

Uttarakhand High Court

Dr. Parveen vs Director General on 19 March, 2019

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No.99 of 2019 (S/B)

With

Stay Application No.3074 of 2019

Dr. Parveen

....Petitioner

Versus

Director General, Indian Council

of Forestry Research & Education and others

....Respondents

Mr. Gyanant Kumar Singh and Ms. Joyce Irwin, learned counsel for the petitioner.

Mr. B.D. Upadhyaya, learned Senior Counsel assisted by Mr. Vikas Pande, learned counsel for the respondents.

Judgment Reserved: 11.03.2019

Judgment Delivered: 19.03.2019

Chronological list of cases referred :

1. (1993) 4 SCC 357
2. AIR 1991 SC 532
3. (2004) 11 SCC 402
4. AIR 1995 SC 1056
5. AIR 1993 SC 763
6. (1994) 5 JT (SC) 299
7. AIR 2003 SC 1344
8. 2003 (2) KarLJ 26
9. AIR 1964 SC 477
10. (2008) 14 SCC 171
11. AIR 1961 SC 970
12. (1952) 1 KB 338
13. AIR 1958 SC 398
14. AIR 1965 SC 111
15. (1972) 4 SCC 257
16. AIR 1955 SC 233
17. AIR 1953 Bom 133
18. (2010) 13 SCC 336
19. (2004) 12 SCC 299
20. (2005) 7 SCC 227
21. (2004) 4 SCC 245
22. (2001) 8 SCC 574
23. (1989) 2 SCC 602
24. (2003) 4 SCC 104
25. (1995) 2 SCC 532
26. (1995) Supp 4 SCC 169
27. (2004) 3 SCC 172
28. (1993) 1 SCC 148
29. (2009) 3 SCC 124
30. AIR 1966 SC 1283

31. (2009) 11 SCC 678
32. (2004) 7 SCC 405
33. (2001) 5 SCC 508
34. (1995) 6 SCC 749
35. (1986) 1 SCC 133
36. (2000) 5 SCC 630

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37. (1974) 4 SCC 3
38. AIR 1977 SC 448
39. (2005) 7 SCC 764
40. (2007) 8 SCC 418
41. (2008) 12 SCC 292
42. (2002) 4 SCC 160
43. (2010) 4 SCC 192
44. (1978) 4 SCC 336
45. (1966) 1 LLJ 458 SC
46. AIR 1991 SC 1260
47. (1995) 1 SCC 745

Coram:- Hon'ble Ramesh Ranganathan, C.J.
Hon'ble N.S. Dhanik, J.

Ramesh Ranganathan, C.J.

The petitioner has invoked the jurisdiction of this Court, under Articles 226/227 of the Constitution of India, seeking a writ of certiorari to quash the order in OA No.616/2018 dated 19.02.2019 passed, by the Central Administrative Tribunal, Allahabad Bench, Circuit sitting in Nainital; a writ of certiorari to quash the transfer order dated 14.05.2018, and relieving orders passed on 14.05.2018, 18.05.2018 and 08.10.2018; and to pass an order of stay of the impugned order of transfer, and of the order of the Tribunal.

2. Facts, to the limited extent necessary, are that the petitioner was hitherto transferred to Jorhat, Assam by proceedings dated 21.08.2015. This order of transfer was effected in the backdrop of a pending sexual harassment complaint, and several representations filed by her and her husband, to various authorities, seeking a probe regarding awarding fake Ph.D. degrees to a clique of IFS officers, plagiarism etc in the Indian Council of Forestry Research & Education (for short "ICFRE"). Questioning her transfer as vitiated by malafides, the petitioner approached the Central Administrative Tribunal, Allahabad Bench, Nainital Circuit Bench (for short "CAT") by filing OA No.4081 of 2015.

3. By an elaborate order in O.A. No.4081 of 2015 dated 13.07.2016, the CAT set-aside the impugned orders of transfer as vitiated by malafides. The CAT observed that the objective of the transfer was to punish and remove the applicant, who had become inconvenient to the respondents; the petitioner, a lady, had acted with courage in raising issues relating to fake Ph.D. degrees, and large scale

plagiarism prevailing in the Institute; her transfer was the result of the issues being raised by her; it was for the authorities to constitute a High Power Committee to inquire into these charges, and to set their house in order ; while the order of transfer did not lower her rank or reduce her salary, it was likely to cause much inconvenience to her as she had adopted a child recently who would be removed from familiar surroundings; she could not be punished, in any event, for raising issues like sexual harassment, fake Ph.D. degrees and plagiarism; the applicant was a whistle blower; and though she had staked no claims to it, in as many words, she was entitled to the protection under the Whistle Blowers Protection Act, 2011, and the numerous decisions relating to whistleblowers.

4. The impugned order of transfer was quashed, the period of absence of the petitioner was directed to be adjusted against some leave due as per the provisions of the Leave Rules; the first respondent was asked to consider setting up a High Power Committee to review the working of the Institution, and ascertain the veracity of the charges levelled by the applicant; and, in case, the charges were found frivolous, it was for the respondents to take appropriate action against the applicant.

