be awarded in favour of the petitioner and against the respondents; and*

iv. *Pass such other and further orders/directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.*”

2. The short issue that arises for consideration in the present petition is the transfer of the petitioner from the post of Jr. Chemist at NTPC, Faridabad, Haryana to the post of Jr. Officer, Energy Efficiency Monitor Group ('EEMG' for short) at the Regional Inspection Office ('RIO' for short), Chennai, Tamil Nadu vide order no. 319/2019 dated December 6, 2019 ('impugned order' hereinafter) is justified.

3. The case of the petitioner is that the said transfer is actuated with *malafides*, is vindictive and in violation of the transfer policy of the respondents. As per the averments made in the petition, the case of the petitioner is that the transfer order which was received by the petitioner on December 11, 2019 bypassed the existing company procedures such as the Whistle Blower Policy; contrary to the recommendations of the Medical Board, change of cadre, i.e., from Jr. Chemist to Jr. Officer (EEMG) which according to the petitioner does not exist at the RIO of the respondent company at Chennai.

4. Before turning to the merits of the controversy I may first reproduce the factual background concerning the instant petition.

(a) The petitioner joined the respondent Company on July 15, 1991 as an Assistant (DM Plant) Chemistry Section at NTPC, Anta Gas Power Project, Rajasthan ('NTPC Anta', for short) through an open recruitment advertisement for vacancy at the Anta Gas Power Project.

b) On promotion he was re-designated as Jr. Chemist

at NTPC Anta. The petitioner continued on that post from July 15, 1991 to May 11, 2012 after which he was transferred to the Commercial Office of the respondent No.1 at Jaipur.

c) The petitioner was then again transferred to the Power Project in Faridabad, Haryana w.e.f. December 31, 2014 and has since been working there. As per the averments in the petition, the petitioner was awarded for his long service of more than 25 years.

5. Mr. Om Prakash Gupta, learned counsel who appears for the petitioner, stated that the impugned order is not based on any administrative requirement but has been effected for extraneous reasons. He stated that the respondents' exercise of power in issuing transfer order is an example of malice in law. According to him the earlier two transfers of the petitioner were also motivated with malice. He stated that when the petitioner was posted at NTPC, Anta, the petitioner had served as General Secretary of Rashtriya Taap Vidyut Karamchari Sangathan ('workers' union', for short) from the year 1999 onwards. Being an office bearer of the workers' union, he was involved in various issues concerning benefits of the employees and had initiated many litigations on behalf of the workers' union. During his tenure he had also raised various issues concerning corruption and performance related payment issues before various fora. He stated that it was because of his functioning and taking part in the activities of the workers' union, petitioner's activities were seen as problematic and it is for these reasons, he was shifted from

NTPC, Anta to the Office at Jaipur through spot transfer, i.e., the petitioner was issued the transfer and release order on the same date. The transfer to NTPC, Faridabad was also in violation of the transfer policy relating to non-executive employees.

6. According to Mr. Gupta when the petitioner sought information through an RTI application regarding his transfer from NTPC, Anta to NTPC, Jaipur, the reply received by him stated that the respondent had constituted a Medical Board upon the petitioner's demand for accommodation of his ailing parents at Jaipur. The Medical Board gave its finding and stated that the parents of the petitioner required constant medical attention and it would be best if the petitioner were to stay with his parents at Jaipur. Mr. Gupta has stated that not only was this transfer motivated through malice but the respondent also went against the finding of its own Medical Board and further transferred the petitioner to NTPC, Faridabad. He stated that the impugned order is also for the activities of the petitioner as member of the workers' union; and in spite of the vacancy and requirement of a Chemist in NTPC, Faridabad, he was again arbitrarily transferred to RIO, Chennai on a post which does not belong to his cadre. In this regard, he has placed reliance on the judgment in the case of *Kavi Raj & Ors. v. State of Jammu and Kashmir & Ors. (2013) 3 SCC 526* to state that in cases of inter-cadre posting or transfer, the same cannot be done unless the employee is transferred to a post for which he / she was selected and it is the duty of the principal employer to ensure that there are statutory rules to govern such transfers. He has also relied on the judgments of *V.*

*Jagannadha Rao & Ors. v. State of A.P. & Ors. (2001) 10 SCC 401* and a judgment of the Central Administrative Tribunal in the case of *Sanjeet Sharma & Ors. v. Union of India & Ors. O.A. No. 060/00140/2017*.

