

(2011) 07 AHC CK 0268

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 47088 of 2005

Ram Charan Pal and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: July 5, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 16(2), 21, 226

Citation: (2012) 1 ADJ 122

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Hon"ble Sudhir Agarwal, J.

Since the writ petition has been restored to its original number vide order of date, as requested and agreed by learned counsel for the parties, I proceed to hear the matter finally under the rules of the Court at this stage.

2. The order impugned in this writ petition is dated 8th June, 2005 whereby the petitioners working as Gateman, Government Press Allahabad have been transferred to Government Press, Rampur by Director, Mudran and Lekhan Samagri, U.P. Allahabad (hereinafter referred as "Director")

3. Sri B.N.Singh, learned counsel for the petitioner, contended that petitioners are class IV employees and therefore, cannot be transferred out of the District and in support thereof placed reliance on a Government Order dated 3404/Karmik-2/ 79 dated 4th October, 1979. He further contended that impugned order of transfer as a measure of victimization since petitioners used to oppose illegal activities of Employees/Trade Union leaders by not permitting them to commit any misconduct or any illegal action. The orders of transfer are, in effect, by way of punishment and therefore, vitiated in law. He contended that impugned orders are result of mala fide of one Jeet Lal, Gate Jamadar who made false complaint against petitioners

resulting in initiation of departmental enquiry. He concluded his argument by stating that orders of transfer are neither in public interest nor on administrative grounds nor in the interest of administration but in utter disregard of Government Orders issued by respondent No. 1.

4. Learned Standing Counsel, per contra, submitted that the petitioners have been transferred pursuant to a general order of transfer issued in respect of 18 employees and thus there was no occasion of any bias or mala fide vis-a-vis petitioners. He further contended that a Government Order, laying down policy guidelines with respect to transfer, does not result in creating a cause of action for challenging an order of transfer made in public interest or administrative exigency and that there is no substance in the contention that transfer has been made by way of punishment. He further contended, where the competent authorities found that a person for smooth working of the administration has to be transferred, such a transfer is also within the realm of administrative exigency and no interference is called for therein.

5. First of all, I would consider the question whether impugned orders of transfer are assailable on the ground that the same are in violation of the Government Order dated 4.10.1979.

6. Learned counsel for the petitioner could not dispute that in absence of any specific provision applicable to the petitioners in regard to transfer, general provision contained in Fundamental Rule 15 is applicable.

7. Construing Fundamental Rule 14-B the Apex Court in *Union of India and others v. Janardhan Debanath and another*, 2004 SCC (L & S) 631, in para 12 said:

Transfers unless they involved any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration.

8. No provision has been shown to this Court which made a complete embargo with respect to transfer of a Class IV employee from one place to another. The scope of judicial review of transfer and also the scope of assailability of an order of transfer allegedly in violation of a Government Order laying down certain guidelines is no more an issue res integra having been considered in a catena of decisions.

9. It is no doubt true that an employee and in particular a Government servant is entitled to be treated fairly, impartially, free from any external influence and strictly in accordance with his service conditions, and rules and regulations framed in this regard. Like any other person, various fundamental rights are applicable to the