5. Aggrieved thereby, the ICFRE invoked the jurisdiction of the Delhi High Court by filing Writ Petition (C) No.6736 of 2016. The Delhi High Court passed an interim order on 02.08.2016 staying the operation of the order of the CAT, Nainital Circuit Bench. Aggrieved thereby, the petitioner carried the matter in appeal to the Supreme Court which, by its order in Special Leave to Appeal (C) No.26267 of 2016 dated 14.09.2016, stayed the operation of the interim order passed by the Delhi High Court in Writ Petition (C) No.6736 of 2016 dated 02.08.2016. Thereafter, by order in I.A. Nos.2-3 in Civil Appeal No.9179 of 2016 dated 24.10.2016, the Supreme Court disposed of the appeal, as also the pending applications, holding that the interim order passed earlier on 14.09.2016 should be maintained. The High Court was requested to decide Writ Petition (C) No.6736 of 2016 as expeditiously as its business would permit. The Civil Appeal and all Interlocutory Applications were, accordingly, disposed of.

6. On a letter dated 12.04.2018 being addressed by the Institute, to its Counsel, stating that they were ready and willing to withdraw the Writ Petition and, thereafter, take a fresh view on the transfer of the petitioner herein subject to the demands of administrative exigencies, and the decision would be taken uninfluenced by any of the extraneous circumstances noted by the Tribunal in Paragraph 35 of its order dated 13.07.2016, the Division Bench of the Delhi High Court, while taking on record the said letter, disposed of the writ petition as not pressed along with the pending applications, and granted the Institute liberty as prayed for which, in terms of the first Paragraph of the said order, was to take a fresh view on the transfer of the petitioner, subject to the demands of administrative exigencies.

7. Thereafter, the impugned order of transfer came to be passed on 14.05.2018. The said order records that the Director General of the ICFRE was pleased to transfer 18 Scientists at the Institute, for administrative reasons, with immediate effect. The petitioner's name was reflected at Sl. No.6 in the said list. The proceedings further states that all scientists were directed to join their place of posting immediately; the concerned Directors of the Institutes shall ensure immediate compliance of the order; and the charge relinquishment/assumption reports, of such scientists, should be sent in due course.

8. Alleging that this transfer order dated 14.05.2018 was also vitiated by malafides, the petitioner again approached the CAT, Circuit Bench Nainital, by filing OA No.330/616/2018. In its order dated 19.02.2019 (the order impugned in this writ petition), the Tribunal noted that the main question in dispute was whether the transfer of the petitioner was as a measure of punishment imposed upon her, consequent to her filing applications for correction of the mal-administration in the ICFRE, and her complaint of sexual harassment at the workplace; and whether it was vitiated by malafides or was in the exigencies of service and interest of administration.

9. The Tribunal, thereafter, observed that it was not its function, or within its jurisdiction, to question the decision on transfers and posting or to evaluate the comparative merits of the officers who could have been posted or considered, as these matters fell exclusively within the domain of the concerned authorities; this was so, since transfer and posting was an incidence of service, and unless the same was vitiated by malafides or on totally extraneous considerations, or was in violation of statutory provisions, the Tribunal would not interfere with the transfer or posting. The Tribunal referred to the judgments of the Supreme Court in S.L. Abbas¹; Shilpi Bose²; Gobardhan Lal³; S.S. Kourav & others⁴ and M. Sankaranarayanan, IAS⁵, and thereafter observed that, in the light of the judgments on the issue of transfer, the conclusions could be summarized as under:-

- 1) Transfer is a condition of service.
- 2) It does not adversely affect the status or emoluments or seniority of the employee.
- 3) The employee has no vested right to get a posting at a particular place or choose to serve at a particular place for a particular time.
- 4) It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required.
- 5) Transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee nor it should be passed under political pressure.
- 6) There is a very little scope of judicial review by Courts/Tribunals against the transfer order and the same is restricted only if the transfer order is found to be in contravention of the statutory Rules or malafides are established.
- 7) In case of malafides, the employee has to make specific averments and should prove the same by adducing impeccable evidence.
- 8) The person against whom allegations of malafide is made should be impleaded as a party by name.
- 9) Transfer policy or guidelines issued by the State or employer does not have any statutory force as it merely provides for guidelines for the understanding of the

Departmental personnel.

10) The Court does not have the power to annul the transfer order only on the ground that it will cause personal inconvenience to the employee, his family members and children, as consideration of these views fall within the exclusive domain of the employer.

11) If the transfer order is made in mid-academic session of the children of the employee, the Court/Tribunal cannot interfere. It is for the employer to consider such a personal grievance.

10. The Tribunal, thereafter, noted the submission, urged on behalf of the petitioner, that she was transferred even before the freshly constituted Committee, to inquire into the complaint of sexual harassment, had submitted its report; and her transfer to Jodhpur would require her coming to Dehradun to attend the inquiry proceedings, involving time and money. On this contention, the Tribunal held that, while attending the inquiry, the petitioner would be on official duty, and would be entitled to be reimbursed for the cost incurred by her while attending the inquiry.

