

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 256/2014

CMA Nos. 349/2014, 445/2014

Date of decision: 18.07.2014

Vinod Kumar Bhat

Vs.

State and ors.

Coram:

Hon'ble Mr. Justice Janak Raj Kotwal, Judge

Appearing counsel:

For petitioner (s): Mr. B. S. Salathia, Sr. Advocate with
Ms. Meenakshi Salathia, Advocate

For respondent(s): Mr. Munish Chopra, GA for No. 1 to 4
Mr. K. M. Bhatti, Advocate for No. 5

(i)	Whether to be reported in Press, Journal/Media:	Yes/No
(ii)	Whether to be reported in Journal/Digest:	Yes/No

- Petitioner, a Section Officer of the State Motor Garages Department, vide Government No. 16-TR of 2013 dated 12.03.2013 was transferred and posted in the office of the Transport Commissioner J&K, Jammu and by the same order Private respondent, Syed Nazir Ahmad, was transferred from the office of Transport Commissioner and posted in the State Motor Garages. Vide Government Order No. 06-TR of 2014 dated 03.02.2014, the petitioner has been "transferred back to his parent department i.e. State Motor Garages Department" and likewise the private respondent has been transferred back to his parent department i.e. the Motor Vehicles Department. Feeling aggrieved by his transfer back to the State Motor Garages, petitioner has filed this

writ petition seeking issue of writ of **Certiorari** to quash order No. 06-TR of 2014 (supra) and writ of **Mandamus** to direct respondents to allow him 'to serve in the office of State Motor Garages Department' till he completes his normal tenure of posting there.

2. Heard. I have perused the record.
3. Petitioner has assailed his transfer from the office of the Transport Commissioner back to his parent department, that is, the State Motor Garages on the grounds, firstly, that the transfer being premature is in breach of the **Transfer Policy** formulated and issued by the State Government vide Government Order No. 861-GAD of 2010 dated 28.07.2010 and secondly, that the transfer has been ordered at the instance of the Minister concerned for political consideration and not in the interest of administration. It is contended by the petitioner that the Transfer Policy laid down by the Government prescribes a minimum tenure of two years at a place of posting and premature transfer, if unavoidable in the interest of administration, can only be ordered with the approval of the Minister Incharge for the reasons to be recorded. Transfer of the petitioner is premature inasmuch as he has been transferred even before he could complete one year in the office of the Transport Commissioner. It is further contended by the petitioner that the transfer has

been ordered with mala fide consideration at the instance of Minister concerned, which is evidenced by the fact that a copy of the transfer order has been endorsed to the Special Assistant of the concerned Minister.

4. Official respondents have opposed the petition by filing objections, initially filed on behalf of respondent No. 4 and adopted by respondents 1 to 3. Likewise private respondent has also filed his objections. Stand of official respondents, briefly, is that the petitioner is borne on the cadre of the State Motor Garages, his service is governed by J&K State Motor Garages Department (Subordinate) Service Recruitment Rule, 2004 and he is not transferable to any other department. Petitioner's transfer to Transport Commissioner's office was not in accordance with norms as he was not transferable to that department though he could have been sent to that department on deputation. It is further contended that even the transfer of petitioner to Transport Commissioner's office was premature having been made after less than seven months' stay but he did not agitate his transfer on that score at that time. Allegation of mala fide has been denied and it is contended that benefit of Transfer Policy is not available to the petitioner as petitioner was not transferable to a department other than the State Motor Garages. It is contended also that transfer of a Government servant is exigency of

service and that the guidelines for transfer are regulatory only and not mandatory. As regards sending of the copy of the transfer order to Special Assistant of the concerned Minister, it is stated that even the copy of earlier transfer order of the petitioner was sent to Special Assistant of the Transport Minister as per the routine official business.

