

knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found ; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court." (Emphasis Supplied).

(8) Therefore, even if the counsel for the petitioner was of the opinion that our order, dated 18th July, 2005 was erroneous, the same ought to have been challenged by adopting the normal remedy of appeal. There were no justifiable grounds for filing the Review Petition.

(9) In view of the aforesaid observations of the Supreme Court, the Review Application is dismissed.

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**R.N.R.**

Before J.S. Narang & Baldev Singh, JJ

DR. DEV PARKASH CHUGH,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. NO. 11172 OF 2005

29th September, 2005

*Constitution of India, 1950—Article 226—Policy Letter, dated 20th April, 2005 issued by Government of Punjab, Department of Personnel on transfers—Cl.2(b)—Posting of a Veterinary Officer from time to time at various places—After about 10 months' stay on last station transfer of petitioner ordered—Petitioner due to retire after about a period of 1—1/2 years—Challenge thereto—Clause 2(b) of the policy, dated 20th April, 2005 provides that a Government employee whether Gazetted or non-gazetted who is due to retire within the next two years, may be allowed to continue in the same district or at the*

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*same station of posting till retirement as far as possible—Cl. 2(f) provides that the Government employee should be given a minimum of stay of three years at the place of posting—Cl. 2(g) provides that transfer of an employee before he has completed minimum of three years stay should not be ordered except under rare circumstances of punishment or clearly spelling out administrative reasons—Such policies/guidelines ought to be adhered to by the Government—In case of any deviation the order must contain the reasons—Order of transfer of petitioner does not contain any administrative reasons nor any public interest has been disclosed by respondents—No allegation of mala fide on the part of the respondents by petitioner—Petition allowed while quashing order of transfer.*

*Held*, that the order of transfer passed against an employee is always based on administrative exigencies and or is in public interest. Normally, the Courts refrain themselves from interfering in such orders. However, the Government has also promulgated the guidelines/instructions to be followed by the controlling authorities so that the power to be used by them is not abused or misused or is used in a manner which would reflect colourable exercise of power. Apart from this, if the guidelines grant protection to the employee, which is promulgated by the employer itself, the employer cannot be allowed to take the stand that such guidelines are not mandatory and are only the guidelines which may be kept in mind but not to be followed *stricto sensu*.

(Para 16)

*Further held*, that the Government is also not entitled to take the stands which are convenient and are termed in consonance with the terms of such guidelines by picking and choosing the particular clauses and applying them in absolute sense. The stand has to be homogenous i.e. either the guideline is treated as guideline only and while applying the same the justifiable reasons are recorded accordingly.

(Para 17)

*Further held*, that transfer orders are not to be set aside at the drop of the hat and that the power to be exercised by the employer has also to be given due weight unless the exercise of such power is clearly opticised by virtue of colourable exercise. We are also conscious

of the jurisdiction of the Court that the Courts or Tribunals do not sit as Appellate Authorities over the transfer orders. Such jurisdiction is allowed to be invoked, if an accepted condition inculcated under the Government instructions/rules and regulations is not adhered to and that the instructions/rules are applied by adhering to pick and choose *vis-a-vis* the instructions. The commitment between the employer and the employee sometimes flow from the promulgation made by the employer by accepting the view points of the employees. This would mean self contained restraints upon either side and in such a situation none of them is entitled to violate the same. The domain of executive administration has to be kept isolated but the Courts have to perform their duties and act as watchdogs requiring both the components to work and function within the crease created and promulgated by themselves.

(Para 19)

*Further held*, that the policies/guidelines ought to be normally adhered to but if any deviation has to be made the order must contain the reasons, which should be transparent so that the same are acceptable and are within the vision of the concerned. In the case at hand, the order of transfer does not contain administrative reasons for transferring the petitioner nor any public interest has been disclosed in the order as well as in the written statement. On the other hand, the petitioner has also not disclosed any *mala fide* intention on the part of the employer as also the colourable exercise of power. Thus, in the totality of the facts disclosed before us, we conclude that since no reasons have been given by either side, the stipulation contained in the policy ought to have been adhered to in the facts and circumstances of this case. It would mean that each case which falls within the ambit of the policies/guidelines has to be examined by the concerned quarters and the order should be passed accordingly.

