

**AFR****IN THE HIGH COURT OF ORISSA AT CUTTACK****W.A. No. 809 of 2025*****Arpan Kumar Pujari***

....

Appellant***-Versus-******State of Odisha and others***

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Respondents**Advocates appeared in this case:**

For Appellant : Mr. Manoj Kumar Mohanty, Advocate

For Respondents : Mr. Saswat Das, Additional Government Advocate

: Ms. Rajeswari Das & Ms. Prangyan Panda,
Advocates for Respondent No.6: Mr. Satyabrata Satapathy, Advocate
For Respondent No.7**CORAM:****HON' BLE THE CHIEF JUSTICE****AND****HON'BLE MR. JUSTICE MURAHARI SRI RAMAN****J U D G M E N T**-----
Date of hearing and Judgment: 24th December, 2025
-----**HARISH TANDON, C.J.**

1. The instant appeal arises from the impugned order dated 23rd April, 2025 disposing of two writ petitions being W.P.(C) Nos.5258 and 2500 of 2025 filed by the respective contesting



parties challenging the order of transfer, which according to the Department, is a routine transfer. Several issues were raised, including the one that the transfer order should not have been passed when the employee is going to demit office within a year. The learned single Judge, without advertng to the nuances of law relating to the interference by the writ Court in exercise of power under Article 226 of the Constitution of India, proceeded to dispose of the aforesaid writ petitions which remotely affected the order of transfer.

2. By virtue of the aforesaid order, the stagnancy is caused as the chain of transfer got disturbed and one of the employees, namely, Saroj Kumar Mohapatra (Resopndent No.6 herein) is placed *in medio*. He is neither permitted to continue with the present post nor can join the transferred post and grave injustice is perpetrated upon him by depriving him to get the salary since last several months.

3. The learned counsel representing the said employee fairly submits that the employee has no reservation in joining any post as he is aware of the service jurisprudence that the transfer is an



incident of service and an employee can be placed at any place to the convenience of the employer.

4. We would have conveniently given a quietus to the issue as the administrative authorities have passed the necessary orders bearing in mind the sufferance of said Saroj Kumar Mohapatra but we feel that the scope and the jurisdiction under Article 226 of the Constitution is required to be reiterated and recapitulated.

5. All the counsels appearing for the respective parties have echoed in one voice that the writ Court exercising power of judicial review should not ordinarily interfere with the order of transfer as it is always regarded as an incident of service.

5.1. One of the earlier judgments placed before us was delivered in the case of ***B. Varadha Rao v. State of Karnataka***, reported in ***(1986) 4 SCC 131***, wherein, the apex Court, in unequivocal term, held that the order of transfer does not *ipso facto* be perceived to the disadvantage of a Government servant nor overrides any of the conditions of service as the same is an ordinary incident of service and it would be incongruous to suggest that a Government officer posted at a particular place acquired a



vested right to remain in the same place. However, an exception is carved out if the power of transfer is abused and/or actuated with malice and above all, in colorable exercise of powers vested upon the employer in the following:

“4. The learned Judges observe that these penalties can be imposed on a government servant where disciplinary proceedings are initiated against him under the Rules by the competent authority. They further observe that Rule 18 of the Rules therefore provides for appeals against orders imposing penalties referred to and specified in Rule 8, and add:

“If an order of transfer does not amount to an order of penalty or ‘any other order’ falling within Rule 19, such an order does not attract and is not appealable either under Rule 18 or Rule 19.”

We agree with the view expressed by the learned Judges that transfer is always understood and construed as an incident of service. The words ‘or other conditions of service’ in juxtaposition to the preceding words ‘denies or varies to his disadvantage his pay, allowances, pension’ in Rule 19(1)(a) must be construed ejusdem generis. Any alteration in the conditions of service must result in prejudice to the government servant and some disadvantage touching



his pay, allowances, pension, seniority, promotion, leave etc. It is well understood that transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post. As the learned Judges rightly observe:

“The norms enunciated by government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer in the government servants.”