Government servants also and in particular Articles 14, 16 and 21 of the Constitution. If there is a case demonstrating that a Government servant has been dealt with unfairly or has been discriminated on one or the other ground, which are impermissible under Article 16(2) of the Constitution like, caste, religion, race, sex, descent place of birth etc. this Court would not hesitate to interfere and restrain the State from doing so immediately. However, all these question pre conceive one fact that the Government employee has some kind of right which is being interfered either by singling him out or on account of mala fide etc. There are several aspects in service and in particular Government service. Some arise out of the rights of the Government servant and in some he has no right but exist there merely because one is a Government servant holding a position and status and by virtue thereof such incident of service has fallen upon him. Further, there are a number of incidents of service, some of which confer a legal right upon the Government servant and some do not result in a legal right. For example once a person is appointed as Government servant, his seniority by virtue of his date of entering the service is an incident of service. It confers a legal right upon him to claim that his seniority should be determined in accordance with the rules or the executive instruction in the absence of the statutory rules laying down the criteria for determining seniority. Similarly, another incident of service is that he is entitled to claim salary or wages as prescribed under statutory rules or executive orders. This also confer upon him a legally enforceable right whether flows from statutory rules or from executive instructions. Then if there is a hierarchy of posts and the rules allow a Government servant working on a particular post to be considered for promotion to a higher post, in certain circumstances, in such a case consideration for promotion is also an incident of service and here also it confers a legally enforceable right whether it emerges from rules or executive instructions. Simultaneously there are certain aspects which though are incidents of service but do not result in conferring any legal right upon the Government servant concerned, Enforceability in later cases varies from case to case. In some matters to a limited extent they may be enforceable and in some matters they may not be enforced at all. For example if by an executive order it is provided that a Government servant holding a particular post will have to show his performance upto a particular level, compliance thereof on the part of the Government servant is also an incident of service but its enforceability varies from case to case. For example the executive higher authorities may take action against such Government servants who fail to perform upto the desired level and such failure may result in adverse consequences in the matter of promotion, crossing of efficiency bar etc. Similarly such matter may also be considered by an executive higher authority at the time of considering whether the Government servant concerned has rendered a dead wood necessitating compulsory retirement or not but Government servant cannot challenge the said standard in a Court of law on the ground that those standards according to capacity of the Government servant are excessive etc. and cannot be followed uniformly by all the Government servant since the capacity of every person

varies depending on various aspects of the matter. Similarly another Government servant or the people at large may not claim something in his favour on the ground that a particular Government servant has not been able to discharge as per desired the level. For example if in a territorial jurisdiction of a particular Police Station, number of offenses in a particular period are more than another Police Station, the citizens residing in the former Police Station cannot come to a Court of law and say that in view of the executive instructions issued by the State Government, the Officer In-charge of the Police Station having failed to achieve the target or show his performance according to desired level and, therefore, he should be proceeded against in one or the other manner or should be removed from his office or from that Police Station. Similarly, if a member of a Subordinate Judiciary, who is supposed to decide certain number of cases in a month, fails to achieve the target, no litigant or advocate can come to a Court of law to ask that such judicial officer is not able to hold the office and should be removed or should be transferred to some other place. The executive orders, in this regard though require performance upto a particular standard for the public benefit and interest but non achievement thereof is not enforceable. In the administrative side, the executive authority higher in office may take into consideration the above executive instructions and the performance of the Government servant concerned while assessing his performance, but otherwise the executive instructions of the nature stated above are not enforceable since they do not result in creating a legally enforceable right. The executive instructions providing certain monetary benefit to Government servants or their family members are enforceable. However, the executive instructions constituting guidelines for the authority competent to transfer a Government servant from one place to another do not fall in the same category i.e. enforceable as they do not confer any legal right upon a Government servant. This is what the law has been in the matter of transfer throughout in the light of the authorities of the Apex Court as well as this Court. I will not burden this judgment with number of authorities on this subject but would like to come straightway on the main issue but before doing so, I propose to refer certain authorities to show how the matter of transfer of a Government servant has been treated by the Courts in India. After having an in-depth study on the subject I find it beyond doubt that throughout it has been held that transfer is an incident of service, which does not affect any legal right of a Government servant holding a transferable post.

10. Initially, in [E.P. Royappa Vs. State of Tamil Nadu and Another](#), the Court said that it is an accepted principle that in a public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in this matter. The Government is the best judge to decide how to distribute and utilize the services of its employees.

11. Thereafter, dealing with the transfer of the Hon"ble Judges of High Court, in [Union of India \(UOI\) Vs. Sankalchand Himatlal Sheth and Another](#), the Apex Court observed that transfer is an incident of service. It was further held that once a

person has entered service he is bound by the conditions imposed either by the Service Rules or the Constitutional provisions. No person after having joined the service can be heard to say that he shall not be transferred from one place to another in the same service without his consent. Having accepted the service, the functionary has no choice left in the administrative action that can be taken by empowered authorities namely, transfer from one place to another, assignment of work and likewise.