(Para 21)

P.S. Patwalia, Senior Advocate with S.K. Tamak, Advocate, *for the petitioner.*

Ramesh Goyal, Advocate, Ashok Aggarwal, Addl. Advocate General, Punjab for the State.

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**JUDGEMENT****J.S. NARANG, J.**

(1) The petitioner had been appointed as Veterinary Assistant Surgeon on March 29, 1972. He had been posted as Veterinary Officer at different places from time to time. On June 9, 2000, he had been given the Current Duty Charge of the post of Assistant Director, Animal Husbandry and was posted at Ferozepur. Thereafter, on May 31, 2001, he was transferred as Senior Veterinary Officer, Jagraon. Subsequently, on June 28, 2002, he was transferred to Faridkot as Assistant Director, Animal Husbandry with Headquarters at Moga. On October 30, 2003, he had been shifted to Faridkot as Assistant Director with additional charge of Deputy Director, Animal Husbandry at Faridkot. Then on April 1, 2004, he had been shifted back to Moga as Assistant Director. It is on July 30, 2004, he was transferred to the post of Senior Veterinary Officer, Moga, he joined at the place of posting on August 5, 2004. Now again on June 20, 2005, he has been transferred as Assistant Director, Animal Husbandry, Ferozepur. The petitioner had not raised any objection for being posted from time to time on various posts as aforesaid.

(2) The last transfer i.e. 20th June, 2005, has been made the subject matter of challenge in the present petition on the premises that the petitioner is to retire on April 30, 2007, meaning thereby that only a period of 1-1/2 years of service remains to the date of superannuation.

(3) Reliance has been placed upon the Government policy/guidelines applicable for posting and transfer of Government employees and Public Sector Undertaking for the year 2005-06 issued by Government of Punjab, Department of Personnel,—*vide* letter dated 20th April, 2005. It is contained in clause 2(b) of the aforesaid policy that the Government employees whether gazetted or non-gazetted, who are due to retire within the next two years, may be allowed to continue in; the same district or at the same station of posting till retirement, as far as possible. The aforesaid excerpt of the policy reads as under :—

“(b) Government employees whether gazetted or non gazetted, who are due to retire within the next two years, may be allowed to continue in the same district or at the same station of postings till retirement, as far as possible.”

(4) Apart from the above, similar is the guideline as contained in clause 2(f) of the aforestated policy that the Government employee should be given a minimum of stay of three years at the place of posting. In the case of the petitioner, he has been transferred only after ten months. There is no rationale in passing the orders of transfer by the Government. It is also provided under clause 2(g) that premature transfers i.e. transfer of an employee before he has completed minimum of three years stay should not be ordered except under rare circumstances of punishment or clearly spelling out administrative reasons. The instant order of transfer does not contain such reasons, i.e. neither the transfer has been ordered by way of punishment or on the administrative grounds/reasons. The exercise of power of transfer falls within the domain of the Government and transfer is an exigency of service. However, for this also the Government has spelt out guidelines for itself so that the controlling authority does not act or exercise such power, reflecting it to be colourable in nature. The import is that conscious and cautious decision is taken in this regard for achieving maximum output from the employee. The rule of governance is always tampered with efficiency achievable.

(5) A representation had been sent by the petitioner against the order of transfer to the Minister concerned with a copy to Secretary to Government of Punjab, Department of Animal Husbandry, spelling out the reasons that his mother, who is more than 90 years of age is not keeping good health and in fact is in critical stage and further less than two years have been left for approaching the date of superannuation. Yet another representation was sent to the Chief Minister, Punjab, with a copy to the Financial Commissioner, of the aforestated department. No reply thereon has been received as the order under challenge continued to remain in operation. Resultantly, the present petition has been filed.

(6) Notice of motion was issued,—*vide* order dated July 26, 2005 and that the notice was accepted by the learned Additional Advocate-General, on our request. The interim relief was granted subject to the rider that if the petitioner has not been relieved as yet, be not relieved till then. The time was taken by the Government for filing written statement, resultantly, the interim order had been extended accordingly and ultimately till further order,—*vide* our order dated August 9, 2005.

