

*Before Permod Kohli, J.*

**N. K. MITTAL,—Petitioner**

*versus*

**STATE OF HARYANA AND ANOTHER,—Respondents**

**CWP No. 733 of 2010**

17th September, 2010

***Constitution of India, 1950—Art. 226—Re-transfer of Food & Supplies Controller only after 5 months of his earlier transfer—Transfer of an employee—Judicial review—Impermissible—However, in cases where mala fide & bias apparent, court is entitled to exercise power of judicial review—Circular, dated 7th April, 1989 issued by Government of Haryana prescribing minimum period of stay of an employee to a station/post 3 years and maximum 5 years—Violative of instructions—Transfer at the instance of Chief Minister without any reason—Record revealing no public interest for re-transfer after 5 months—Petition allowed, transfer order quashed.***

*Held*, that transfer is an exigency of service and no Government employee has a right to remain on a particular post or at a particular place but transfer on considerations other than the public interest and to adjust one employee at particular place in violation of norms is to be construed a transfer actuated by malice. Such malice may not be against the person, who may be affected by such transfer but eventually there is official bias. Official bias is to help one of the person may not be with intention to harm the other but unfortunately the other person is harmed as a natural consequence of helping one. Under normal circumstances interference in exercising of judicial review in the matter of transfer of Government employee is impermissible. However, transfer on account of *mala fide* and bias is one of the situation, where the Court is entitled to exercise the power of judicial review. This is one of such cases where bias is apparent and exercise of power of judicial review is warranted. It is also relevant to note that even there is no application on behalf of respondent No. 2 for his re-transfer to Sonapat.

Suman Jain, Advocate, *for the petitioner*

R. K. Malik, Sr. Advocate with  
Vikas Malik, Advocate

R.K.S. Brar, Addl. A.G. Haryana

Ashwani Talwar, Advocate

**PERMOD KOHLI, J :**

(1) The petitioner is aggrieved of his transfer from Sonapat to Kurukshetra vice respondent No 2,—*vide* the impugned order dated 13th January, 2010. Petitioner and respondent No. 2 both are working as District Food & Supplies Controllers. The petitioner was transferred to Sonapat on 21st August, 2009, whereby as many as six transfers of Food and Supplies Controllers were made including that of respondent No. 2. Petitioner was transferred from Karnal to Sonapat whereas respondent No. 2 transferred Sonapat to Kurukshetra. Petitioner joined at Sonapat on 22nd August, 2009 i.e. day following the order of transfer. Obviously, respondent No 2 also joined at Kurukshetra. Within less than five months, respondent No. 2 has again been transferred to Sonapat and petitioner ordered to be transferred to Kurukshetra,—*vide* the impugned order. The petitioner has challenged the transfer primarily on two grounds. One violative of the Government Transfer Policy as also the guidelines framed in the Food and Supplies Department regarding delivery of food grains, two the transfer being actuated by *mala fide* and ordered at the instance of the Chief Minister of the State.

(2) The petitioner has quoted the guidelines framed by the State regarding the delivery of the rice etc.,—*vide* memo dated 18th September, 2009. Under these guidelines the officer who made purchases is responsible for delivery to the Central Pool otherwise in case of any discrepancy it is difficult to fix the responsibility. It is alleged that while in Kurukshetra, respondent No. 2 has made purchases of 7.80 lacs ton paddy up to 17th December, 2009 and the delivery of the rice is to be made to the Food Corporation of India or its Central Pool up to 31st March, 2010. It is stated that approximately the paddy worth Rs. 550 crores has been purchased. The respondent No. 2 was to procure 45% custom milled rice upto 31st December, 2009 whereas only 32% of the rice has been delivered to the