12. In [B. Varadha Rao Vs. State of Karnataka and Others](#), the Court said that it is now well settled that a Government servant is liable to be transferred to a similar post in the same cadre. It is a normal feature and incident of Government service. No Government servant can claim to remain at a particular place or in a particular post unless, of course, his appointment itself is to a specified, nontransferable post.

13. In B. Varadha Rao (supra) an attempt was made to argue that since in E.P. Royappa (supra) it was held that the transfer is an implied condition of service, therefore, the transfer affecting the petitioner must be treated to have altered the service conditions to his disadvantage and such an order would be deemed to be an adverse order appealable under the provisions applicable in the rules pertaining to disciplinary action, but was rejected by the Court observing that transfer is always understood and construed as an incident of service. It does not result in alteration of any of the conditions of service to the disadvantage of the employee concerned. In the reference of E.P. Royappa (supra) with respect to observation "an implied condition of service" the Apex Court in B. Varadha Rao (supra) held as "just an observation in passing" and it was held that it cannot be relied upon in support of the contention that an order of transfer ipso facto varies to the disadvantage of a Government servant, any of his conditions of service making the impugned order appealable.

14. In [Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani](#), the Apex Court further said that transfer from one place to another is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules.

15. In [Mrs. Shilpi Bose and others Vs. State of Bihar and others](#), it was held:

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.

16. In the same judgment the Hon'ble Apex Court also held that a transfer order, even if, is issued to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the Court merely because transfer orders were passed on the request of the concerned employees. No person has a vested right to remain posted to a particular place, and unless the transfer order is passed in violation of any mandatory rule, the High Court had no jurisdiction to interfere with the transfer orders. Relevant extract is quoted as under:

If the competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the Court merely because the transfer order were passed on the request of the employees concerned. The respondents have continued to be posted at their respective places for the last several years, they have no vested right to remain posted at one place. Since they hold transferable posts they are liable to be transferred from one place to the other. The transfer orders had been issued by the competent authority, which did not violate any mandatory rule, therefore, the High Court had no jurisdiction to interfere with the transfer orders. (Para-3)

17. In Rajendra Roy Vs. Union of India (UOI) and Another, it was said "in a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department."

18. In Rajendra Roy Vs. Union of India (UOI) and Another, and Union of India and another Vs. N.P. Thomas, it was said that the Court should not interfere with the transfer orders unless there is a violation of some statutory rule or where the transfer order was mala fide.

19. In N.K. Singh Vs. Union of India and others, the Court said, "Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers..."

20. In Abani Kanta Ray Vs. State of Orissa and Others, the Court observed "It is settled law that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer."

21. In National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, the Apex Court held that 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.

22. In Public Services Tribunal Bar Association Vs. State of U.P. and Another, the Court said, "Transfer is an incident of service and is made in administrative exigencies. Normally it is not to be interfered with by the Courts. This Court consistently has been taken a view that orders of transfer should not be interfered with except in rare cases where the transfer has been made in a vindictive manner."

23. In State of U.P. and Others Vs. Gobardhan Lal, the Court said "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."

24. In Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, the Apex Court said, "No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice 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 or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management...."

25. Thus, the scope of judicial review in the matter of transfer is restricted inasmuch if an order of transfer is challenged on the ground of violation of statutory provision or lack of competence of the person who has passed the order or mala fide, only then the Court should interfere otherwise it is not liable to be interfered in judicial review. The reason for such a view taken by the Courts repeatedly is that no Government servant has a right to be posted in a particular post or position once appointed in service. He cannot claim that he should continue at same place as long as he desire.

26. Noticing distinction in transfer of civilian employee including those working in public sector undertakings and those of disciplined forces, in Major General J.K. Bansal Vs. Union of India (UOI) and Others, the Apex Court said "The scope of interference by Courts in regard to members of armed force is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The Courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made."