11. On the petitioner's challenge to the composition of the Transfer Committee which, among others, included Mr. A.S. Rawat, heading the Transfer Committee against whom she had filed a complaint of sexual harassment, and against whom the inquiry was pending, and Mr. Raman Nautiyal, as "Special Invitee", against whom her husband had filed petitions in the Court which are pending, the Tribunal held that the respondents had denied vindictiveness on behalf of the Committee members; inclusion of Mr. A.S. Rawat and Mr. Raman Nautiyal, in the Transfer Committee, did not hold much significance; in fact, there were other members of the Transfer Committee against whom nothing had been alleged by the petitioner; it could not be said that the Transfer Committee took the decision to transfer employees solely on the directions of Mr. Rawat and Mr. Nautiyal; on the applicant's own showing, she had the right to file applications for removal of the said two persons, which she chose not to do; and this was yet another factor which did not support her contention of malafides and vindictiveness.

12. On the petitioner's contention that she was working on a Project for a long period which would be left unfinished by her transfer, and the contention of the respondent that, at present, she was not involved in any project, the Tribunal opined that, whatever may be the status of an ongoing project and whether it was being handled by the petitioner or not, it was the sole prerogative of the Head of the Department/Organization to ensure that the day-to-day working of the organization was carried on; the Tribunal did not have the expertise to direct the Director-General as to how best to conduct the working and management of the organization; and there ought not to be any interference in the working of the organization at the behest of the Tribunal. The Tribunal referred to the judgment of Supreme Court, in N.K. Singh⁶, in this regard.

13. On the petitioner's complaint of the haste in which her transfer order was sought to be implemented, the Tribunal held that these were formalities provided for relieving an Officer, and it was for the administration to see how best the formalities were to be observed; any act of the administration, if illegal or irregular, could not and would not harm the applicant in the rights available to her under the administrative instructions; and mal-administrative acts or omissions, if

any, could not prejudice the rights of the applicant in any manner whatsoever.

14. On the petitioner's claim that the same circumstances existed even as on date, based on which she was transferred earlier, the Tribunal held that, from the material on record, it was evident that the previous transfer order was set-aside on the ground that the object of the transfer was to punish and remove the petitioner, who had become inconvenient to the respondents, and was not in public interest. The Tribunal observed that the respondents had contended that action was taken to look into the allegations of corruption and mal-administration in the organization; the present transfer was neither punitive nor malafide, and had been made on administrative exigencies, uninfluenced by extraneous circumstances which found mention in the order of the Tribunal in the previous O.A. filed by the petitioner challenging her transfer; she had not been singled out, but was transferred along with several other officers; the same circumstances, surrounding the previous transfer, did not exist as on date; the present transfer did not adversely affect the status or emoluments or seniority of the applicant; it was for the administrator to determine as to at what place, and for how long, the services of a particular employee was required; the fact that other officials had not been transferred for a long period could not be a ground of challenge to the transfer order; the employee could question the order of transfer, on the ground of malafides, only by making specific averments and proving the same by adducing impeccable evidence which the applicant had been unable to adduce; and while allegations of malafides had been made against a number of persons, all of them had not been impleaded as respondents by name.

15. The Tribunal referred to Federation of Railway Officers Association⁷, wherein it was held that allegations regarding malafides cannot be vaguely made and it must be specific and clear. The Tribunal also took note of the judgment in Smt. B. Nagarathnamma & another⁸, wherein it was held that the concerned officer was not entitled to the Last Pay Certificate (LPC) till the charge was handed over as required under the Rules. The Tribunal, thereafter, observed that these administrative acts were initiated pursuant to the transfer order and, therefore, no prejudice can be said to have been caused to the applicant by the said acts.

16. The Tribunal held that, in the light of the principles laid down in the judicial pronouncements of the Supreme Court and the limits of judicial review on transfer, it was satisfied that the transfer and posting of the petitioner was for administrative reasons, and was not liable to be interfered with. The Tribunal concluded that the transfer order was for administrative reasons, and not made by way of malafides or punishment. The O.A. was, accordingly, dismissed. Aggrieved thereby, the present writ petition.

17. Mr. Gyanant Kumar Singh, learned counsel for the petitioner, would submit that the Tribunal had failed to consider that the order of transfer of the petitioner was in violation of Section 12(1) and (3) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereafter referred to as the "2013 Act"); the undertaking furnished to the Delhi High Court, which resulted in the order in Writ Petition (C) No.6736 of 2016 dated 12.04.2018 being passed, was not placed before the Transfer Committee; this undertaking required the respondent-Institute to take note of Paragraph 35 of the earlier judgment of CAT; it is only if the order of the Delhi High Court had been placed before the Transfer Committee, could it have considered whether or not