7. Mr. Gupta stated that there is no EEMG department at RIO NTPC, Chennai. He stated that the post to which he has been transferred, i.e., Jr. Officer (EEMG) does not exist even in any official record of NTPC and the same is also not reflected on the website of NTPC and the Company website. He has made a reference to the reply by the Central Public Information Officer, NTPC to contend that no such post exists at RIO NTPC, Chennai. He stated, not only the petitioner has been transferred but the cadre of the petitioner has also been changed by the respondents without consent. This action is in violation of Rules 2.1(i), 2.1 (iv), 2.2 and 2.6 of the NTPC Transfer Policy for Workmen of the respondents and is aimed at injuring the career growth of the petitioner.

8. As per the petitioner, he was selected in the Chemistry Section within the workman cadre with prerequisite qualifications pertaining to the field of Chemistry and the petitioner wishes to advance his career in the field of Chemistry. Mr. Gupta stated that as per the recent advertisement taken out by the respondents for the post of Assistant Chemist, it has been clearly mentioned that the said post requires experience on the post of Chemist. The advertisement also contains recruitment for other posts as well which are different from the post of Chemist which is contrary to the stand taken by the respondents in their pleadings, by stating

that the petitioner's job is not specific. The petitioner has stated that there is clearly a scarcity of manpower in the Chemistry Department at NTPC, Faridabad despite, which he has been transferred to a non-existing post at RIO, NTPC Chennai. Mr. Gupta submits that the respondents have 16 RIOs; however, none of the existing RIOs have a post for a Jr. Officer (EEMG).

9. Mr. Gupta conceded during the course of hearing that the respondents have offered the petitioner, posting at many other offices viz., Trichy, Mumbai, Bangalore, Ranipet, Bhopal and Haridwar which places are not acceptable as none of these RIOs have a post for Jr. Officer EEMG and there is no existing cadre of Chemist. He stated that the transfer is clearly *malafide* in nature and stated that it would be fair if the respondents were to offer work relating to his cadre at the Research and Development Centre (NETRA) of the respondent at Greater Noida. In this regard, Mr. Gupta placed reliance on the judgment of the Madras High Court in the case of *Dr. A. Jayachitra v. The Principal Secretary / Member Secretary, Sports Development Authority of Tamil Nadu, W.P.No.12252 of 2020*, decided on December 11, 2020 in support of his submission on the aspect of administrative requirement. He has relied on the letter dated February 27, 2016 numbered as 6320/O&M/G-Chem-4/2016 to state that there is shortage of executive manpower in his existing cadre.

10. Mr. Gupta would contend that the petitioner has been transferred three times in the last seven years which is clearly against the Transfer Policy. He stated that the petitioner has worked diligently and has discharged all duties assigned to him

and has also made significant developments in the functioning of the NTPC plant at Faridabad. The impugned order stated that the transfer is based on multi-tasking work to which Mr. Gupta has argued that the work assigned outside the cadre would have aspects for which the petitioner does not have the qualifications and that the impugned order seeks to effect a transfer to a different stream altogether. He makes a reference to Rule 2.6 of the Transfer Policy which stated, "*Workmen being promoted / laterally appointed from the grade of workman to supervisor may be transferred within the Region*". In the case of the petitioner Mr. Gupta stated that there was no occasion for promotion to the executive / supervisor level. The said transfer has been issued in violation of Articles 14 and 16 of the Constitution of India.

11. Mr. Gupta has contended that 178 workmen have already been transferred during the period 2017-19, due to the closure of the Badarpur Thermal Power Station, Delhi in 2018, in such a scenario all the workmen were justifiably transferred on account of closure of plant and not on administrative grounds. Even in that case the management failed to answer the fact that many of the employees were transferred inter-region and intra-region to places such as Anta, Jaipur, Faridabad; and the petitioner was the only employee who was transferred from NTPC Anta. Additionally, the petitioner has also been arbitrarily denied timely promotions whereas the juniors of the petitioner were promoted. It is the submission of Mr. Gupta that the petitioner has filed Writ Petitions being CWP 547/2015 and CWP 1246/2015 before the Jaipur Bench of the Rajasthan High Court, wherein the issue

regarding seniority vis-à-vis his juniors is pending adjudication. He also stated that the issue regarding misconduct of the petitioner as alleged by the respondents only depicts the ill will harboured by the management against the petitioner.