27. Considering J.K. Bansal (supra), a Division Bench of this Court in Special Appeal No. 1296 of 2005 (Gulzar Singh v. State of U.P. and others) decided on 7.11.2005 in respect to member of police force observed as under :

The present case, if not strictly identical to the case of Major General J.K. Bansal v. Union of India and others (Supra), is quite nearer to the same. The petitioner-appellant in the present case is a member of a discipline force, namely, U.P. Police. His requirement and urgency as well as the exigency regarding posting would be totally different than other civil employees. There may be numerous factors on account whereof the competent authority has to post a particular member of Police Force at a particular place and unless and until a case of mala fide is made out or there is violation of statutory provision, there would be no occasion for this Court to interfere in the case of transfer of a member of a Police Force. The scope of judicial interference would definitely be limited and narrow in case of a disciplined Force comparing to scope available in the case of other civil servants. It is not the case of the petitioner-appellant that the impugned order of transfer is in contravention of any statutory mandatory provision.

28. In Prabir Banerjee Vs. Union of India (UOI) and Others, transfer of a member of central service, namely, Central Excise, from one zone to another zone was challenged on the ground that inter zonal transfer was prohibited in the department of Central Excise and Customs pursuant to the circular dated 19.2.2004 issued by the department of Revenue, Ministry of Finance, Government of India. The Court held that it is no doubt true that transfer is an incident of service in all India service under the Central Service Rules, but in the absence of any direct rule relating to transfer between the two collectorates, the field may be covered by the administrative instructions.

29. In Mohd. Masood Ahmad Vs. State of U.P. and Others, the Apex Court said "Transfer is an exigency of service and is an administrative decision. Interference by the Courts with transfer order should only be in very rare cases." It further held "This Court has time and again expressed its disapproval of the Courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer."

30. In Prasar Bharti and Others Vs. Amarjeet Singh and Others, the Court said that an order of transfer is an administrative order. There cannot be any doubt that the transfer being an incident of service should not be interfered except some cases where, inter alia, mala fide on the part of the authorities is proved.

31. In Union of India (UOI) and Others Vs. Muralidhara Menon and Another, the Court observed that even if the conditions of service are not governed by the statutory rules, yet the transfer being an incident of service, an employee can be

transferred which may be governed by the administrative instruction since an employee has no right to be posted at a particular place.

32. Recently, in [Rajendra Singh Vs. State of U.P. and Others](#), the Court observed that a Government servant holding a transferable post has no vested right to remain posted at one place or other, he is liable to be transferred from one place to other.

33. The Court in Rajendra Singh (supra) also observed that the transfer orders issued by the competent authority do not violate any of the legal rights of the concerned employee. If a transfer order is passed in violation of a executive instruction or order, the Court ordinarily should not interfere with the order and the affected party should approach the higher authority in the department.

34. Thus, from the above it is evident that since an employee holding a transferable post has no right to continue at a particular place or position, an order of transfer does not violate any of his legal right whatsoever. That being so, an order of transfer cannot be interfered except of the contingency of mala fide, violation of Rule and competence since it cannot be said to be an order affecting the legal rights of an employee. The limited scope of interference in a judicial review, therefore, has been left to the cases where the order is either violative of statutory provision or is vitiated on account of mala fide or has been issued by a person incompetent. The transgression of administrative guidelines at the best provide an opportunity to the employee concerned to approach the higher authorities for redressal but its consequences would not go to the extent to vitiate the order of transfer. The question as to whether violation of transfer policy or guide lines relating to transfer contained in an executive order or executive insturcitoins or policy for a particular period laid down by the Government would result in vitiating the order of transfer has also been considered repeatedly in past by Apex Court as well as this Court.

35. The enforceability of a guideline laid down for transfer specifically came to be considered by the Apex Court in Shilpi Bose (supra) and it was held that even if transfer order is passed in violation of the executive instructions or orders, the Courts ordinarily should not interfere with the order and instead affected arty should approach the higher authorities in the Department.

