

GAHC010079392024



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**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/2460/2024**

1. The Union of India, represented by the Secretary,  
Railway Board, Ministry of Railways, Railway Board,  
Rail Bhawan, New Delhi- 110001
2. Director/ESTT (SPL) Railway Board,  
Ministry of Railway 256-A, Raisina Road, Raj Path  
Area, Central Secretariat, New Delhi-110001
3. Pr. Chief Mechanical Engineer,  
Northeast Frontier Railway, Maligaon,  
Guwahati, Assam-781011
4. The Assistant Personnel Officer/I/LMG, For  
Divisional Railway Manager (P), N.F. Railway,  
Maligaon, Lumding- 782447
5. Dy. CPO/GAZ, For GM(P), Northeast Frontier  
Railway, Maligaon, Guwahati-781011

**.....Petitioners**

**-Versus-**

Sri Kundan Kumar,  
S/o- Sri Brahmideo Prasad Yadav,  
Present Address: E/3/A Station Colony,  
Panbazar, Guwahati

Permanent Address:  
Village- Bhelahi, P.O.- Ratan Patty,  
District- Madhepura, Bihar-852122

**.....Respondent**

– B E F O R E –

**HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI**  
**HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

For the petitioners : Mr. H. Gupta, C.G.C.  
For the respondent : Mr. D. Mozumdar, Sr. Advocate  
Assisted by Mr. S. Nath, Advocate

Date of hearing : 26.11.2024  
Date of Judgment : 02.12.2024

**JUDGMENT & ORDER (CAV)**

*(Vijay Bishnoi, C.J.)*

This writ petition is filed by the petitioners being aggrieved with the order dated 22.03.2024 passed by the Central Administrative Tribunal (hereinafter to be referred as 'Tribunal'), Guwahati Bench in O.A. No.279/2023 whereby the Tribunal has allowed the O.A. filed on behalf of the respondent herein and has set aside the order dated 05.09.2023 whereby the respondent was transferred from N.F. Railway to South Central Railway and has also quashed the subsequent office orders dated 14.09.2023 and 15.09.2023 whereby the respondent was relieved from the present place of posting.

**2.** The brief facts which are necessary for adjudication of the present writ petition are that the respondent joined as Group 'A' officer in Indian Railway Service of Mechanical Engineers (IRSME) on 03.12.2012 and after completion of

necessary training, he was posted in Northeast Frontier Railway (N.F. Railway) on 18.06.2014. The respondent was posted at several locations in N.F. Railway, such as Lumding and Dibrugarh and while working as Senior CDO/GHY, he was transferred from Dibrugarh to Guwahati in February, 2023. However, the Railway Board vide order dated 05.09.2023 transferred the respondent from N.F. Railway to South Central Railway. Vide order dated 14.09.2023 issued by the Deputy CPO/GAZ for General Manager (P), it was ordered that Shri Ashok Kumar, Dy.CME/Chg/HQ would look after the post of Sr. CDO/GHY, which was held by the respondent, till regular incumbent is posted. Again vide order dated 15.09.2023, the APO/I/LMG for Divisional Railway Manager (P), N.F. Railway, Lumding ordered that Shri Ashok Kumar, Dy.CME/Chg/HQ would look after the post of Sr. CDO/GHY till regular incumbent is posted.

It is to be noticed that three other officers were also transferred along with the respondent from N.F. Railway to Eastern Railway, East Central Railway and South East Central Railway, respectively.

**3.** Being aggrieved with the transfer order dated 05.09.2023, the respondent filed an appeal to the General Manager, N.F. Railway raising a grievance regarding his transfer. In the said appeal, the respondent alleged that someone had tried to create conspiracy with bad intention against him to tarnish his image by propagating false information to social media/news media as well as to administration. It was also alleged that since the respondent had denied to commission the BOOT Laundry despite repeated requests made by the firm, however, as the firm has not supplied the basic part of machine, he refused to grant permission and he was targeted after the said incident. In the said appeal, the respondent reiterated that he had worked with full of honesty, ethics and dignity for the benefit of the Indian Railway.

The said appeal dated 07.09.2023 was disposed of by the General Manager (P), N.F. Railway which was communicated to the respondent vide letter dated 14.09.2023 stating that the respondent has been working all alone in N.F. Railway since induction and as he has a long career ahead and has about 20 years of service, for career progression, he requires wide exposures in other Railway also. It was specifically mentioned in the said letter that there was nothing against him on record as submitted in his appeal.