12. Mr. Gupta argued that the impugned order has been passed without procuring the pre-requisite written consent from the Section Head who has himself been recently transferred from NTPC-Tanda to NTPC-Faridabad and another requirement of seeking approval of Head of Department, Head of Business Unit and General Manager, NTPC-Faridabad who is the appointing authority of the petitioner. He stated that even the AGM (HR) and Manager (HR) of the Faridabad Administration of NTPC are unaware of the petitioner's transfer.

13. As per Mr. Gupta at the time of promotion from the workman grade to an executive grade, the respondent as per their own Transfer Policy is supposed to give an option for a new place of posting. Upon joining the said posting if the concerned employee were to seek a transfer to any other place within three years of his / her joining, the case of the said employee would also be considered for transfer subject to reversion to pre-promoted post / grade w.e.f. the date of promotion, i.e., placement within the E-1 grade. In this regard, he has relied on one such promotion order dated July 6, 2017 containing the aforementioned clause. He stated that the petitioner at the time of transfer was not given any option for posting / transfer. At present the petitioner is said to be handling all the Chemistry related activities at NTPC-Faridabad as there is no other

workman in the Chemistry division and NTPC-Faridabad too is in requirement of personnel in the Chemistry division. Mr. Gupta stated that such a transfer that too when NTPC-Faridabad requires workmen in the Chemistry division, i.e., detrimental to operations of plant, only goes to show the arbitrariness of the transfer.

14. Mr. Gupta argued that the bone of contention of the respondents against the petitioner is rooted in the fact that the petitioner has acted as a whistle blower and has written a letter highlighting the irregularities and excess payments relating to profits. He stated that the petitioner is entitled for protection under the Whistle Blower Policy. The petitioner has made representations dated December 12, 2019 and December 14, 2019 to the respondents, which have gone unheard.

15. As per the averments in the petition the Board of Directors of the respondent Company are only empowered to re-designate an employee. In the case of the petitioner, an approval was required to be taken from the Board of Directors and this procedure has been bypassed by the respondents just out of personal vendetta.

16. Mr. Sanjoy Ghose, learned Senior Counsel appeared along with Mr. Puneet Taneja on behalf of the respondents and stated that an appeal was preferred against the order dated January 06, 2020 which was disposed of with a request that this Court either hear the matter finally or take up the CM 4762/2020 filed on behalf of the respondents for vacation of stay. It was thereafter that the respondents offered the petitioner various

options for posting nearer to Jaipur which were all turned down by the petitioner.

17. Mr. Ghose has taken a stand that no cause of action has arisen within the jurisdiction of this Court, as the petitioner is himself residing and working in the State of Haryana and has been transferred to the State of Tamil Nadu which has no nexus with the jurisdiction of this Court. He has also argued that the petitioner being a workman under the Industrial Disputes Act, 1947 ('ID Act', for short) should exhaust alternative remedies available to him.

18. With regard to the representation dated December 12, 2020 the respondents had through a letter dated January 28, 2020 disposed of the same by giving detailed reasons. The argument that the representation of the petitioner was not adequately dealt with or heard, ought not to be accepted. Mr. Ghose has argued that, apart from bald averments and unsubstantiated allegations, the petitioner has not been able to show in any manner the violation of any policy through the impugned order.

19. It is the case put forth by Mr. Ghose that the power sector has undergone a sea of change in India. The respondents are facing immense challenges and have to cope up with the changing markets as well as the changing means of the organisation. The macro-level restructuring has resulted in cost-cutting and optimum utilisation of manpower. It is stated that in the period between the years 2017-19 the respondents have transferred approximately 178 employees from the category of workman, 115 out of these transfers have been incidents of inter-

region transfer whereas 63 out of these 178 workmen have been transferred intra-regionally. Subsequently, a total of 4,252 employees in the executive category have also been transferred during the same period; out of these transfers 1,623 have been intra-region transfers and 2,629 have been inter-region transfers.