Food Corporation of India (FCI) leaving deficiency of 13% and under such circumstances transfer of the petitioner in place of the respondent No. 2 is not desirable. Mr. Suman Jain, learned counsel for the petitioner further stated that transfer of the petitioner is only at the instance of the Chief Minister and not in public interest. As a matter of fact respondent No. 2 who was transferred from Sonapat to Kurukshetra only on August, 2009. He wanted to stay back at Sonapat for some consideration and has managed his re-transfer to Sonapat through the intervention of the Chief Minister of the State. State of Haryana has notified transfer policy for its employees,—*vide* circular dated 7th April, 1989. It is prescribed that minimum period of stay of an employee at a station/post is three years and maximum five years. It has also been specified that employee should be discouraged from approaching higher authorities and such approach render him liable to disciplinary action. It is argued that transfer of the petitioner and the respondent No. 2 is in gross violation of the Government Instructions, both relating to delivery of paddy and transfer policy for the Government employees and additionally on account of considerations other than public interest. Petitioner has placed on record official notings relating to the transfer of the respondent No. 2. Copy of the same is Annexure P-4. With a view to ascertain the authenticity of the office notings, the State counsel was asked to produce the original record, which has been produced by Mr. Brar appearing on behalf of the State. When this petition was filed,—*vide* interim order dated 18th January, 2010, it was directed that petitioner shall not be relieved, if not already relieved. Initially, respondent No. 2. was not a party but later he was impleaded as respondent No. 2. The State as also the private respondent filed their separate replies. The State has sought the dismissal of the writ petition on the ground that petitioner has relinquished the charge on 2nd February, 2010 from Sonapat and assumed charge at place of his transfer on 3rd February, 2010. The private respondent has simply stated that in the matter of transfer on administrative ground, no reasons are required for transfer. He has further admitted that under the policy of 2009 of the Custom Milled Rice (CMR) work has to be completed upto 31st March, 2010 and an employee is responsible for even, if transferred. The grievance of the petitioner is that without he being relieved, respondent No. 2 has in violation of the Court order assumed charge at Sonapat. This fact is evident from the additional affidavit of Mr. A.K. Gaur, Deputy Director, Food and Supplies Department, Haryana, Chandigarh wherein it

has been stated that on joining of K.S. Dahiya, District Food and Supplies Controller (respondent No. 2) N.K. Mittal (petitioner) is deemed to be relieved from Sonapat on 14th January, 2010. Respondent No. 2 has also placed on record his joining report on 14th January, 2010. As also the joining report of the petitioner on 3rd February, 2010 at Kurukshetra. It is argued on behalf of the respondent No. 2 that since the petitioner has already joined at the transferred post, the writ petition is rendered infructuous. According to the petitioner he was never relieved and since respondent No. 2 illegally joined in his place without relieving him, he had no option but to join at Kurukshetra to avoid any disciplinary action against him. I have perused the transfer policy as also the guidelines of the Government of Haryana regarding purchase and delivery of the food grains. It is admitted position on record that the respondent No. 2 has purchased food grains paddy worth Rs. 550 crores at Kurukshetra. This paddy was to be delivered to the Food Corporation of India for the Central Pool up to 31st March, 2010. Neither the reply of the State nor of respondent No. 2 contain any valid ground for re-transfer of the respondent No. 2 to Sonapat. In the record produced, following notings are recorded :—

*"Hon'ble C.M. has desired that Shri K.S. Dahiya, DFSC, Kurukshetra may be transferred to Sonapat against Shri N.K. Mittal and vice versa.*

(Sd.) . . . ,  
(M.S. CHOPRA),  
OSD/C.M."

9th December, 2009  
Hon'FSM

(Away  
apprised of)

*"Examine about, stay at these stations and working, record of performance etc; and put up*

(Sd.) . . . ,  
(FSM),  
11.12.09"

(3) The file has been sent to Financial Commissioner Food and Supplies and to other functionaries. A detailed report is recorded by SFS on 18th December, 2009. This note reads as under :—

*“Subject: Regarding transfer of District Food and Supplies  
Controllers.*

*Vide V. letter, a transfer note has been received from the OSD/  
CM wherein it has been written that Hon'ble CM has  
desired that Shri K.S. Dahiya, DFSC, Kurukshetra may be  
transferred to Sonapat against Shri N.K. Mittal and vice  
versa. On this note, Food Minister had ordered to examine  
about stay at these stations and working record of  
performance etc. and put up.*

*With regard to the order of the Hon'ble Food Minister on the V.  
letter, it is hereby explained that vide government order,  
which was issued vide memo No 14/25/2006-4F.S./248.A.A.  
on 21st August, 2009, Shri K.S. Dahiya, District Food and  
Supplies Controller was transferred from Sonapat to  
Kurukshetra against vacant post and Shri N.K. Mittal,  
District Food and Supplied Controller was transferred from  
Karnal to Sonapat against Shri K.S. Dahiya, District Food  
and Supplies Controller. In this way, only four months have  
expired to the transfer of Shri K.S. Dahiya and Shri N.K.  
Mittal, District Food and Supplies Controllers.*

*Insofar as their working record is concerned, is will be  
appropriate to have a report from the Purchase Branch,  
Storage Branch and General Food Branch of the  
headquarter so that the Hon'ble Food Minister will be  
apprised of accordingly on the basis of that report. File is  
being presented for orders. (A)*