**4.** After rejection of the appeal by the petitioner N.F. Railway, the respondent moved an application to the N.F. Railway on 25.09.2023 while showing his intention to avail 15 days preparatory leave (PL) for joining in South Central Railway zone.

Soon thereafter, the respondent approached the Tribunal challenging his transfer order.

**5.** The Tribunal vide order dated 06.10.2023 admitted the original application and directed to maintain status-quo. On 12.10.2023, the respondent preferred another original application, being, O.A. No.302/2023 raising a grievance that despite the stay order passed by the Tribunal on 06.10.2023, Shri Ashok Kumar, Dy. CME/Chg/MLG was posted as Senior CDO/GHY against the existing vacancy vide order dated 10.10.2023. The Tribunal while admitting the O.A. 302/2023 stayed the operation of the order dated 10.10.2023.

**6.** Be that as it may, the respondent has challenged the order of the Tribunal dated 05.09.2023 mainly on the ground that as per the comprehensive transfer policy dated 31.08.2015, ordinarily a Group 'A' officer is not supposed to transfer out of his allotted zone until he gets Selection Grade. It is also stated that minimum tenure on a particular post at a time is two years and maximum

tenure will be five years. However, for sensitive posts, maximum tenure is of four years. As per the transfer policy, transfer orders other than those caused due to promotion, deputation/return from deputation, retirements etc. are generally issued from January to March.

Another contention raised by the respondent is that the respondent has been transferred without any recommendation by the Placement Committee which is one of the statutory requirement for transfer of Group 'A' officers.

In the original application, the respondent has also leveled serious allegations against one of the senior officers, Shri Jyotindra Digi and Shri Ashok Kumar, who was handed over the charge of the post from where the respondent was transferred. The allegations against those officers are of victimization and their involvement in corruption etc.

**7.** The petitioners have filed their reply to the original application contradicting the allegations of violation of transfer policy and *mala fides*.

**8.** The Tribunal after hearing the counsel for the parties has allowed the O.A. No.279/2023 vide order dated 22.03.2024 mainly on the ground that the impugned transfer order dated 05.09.2023 is violative of transfer policy which is statutory in nature and the transfer of the applicant (respondent herein) from N.F. Railway to South Central Railway is suffering from *mala fide* as the same was passed to facilitate the joining of Shri Ashok Kumar, Deputy CME for ulterior motive and the reasons best known to the respondent authorities.

The relevant portion of the impugned order passed by the Tribunal is extracted hereunder:

“8. We observe that in the instant case, there has been violation of the Comprehensive Transfer Policy of the Railways No. E(O)III/2014/PL/05 dated

31.08.2015, which is statutory in nature and which inter alia reads as follows:

*“(vii) Normally, minimum tenure on a particular post at a time will be 2 years and maximum tenure will be 5 years. For sensitive post, maximum tenure will be 4 years. Minimum tenure will not be applicable for Junior Scale/Senior Scale officers of Group A. However, in administrative exigencies, relaxation may be granted by cadre controlling officer.”*

9. As can be seen from the above, the instant applicant who had only recently joined in Guwahati from Dibrugarh stands transferred to South Central Railway within a period of six months only without showing any objective administrative exigency. The reason of his transfer has been shown as better career prospects and growth which is highly subjective in nature. This transfer would not only be unsettling for the applicant but also disturb the academic session of his three children who have recently been put in local schools in Guwahati to study. Moreover, there has been no formal handing/taking over charge between the applicant and Sri Ashok Kumar respectively as should be the protocol or Standard Operating Procedure (SOP) in any normal posting and transfer. Sri Ashok Kumar was given “looking after charge” without his joining formally in the post of Sr. CDO/GHY in Guwahati, which is quite strange and abnormal in Government Service matters and Personnel Management. Also present transfer appears to be iniquitous as the Applicant’s colleagues namely Sri Sudir Kumar Azad, Sri P.P. Roy, Sulabh Bist and Manish Kumar still continue to work in N.F. Railway whereas the Applicant has been singled out and transferred.

*Moreover, the transfer has been effected on malicious ground to facilitate the joining of Sri Ashok Kumar for ulterior motives and for reasons best known to the Respondent Authorities.”*

**9.** By a simultaneous order, the Tribunal disposed of O.A. No.302/2023 preferred by the respondent taking note of the fact that the order dated 10.10.2023 whereby Shri Ashok Kumar was transferred on the post, which was earlier held by the respondent, was withdrawn. However, the order passed by the Tribunal in O.A. No.302/2023 is not under challenge and only the order

dated 22.03.2024 passed by the Tribunal in O.A. No.279/2023 is under challenge in this writ petition.