20. Mr. Ghose has pointed to the terms and conditions of the petitioner's appointment letter dated June 20, 1991 (joined on July 15, 1991) and the respondents' Service Rules to state that the petitioner's employment is of a transferable nature. As per clause 9 of the said appointment letter it has been stated that although the initial posting of the petitioner would be at Anta, however, the discretion would lie with the respondents to change the place of service to any unit or office belonging to the respondents or any other government run industrial establishment in India or abroad. He has also referred to clause 8 of the appointment letter to state that the petitioner is bound by the extant Service Rules, Policies etc., of the respondent Company. He has stated that at the time of appointment the qualification of the petitioner was B.Sc. with Chemistry and any other additional qualification have been acquired thereafter. Additionally, Mr. Ghose pointed to the Memorandum of Settlement dated October 26, 2018 ('MoS', for short) between the respondents and their workmen / workers' union where, in clauses 12.1 and 13.2 it is mentioned that the management and the unions have agreed to improve utilisation of human resources as well as material resources for optimum performance of the respondent Company and it is the prerogative of the respondent Company to reorganize and redeploy its

employees to meet its macro-restructuring goals. Mr. Ghose argued that neither the consent of the Head of Project is required nor the consent of the employee is required to be obtained before effecting transfers in terms of the NTPC Service Rules, MoS, appointment letter and applicable policies.

21. On the issue regarding the charge sheet dated October 28, 2014, which culminated in the establishment of guilt of the petitioner; Mr. Ghose stated, still the petitioner was shown leniency and was issued a warning letter and no serious punishment was awarded. According to him, there is no relation between the impugned transfer order which was issued in 2019 and the chargesheet which was issued in 2014 followed by a warning letter in 2016. He has also stated that the defamation proceedings pending before District and Sessions Court at Jaipur have no bearing on the present issue. He stated that the other writ petitions pending before the High Court of Rajasthan pertain to the issue of promotion and are also not connected to the matter at hand. As per Mr. Ghose the petitioner has deliberately attempted to reagitate the already settled issues in order to put up a smokescreen and divert the attention of this Court from the real issue at hand.

22. Mr. Ghose contended that there can be no argument regarding the promotion of the petitioner. The petitioner has been promoted on January 01, 1996, January 01, 2000, July 01, 2004 and January 01, 2009. And the last promotion of the petitioner was as recent as April 01, 2019. It is the case of the respondents and so contended by Mr. Ghose that the present

transfer is only the third transfer in the 30 years' service period of the petitioner.

23. Mr. Ghose has responded to the various grounds raised by the petitioner and has stated that as per rule 2.6 of the NTPC Transfer Policy which prohibits the transfer of the workmen on promotion but in the case in hand, it is only transfer and not promotion hence, reliance cannot be placed by the petitioner on this rule. He stated that there is no breach of NTPC Equal Opportunity Policy and NTPC Human Rights Policy. In terms of clause 8.7 of the NTPC Travelling Allowance Rules, bachelor employees are usually provided with bachelor accommodation and not provided with a Transfer Grant. Mr. Ghose has taken a stand that there is no violation of Delegation of Powers, 2018 (*Section IV Delegation of Powers Applicable to Human Resources Administrative and Miscellaneous Powers in Regions / Projects / Generating Stations and Corporate Centre*) in terms of clause 5(iii) (a). He argued that the point raised regarding the change in the job function of the petitioner through the impugned transfer order being a violation of Section 9A of the ID Act, is misconceived as the petitioner's employment is not "job-specific". No condition of the petitioner's service is being altered / modified by the respondents and the petitioner's employment itself being transferable, the impugned order is not a change of service as contemplated under Section 9A of the ID Act. He has stated that the petitioner's transfer is at the administrative discretion of the respondent management and an employee cannot demand a posting as a matter of right. More so, when the

transfer has been effected to meet the demands of the respondents Company. According to him, for the reasons mentioned above, it cannot be stated that the petitioner is being victimised or that the impugned order is motivated with *malafides*.