transfer of the petitioner was contrary to what the Tribunal had observed in Paragraph 35 of its earlier order; the conduct of the respondent-Institute in not providing her any work, and their acts after the earlier order of transfer and before the subsequent order of transfer, showed that the subsequent order of transfer was vitiated by malafides; the petitioner was not given any work whatsoever, and her salary was not paid till an order was passed by the Delhi High Court; the Transfer Committee consisted of two members against whom the petitioner and her husband had levelled serious allegations; the petitioner's transfer, by the order impugned before the Tribunal, was passed during the period when the inquiry, into her complaint of sexual harassment, was still pending; it is only after the order of the transfer was passed, was the said inquiry closed; questioning the conclusions of the Inquiry Committee, the petitioner has approached the CAT, Circuit Bench Nainital, before whom the matter is still pending; the note submitted by the erstwhile Secretary of the Institute Mr. V. Khandekar, records the views of the authorities that her continued presence in Dehradun would vitiate the atmosphere further, and she may indulge in attempts at implicating others; and in view of these factors, she needs to be transferred to some place away from Dehradun; the Tribunal had erred in holding that the petitioner could have complained about the inclusion of two members in the Transfer Committee, and should have sought for their exclusion; it is only after the Transfer Committee, took a decision to transfer several employees, did the petitioner come to know that these two members were also part of the Transfer Committee; the petitioner could not, in such circumstances, have complained to the authorities regarding constitution of the Transfer Committee itself; the petitioner had, on being intimated that she could exercise her option for two stations, called upon the authorities to disclose which of the candidates were eligible for transfer; since the petitioner had questioned her transfer, on the ground that it was vitiated by malafides, it was wholly unnecessary for her to indicate her option to be posted at any one of two other stations, either in her claim petition before the Tribunal, or in the Writ Petition filed before this Court; while Scientists, who had put more than 10 years, are said to have been identified for transfer, there were several other Scientists who had put in far longer years service than the petitioner at Dehradun, and yet their cases were not placed before the Transfer Committee, much less being considered for transfer; the very fact that the first relieving order was issued post-haste is evident from the fact that relieving orders were issued within half an hour of receipt of the order of transfer on 14.05.2018 itself; this was followed by another relieving order four days' thereafter on 18.05.2018, and by yet another relieving order a few months thereafter on 08.10.2018; this would also justify the petitioner's allegation that the transfer order was vitiated by malafides; the conduct of the Director General (the fourth respondent), in not giving her any notice, showed that the intention of the authorities was to, somehow, ease her out from the office; these specific contentions, regarding malafides, were not considered by the Tribunal; the impugned order of transfer itself records that the transfer was for administrative reasons, and not for administrative exigencies; Rule 286(3) of the General Financial Rules, 2007, issued by the Ministry of Finance, required a Government servant to move to another post, relinquishing his post against local arrangement due to administrative exigencies, and not for administrative reasons; and on these grounds the order passed by the Tribunal, as also the order of transfer impugned before the Tribunal, necessitate being set-aside.

18. On the other hand Mr. B.D. Upadhyaya, learned Senior Counsel appearing on behalf of the Institute, would submit that persons against whom the petitioner had alleged malafides, both in her

application before the Tribunal and in the Writ Petitioner filed before this Court, have not been arrayed as respondents eo-nominee; the petitioner had been working at Dehradun for the past 16 years, ever since 2003; the services of Scientist Grade-A are transferable from one station to another; the Rule only prescribes a tenure of five years at each station; options were invited from all candidates, who were sought to be transferred, asking them to indicate their choice of two different stations; the petitioner, despite being intimated in this regard, chose not to exercise any option; the Tribunal was, therefore, justified in refraining from interfering with the order of transfer made for administrative reasons; and the order of the transfer was passed by the Director-General of the Institute who has not been arrayed as a respondent eo-nominee either before the CAT or before this Court.

19. As noted hereinabove, the petitioner has sought a writ of certiorari to quash the order of the CAT in OA No. 616 of 2018 dated 19.02.2019, the transfer order dated 14.05.2018, and the relieving orders passed on 14.05.2018, 18.05.2018 and 08.10.2018. A writ of certiorari can be issued for correcting errors of jurisdiction such as in cases where the order is passed without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction or where, in exercise of the jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly. The jurisdiction to issue a writ of certiorari is supervisory and not appellate. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. The adequacy or sufficiency of evidence, and the inference of fact to be drawn therefrom, cannot be agitated in certiorari proceedings (Syed Yakoob 9) as it is in the province of a court of appeal.

20. If the tribunal has erroneously refused to admit admissible and material evidence, or has erroneously admitted inadmissible evidence, or if a finding of fact is based on no evidence, it would be an error of law which can be corrected by a writ of certiorari. Where the conclusion of law by the Tribunal is based on an obvious mis-interpretation of the relevant statutory provisions, or in ignorance of it or even in disregard of it or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. Whether or not an error is an error of law, and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case, and upon the nature and scope of the legal provisions which is alleged to have been misconstrued or contravened. (Syed Yakoob9).

21. Unlike an appellate authority which can re-appreciate the evidence on record, the High Court, in the exercise of its certiorari jurisdiction, would not substitute its views for that of the Tribunal, nor would it re-appreciate the evidence on record to arrive at a conclusion different from that of the Tribunal whose order is impugned before it. Even if two views are possible, and the Tribunal has taken one of the possible views, the High Court would not interfere, in the exercise of its certiorari jurisdiction, even if it were to be satisfied that other possible view, canvassed before it, is more attractive. A finding of fact reached, on the appreciation of evidence, cannot be reopened or questioned in writ proceedings save a finding of fact which is either perverse or is based on no evidence. If a provision is reasonably capable of two constructions, and one construction has been adopted by the authority, its conclusion may not always be open to correction in writ proceedings. (Syed Yakoob9).

22. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior tribunals. A writ can similarly be issued where, in exercise of the jurisdiction conferred on it, the tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. (Saurashtra Kutch Stock Exchange Ltd.¹⁰; Syed Yakoob⁹). A writ of certiorari can be issued in the case of illegal exercise of jurisdiction, and also to correct errors of law apparent on the face of the record, even though they do not go to jurisdiction. It is only errors of law apparent on the face of the record, and not errors of fact though they may be apparent on the face of the record, which can be corrected, (Shri Ambica Mills Co. Ltd.¹¹; Northumberland Compensation Appeal Tribunal¹²; and Nagendra Nath Bora¹³), and not every error either of law or fact which can be corrected by a Court of appeal or revision. (T. Prem Sagar ¹⁴; Bachan Singh ¹⁵; Nagendra Nath Bora¹³).

23. Further an error of law, which can be corrected by a writ of certiorari, must be self-evident. It should not need an elaborate examination of the record (Shri Ambica Mills Co. Ltd.¹¹), or require a detailed examination or an elaborate argument to establish it (Saurashtra Kutch Stock Exchange Ltd.¹⁰; Hari Vishnu Kamath¹⁶; Batuk K. Vyas¹⁷). An error cannot be said to be apparent if one has to travel beyond the record to see whether the judgment is correct or not. It is an error which strikes on the mere looking, and does not need a long-drawn out process of reasoning on points where there may conceivably be two opinions. Such an error would not require any extraneous matter to show its incorrectness. To put it differently, it should be so manifest and clear that no court would permit it to remain on record. (Saurashtra Kutch Stock Exchange Ltd.¹⁰; Sant Lal Gupta¹⁸).

24. Bearing the aforesaid principles in mind, let us now examine the contention urged on behalf of the petitioner that the order of transfer and the consequential relieving orders, impugned before the Central Administrative Tribunal, suffer from an error apparent on the face of record necessitating exercise of the certiorari jurisdiction. It is not in dispute that the petitioner has been working at F.R.I., Dehradun ever since the year 2003, i.e. for the past 16 years; the post held by her is a transferable post, and the Rules prescribe only a tenure of five years at each station. The transfer of the petitioner, by the order impugned before the Central Administrative Tribunal, from Dehradun to Jodhpur, is, as is referred to in the order dated 14.05.2018 itself, for administrative reasons. No government servant, or an employee of a Government undertaking/Institute has a legal right to be posted forever at any one particular place or a place of his choice. (Kendriya Vidyalaya Sangathan¹⁹; Major General J.K. Bansal²⁰; Janardhan Debanath²¹; National Hydroelectric Power Corpn. Ltd.²²). Transfer of an employee, appointed to a particular cadre of transferable posts, is an incident of service and is made in administrative exigencies. No government servant, or an employee of a public undertaking, has a legal right for being posted at any particular place. Transfer, from one place to the other, is generally a condition of service and the employee has no choice in the matter. Transfer is necessary in public interest, and efficiency in public administration. It is, normally, not to be interfered with by Courts/Tribunals except in rare cases where it has been made in a vindictive manner. Whenever a public servant is transferred he must comply with the order, but if 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 concerned employee must carry out the order of

transfer. In the absence of any stay of the transfer order, the employee has no justification to avoid or evade the transfer order merely on the ground of his having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer, in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules. (Gujarat Electricity Board²³; Public Services Tribunal Bar Association²⁴).

25. 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. (Rajendra Ch. Bhattacharjee²⁵). 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 Sangathan¹⁹; S.L. Abbas¹; Major General J.K. Bansal²⁰; Abani Kanta Ray²⁶). 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. (Shilpi Bose²; Major General J.K. Bansal²⁰). A person holding a transferable post, unless specifically provided in his service conditions, has no choice in the matter of posting. (Rajendra Ch. Bhattacharjee²⁵). Unless there is a term to the contrary in the contract of service, a transfer order is a normal incidence of service. (Pearlite Liners (P) Ltd.²⁷). 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 Roy²⁸). When an employee does not join at his transferred place, he commits a misconduct. (Novartis India Ltd.²⁹). 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 (P) Ltd.²⁷).

26. 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, it cannot lightly be interfered with as a matter of course or for every type of grievance sought to be made. (Gobardhan Lal³). The employer is entitled to decide, on a consideration of the necessities of administration, whether transfer of an employee should be made to a particular place. The employer is in the best position to judge as to how to distribute its employees at different places. Courts/Tribunals should be wary of interfering with such orders made by the employer in discharge of its managerial functions. If an order of transfer is made malafide, or for some other ulterior purpose, Courts/ Tribunals may interfere and set aside such an order of transfer, as mala fide exercise of power is not considered an exercise of power in law. The finding of malafide should, however, be reached by Courts/Tribunals only if there is sufficient and proper evidence and such a finding should not be reached capriciously or on flimsy grounds. (Syndicate Bank Ltd.³⁰). Transfer orders should not be interfered with except where the transfer has been made in a vindictive manner. (Public Services Tribunal Bar Assn.²⁴; Tushar D. Bhatt³¹).