**10.** Mr. H. Gupta, learned Central Government Counsel appearing for the petitioners has vehemently submitted that the Tribunal grossly erred in interfering with the transfer order mainly on the ground that the same is in violation of transfer policy which is statutory in nature. Learned counsel has argued that as a matter of fact, there is no violation of the transfer policy in transferring the respondent and the same is in consonance with the transfer policy.

Learned counsel has submitted that the transfer policy dated 31.08.2015 provides that normally minimum tenure on a particular post will be two years and maximum tenure will be five years. However, for sensitive post, the minimum tenure will be four years. It is specifically provided in the said transfer policy that the clause of minimum tenure will not be applicable for Junior Scale/Senior Scale officers of Group 'A'. Learned counsel has submitted that the above clause is not applicable in the case of the respondent because the respondent has been transferred after completion of the minimum tenure in the N.F. Railway because since his induction in the Indian Railway in June, 2014, he remained posted in N.F. Railway up to his transfer to South Central Railway vide order dated 05.09.2023.

It is contended that earlier transfer of the respondent from Dibrugarh to Guwahati was within the same zone and as such, it cannot be said that the respondent was transferred before expiry of minimum tenure.

It is further contended that for the purpose of transferring an employee on administrative exigency, the authorities are not required to give reasons.

Learned counsel for the petitioners has submitted that apart from that the finding of the Tribunal to the effect that the transfer policy is a statutory in nature is against the settled principle of law.

**11.** Learned counsel has further submitted that the respondent raised a specific plea before the Tribunal that he was transferred from N.F. Railway to South Central Railway without there being any proposal from the Placement Committee. It is submitted on that on the instruction of the Tribunal, the record pertaining to the transfer was produced before the Tribunal and from the said record, it is clear that in the case of the respondent, there was a proposal from the member of the Railway Board, as no Placement Committee was constituted for sending a proposal of officer belonging to the respondent's cadre and after taking into consideration the said proposal, the Railway Board transferred the respondent.

Learned counsel has also submitted that in view of the said record, the Tribunal did not record any finding to the effect that the transfer of the respondent was without any proposal.

**12.** It is further contended that the Tribunal grossly erred in coming to the conclusion that the transfer of the respondent was effected on malicious ground to facilitate the joining of Shri Ashok Kumar for ulterior motives. Learned counsel has submitted that Shri Ashok Kumar was never transferred on the post which was earlier held by the respondent. He was simply asked to look after the charge of the said post in addition to the charge he was holding at the relevant point of time. Such order of instructing him to look after the charge of a particular post cannot be deemed to be a transfer.

**13.** Learned counsel has further vehemently argued that in the original



application, the respondent has leveled serious allegation of *mala fides* and corruption against two senior officers, namely, Shri Jyotindra Digi and Shri Ashok Kumar but the respondent did not make them party before the Tribunal. It is contended that without making the above-named officers opposite party in the original application, the said challenge was not liable to be sustained but the Tribunal ignoring the same came to the conclusion that the respondent had been transferred due to *mala fides*.

**14.** Learned counsel has also invited our attention that as a matter of fact, the respondent by filing application on 25.09.2023 sought fifteen days preparatory leave for joining at South Central Railway and thereafter, he filed the original application challenging the transfer order. Learned counsel has, therefore, argued that in the above facts and circumstances of the case, the order passed by the Tribunal cannot be sustained and the same is liable to be interfered with. Learned counsel has, therefore, prayed that the writ petition may kindly be allowed and the impugned order passed by the Tribunal may kindly be set aside.

**15.** Learned counsel for the petitioners has relied on several decisions of the Hon'ble Supreme Court wherein it is held that the transfer order cannot be interfered with by a Court until and unless the authority which has passed the transfer order has no *locus standi* to do it or the transfer order is violative of any statutory provisions or is suffering from *mala fides*. Learned counsel has also relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***Ratnagiri Gas and Power Private Limited vs. RDS Projects Limited and others***, reported in **(2013)1 SCC 524** and has argued that the Supreme Court has held that when allegation of *mala fides* are made, the person against whom the said charge is leveled need to be impleaded as party to answer the charge.

**16.** *Per contra*, Mr. D. Mozumdar, learned senior counsel for the respondent

has opposed the writ petition and has argued that the Tribunal has not committed any illegality in passing the impugned order and as such no case for interference is made out.