24. Mr. Ghose has placed reliance on the judgments of the Supreme Court in the following cases:

- i. ***Rajendra Roy v. Union of India & Anr., (1993) 1 SCC 148;***
- ii. ***National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan & Anr., (2001) 8 SCC 574;***
- iii. ***State Bank of India v. Anjan Sanyal & Ors., (2001) 5 SCC 508;***
- iv. ***State of U.P. & Ors. v. Gobardhan Lal, (2004) 11 SCC 402 and;***
- v. ***Union of India & Ors. v. S.L. Abbas, AIR 1993 SC 2444.***

These judgments primarily relate to the law that transfer is an incident of service and a part of service conditions of an employee and, it is for the appropriate authority to decide who should be transferred and where. The Courts although being appellate authorities against such orders, should not ordinarily interfere with routine transfer orders in exercise of powers under Article 226 of the Constitution unless there is a finding of *malafide* or is there is a prohibition on such transfer under the service rules and / or if the issuing authority was not competent to pass such orders.

25. In a case where the transfer order has been shown to be a result of *malafide* exercise of power in such a case the administrative guidelines for regulating transfers or containing Transfer Policies may at best afford the opportunity to the

transferred employee to approach the higher authorities however, the employer cannot be deprived of the power to transfer an employee in the interest of the establishment so long as the official status and career prospects are not adversely impacted. In this regard, Mr. Ghose has relied on State of *State of U.P. & Ors. v. Gobardhan Lal (supra)*. He stated that the Supreme Court in the said case had recorded that a transfer even if transgressing administrative guidelines cannot be interfered with, as it does not confer any legally enforceable right unless it is in violation of statutory provision or is motivated by *malafides*.

26. Mr. Ghose referred to *Shilpi Bose (Mrs.) & Ors. vs. State of Bihar & Ors., 1991 Supp. (2) SCC 659, State of M.P. & Anr. v. S.S. Kourav & Ors., (1995) 3 SCC 270* and *Rajendra Singh & Ors. v. State of Uttar Pradesh & Ors., (2009) 15 SCC 178*, to state that the public interest and administrative exigencies outweigh the personal interests of any employee. The Courts ought not to interfere in cases challenging transfer orders just because it causes personal difficulty such as dislocation of family of the transferee, if such transfers, are common in the area of service must be taken to be free from any *malafides* as per *Rajendra Roy (supra)*.

27. Mr. Gupta in his rejoinder arguments has stated that the reliance placed by Mr. Ghose on Clause 9 of the appointment letter would not aid the case of the respondent. Mr. Gupta has also stated that the reply dated January 28, 2020 has not addressed the core issue of continuous victimisation and harassment of the petitioner. The respondents have also not

provided all documents pertaining to the impugned orders including the administrative reasons. As per Mr. Gupta the health condition of the petitioner's parents has since deteriorated and they require much more care and such a transfer at this juncture would only be to the detriment of the petitioner's family. He argued that the interim order dated January 6, 2020 has been passed after hearing the parties on merits and the Court has taken the view after considering the sum total of facts and circumstances in the present petition. It is for these reasons he prays that the interim order be made absolute.

28. Having heard the learned counsel for the parties, the only issue which arises for consideration is whether the transfer of the petitioner from NTPC Faridabad to RIO Chennai is justified. The challenge of the petitioner to the transfer order is primarily for the following reasons:

- (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.

29. At the outset, I must state that during the hearing on August 25, 2021, I had asked Mr. Ghose whether the NTPC is ready to consider the posting of the petitioner to a place nearer to

Jaipur where the parents of the petitioner are residing alone. At the request of Mr. Ghose to take instructions, I re-notified the matter on September 01, 2021. On September 01, 2021 Mr. Ghose had taken instructions from the respondents, who are agreeable to post the petitioner any of the following places, namely to Trichy, Mumbai, Bangalore, Ranipet, Bhopal and Haridwar. I had also noted, Bhopal and Haridwar are nearer to Jaipur, as compared to Chennai. Mr. Gupta sought a day's time to take instructions from the petitioner, for choosing any of the places. On September 02, 2021 Mr. Gupta conveyed to the Court that the petitioner is not agreeable to the options given, including for being posted at Bhopal or Haridwar. Accordingly, I proceeded to hear the learned counsel for the parties on the merits of the challenge.

30. The petitioner was appointed in the NTPC in terms of appointment letter dated June 20, 1991 which contains a stipulation that he is initially deployed at Anta Gas Power Project, but he will be 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. The aforesaid stipulation is wide enough to include not only the project but also regional office, or any other institute not only of NTPC but even those which are under the administrative control of Government of India.