*(Sd.) . . . .*

*18th December, 2009*

*SFS”*

(4) From the above note, it is evident that transfer of respondent No. 2 was at the instance of the Chief Minister, who desired the transfer of the respondent No. 2 to Sonapat and that of petitioner to Kurukshetra. In the note, transfer of both these officers at their respective places i.e. Kurukshetra and Sonapat on 21st August, 2009 is also mentioned. A report was sought from the Purchase Branch, Storage Branch and General Food Branch of the Headquarter. Report submitted regarding both the officials is as under :—

- “(1) Both Shri K.S. Dahiya and Shri N.K. Mittal are discharging their duties at Kurukshetra and Sonapat respectively for the last four months.*
- (2) Both are from the same batch (1988) Haryana Civil Services and allied services.*
- (3) As per the information given by Supdt. Public Distribution, there is no complaint against any of the officers.*
- (4) In Kurukshetra, we have 83,256 MTS of wheat in storage and in Sonapat the quantity is 29,546 MTS as on 15th December, 2009 (Food Deptt.)*
- (5) The crucial in this case is that the quantity of paddy purchased on MSP. In Sonapat the quantity is nil though in the case of KKR we have (Food Deptt.) procured 4,15.810 MTS of paddy on MSP. The financial involvement in Kurukshetra is to the tune of 550 crores rupees.*

*The main principle of PR work as has evolved in the last 75 years is to see as possible that the same set of officers/officilas should liquidate the stocks who have purchased it. Otherwise in case of default it becomes very defficult to fix the responsibility. Most of the cases of default in our department are due to such transfers and such cases have become very tedious.*

*Case may please be sent to Hon'ble FSM for his order.*

*(Sd.) . . . .*

*DFS”*

*26th December, 2009*

(5) This report was sent by the Financial Minister on 4th February, 2009 to Financial Commissioner, Food and Supplies, who also approved it and finally the transfer order was issued on 13th January, 2010 under the signatures of the Financial Commissioner and Principal Secretary to Government of Haryana, Food and Supplies Department. From the above note on the file and even from the file of the respondent, it appears that the transfer is purely at the asking of the Chief Minister. No reason for re-transfer of the respondent No. 2 back to Sonapat just after five months has been recorded. It is surprising to note that in the entire record produced no ground has been mentioned for transfer of respondent No. 2 to Sonapat.

(6) From the record produced, it appears that on the occasion of earlier transfer the note is prepared by the office and after passing through various channels goes upto the Chief Minister, who finally approves it and transfer order is issued. However, in the present case, the procedure adopted is totally reverse of the normal procedure. In the present case, the initial note has emanated from the office of the Chief Minister, who desired the transfer and that too only a single transfer of the respondent No. 2 in place of the petitioner. It is relevant to note that both these officials were transferred only in the month of August, 2009 and just after five months impugned transfer order has been issued in contravention of Government's own transfer policy. This transfer is purely at the instance of the Chief Minister. Power of the Chief Minister to transfer a Government employee has to be conceded to him, he being the Chief Executive of the Government. The question is not of the authority and power to transfer a Government employee. The question is of the legitimacy of the transfer, which is under scrutiny in the present case. It is settled principle of law that transfer is an exigency of service and no Government employee has a right to remain on a particular post or at a particular place but transfer on considerations other than the public interest and to adjust one employee at particular place in violation of norms is to be construed a transfer actuated by malice. Such malice may not be against the person, who may be affected by such transfer but eventually there is official bias. Official bias is to help one of the person may not be with intention to harm the other but unfortunately the other person is harmed as a natural consequence of helping one. Under normal circumstances interference in exercising of judicial review in the matter of transfer of Government employee is impermissible. However, transfer on

account of *mala fide* and bias is one of the situation, where the Court is entitled to exercise the power of judicial review. I am of the considered opinion that this is one of such cases where bias is apparent and exercise of power of judicial review is warranted. It is also relevant to note that even there is no application on behalf of the respondent No. 2 for his re-transfer to Sonapat. It is also admitted position that respondent No. 2 made purchases of paddy worth Rs. 550 crores and is responsible for its delivery to Food Corporation of India after converting the paddy into the rice before 31st March, 2010. Before he could discharge the responsibility of delivery of the food grains he was ordered to be transferred from Kurukshetra to Sonapat. As a matter of fact from the entire record no public interest whatsoever has been revealed.

(7) I do not find any valid reason for the transfer of the petitioner within a period of five months except to re-transfer the respondent No. 2 to Sonapat. This transfer is liable to be set aside, thus the impugned order dated 14th January, 2010 (Annexure P-2) is hereby quashed.

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**R.N.R.**