

Calcutta High Court

Registrar General Of High Court ... vs Chitra Biswas And Ors. on 21 April, 2005

Equivalent citations: 2006 (1) CHN 110

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Bench: D Seth, S Pal

JUDGMENT D. K. Seth, J.

1. The appeal has been preferred against the judgment and order dated 15th of October, 2004 passed by learned Single Judge in WP No. 236 of 2004, quashing the order of transfer- principally on the ground of discrimination, non-application of mind, violation of the principles of natural justice and equity as well as the provisions of Article 21 of the Constitution of India read with the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

2. Mr. Jayanta Mitra, learned Senior Counsel appearing on behalf of the appellant, assailed the order on various grounds whereas Mr. Debashis Kundu appearing on behalf of the respondent/writ petitioner supported the order and countered the submission of Mr. Mitra. We shall be dealing with the respective contentions raised by the respective Counsel with reference to the respective arguments as hereafter.

Facts:

3. In order to appreciate the situation, a brief reference to the facts, which are admitted, would be beneficial to us. On 28th May, 1999, the writ petitioner/ respondent was posted as Additional Chief Judicial Magistrate, Sealdah. She joined as Additional District and Sessions Judge at Alipore on 4th September, 2001. She was posted on 1st July, 2002 as Additional Principal Judge, 2nd Family Court, Kolkata. Under the norms followed by the High Court at Calcutta in the administration of the subordinate judicial service so far as it relates to the question of transfer, the territories of the State of West Bengal has since been categorized in different zones. An officer after having posted in a particular zone for a period of three years or more is supposed to be transferred to another zone. This is done in normal course of event. The petitioner having been posted in 'A' zone for over three years, she was due for transfer to 'B' Zone as prescribed in the norms.

3.1. On 16th of August, 2003, the petitioner/respondent sustained injury in her right eye. She applied for leave for her treatment at Chennai. On 5th September, 2003, the petitioner/respondent reported to Sankara Nethralaya, Chennai and got herself treated there. After her treatment at Chennai, she was advised to continue her periodical check up at Rotary Narayana Sankara Nethralaya at Kolkata. Pursuant to such advice, she reported for check up at the said Nethralaya at Kolkata on 25th September, 2003 and continued till 10th of January, 2004.

3.2. In the meantime, her transfer being due, her name was considered by the Transfer Committee, which met on 14th of November, 2003, when a resolution was passed regarding transfer of various judicial officers including the petitioner/ respondent, whose case was in Item No. 6. In the said

resolution, it was resolved that the petitioner was being transferred and posted as Additional District & Sessions Judge, Midnapore, which was then vacant. The said resolution was placed before Hon'ble the Chief Justice for approval and was approved on 19th of November, 2003. The petitioner/respondent got herself checked up at Sankara Nethralaya on 21st November, 2003 when she was advised to go there for review once a year. A Notification was issued on 25th November, 2003 appointing the petitioner on reversion to the general lines as Additional District & Sessions Judge in the District of Paschim Midnapore in the interest of public service. A copy of the said Notification was forwarded on 25th November, 2003 to the Special Secretary, Government of West Bengal, Judicial Department, requesting him to move the State Government for replacing the services of the writ petitioner/ respondent at the disposal of the High Court for her appointment in the general line.

3.3. At this stage on 11th of December, 2003, the petitioner/respondent submitted a representation to the Registrar (Judicial Service) with a prayer for recalling of the order of transfer and for her posting in the present post till her retirement in August, 2005. Upon consideration of this representation, the Transfer Committee rejected the same on 19th of December, 2003. The petitioner/ respondent was then directed to deliver charge of her present assignment on receipt of necessary Orders/Notifications and to proceed immediately to Paschim Midnapore to join her new assignment. The resolution of the Transfer Committee was placed before Hon'ble the Chief Justice and was approved by him on 4th of January, 2004. A Notification was issued on 29th of December, 2003 under the order of the Governor to replace the service of the petitioner/respondent at the disposal of the High Court for her appointment in the general line to the post of Additional District & Sessions Judge, Paschim Midnapore in the vacancy of Sri B.N. Baidya. The order of rejection of her representation was communicated to the petitioner/respondent on 8th January, 2004.