5. Stand taken by the private respondent is mainly similar to that taken by the official respondents but in addition he has contended that he was at the verge of retirement attaining the age of superannuation in January, 2015 so he had made a representation for his transfer back to his parent department to enable him to complete his retirement case and impugned transfer order has been passed in the interest of administration.
6. Before referring to the submissions, which were made at bar, I may refer to and cull out para 3 of the petition, which has not been denied by the official respondents in their reply:

“That the Transport Department is the Administrative department holding the Administrative control over three Departments i.e. State Motor Garages, J&K SRTC and Motor Vehicles Department. But fact remains that the State Motor Garages Department is the parent department of the petitioner and his services are governed by the Rule known as J&K State Motor Garages (Subordinate) Service Recruitment Rules, 2004.”

7. Mr. B. S. Salathia, learned senior Advocate, appearing for the petitioner would say that the State Motor Garages Department and the Motor Vehicles Department headed by the Transport Commissioner are controlled by the same Administrative Department, inter-departmental transfers in these departments are made as a matter of routine, the inter-departmental transfer of the petitioner and private respondent vide order dated 12.03.2013 was a routine transfer and the impugned premature transfer of the petitioner contravenes the Transfer Policy. Mr. Salathia referred to a decision dated 22.09.2011 of a Coordinate Bench of this Court in SWP Nos. 1526/2011 in 1583/2011, in which this Court as regards the Transfer Policy (supra) has observed:

“...The Government has issued Government order No. 861-GAD of 2010 dated 28.07.2010 which reflects policy of the Government in the matter of transfers. These guidelines would thus form part of Rule 27 of Rules of 1956. The strict adherence of these guidelines in all circumstances may not be called for, but as far as possible they are to be adhered to. The adherence to the guidelines notified vide aforesaid Government order would exclude arbitrariness in exercise of power of transfer. It is for this reason that the competent authority will be bound to follow these guidelines in the matter of transferring an employee from one place to another.”

8. Per contra, identical submissions of Mr. Munish Chopra, Government Advocate, appearing for the official respondents and Mr. K. M. Bhatti, appearing for private respondent, were that transfer of a

Government servant holding a transferable post is an exigency of service and the competent authority is the best judge to decide about the distribution of its manpower, the transfer of the petitioner has been effected in the interest of administration taking relevant factors into account. As regards the Transfer Policy, Mr. Chopra would say that the same is regulatory and not mandatory and enforceable.

9. The Transfer Policy formulated by the Government as per its Item Nos. 1, 2 and 3 under heading **“Tenure of Posting”** provides:

- “1. **The minimum tenure of a Government employee on a post shall be two years and a maximum of three years.**

2. **The maximum tenure of posting in respect of important projects which are required to be completed in a time bound manner may be extended up to five years if continuation of any officer is considered necessary. Specific orders for retention of the officer in such cases beyond a period of three years shall be issued with the approval of the Minister In charge and the reasons for the same shall be recorded.**

3. **Pre-mature transfers wherever unavoidable in the interest of administration shall be ordered with the prior approval of the Minister In charge for reasons to be recorded.**

4. **A government employee holding any post may be transferred even before the completion of minimum tenure if:-**
 - (i) **the performance of the employee is found to be below job requirement, if there are grounds for initiating enquiry or disciplinary proceedings against him/her;**

(ii) **it is not in public interest or in the interest of administration to allow the employee to continue on a post for a full tenure; or**

(iii) **the transfer is sought on health grounds supported by medical certificates issued by the duly constituted Medical Boards**

Such transfer shall be made with the prior approval of the Minister Incharge after recording reasons for the same."

10. It is seen that the Transfer Policy not only provides minimum tenure of two years and maximum tenure of three years on a post but also provides for sufficient scope and inbuilt mechanism for premature transfer wherever unavoidable in the interest of administration or because of inapt performance or on health grounds. The premature transfer can be ordered with the prior approval of the Minister Incharge for reasons to be recorded. It may not be disputed that a particular situation may call for premature transfer of a Government servant but such transfer is to be made with prior approval of the Minister Incharge for the reasons to be recorded as provided under the Policy. This can be done and ordinarily must be done if the Cabinet has decided so. May a situation arise where taking of prior approval is not be possible or wait for prior approval may defeat the purpose of transfer, in that case, if the transfer is questioned on that score, the transferring authority should explain the reasons necessitating premature transfer without seeking prior approval instead of questioning the

Policy itself or its enforceability. In such and similar cases question as regards no adherence to the Transfer Policy may arise and call for consideration in the context in which it is raised.