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(7) The State has filed a detailed written statement by spelling out the plea that it is the prerogative of the Government to transfer its employees in public interest and that no employee can be given a particular place of posting as a matter of right. It is also the stand that the petitioner has been transferred in the public interest and on administrative ground. It is also the stand that transfer cannot be deemed to be a punishment under the Punjab Civil Services (Punishment and Appeal) Rules, 1970. Thus, the petition merits dismissal on this ground alone.

(8) It is further the case that upon passing of the order of transfer one Dr. Parkash Chand Mittal had joined in June 24, 2005 (Forenoon), the question of petitioner's continuing on the post did not arise. However, the petitioner proceeded on medical leave from June 24, 2005, July 14, 2005 and applied for further extension from July 15, 2005 to July 28, 2005. The effort of the petitioner has been to hoodwink the compliance of order of transfer. So far as, the place of postings from time to time, as spelt out in paras No. 5 to 11 are concerned, the same have been admitted meaning thereby that the number of occasions on which the petitioner had been transferred with short duration at a particular place have also been admitted. It is also the stand that the petitioner has remained at Moga or around Moga for a period of 19 years. Whereas, the aforesaid guide-lines explicitly state that no employee should be allowed to serve in one district beyond the period of seven years in his entire service. It has also been admitted that the petitioner is due to superannuate on April 30, 2007. It is also the stand that the guide-lines issued are to be followed as far as possible but in a given case where transfer of the employee is necessarily required in the public interest and on the administrative grounds such orders are not justiciable. Thus, the petition deserves to be dismissed.

(9) The present incumbent, who is alleged to have joined the present place of posting having been impleaded as respondent No. 3 has also filed written statement.

(10) He has placed reliance upon the judgment of the Hon'ble Supreme Court rendered in re : **Union of India and others versus S.L. Abbas (1)** in support of his contention that unless the order of

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transfer is violated by *mala fides* or is made in violation of the statutory provision, the Court should interfere with it. In the instant case, the order does not suffer from the aforestated vice.

(11) Reliance has also been placed upon the dicta in re: **Chief General Manager (Telecom) N.E.T. Telecom circle and another versus Shri Rajendra Ch. Bhattacharjee and others**, (2) in support of his contention that the posts are transferable, if any protection is provided in the service conditions, such right to transfer may be effected accordingly. No service condition provides that the petitioner shall have the choice in the matter of posting. Reference has also been made to a judgment of Hon'ble Supreme Court rendered in re: **State of U.P. and others versus Gobardhan Lal** (3) contending that a challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals although 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 so as to inspire confidence in the Court. The *mala fides* ought not be entertained on the mere asking of it. In the case at hand, the order of transfer does not suffer from such vice, therefore, the petition deserves to be dismissed. It is also the averment that the petitioner made all out efforts to remain at Moga or around Moga by putting up one excuse or the other and even now wants to remain at Moga. Thus, the petitioner has not approached this Hon'ble Court with clean hands. Resultantly, the petitioner has been correctly transferred and has no right to remain at Maga on the basis of his whims and fancies.

(12) Mr. P.S. Patwalia, Senior Advocate, learned counsel for the petitioner has argued that the Government has promulgated the policy itself which has come under scrutiny on a number of occasions and especially the clause that an employee, gazetted or non-gazetted, who is due to retire within the next two years, should be allowed to continue in the same district or at the same station of posting till retirement as far as possible. Reference has been made to a Division

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(2) 1995 (2) S.L.R. 1

(3) 2004 (3) S.L.R. 239

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Bench judgment of this Court rendered in re: **Jagjit Singh v. State of Punjab and others (4)** It has been contended that the Hon'ble Bench has categorically observed that when policy instructions are issued by the State Government, the same are to be accepted and not to be violated by the Government as well as authorities upon which the same are binding. The transfer orders having been issued in violation of the policy instructions cannot be sustained.