36. Again in [Union of India and Others Vs. S.L. Abbas](#), a similar argument was considered and in para 7 of the judgment the Court said, "The said guidelines, however, does not confer upon the Government employee a legally enforceable right."

37. Referring its earlier judgment in [Bank of India Vs. Jagjit Singh Mehta](#), the Apex Court in S.L. Abbas (supra) observed as under :

The said observations in fact tend to negative the respondents contentions instead of supporting them. The judgment also does not support the Respondents" contention that if such an order is questioned in a Court or the Tribunal, the

authority is obliged to justify the transfer by adducing the reasons therefor. It does not also say that the Court or Tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can it be characterized as mala fide for that reason. To reiterate, the order of transfer can be questioned in a Court or Tribunal only where it is passed mala fide or where it is made in violation of the statutory provisions.

38. Same thing has been reiterated by the Apex Court in *Gobardhan Lai* (supra) in the following words :

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.

39. Besides the judgments of the Apex Court, this Court has also considered the same time and again and has reiterated that the order of transfer made even in transgression of administrative guidelines cannot 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. Some of such authorities are as under.

40. In *Rajendra Prasad Vs. Union of India (UOI) and Broadcasting, Government of India, Director, General, All India Radio Directorate Akashwani, Station Director, All India Radio and Station Director, All India Radio*, a Division Bench observed, "Transfer policy does not create legal right justiciable in the Court of law."

41. In Division Bench of this Court in Civil Misc. Writ Petition No. 52249 of 2000 (Dr. Krishna Chandra Dubey v. Union of India and others) decided on 5.9.2009 said, "It is clear that transfer policy does not create any legal right in favour of the employee. It is well settled law that a writ petition under Article 226 of the Constitution is maintainable for enforcing the statutory or legal right or when there is a complaint by an employee that there is a breach of statutory duty on the part of the employer."

42. In *Gulab Singh* (supra) and *Ram Niwas Pandey and others v. Union of India and others* (Special Appeal No. 769 of 2005) decided on 29.11.2005 also this Court held that transgression of transfer policy or executive instructions does not give a legally enforceable right to challenge an order of transfer.

43. In Civil Misc. Writ Petition No. 243 (SB) of 2007 *Uma Shankar Rai v. State of U.P. and others*, decided on 31.7.2007 this Court observed as under:

Dr L.P. Misra, learned counsel for the petitioner seriously contended that though the transfer of Government servant is made in exigencies of service, yet where transfer policy has been framed, the same is expected to be adhered to and cannot be defied in a discriminatory and selective manner. Any action of the authorities, even in respect of the matter of transfer, if is inconsistent to such policy would vitiate the order of transfer since it would render the same arbitrary and illegal. Referring to paras 2 and 3 of the transfer policy dated 11.5.2006, he contended that the respondent No. 4 having completed his tenure of six years in the District and ten years in the Commissionery even at Mirzapur yet he has again been sought to be posted at Mirzapur to accommodate him and the petitioner has been transferred to Varanasi, therefore, the impugned order is patently illegal. In support of the submission that order of transfer, if has been issued in violation of transfer policy, the same can be assailed since the transfer policy was laid down to adhere to and not to violate, reliance has been placed on the apex Court's decision in [Home Secretary, U.T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others, N.K. Singh Vs. Union of India and others](#); R. v. Secretary of State, (1985) 1 All ER 40; and a Division Bench decision of this Court in Smt. Gyatri Devi v. State of U.P. and others, 1998 (16) LCD 17. In other words the learned counsel for the petitioner contends that even through the order of transfer may not be challenged on the ground of mere violation of transfer policy, yet such order can be interfered with if the authorities who are supposed to adhere with the guidelines, have failed to do so.

In our view the submission is mutually destructive and self contradictory. What the petitioner in fact has sought to argue is that the Executive once has laid down certain standards for guidance in its functioning, it must adhere to and any deviation thereof would vitiate the consequential action, which may be challenged in writ jurisdiction. The argument though attracting but in the matter of transfer, however, in our view, the same has no application. Transfer of Govt. servants in the State of U.P. is governed by the provisions contained in Fundamental Rule- 15, which reads as under :

...