3.4. On 9th January, 2004, the petitioner made another representation to the Registrar (Judicial Service) praying that she was due to retire on 31st August, 2005 and that due to her complete loss of vision in the right eye, she should be given light posting at Kolkata and to remain posted in the present post till disposal for her second representation. On the basis of this representation, a note was put up indicating that the post of Additional District & Sessions Judge, Midnapore was lying vacant since 11th June, 2003. At this stage, the petitioner/ respondent addressed a letter on 19th of January, 2004 to the Registrar (Judicial Service) seeking a personal hearing before one of the Hon'ble Judge being one of the members of the Transfer Committee to enable her to advance her submissions in support of her representation. On 20th of January, 2004, the said representation was rejected by the Judge-in-charge, Transfer Committee directing her to deliver charge within 31st January, 2004 and since when she would be deemed to have been relieved from her present office.

3.5. On 20th January, 2004, the Registrar (Judicial Service) informed the petitioner that her prayer for seeking personal hearing was refused and that her representation dated 19th January, 2004 had since been considered and rejected and that she was directed to deliver charge of her present assignment by 31st January, 2004 and requested her to submit compliance report. On 22nd January, 2004, a Notification was issued by the order of the Governor that the petitioner/respondent should make over her charge of her office to Sri Arup Das, Principal Judge, First Family Court, Calcutta in order to enable her to join her new assignment in the post of

Additional District & Sessions Judge, Paschim Midnapore by 31st January, 2004.

3.6 On 27th January, 2004, a certificate was issued from Notary Narayana Sankara Nethralaya advising the petitioner for regular check up after her last check up on 10th of January, 2004. On 80th January, 2004, the petitioner moved the writ petition in which the order of transfer was stayed till 27th January, 2004. An appeal against the said order before the Division Bench was disposed of on 19th February, 2004 on the expectation that the writ petition would be disposed of very soon. The writ petition was heard by the learned Single Judge on several days in between 25th February, 2004 and 7th July, 2004 and the judgment was delivered on 15th of October, 2004, quashing the order of transfer, directing reconsideration of the representation of the writ petitioner/respondent and till such reconsideration, she should be allowed to remain in her present posting till she retires on 31st August, 2005 in the event no other alternative was possible.

The pleadings : Ground of challenge: The scope :

4. The order of transfer was challenged on the ground she pleaded in the writ petition, particularly, in paragraphs 13 and 14, which we may quote :

13. Your petitioner cannot take on any strenuous work and has not regained vision in her injured right eye and her left eye is also susceptible to any strenuous work. She has been depending on others to carry out day to day activities of her normal life and she requires the assistance of her husband who lives with her. She has been advised to do only light work and as such all the household works which are of slightly strenuous and heavy in character have to be done by others. She cannot take any work which is stressful and would create tension. She also has to undergo periodical checkup once or twice a month from Rotary Narayan Shankara Nethralaya at Salt Lake, Calcutta. She has been advised by her doctor to do only light work as far as possible free of tension and stress. A copy of the said report of the Doctor dated 21st November, 2003 is annexed hereto and marked P 13.

14. She lives with her husband aged more than 70 years, a retired Government Doctor who is practising in two medical institutions and as such is not possible for her husband to leave Calcutta. She cannot go outside and/or move about freely alone due to her blind right eye and her poor vision of left eye and always has to take assistance of others to move around. Her children are married and they lead separate life of their own and are living with your petitioner who give regular assistance and support to your petitioner to carry out the day to day regular work. Your petitioner, if posted to Paschim Medinipore, it would not be possible for your petitioner to take her children out there and her aged husband. It would not be possible for her husband to help and assist your petitioner in all possible work without constant assistance of other family members. The children of your petitioner cannot be asked to go to Paschim Medinipore sacrificing their work and family life in Calcutta and without their help and support it would be impossible for your petitioner to do day to day work. Your petitioner ought not to be transferred to Paschim Medinipore and should be allowed to remain in Calcutta so that strain and tension does not affect the vision of the left eye of your petitioner.

4.1. That apart, it is the order of rejection of the representation, which was mainly challenged along with the Notifications dated 25th November, 2003 and 29th December, 2003. We may remember that there is no provision in the Service Rules under which the petitioner/respondent is governed that a person should be allowed to continue at a place her/his choice immediately preceding her/his retirement. There is no dispute about the fact that the order of transfer was passed in the normal course of transfers made in administrative exigencies involving several persons in a routine manner. It is only the rejection of the representation, which could be assailed not the order of the transfer. There is neither any pleading nor any finding that the order of transfer was issued by reason of any mala fide or in colourable exercise of power or on such other grounds on which an order of transfer could be held to be illegal or bad. Nor there is any allegation that the authority transferring her was incompetent or had no jurisdiction to transfer. Admittedly, the petitioner was in a transferable service. Transfer being an incidence of service, she cannot claim any special right for being retained at a particular place. The question of consideration of the representation depended on the materials those were available at the time when such consideration was made. The Court cannot proceed while questioning the validity of the order of rejection of the representation on the basis of additional materials placed before it, particularly, when such additional materials were neither before the authority concerned nor in existence, when the representation was rejected. It was only the materials those then existed and placed before the authority would be the materials on which the Court has to come to a conclusion that the order of rejection was bad or invalid.