5.2. In *Shilpi Bose (Mrs) v. State of Bihar*, reported in **1991 Supp (2) SCC 659**, another Bench of the apex Court re-stated and reiterated the same principles in the following:

“4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and



for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he 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. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.”

5.3. In ***Rajendra Roy v. Union of India***, reported in (1993) 1 SCC 148, the apex Court, though aware of the practical difficulties which an employee faces for the transfer resulting into the dislocation in the family setup, cautioned the writ Courts to interfere with such order, unless the same is mala fide or in violation of the statutory rules or rule of service or in the



event any guideline is framed, the same is violative of such guidelines. The moment it is found that there is bona fide approach in passing an order of transfer, on mere presumption that it would cause a personal hardship, that does not invite interference by the writ Court in the following:

“7. After considering the respective contentions of the parties, it appears to us that the appellant has not been able to substantiate that the impugned order of transfer was passed mala fide against him for an oblique purpose and/or for wreaking vengeance against him because respondent 2 was anxious to get rid of him and he seized the opportunity of transferring him from Delhi to Calcutta by transferring Shri Patra back to Orissa from Calcutta. It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set-up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. We are in agreement with the Central



Administrative Tribunal that the appellant has not been able to lay any firm foundation to substantiate the case of malice or mala fide against the respondents in passing the impugned order of transfer. It does not appear to us that the appellant has been moved out just to get rid of him and the impugned order of transfer was passed mala fide by seizing an opportunity to transfer Shri Patra to Orissa from Calcutta. It may not be always possible to establish malice in fact in a straight-cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions. In this case, we are unable to draw any inference of mala fide action in transferring the appellant from the facts pleaded before the Tribunal. It appears that Shri Patra was transferred to Calcutta and after joining the post he had made representation on account of personal hardship. Such representation was considered and a decision was taken to transfer him back to Orissa region. As a result, a necessity arose to transfer an employee to Calcutta to replace Shri Patra. It cannot be reasonably contended by the appellant that he should have been spared and some one else should have been



transferred. The appellant has not made any representation about personal hardship to the department. As such there was no occasion for the department to consider such representation. This appeal, therefore, fails and is dismissed but we make no order as to costs. It is, however, made clear that the appellant will be free to make representation to the concerned department about personal hardship, if any, being suffered by the appellant in view of the impugned order. It is reasonably expected that if such representation is made, the same should be considered by the department as expeditiously as practicable.”

5.4. The apex Court, in *Abani Kanta Ray v. State of Odisha*, reported in *1995 Supp (4) SCC 169*, again cautioned the writ Court to exercise the power of judicial review in relation to an order of transfer unless it is patently arbitrary or vitiated by mala fides or infraction of any professed norms or principles governing the transfer.

5.5. It is no doubt true that if the order of transfer is tainted with smack of arbitrariness or actuated by malice, the Court shall rise to the occasion and interfere with such order as there is no space for arbitrary or mala fide action in the judicial field. In the



event any rule or guideline is framed by the employer regulating the transfer, the interference may be possible in the event the order of transfer is inconsistent therewith or in flagrant violation thereof.

5.6. After a gap of several years, in a judgment of the apex Court rendered in *National Hydroelectric Power Corporation Limited v. Shri Bhagwan*, reported in (2001) 8 SCC 574, a plea was sought to be taken that in the event routine transfer orders are passed, the seniority in the cadre must be maintained. The apex Court ruled out the said possibility in holding that the order of transfer does not interdict any seniority in the cadre and reminded basic principles relating to the interference by the Court as held in the catena of decisions, some of which has been quoted herein above, in the following:

“5. On a careful consideration of the submissions of the learned counsel on either side and the relevant Rules to which our attention has been invited to, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer. It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular



employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned. On the facts and circumstances of the cases before us, we are also unable to agree with the learned counsel for the respondents that Rule 4.1.1 of the Seniority Rules interdicts any transfer of the employees from one office or project or unit to any one of the other as long as the seniority of such an employee is protected based on the length of service with reference to the date of promotion or appointment to the grade concerned irrespective of the date of transfer. We also consider it to be a mere submission in vain, the one urged on the basis of alleged adverse consequences detrimental to their seniority resulting from such transfer. In the facts of the present cases, at any rate, no such result is bound to occur since the Project undertaken to which



the respondents have been transferred is itself a new one and, therefore, we see no rhyme or reason in the alleged grievance.”