(13) It has been further argued that the respondents are emphatically making an effort to place reliance upon the covenants of the transfer policy to the effect that an employee cannot be allowed to remain at a particular place beyond seven years, resultantly, the petitioner has been transferred as he has remained at Moga for the last 19 years. If such clause can be embanked upon, how is this that the other clause which categorically provided that a person should not be shifted when a period of two years or less remains for superannuation, would it not be enforceable equally. It is not the case of the petitioner that why he has been shifted from Moga, Faridkot and Ferozepur on a number of occasions. If he has accepted the earlier transfers which were not made after a period of three years but prior to the same, he would have accepted this as well but the transfer has not been made by way of punishment or on the administrative grounds tampered with public purpose. Admittedly, if the period of two years was not in issue, the petitioner may not have objected unless the transfer was tampered with *mala fides* or for other extraneous considerations. The petitioner is conscious of the fact that transferring an employee is the right of the Government but the Government itself has formulated the policy to control and dilute the power of the administrative functionaries so that the same is not tainted with colourable exercise of power. It is also not the case of the petitioner that the transfer reflects any colourable exercise of power but the same has to adhere to the niceties of the transfer policy and that one such is that if an employee is going to retire and the period is two years or less, he should not be shifted from the place of posting. It is absolutely wrong to suggest that the petitioner has any intention to stay perpetually at Moga. It is borne out from the record that he has been transferred on a number of occasions from Moga to such other



places and has also been asked to hold additional charge as well and which charge, the petitioner has performed to the satisfaction of the employer.

(14) On the other hand, Mr. Ashok Aggarwal, learned Additional Advocate General, Punjab, has argued that the Hon'ble Supreme Court has held on a number of occasions that an employee has no legal right to insist for being posted at a particular station of his choice. The orders of transfer are based on administrative reasons and are in public interest but if such acts are tainted with *mala fides* or are based on extraneous considerations, the same would not be sustainable. The jurisdiction of the Court cannot be invoked to bring an impediment in the mannerism of functioning of the Government. The employer knows which person has to be posted at which place. A categorical reference has been made to **Shri Rajendra Ch. Bhattacharjee's case (supra)** and **S.L. Abbas's case (supra)**, to substantiate his argument that the Government employee has no legally enforceable right *vis-a-vis* the order of transfer. The guide-lines are to be followed as far as possible but the same are diluted with the right of the employer, based on administrative reasons and is in the public interest. Thus, the order of transfer has been passed for administrative reasons and is in the public interest. thus, the order is not justiciable as the same does not fall within the domain and jurisdiction of this Court. Admittedly, no mala fides have been attributed by the petitioner and that the effort and manipulation to remain at Moga, on one pretext or the other are far too obvious. Such approach of an employee is always deprecated and that no forum would accept and grant the relief in perpetuation thereof.

(15) We have heard learned counsel for the parties and have also perused the paper book as also the imugned order of transfer, copy Annexure P11 and have also noticed the observations of the Hon'ble Supreme Court as also the dictas of this Court.

(16) We are conscious of the fact that the order of transfer passed against an employee is always based on administrative exigencies and or is in public interest. Normally, the Courts refrain themselves from interfering in such orders. However, the Government has also promulgated the guide-lines/instructions to be followed by the controlling authorities so that the power to be used by them is not abused or misused or is used in a manner which would reflect colourable

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exercise of power. Apart from this, if the guide-lines grant protection to the employee, which is promulgated by the employer itself, the employer cannot be allowed to take the stand that such guide-lines are not mandatory and are only the guidelines which may be kept in mind but not to be followed *stricto sensu*.

(17) The Government is also not entitled to take the stands which are convenient and are termed in consonance with the terms of such guidelines by picking and choosing the particular clauses and applying them in absolute sense. The stand has to be homogenous i.e. either the guideline is treated as guideline only and while applying the same the justifiable reasons are recorded accordingly.

(18) It is the settled law that a government employee or any other servant of a Public Undertaking has no legal right to insist for being posted at a particular place. No doubt, it is the prerogative of the employer to take the best work out of its employee by keeping him at a particular post or places. However, if any such act is tainted with *mala-fides* or is based on some extraneous considerations and is not in consonance and conformity with the administrative reasons or is not meant in public interest or is required for a particular reason, in that case the act/action of the employer would not be justifiable.