Learned senior counsel has submitted that as per the transfer policy it is clear that no employee can be transferred in normal course in the Railway until and unless he or she has completed minimum tenure of service. Learned senior counsel has contended that it is an admitted position that the respondent was transferred from Dibrugarh to Guwahati in February, 2023 and after six months only, he was again transferred from Guwahati to South Central Railway, which is clearly in violation of the transfer policy. Learned counsel has frankly admitted that though the Tribunal has recorded the finding that the transfer policy dated 31.08.2015 is statutory in nature but the same is not statutory in nature. However, the learned senior counsel has submitted that though the transfer policy may not be statutory in nature, it has to be given due regards before transferring an employee and violation of the same without justifiable reasons is not permissible.

In support of his contention, learned senior counsel has placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of ***Ms. X vs. Registrar General, High Court of Madhya Pradesh and another***, reported in ***(2022) 14 SCC 187***.

**17.** Learned senior counsel has further submitted that the respondent was transferred from N.F. Railway to South Central Railway without there being any proposal from the Placement Committee. It is contended that the transfer policy clearly provides that an employee can be transferred from one place to another only on the basis of a proposal moved by the Placement Committee. Learned senior counsel has submitted that in the present case, no such proposal of the

Placement Committee was available with the Railways and in such circumstances also, the impugned transfer order is not liable to be sustained.

Learned senior counsel has further submitted that from the various orders passed by the petitioners, it is clear that the respondent has been transferred with the intention to adjust Shri Ashok Kumar in place of him and in such circumstances, the Tribunal has not committed any illegality in interfering with the transfer order passed by petitioners on the ground of *mala fides*.

Learned counsel has, therefore, submitted that there is no illegality in the impugned order passed by the Tribunal and hence, no case for interference is made out and the writ petition is liable to be dismissed.

**18.** Heard learned counsel appearing for the parties.

**19.** As noticed earlier, the Tribunal has interfered with the impugned transfer order mainly on two grounds; i) the transfer order is in violation of transfer policy and ii) it is suffering from *mala fides*.

While observing this, the Tribunal has come to the conclusion that the transfer policy dated 31.08.2015 is statutory in nature. How the Tribunal has come to this conclusion is not clear from the order. No justification has been given by the Tribunal while coming to the conclusion that transfer policy dated 31.08.2015 is statutory in nature. May be the transfer policy dated 31.08.2015 was constituted as per the directions of the Hon'ble Supreme Court but this itself is not sufficient to hold that the transfer policy dated 31.08.2015 is statutory in nature.

**20.** The Hon'ble Supreme Court in the case of ***Sri Pubi Lombi vs. The State of Arunachal Pradesh & ors. (Civil Appeal No.4129/2024)***, after revisiting its earlier decision has held as under:

“10. In view of the foregoing enunciation of law by judicial decisions of this Court, it is clear that in absence of (i) pleadings regarding malafide, (ii) non-joining the person against whom allegation are made, (iii) violation of any statutory provision (iv) the allegation of the transfer being detrimental to the employee who is holding a transferable post, judicial interference is not warranted. In the sequel of the said settled norms, the scope of judicial review is not permissible by the Courts in exercising of the jurisdiction under Article 226 of the Constitution of India.”

**21.** In ***Punjab and Sind Bank & Ors. vs. Mrs. Durgesh Kuwar***, reported in **(2020) 19 SCC 46**, the Hon'ble Supreme Court has held as under:

“17. We must begin our analysis of the rival submissions by adverting to the settled principle that transfer is an exigency of service. An employee cannot have a choice of postings. Administrative circulars and guidelines are indicators of the manner in which the transfer policy has to be implemented. However, an administrative circular may not in itself confer a vested right which can be enforceable by a writ of mandamus. Unless an order of transfer is established to be mala fide or contrary to a statutory provision or has been issued by an authority not competent to order transfer, the Court in exercise of judicial review would not be inclined to interfere. These principles emerge from the judgments which have been relied upon by the appellants in support of their submissions and to which we have already made a reference above. There can be no dispute about the position in law.”

**22.** Further, the Hon'ble Supreme Court in ***SK. Nausad Rahaman & Ors. vs. Union of India & Ors.***, reported in **(2022) 12 SCC 1** has observed as under:

“D. Analysis

23. While analysing the rival submissions, certain basic precepts of service jurisprudence must be borne in mind.

24. First and foremost, transfer in an all-India Service is an incident of service. Whether, and if so where, an employee should be posted are matters which are governed by the exigencies of service. An employee has no

*fundamental right or, for that matter, a vested right to claim a transfer or posting of their choice.*

25. *Second, executive instructions and administrative directions concerning transfers and postings do not confer an indefeasible right to claim a transfer or posting. Individual convenience of persons who are employed in the service is subject to the overarching needs of the administration.*

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27. *The above principle was cited with approval in Union of India v. S.L. Abbas [Union of India v. S.L. Abbas, (1993) 4 SCC 357 : 1994 SCC (L&S) 230] wherein the Court held that transfer is an incident of service : (SCC p. 359, para 7)*

*“7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right.”*

**23.** In view of the above, we are of the view that the learned Tribunal has erred in holding that the transfer policy dated 31.08.2015 is statutory in nature.