31. Concedingly, the petitioner was appointed on the post of Assistant Grade-IV which according to the petitioner was in the workman category. It follows that an employee appointed in

workman category can also to be posted anywhere in India / abroad. The case of the respondents in the counter affidavit is that there is a sea change in the demand of electricity, inasmuch as the demand is lesser than electricity produced by the power companies. Moreover, companies like NTPC are now moving towards solar and other forms of renewable energy. The roadmap has been released by the Government of India to achieve 175 GW capacity in renewable energy by 2022, which includes 100 GW of solar power and 60 GW of wind power. The Plant Load Factor in the thermal segment has edged down drastically, not only low Plant Load Factor, there is two shift operations of coal-based plants and peaking operating gas stations will be the future mode of operation with the changing needs of the organisation, cost-cutting and optimum utilisation of manpower and their skill-sets have become quite significant. Pursuant thereto, NTPC has, over the last two years, been in the process of a macro-level restructuring, across India, to achieve such ambitious targets.

32. The case of NTPC is also that the petitioner is not the only employee who has been transferred. The statistics given by NTPC suggest that in the last two years itself approximately 178 employees from the workman category out of which 115 such workmen have been transferred outside the region while 63 workmen have been transferred intra-regionally.

33. That apart, as part of the macro-level restructuring, NTPC has transferred, approximately 4,252 employees from the executive category which includes 1,623 intra-region transfers and 2,629 inter-region transfers.

34. Having said so, I find that the impugned order itself depicts that the petitioner while working as Junior Chemist Grade-III / W9 has been transferred as Junior Officer (EEMG / W9). In other words, the transfer from Faridabad to Chennai is on equivalent post. In that regard, it must be held that the transfer is not to a different grade.

35. Insofar as the submission of Mr. Gupta that the transfer has the effect of changing the cadre is concerned, NTPC's case is that the transfer of the petitioner to Chennai is on specific requirement of the Company. NTPC has also relied upon Clause 12.1 / 13.2 of the MoS entered by the management and the workers union, which clearly stipulates to improve productivity and also to make organisation cost effective it has been agreed by the workers' union to optimise the utilisation of manpower by extending responsibility with multi-scaling and by redeploying manpower. It is not been shown to the Court that there exists a separate cadre of Chemist in NTPC and the transfer to Chennai is outside the cadre, which will effect the petitioner's seniority, promotion, emoluments etc. I see, that the transfer is an equivalent post of W9. So to that extent, no prejudice has been caused.

36. The plea of Mr. Gupta on promotion from workman category to Supervisor category, an employee can be transferred within the region as far as possible is also not appealing. The word "*may*" and "*as far as possible*" contemplates discretion with the management in a given case to transfer an employee within the region. It is not mandatory that an employee under

such clause of the NTPC Transfer Policy need to be posted within the region. In fact, the terms of appointment coupled with the Clause 8 of the NTPC Service Rules which stipulates liability of an employee to serve any part of the country or abroad is a sufficient indication that the petitioner can be transferred to Chennai also.

37. It is a conceded position that the petitioner was initially appointed at a project site at Anta and thereafter transferred to NTPC Jaipur Commercial Office and from there to Faridabad. At least nothing has been brought to my notice that there is any challenge laid by the petitioner to such transfers in any Court of law. The present transfer is a third transfer in a period of around 30 years.

38. The plea of Mr. Gupta that the impugned order has not been issued by the Competent Authority i.e. General Manager-Faridabad is also not appealing as the transfer in question of the petitioner is an inter-regional transfer. Surely the General Manager Faridabad cannot transfer a person beyond his territorial limits.

39. It is the case of the NTPC that General Manager (HR) is competent to make inter region transfer. I find that the impugned order has been issued under the signatures of Manager (HR) with the approval of the Competent Authority. The transfer order cannot be faulted on that ground.

40. The plea of Mr. Gupta that the impugned order has been issued without the consent of the Head of the Project. I am afraid such an argument cannot be accepted. The Competent Authority

being General Manager (HR), the Head of the Department cannot have a say on such a decision taken by General Manager (HR) for transfer. Moreover, it is not the case of Head of the Project that the transfer order of the petitioner need to be recalled.