It is not disputed that the post held by the petitioner is transferable and he is liable to be transferred from one place to another. The employer once possess right to transfer an employee from one place to another, in our view, there is no legal or otherwise corresponding obligation upon him to inform his employee as to why and in what circumstance an employee is being transferred from one place to another. Shifting and transferring of the employee from one place to another involves more than thousand reasons and it is difficult to identify all of them in black and white. The commonest reason may be a periodical shifting of person from one place to another, which does not require any special purpose; the other reasons include necessity of a particular officer at a particular place; avoidance of disturbance or

inconvenience in working of the officer on account of a person at a particular place; unconfirmed complaints and to avoid any multiplication thereof; transfer may be resorted to and so on. These are all illustrations. The question as to whether in any of the circumstances when a person is transferred from one place to another without casting any stigma on him, does it infringe, in any manner, any right of such employee which may cause corresponding obligation or duty upon the employer to do something in such a reasonable manner which may spell out either from its action or from the record and when challenged in a Court of law, he is supposed to explain the same, In our view, the answer is emphatic No.

44. It further held :

In view of the aforesaid well settled principles governing the matter of transfer, the consistent opinion of the Courts in the matter of judicial review of the transfer orders has been that the order of transfer is open for judicial review on very limited grounds; namely if it is in violation of any statutory provisions or vitiated by mala fides or passed by an authority holding no jurisdiction. Since the power of transfer in the hierarchical system of the Government can be exercised at different level, sometimes for the guidance of the authorities for exercise of power of transfer, certain executive instructions containing guidelines are issued by the Government so that they may be taken into account while exercising power of transfer. At times orders of transfer have been assailed before the Court on the ground that they have been issued in breach of the conditions of such guidelines or in transgression of administrative guidelines. Looking to the very nature of the power of transfer, the Courts have not allowed interference in the order of transfer on the ground of violation of administrative guidelines and still judicial review on such ground is impermissible unless it falls within the realm of malice in law. The reason behind appears to be that the order of transfer does not violate any right of the employee and the employer has no corresponding obligation to explain his employee as to why he is being transferred from one place to another.

45. The Division Bench judgment in *Uma Shanker Rai* (supra) has been followed by another Division bench in *Jitendra Singh v. State of U.P. and another*, 2009 (3) ADJ 569 (DB).

46. In view of the above discussion and in absence of any provision to show that a Class IV employee shall not be transferred outside the district, it cannot be said that the order of transfer is illegal. Even the Government Order dated 4.10.1979, referred to by the petitioners, does not say so but in given circumstances, it requires that ordinarily transfer of Class IV employees may be made within the district but there is no complete embargo for their transfer outside the district. Moreover, since 1979 repeatedly several Government Orders have been issued laying down guidelines for transfers and in supersession of earlier orders. They have been issued on annual basis.

47. Learned counsel for the petitioner contended that in the Government Press, no person has ever been transferred outside the district. But, in the counter-affidavit, respondents have filed a copy of note, Annexure C.A.1, whereunder petitioners have also been transferred which would show transfer of almost 18 persons from one district to another and it includes 12 Gateman. Thus, it cannot be said that transfer has been made only in respect to the petitioners transferring them out of district and no transfer has been made in respect to any other person. Moreover, Annexure C.A. 1 also shows that the exigency of transfer of various persons have been considered by a Committee consisting of Director, Joint Director (Administration) and Personnel Officer and thereafter transfers have been given effect to. The scope of mala fide or bias in such a circumstances when a body of three persons has taken a decision, diminish considerably and nothing has been placed or pleaded in the writ petition to allege any mala fide or malice to the members constituting the Committee who has recommended for transfer. A mere fact that one of the petitioner was placed under suspension or a departmental enquiry was going on by itself would not constitute a foundation for the impugned order of transfer unless there is something more than that. Unfortunately, there is nothing on record to substantiate that the impugned order of transfer has been made as a result of punishment. The vague and conjectural allegation would not vitiate an order of transfer otherwise passed in accordance with law objectively and independently. The Division Bench decision in *Om Prakash Singh v. State of U.P. and others, 2008 (2) ESC 1141*, relied on by learned counsel for the petitioner has no applicability to the facts of this case. Therein the Court, from the perusal of the pleadings and record, found as a matter of fact that the order of transfer was made at the instance of Minister who was not of the department concerned and was otherwise found arbitrary.