11. It goes without saying that no Government servant has a right to serve or continue serving at a particular place or at a place of his choice. Transfer of a Government servant is not only an incident inherent in the terms of his appointment but also implicit as an essential condition of service. It may not be disputed that to order transfer of a Government servant is the prerogative of the Government or the competent authority but laying down the guidelines or a policy for regulating the transfers, nonetheless, is a symbol of good governance as it systematizes the transfers, provides consistency in public service, increases transparency and reduces the chances of arbitrariness.
12. Noticing the increasing trend of premature transfers of Government servants in breach of the Transfer Policy formulated by the State Government pursuant to a cabinet decision, it needs to be stated that in every case the Government or the transferring authority may not be permitted to question the enforceability of the Transfer Policy or to raise a question whether the policy is regulatory only or mandatory. It may not

be advisable to raise in every case the wider question whether the administrative guidelines for regulating transfers or laying down a Transfer Policy can be equated with a statute or service rules governing transfer of Government servants. The Government Order No. 861-GAD of 2010 (supra), which reflects the Transfer Policy pursuant to a Cabinet Decision No. 156/12/2010 dated 27.07.2010, mandates that 'the departments shall make transfers of government employees strictly in conformity with the Transfer Policy'. As directed under the said order, the Transfer Policy is required to be adhered to in its letters and spirit as a matter of rule and non adherence to any of its provisions, therefore, should be a rare exception. Whenever a transfer is questioned on the ground of non adherence to the Transfer Policy, advisable it would be that instead of questioning the enforceability of the Transfer Policy and taking refuge under oft said maxim that transfer is an exigency of service, the transferring authority must come forward to disclose the reason for non adherence to a particular condition of the Policy and question of enforceability of the policy may be considered in that context only. This would help making the system transparent and to avoid arbitrariness and allegation of mala fide in a particular transfer.

13. Having viewed thus, I am not persuaded to entertain the question of enforceability or legal status of the Transfer Policy (supra) afresh and would follow the observation made by this Court in judgment dated 22.09.2011 (supra).
14. Stand of the official respondents that the earlier transfer of the petitioner from the State Motor Garages Department to the Motor Vehicle Department/Office of Transport Commissioner was not in accordance with norms does not have substance for the reason that it is nowhere stated in the reply filed on behalf of the official respondents that the impugned transfer has been made to undo the wrong committed in making the earlier transfer. Impugned transfer is rather said to have been made in the interest of administration in exercise of discretion vested in the transferring authority. However, it is not stated as to why the requirement of Transfer Policy as regards the 'Tenure of a Posting' or making premature transfer have been ignored or not adhered to.
15. The official respondents in this case have not stated any reasonable ground for the premature transfer of the petitioners, much less, as to how the premature transfer was unavoidable and if unavoidable, why the procedure provided under the Transfer Policy for premature transfer was not

followed. The private respondent has given a plausible reason for his premature transfer saying that his representation for his transfer to his parent department to enable him to prepare his pension papers was accepted. This would have attracted consideration of this Court had the same been the stand of the official respondents too, which, however, is not. In any case, the stand taken by the private respondent now loses importance because of enhancement of age of superannuation from 58 to 60.

16. For aforementioned, impugned transfer order is set aside as in contravenes the Transfer Policy issued by the State Government. It would, however, be open to the transferring authority to pass any other order afresh after satisfying the conditions laid down in the Transfer Policy.

(Janak Raj Kotwal)
Judge

Jammu:
18.07.2014
Rakesh