27. Questions, as to whether the transfers effected are in public interest or not, are normally not examined as this would essentially require factual adjudication and invariably depend upon the peculiar facts and circumstances of the case concerned. No government servant or employee of a

public undertaking has any legal right to be posted forever at one particular place or to a place of his choice since transfer of a particular employee, appointed to the class or category of transferable posts from one place to another, is not only an incident, but a condition of service, necessary in public interest and efficiency in public administration. Except, in exceptional circumstances, Courts or the Tribunals do not, normally, interfere with such orders as if they were appellate authorities substituting their own decision, for that of the employer/management, with respect to such orders passed in administrative exigencies. (National Hydroelectric Power Corpn. Ltd.²² and Siya Ram³²).

28. Courts or tribunals are not appellate forums to decide on transfer of employees on administrative grounds. Wheels of administration should be allowed to run smoothly and Courts/tribunals are not expected to interdict the working of the administrative system by transferring officers to places it considers proper. It is for the administration to take appropriate decisions, and such decisions shall stand unless they are vitiated either by malice or extraneous considerations. (S.S. Kourav⁴). Orders of transfer should not be interfered with lightly by a Court of law in the exercise of its discretionary jurisdiction. (Anjan Sanyal³³). Courts or Tribunals cannot substitute their own decisions, in the matter of transfer, for that of the competent authorities. (Gobardhan Lal³; Kendriya Vidyalaya Sangathan¹⁹; Janardhan Debanath²¹; National Hydroelectric Power Corpn. Ltd.²²; S.L. Abbas¹; B.C. Chaturvedi³⁴; National Hydroelectric Power Corpn. Ltd.²²; Major General J.K. Bansal²⁰).

29. Since the petitioner's claim, of the transfer order being illegal, is primarily based on the ground that it is vitiated by malafides, it is necessary to take note of the circumstances under which a transfer order can be set aside on this score. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an "alien" purpose, other than the one for which the power is conferred, is malafide use of that power. Same is the position when an order is made for a purpose, other than that which finds place in the order. (Express Newspapers (P) Ltd.³⁵). 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 considerations borne out of conjectures or surmises. (Gobardhan Lal³). 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 Roy²⁸). 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 an order of transfer is vitiated by malafides.

30. Except for a bald averment, no material has been placed by the petitioner before this Court to support the allegations of malafides. Mere use of the word "malafide" would not, by itself, justify acceptance of such a plea. (Prabodh Sagar³⁶). Allegations of malafides essentially raise a question of fact. It is, therefore, necessary for the person making such allegations to supply full particulars in the petition. If sufficient averments and requisite material are not on record, the court would not make a "fishing" or a "roving" inquiry. Mere assertion, vague averment or bald statement is not enough to hold the action to be malafide. It must be demonstrated by facts. Moreover, the burden of proving malafides is on the person levelling such allegations and the burden is "very heavy". The

charge of malafide is more easily made than made out. It is the last refuge of a losing litigant (E.P. Royappa³⁷; Gulam Mustafa³⁸; Ajit Kumar Nag³⁹; and Dhampur Sugar (Kashipur) Ltd.⁴⁰). Vague allegations of malafides are not enough to dislodge the burden resting on the person who makes the same, though what is required in this connection is not proof to the hilt. The abuse of authority must appear to be reasonably probable. (Express Newspapers (P) Ltd.³⁵). There has to be strong and convincing evidence to establish allegations of malafides specifically and definitely alleged in the petition. The presumption under law is in favour of the bonafides of the order unless contradicted by acceptable material. (Chandra Prakash Singh⁴¹; Nirodhi Prakash Gangoli⁴²).

31. While exercising the power of judicial review, the High Court should not readily accept the charge of malus animus laid against the State and its functionaries. The burden to prove the charge of malafides is always on the person who moves the court for invalidation of the action of the State and/or its agencies and instrumentalities on the ground that the same is vitiated due to malafides. The Court should resist the temptation of drawing dubious inferences of malafides or bad faith on the basis of vague and bald allegations or inchoate pleadings. (Jasbir Singh Chhabra⁴³).

32. Where a case is almost entirely based on mala fides, the person alleging malice should furnish the necessary particulars for the allegation, and should prove malus animus indicating that the respondent was actuated either by spite or ill will against him or by indirect or improper motives, failing which it is not obligatory for the respondents to deal with it in detail in their reply. Both direct and circumstantial evidence, as well as the respondents' admission and the surrounding circumstances of the case, are admissible to establish lack of bona-fides, or bad faith. (Kedar Nath Bahl⁴⁴). It is for the person seeking to invalidate an order to establish the charge of bad faith. Such a charge may be made easily or without a sense of responsibility, and that is why it is necessary for Courts to examine it with care and attention. (S. Pratap Singh⁴⁵; Kedar Nath Bahl⁴⁴).