(19) We are conscious of the fact that transfer orders are not to be set aside at the drop of the hat and that the power to be exercised by the employer has also to be given due weight unless the exercise of such power is clearly opticised by virtue of colourable exercise. We are also conscious of the jurisdiction of the Court that the Courts or Tribunals do not sit as Appellate Authorities over the transfer orders. Such jurisdiction is allowed to be invoked, if an accepted condition inculcated under the government instructions/rules and regulations is not adhered to and that the instructions/rules are applied by adhering to pick and choose principle, *vis-a-vis* the instructions. The commitment between the employer and the employee sometimes flow from the promulgation made by the employer by accepting the view points of the employee. This would mean self contained restraints upon either side and in such a situation none of them is entitled to violate the same. The domain of executive administration has to be kept isolated but the Courts have to perform their duties and act as watch-dogs requiring both the components to work and function within the crease created and promulgated by themselves.

(20) In the case at hand, we find that the Government has promulgated the guidelines by formulating a policy/guidelines applicable for posting and transfer of Government Employees and Public Sector Undertaking for the year 2005-06,—*vide* publication issued by Government of Punjab, Department of Personnel, which is dated April 20, 2005. The relevant clauses have been referred to by the learned counsel for the petitioner as also by learned Additional Advocate General. The perusal of the clauses referred and reproduced shows the projection of mind of the government whereby a conscious decision has been taken that a government employee whether gazetted or non gazetted, who is to retire within the next two years, be allowed to continue in the same district or at the same station of postings till retirement, as far as possible. This would mean that under the normal circumstances, depending upon the situations, the employee should not be disturbed, if he/she is going to superannuate within two years from the date when the government proceeds to act in passing the order of transfer. Such discretions cannot be put into water tight compartment as the employee must be transferred after serving at a particular place for a period of three years and further the employee must not be allowed to remain at a particular place more than seven years. These stipulations are very appreciable mathematically but applying the same in *stricto sensu* would some time create infallible terms for either side. It would also depend upon the circumstances under which the employer gets into or the employee may be placed. The last word, would of course, be with the employer but this would have to be amenable to the reasons whenever the application of such guidelines/policies are to be enforced by either side. If we read mathematical calculations in the policy, as aforesaid, it might become difficult for an employee as well if he has to be posted at a particular place even before the expiry of the period of two years in the given circumstances. Thus, a licence cannot be given to the employee to claim his retention at the place for two years before his superannuation as this may culminate into situations which may fall beyond the control of the employer.

(21) In view of the above, we are of the considered opinion that such policies/guidelines ought to be normally adhered to but if any deviation has to be made the order must contain the reasons, which should be transparent so that the same are acceptable and are within the vision of the concerned. In the case at hand, the order of transfer

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does not contain administrative reasons for transferring the petitioner nor any public interest has been disclosed in the order as well as in the written statement. On the other hand, the petitioner has also not disclosed any *mala-fide* intention on the part of the employer as also the colourable exercise of power. Thus, in the totality of the facts disclosed before us, we conclude that since no reasons have been given by either side, the stipulation contained in the policy ought to have been adhered to in the facts and circumstances of this case. It would mean that each case which falls within the ambit of the policies/guidelines has to be examined by the concerned quarters and the orders should be passed accordingly. Resultantly, the petition is allowed and the impugned order of transfer dated 20th June, 2005, Annexure P11, is quashed with no order as to costs.

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**R.N.R.**

*Before Surya Kant, J.*

KAULWANT SINGH,—*Appellant/Applicant*

*versus*

STATE OF PUNJAB,—*Respondents*

CrI. Misc. No. 7065 of 2005 in

CrI. Appeal No. 237/SB of 2005

8th August, 2005

*Code of Criminal Procedure, 1973—Ss. 389 & 482—Prevention of Corruption Act, 1988—Ss. 7 & 13—A Junior Engineer convicted and sentenced for the offences under Sections 7 & 13 of the 1988 Act—High Court while admitting the appeal suspended the sentence—Prayer for suspension of conviction also—Whether departmental proceedings to dismiss the appellant from service likely to be initiated is a sufficient ground for suspension of conviction—Held, no—However, on exoneration of the charges, the case of appellant can be revised by the competent authority with all consequential benefits:*