41. The plea of Mr. Gupta that the impugned order has resulted in change of job function / conditions of service. I am afraid such a submission is unmerited more so, in view of the terms of appointment / clause 8 of the NTPC Rules and also MoS stipulating that the services of an employee are transferable to any part of the country / abroad. That apart Mr. Ghose during the course of his submission has stated that no service conditions including the promotion avenues / pay of the petitioner / seniority have been effected because of the transfer to Chennai.

42. The submission of Mr. Gupta that there is no vacancy for Junior Officer in RIO, Chennai is also unmerited. Surely, it is not for the employee to state that there is no vacancy or that no work exists at the place where he is being transferred. It is for the Competent Authority to decide the place of posting of an employee in exigency. The plea that there is no other person available to look after the work as being performed by him in Faridabad cannot be the perspective of the petitioner.

43. In fact, the respondent NTPC has taken stand that the department is under the supervision of the Manager (Chemistry) who is in a position, in terms of the administrative assessment of the Management, to effectively discharge all functions with the aid of out-sourced manpower. If that be so, surely neither the petitioner nor this Court can sit over the decision of the

authorities in that regard. The plea of the petitioner that he has made a complaint dated October 17, 2019 highlighting the alleged excess payment and irregularities with regard to PRP and as such he has acted as a whistle blower is also unmerited. I have seen the complaint dated October 17, 2019 of the petitioner. The plea in that regard of the petitioner is that the grant of PRP to Executive is discriminatory as the profits are not shared among all the employees. Moreover, it is the case of NTPC that the said representation has no connection with the transfer of the petitioner to Chennai. In fact, it is matter of record that the non-executives have also filed a petition in this Court for grant of similar benefit to them. I also agree with the plea of Mr. Ghose, that the petitioner's is not a solitary case of transfer in NTPC. The statistics already given above, show that the transfers are in conformity with the policy decision taken by NTPC for optimum utilisation of manpower.

44. The reliance placed by Mr. Gupta on the judgment of the Supreme Court in the case of *Kavi Raj & Ors. (supra)* in support of his submission that an employee cannot be transferred outside the cadre is not applicable to the facts of this case. I find the initial appointment of the petitioner was as an Assistant Grade-IV while working in NTPC, Anta. The petitioner was transferred to NTPC Jaipur Commercial Office and while in Faridabad, he was working in Chemistry Department all three designations of the petitioner are not similar. The petitioner has not challenged the said transfers. I may state here if an employee is transferred outside the cadre effecting his seniority, promotion,

pay etc. the same can be interfered with by the Court. It is not such a case here, moreover, Mr. Ghose has stated neither the pay, seniority / promotion of the petitioner shall be effected on his transfer to Chennai. Hence the said judgment is distinguishable.

45. Similarly, insofar as the judgment of the Madras High Court in the case of *Dr. A. Jayachitra (supra)* is concerned, the Court on perusing files of the respondent found that there was no administrative requirement or exigency for transferring the employee to the transferred place. Suffice to state, the judgment of Madras High Court was peculiar to the facts of that case.

46. Insofar as the judgment relied upon by Mr. Gupta in the case of *V. Jagannadha Rao & Ors. (supra)* wherein it was held that a transfer is an incident of service and that a government servant is liable to be transferred to a similar post in the same cadre. The judgment has no applicability in view of my conclusion in paragraph 44 above.

47. The judgment of the Central Administrative Tribunal, Chandigarh in the case of *Sanjeet Sharma & Ors. (supra)* relied upon by Mr. Gupta is concerned, the case of inter cadre transfer was held to be bad being in violation of the judgments of the Supreme Court including *Kavi Raj & Ors. (supra)* and *V. Jagannadha Rao & Ors. (supra)*. The same has no applicability in the facts of this case, in view of my conclusion in paragraphs 44 and 45.

48. Mr. Ghose is justified in relying upon the judgment in the case of *State of M.P. & Anr. v. S.S. Kourav & Ors., (supra)*, wherein the Supreme Court has in para 4 & 6 has 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 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.

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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.”

49. In view of my above discussion, I do not see any reason to interfere with the impugned transfer order dated December 6, 2019, the writ petition is dismissed. No costs.

**CM Nos. 55947/2019, 135/2020 & 4762/2020**

The prayer in these applications pertain to interim stay, since I have finally decided the petition, these applications are dismissed as infructuous.

**V. KAMESWAR RAO, J**

**SEPTEMBER 27, 2021/jg/aky**