33. Let us now examine whether the petitioner has been able to make out a case of bad faith, by the respondents herein, in passing the order of transfer impugned before the Central Administrative Tribunal. The petitioner's contention that the order of transfer is in violation of Section 12 (1) and (3) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short the "2013 Act") does not merit acceptance. Section 12 of the 2013 Act relates to action during pendency of an inquiry and, sub-section (1) thereof, stipulates that, during the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to (a) transfer the aggrieved woman or the respondent to any other workplace; or (b) grant leave to the aggrieved woman up to a period of three months; or (c) grant such other relief to the aggrieved woman as may be prescribed. Section 12(2) stipulates that the leave granted to the aggrieved woman, under this Section, shall be in addition to the leave she would be otherwise entitled. Section 12(3) stipulates that, on the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be. In terms of Section 12(1)(a) of the 2013 Act, the Committee concerned is required to transfer the aggrieved woman (in the present case the petitioner) on a written request made by her. Admittedly no such request was made by the petitioner and, consequently, Section

12(1)(a) of the 2013 Act has no application. The said provision does not have any bearing on transfer of an employee in administrative exigencies or in public interest. Reliance placed, on behalf of the petitioner, on Section 12 (1) and (3) of the 2013 Act is, therefore, misplaced.

34. The contention of the petitioner, that failure to place a copy of the undertaking furnished by the respondents to the Delhi High Court, which resulted in the order in W.P. (C) 6736/2016 dated 12.04.2018 being passed, before the Transfer Committee vitiated the order of transfer, is only to be noted to be rejected. As noted hereinabove, the Delhi High Court recorded the submission, of the respondents herein in their letter dated 10.04.2018, that they were willing to withdraw the writ petition filed by them before the Delhi High Court, and thereafter take a fresh view on the transfer of the petitioner, subject to the demands of the administrative exigencies. They also stated that the decision would be taken uninfluenced by any of the extraneous circumstances noted by the CAT in paragraph no. 35 of its judgment dated 13.07.2016.

35. The extraneous circumstances noted by the CAT, in paragraph no. 35 of its order dated 13.07.2016, were that the objective of transfer was to punish and remove the petitioner, who had become inconvenient to the respondents, and was not in public interest; the petitioner, a lady, had raised some of the issues relating to fake Ph.D. degrees and large scale plagiarism prevailing in the institute; the transfer was as a result of the issues raised by her; it was for the authorities to appoint a high power committee to inquire into the charges, and to set their house in order; the transfer would cause her inconvenience, as she appeared to have adopted a child recently; the petitioner could not be punished for raising issues like sexual harassment, fake degrees and plagiarism; and she was a whistle blower entitled to protection under the Whistle Blowers Protection Act, 2011.

36. Mr. Gyanant Kumar Singh, learned counsel for the petitioner, has not drawn our attention to any provision of the Whistle Blowers Protection Act, 2011 which has been violated as a result of the impugned order of transfer. A bare perusal of the order of transfer dated 14.05.2018 would show that, in all, 18 Scientists in various grades were transferred from one institute to another. Out of these 18, 4 Scientists from the FRI Dehradun, including the petitioner, were transferred to other places. The petitioner is a Scientist in "E" Grade. The impugned order shows that, in all, 7 Scientists Grade "E" were transferred from one station to another. Out of the 18 individuals transferred, five are women. It is difficult for us, therefore, to accept the petitioner's plea that the transfer order was passed as a measure of punishment. While the serious allegations leveled by the petitioner, of fake Ph.D. degrees and plagiarism in the Institute, would undoubtedly necessitate an inquiry being caused by the Institute, and for stringent measures to be taken to prevent such incidents from occurring in future; and the perpetrators should, undoubtedly, be identified and punished (in case these allegations are true); that does not mean that the person, who has made such a complaint, cannot be transferred at all, and should be retained in the very same institute till he/she retires from service.

37. The petitioner has been working in the Institute at Dehradun for the past nearly 16 years, and the respondents have effected transfer of 18 employees, who had completed 10 years of service at a particular station, from one station to another. As the respondents do not appear to have been influenced by the extraneous circumstances noted by the Tribunal in paragraph no. 35 of its

judgment dated 13.07.2016, it matters little that a copy of the order of the Delhi High Court was not placed before the Transfer Committee. Neither the undertaking furnished by the respondents before the Delhi High Court, nor the order passed by the Delhi High Court in WP (C) 6736/2016 dated 12.04.2018, obligated the respondents to place a copy of the order of the CAT, or the Delhi High Court, before the Transfer Committee prior to its recommendation regarding transfers.