48. It is well settled that a person against whom plea of mala fide is taken shall be impleaded *eo nomine* since plea of mala fide is not available against unnatural person. The Apex Court has gone to the extent that in absence of impleadment of a person *eo nomine*, against whom plea of mala fide is alleged, Court cannot not even entertain the plea of mala fide.

49. The Apex Court in *State of Bihar and Another Vs. P.P. Sharma, IAS and Another*, of the judgment, held:

It is a settled law that the person against whom mala fides or bias was imputed should be impleaded *eo nomine* as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity. Admittedly, both R.K. Singh and G.N. Sharma were not impleaded. On this ground alone the High Court should have stopped enquiry into the allegation of mala fides or bias alleged against them.

(emphasis added)

50. In *J.N. Banavalikar v. Municipal Corporation of Delhi*, AIR 1996 SC 326, in para 21 of the judgment, it has been held:

Further in the absence of impleadment of the... the person who had allegedly passed mala fide order in order to favour such junior doctor, any contention of mala fide action in fact i.e. malice in fact should not be countenanced by the Court.

51. In *All India State Bank Officers" Federation and Others Vs. Union of India (UOI) and Others*, the Hon"ble Apex Court has said where a person, who has passed the order and against whom the plea of mala fide has been taken has not been impleaded, the petitioner cannot be allowed to raise the allegations of mala fide. The relevant observation of the Apex Court relevant are reproduced as under:

The person against whom mala fides are alleged must be made a party to the proceeding. Board of Directors of the Bank sought to favour respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of mala fide, which allegations, in fact, are without merit.

(emphasis added)

52. In *Federation of Railway Officers Association and Others Vs. Union of India (UOI)*, it has been held:

That allegations regarding mala fides cannot be vaguely made and it must be specified and clear. In this context, the concerned Minister who is stated to be involved in the formation of new Zone at Hazipur is not made a party who can meet the allegations.

(emphasis added)

53. The aforesaid view has been followed by various Division Benches of this Court including *Dr. Harikant Mishra v. State of U.P. and others*, 2008(4) ADJ 36 : 2008(2) ESC 1312 and *Satahuddin v. State of U.P. and another*, 2008(3) ADJ 705. In view of the above, since the person against whom the plea of mala fide has been levelled is not impleaded, I have no hesitation in declining the contention of the petitioner to assail the impugned order on the ground of mala fide.

54. However, the aforesaid judgment are in connection with the case where the mala fide is alleged but where the allegation is malice in law, non impleadment of the person concerned eo nomine may not come in the way of entertaining such a plea. The plea itself however cannot be entertained on mere vague and unspecific averments unless it is pleaded and proved by placing relevant material on record. The Court will not make fishing and roving enquiries on mere suggestion by the learned counsel during the course of the argument or use of these words in the

pleading that order suffers from vice of malice in law. In order to sustain such a contention, specific pleadings and relevant material in support thereof is necessary, which unfortunately is not existing/available in this case. Therefore, even the plea of malice in law, in the case in hand, is clearly misconceived.

55. Moreover, more than six years have already passed since impugned orders of transfer were issued. The petitioners have made these orders ineffective and inoperative by obtaining ex parte interim order passed by this Court on 7th July, 2005. It is really unfortunate that the very purpose of transfer made in administrative exigency or in public interest sometimes get frustrated when an ex parte interim order is passed and it continues for long since Court could not take up the matter expeditiously.

56. In any case, in view of the discussion above, I find no merit in the writ petition. The writ petition is dismissed with cost quantified to Rs. 15,000/-.

57. Interim order, if any, stands vacated.