Apart from that, after carefully going through the transfer policy, we do not find that there is any provision which prohibits the Railway from transferring an employee from one zone to another zone before completion of minimum tenure at the place of posting on which he was transferred within the same zone from other place.

**24.** We have also perused the copies of record which were produced before the Tribunal by the petitioners and found that there exists a proposal dated 01.09.2023 by member of Railway Board to transfer the respondent along with three other officers, who have also been transferred along with the respondent,

from one Railway zone to other Railway zone.

**25.** Another question which requires consideration is that the Tribunal has interfered with the transfer policy on the ground that it suffers from *mala fides* because the respondent was transferred only with the intention to adjust Shri Ashok Kumar in place of him. In the original application, the applicant (respondent herein) has neither made Shri Ashok Kumar nor Shri Jyotindra Digi as party respondents though he has leveled serious allegations of bias and corruption against them.

Vague allegation of *mala fides* has been leveled against the above-named two persons, despite this, the learned Tribunal has ignored the fact that they had not been impleaded as party respondent.

**26.** The Hon'ble Supreme Court in ***Ratnagiri Gas and Power Private Limited (supra)*** dealing with the similar situation has observed as under;

*26. The legal position in this regard is fairly well-settled by a long line of decisions of this Court. We may briefly refer to only some of them.*

*26.1. In [State of Bihar v. P.P. Sharma](#) 1992 Supp. (1) SCC 222, this Court summed up the law on the subject in the following words:*

*“50. ‘Mala fides’ means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.*

*51. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and*

*circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.” (emphasis supplied)*

26.2 We may also refer to the decision of this Court in *Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd.*, (2005) 7 SCC 764 where the Court declared that allegations of mala fides need proof of high degree and that an administrative action is presumed to be bona fide unless the contrary is satisfactorily established. The Court observed:

56. ... .. It is well settled that the burden of proving mala fide is on the person making the allegations and the burden is “very heavy”. (vide *E.P. Royappa v. State of Tamil Nadu and another*, (1974) 4 SCC 3) There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility. As Krishna Iyer, J. stated in *Gulam Mustafa v. State of Maharashtra and others*, (1976) 1 SCC 800 (SCC p. 802, para 2): “It (mala fide) is the last refuge of a losing litigant.”

27. There is yet another aspect which cannot be ignored. As and when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. In the absence of the person concerned as a party in his/her individual capacity it will neither be fair nor proper to record a finding that malice in fact had vitiated the action taken by the authority concerned. It is important to remember that a judicial pronouncement declaring an action to be mala fide is a serious indictment of the person concerned that can lead to adverse civil consequences against him. Courts have, therefore, to be slow in drawing conclusions when it comes to holding allegations of mala fides to be proved and only in cases where based on the material placed before the Court or facts that are admitted leading to inevitable inferences supporting the charge of mala fides that the Court should record a finding in the process ensuring that while it does so, it also hears the person who was likely to be affected by such a finding.”

**27.** So far the judgment of the Hon'ble Supreme Court rendered in ***Ms. X vs. Registrar General, High Court of Madhya Pradesh (supra)*** is concerned, the same is not applicable in case of the respondent because in the said case the employee was successful in demonstrating that his transfer was carried out at the instance of a particular officer, whereas in this case, the respondent has failed to prove that his transfer to South Central Railway is at the instance of

anybody.

**28.** It is not in dispute that since his induction in the Indian Railway, the respondent remained posted in N.F. Railway for more than nine years and, for the first time, he has been transferred to another zone. There is no reason to discard the stand of the petitioners that the respondent has been transferred for his career progression and for that he requires wide exposure in other Railway zone also.

**29.** Transfer is an incident of service and every employee is expected to comply with the same. Despite his/her reservation about the place of posting, the best way for the employee is to approach the authorities concerned by way of filing an appropriate representation.

**30.** In view of the above discussions, we are of the view that the order dated 22.03.2024 passed by Tribunal cannot be sustained and the same is, therefore, set aside. Resultantly, the writ petition is allowed.

No order as to costs.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**