38. With regards the petitioner's contention that Mr. A.S. Rawat and Mr. Raman Nautiyal, against whom she and her husband had leveled allegations, were part of the Transfer Committee, it is only if the petitioner is able to show that these two individuals were responsible for such transfers being made in bad faith, only because the petitioner and her husband had made complaints against them, would interference, with the order of transfer, be justified. It is necessary to note that neither of these two individuals have been arrayed as respondents either in the OA filed before the Tribunal or in the writ petition now filed before this Court. The person to whom malafides are imputed should be impleaded eo- nomine as a party respondent to the proceedings, and should be given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it, itself, would be violative of principles of natural justice as it would amount to condemning a person without giving him an opportunity of being heard. (P.P. Sharma⁴⁶). It would be wholly inappropriate for us, therefore, to examine the petitioner's contention of malafides, on the part of Mr. A.S. Rawat and Mr. Raman Nautiyal, behind their back. Further the order of transfer was passed by the Director General of the Institute, and the aforesaid two persons along with others in the Transfer Committee had only recommended transfers. In this context it is relevant to note that the Director General who passed the impugned transfer order has also not been arrayed as a respondent eo-nomine.

39. As has been noted by the Tribunal, in the order impugned in this Writ Petition, all those employees who were identified for transfer were asked to exercise their options for two different places. Despite being called upon to do so, the petitioner chose not to indicate her choice of posting and had, instead, asked the authorities to disclose which of the candidates were eligible for transfer. Her complaint that there were several others who had also completed more than 10 years, and should have also been transferred, cannot be examined in present proceedings since none of those individuals, who the petitioner alleges are also liable to be transferred, have been arrayed as respondents eo-nomine in this writ petition. In any event, the mere possibility that some others, who ought also to have been transferred, were not, would not justify the petitioner's claim that she should be retained in Dehradun itself. As held by the Supreme Court in Chandigarh Administration and another vs. Jagjit Singh and another⁴⁷:

".....Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the

respondent-authority to repeat the illegality or to pass another unwarranted order. The extra-ordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law - indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent- authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course - barring exceptional situations - would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles....."

(emphasis supplied)

40. Even if the retention of some others is presumed to be illegal, the petitioner could only have claimed that they should also have been transferred to other stations, and not that she should be retained at Dehradun.

41. The contention that the relieving order was issued, half an hour after receipt of the transfer order, and this revealed the intention of the authorities to ease her out, does not also merit acceptance. If the relieving order was issued contrary to the Rules, then it would be the relieving order, and not the transfer order, which would stand vitiated. Whatever be the justification for issuing such a relieving order soon after the impugned order of transfer was passed on 14.05.2018, the fact remains that, despite the order of transfer having been passed on 14.05.2018, the petitioner, having obtained the interim protection of the Tribunal, is working at Dehradun till date.

42. Reliance placed on the note signed by Mr. V. Khandekar, erstwhile Secretary of the Institute dated 14.08.2015, is also of no avail. While the said note does record that the petitioner's continuance in Dehradun would certainly vitiate the atmosphere further, she may indulge in attempts at implicating others, and she needs to be transferred to some place away from Dehradun, the aforesaid note was signed by Mr. V. Khandekar on 14.08.2015 nearly three years prior to the date of the impugned order of transfer dated 14.05.2018. The said endorsement was made even prior to the earlier order of the Tribunal in OA No. 4081 of 2015 dated 13.07.2016. As the impugned order of transfer was passed after seeking leave of the Delhi High Court to effect transfers in administrative exigencies, reliance placed on events, which took place nearly three years prior to the order of the Delhi High Court in W.P. (C) No. 6736 of 2016 dated 12.04.2018, is misplaced.

43. In Smt. Nagarathnamma and Anr.8, on which reliance is placed on behalf of the petitioner, the learned Single Judge of the Karnataka High Court has held that the last pay certificate should be given to a government servant on his transfer from one establishment to another. We have no reason to doubt that the respondents would issue such a last pay certificate, enabling the petitioner to join at her transferred station at Jodhpur.

44. The subtle distinction sought to be made between "administrative exigencies" and "administrative reasons" does not also merit acceptance. The word "exigency" means an urgent need, and transfer on "administrative exigencies" would mean the urgent need to transfer an employee on administrative grounds. The mere fact that the order of transfer records that the transfer is made for administrative reasons, and does not state that the transfer was being made on administrative exigencies, matters little. It is just a play of words by the learned counsel for the petitioner, and nothing more.

45. While the petitioner complains that she was not given any work despite the earlier order of the Tribunal dated 13.07.2016, the respondents contend that there was no work to be given to her.

46. No rule which requires an employee to be put on notice, before a transfer order is passed, has also been brought to our notice. The Tribunal has examined the matter in great detail, and has held that the manner in which an organization should be run is for those, at the helm of its affairs, to decide; and Courts/Tribunals lack expertise in such matters. The view taken by the Tribunal cannot be said to be a view which could not have been taken at all, for it is only then would this Court be justified in exercising its certiorari jurisdiction, under Article 226 of the Constitution of India, to interfere.

47. Viewed from any angle, we are satisfied that the order of the Tribunal, impugned in the writ petition, does not suffer from an error apparent warranting exercise of our certiorari jurisdiction. The writ petition fails and is, accordingly, dismissed. No costs.

(N.S. Dhanik, J.)
19.03.2019

(Ramesh Ranganathan, C.J.)
19.03.2019

Rahul