5.7. The apex Court, in the case of *State of U.P. v. Gobardhan Lal*, reported in (2004) 11 SCC 402, reminded the exceptions when the writ Court should interfere with the order of transfer and held as under:

“7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their



higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or



on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

5.8. In a recent decision rendered in case of ***Punjab and Sind Bank v. Durgesh Kuwar***, reported in (2020) 19 SCC 46, the apex Court, in unequivocal term held that the employee does not get vested right at a place of posting, which can be enforced through a writ of *mandamus* in the following:

“17. We must begin our analysis of the rival submissions by advertng 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.”

5.9. The principle of law emerged from the aforementioned reports appears to be unison to the fact that the transfer is an incident of service and ordinarily, the Court should not interfere against the order of transfer passed by the authorities. The exercise of judicial power is restricted and/or brindled or to somewhat abridged when a *mandamus* against the order of transfer is sought for, unless the order of transfer is arbitrary, mala fide or in contradiction with the statutory rules or the guidelines framed in this regard and above all, actuated by malice or discriminatory in nature. Ordinarily, the writ Court should not interfere with the order of transfer passed by the authorities as the administrative decisions to manage, administer and run the institutions or the departments should be left to the wisdom of the authorities.

5.10. The person, if posted at a particular place does not acquire an inchoate or a vested right to remain at such place. The interference by the writ Court should be avoided and not to be readily exercised. The invocation of power of judicial review should be in an extraordinary circumstance. If the exceptions



carved out are patent and galore from the document, then the exercise of such power in a routine manner should be eschewed. The interference against the order of transfer in a routine manner creates an indirect impact of substituting its own view over the administrative decision and, therefore, the Court should not usurp the power of the administrative authorities as the management and the administration of the department should be left with the administrative authorities.

6. We could have interfered with the order on the conspectus of the ratio of law laid down in the above reports, but the administrative authorities have devised a mechanism to weed out the impasse having created and issued the administrative orders on 23rd December, 2025, which is handed over to this Court by Mr. Saswat Das, learned Additional Government Advocate. It appears from the said order that the respondent No.6- Saroj Kumar Mohapatra has been directed to join as Assistant Executive Engineer (AEE) in the Khaparakhhol Block in the district of Balangir and immediately upon his joining, he will be entitled to all service and financial benefits as is due and admissible.



7. We have indicated in the preceding paragraph that because of the orders of the Court and the joining of the other persons who are arraigned as parties in the instant appeal, said Saroj Kumar Mohapatra was not in a position either to continue in the present post nor could he join the transferred post, which invites a serious injustice as the salary since last several months have not been paid to him. It is seen that a conscious decision has already been taken by the administrative authority in posting said Saroj Kumar Mohapatra at a place indicated hereinabove. The authorities are further directed to release all arrear salaries, as we do not find any fault on the part of the said employee in discharging the duties or joining the post in which the transfer order was passed. The arrear salary shall be paid within four weeks from the date of joining at the transferred post.

7.1. It goes without saying that the current salary shall be paid in a manner as is being paid to all other employees till he attains superannuation. The period in which said Saroj Kumar Mohapatra could not remain at the present post or join the transferred post shall be treated as a continuance of service and not on leave or



absent or break in the service for the purpose of computation of his pension.

8. At the last, we must record our appreciation that commendable efforts are put by Mr. Saswat Das, learned Additional Government Advocate and the concerned officer in resolving the issue raised in the instant writ appeal in a more pragmatic way.

9. Accordingly, the writ appeal is disposed of.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

S. Behera