4.2. The order of transfer being purely administrative in nature without involving any quasi-judicial characteristics even by remote chance, the scope of interference with such order in exercise of writ jurisdiction is very limited. The Court is not supposed to question the justifiability of the administrative necessities and exigencies relating to such transfers, nor can impose its own view in order to interfere with. Wheels of administration should be allowed to run smoothly. Transfer cannot be interfered with unless there is mala fide or extraneous consideration backed by factual materials.

Submission on behalf of the Appellant:

5. Mr. Jayanta Mitra, learned Senior Counsel for the appellant, had contended that the provisions of the 1995 Act do not apply in the case of the petitioner/ respondent in the facts and circumstances of the case and had elaborated his submission with reference to Section 38(d) and Sections 2(b) (ii) and (iii) of the said Act and relied upon the decision in *Rasala v. Andhra Bank and Ors.* 2003 Lab. IC 2909 and distinguished the decision in *Apparel Export Promotion Council v. A.K. Chopra* ; *Githal Hariharn v. Reserve Bank of India and Ors.* ; *Municipal Corporation Delhi v. Female Workers (Muster Roll) and Anr.* ; *Indian Council of Legal Aid & Advice v. Union Of India and Ors. and Javed Abidi v. Union of India and Ors.* .

5.1. He next contended that Articles 233, 234 and 235 empower the High Court to take appropriate steps with regard to the posting, transfer and promotion of the judicial officers. In this context, he relied on the decision in *High Court of Judicature at Bombay v. Shirish Kumar Rangrao Patil and Anr.* .

5.2. He then contended that the transfer is an incidence of service. The employer is the best person to decide the question of transfer. In this case, a Transfer Committee was constituted. This Transfer Committee had applied its mind. The Transfer Committee had passed the order in the administrative exigencies and nothing short of mala fide can justify the same. In this case, there is no allegation of mala fide or any infraction of any statute, rules or procedure. The decision in *K.B. Shukla v. Union of India*, was relied upon by Mr. Mitra to contend that exigency of administration is the prime consideration governing the field of transfer. He cited *Union of India and Anr. v. N. P. Thomas* to contend that unless the transfer violates any statute, the Court cannot interfere with an order of transfer. He cited *Union of India and Ors. v. S.L. Abbas* to support his contention that unless there is mala fide, the Court cannot interfere even on health ground. The Court is not supposed to sit on appeal on the decision. Referring to paragraphs 13 and 14 of the writ petition, he sought to apply the test laid down in the said decisions. He also relied on the decision in *State of Punjab and Ors. v. Joginder Singh Dhatt* to contend that the High Court cannot interfere with an order of transfer. Relying on *Rajendra Roy v. Union of India and Anr.* to contend that the High Court can interfere only in case of mala fide, oblique purpose and wreaking vengeance etc. But difficulties are not grounds for interference. He also relied on *Chandra Gupta I.F.S. v. Secretary, Government of India, Ministry of Environment and Forest and Ors.* and *State of Madhya Pradesh v. S.S. Kourav and Ors.* to support his contention that the wheels of administration should be allowed to run smoothly. Transfer cannot be interfered with unless there is mala fide or extraneous consideration backed by factual materials.

Submission on behalf of the Respondent:

6. On the other hand, Mr. Kundu, learned Counsel for the respondent, had contended that the note placed by the Registrar (Judicial Service) was incomplete and biased. The decision rejecting the representation was taken by one member and not by the entire body and as such the same is liable to be quashed. According to him, mind was not applied to the grounds pleaded in the representation. That the officer was due to retire shortly was a factor, which ought to have been taken into consideration. But it was not taken into consideration. The order suffers from bias, non-application of mind and violation of principles of allowing a person retiring to be posted at his/her place of choice prior to retirement. She was advised to do light work because of her health condition. This was also not considered. Her necessity for staying in Kolkata for her treatment was completely overlooked. The order of transfer was oppressive and mala fide. In support of his contention he relied on *Cyril Lasrado v. Juliana Maria Larado* .

6.1. He also pleaded discrimination under Article 14 of the Constitution of India on the ground that the order of transfer of one S.C. Chattorjee was cancelled on account of his son's education in the same city when the petitioner's representation was being considered and rejected. Mr. Kundu had elaborated his submission on all these points including the question of extending the principles of Article 21 of the Constitution of India and the application of the 1995 Act.

Discrimination : Violation of Article 14 :

7. So far as the question of discrimination in the rejection of the representation of the writ petitioner/respondent and the allowing of that of one Sri S.C. Chatterjee is concerned, was sought to be repelled by Mr. Alok Ghosh, appearing with Mr. Mitra, upon production of the relevant records relating to those cases produced before the learned Single Judge. Inasmuch as, it was pointed out from those records that Sri S.C. Chatterjee had requested for keeping him at Kolkata for his son's education. The order of transfer to North Bengal, the zone he had served once, was recalled and he was transferred to Purulia and was never posted at Kolkata where he had asked for being posted. The order of transfer was recalled on the ground that under the norms an officer once posted in North Bengal is normally not posted again in North Bengal and on that consideration he was posted in another zone in Purulia. Therefore, the question of discrimination would not arise on merit, though, however, we have reservation as to whether the principles of discrimination could be applied to purely administrative matters of such nature.

The Disabilities Act: The scope : How far applicable :

8. After having gone through the provisions of the 1995 Act, we are of the view that the said Act would not apply in the case of the petitioner. Inasmuch as from the Statement of Objects and Reasons, it appears that the said Act was enacted for equal opportunities, protection of rights and full participation of disabled persons in the social mainstream, particularly, in relation to medical care, education, training, employment, rehabilitation for creating a barrier-free environment, removal of discrimination, sharing of development benefits, prevention of abuse and the exploitation of persons with disabilities, for laying down strategies for comprehensive development of programmes and services and equalization of opportunities. With these objects in view, this Act was enacted to achieve the purpose of undertaking various measures for the prevention and early detection of disabilities, creation of barrier-free environment, provisions for rehabilitation services etc. providing for education, employment, vocational training, reservation in identified posts, research and manpower development, establishment of homes for persons with severe disabilities etc. 8.1. Admittedly, the petitioner/respondent was not a disabled person until she sustained injury on 16th of August, 2003 and none of the object and purpose could be necessary for the purpose of protecting the interest of a person, who is already in service and who had never been denied any opportunity on account of her disability. That apart, in order to come within the purview of the said Act, she has to satisfy the ingredients of 'blindness' on which she was banking upon, as defined in Section 2(b) of the 1995 Act. Inasmuch as " 'blindness' refers to a condition where a person suffers from any of the following conditions, namely : - (i) total absence of sight; or (ii) visual acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye with correcting lenses; or (iii) limitation of the field of vision subtending an angle of 20 degrees or worse." From the report dated 28th November, 2003 given by Dr. Lingam Gopal of Medical Research Foundation, Unit - Sankara Nethralaya, it appears that she had 6/6: N6 vision in the left eye at the time of evaluation (page 83); and at the time of check up on 21st November, 2003, she was found to have 6/6: N6 vision in the left eye with correcting lenses.

8.2. The scheme of the Act deals with the rights of persons with disability as defined in Section 2(i) to mean blindness, low vision etc. The petitioner/ respondent does not come within the definition of 'blindness' in order to be a person with disability. Low vision has been defined in Section 2(u) to

mean "a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device", within which also the petitioner cannot be fit in.

8.3. That apart within the scheme of the Act, provisions have been made for employment in Chapter VI for identification of posts, which can be reserved for persons with disabilities (Section 32), reservation of posts (Section 33), Special Employment Exchange (Section 34), provisions of inspection of record and document in possession of any establishment (Section 35), vacancies not filled up to be carried forward (Section 36), employers to maintain records (Section 37), schemes for ensuring employment of persons with disabilities (Section 38), reservation of seats in educational institutions (Section 39), reservation of vacancies in poverty alleviation schemes (Section 40) and incentives to employers to ensure five per cent of the work force composed of persons with disabilities (Section 41); whereas. Chapter VIII deals with non-discrimination in transport on the road, in the building environment, in Government employment etc. 8.4. The decision in *Rasala Gopal* (supra) deals with a case that the petitioner therein was born with only one functional eye and the vision of the other eye was totally impaired. The functional eye was certified as 30% disabled. He complained that he cannot be treated as disabled person defined in Section 2 of the 1995 Act and that the definition of 'blindness' did not take into its fold the persons with one functional eye or those suffering with disability of 30%. Therefore, he was entitled to be considered on par with general candidates despite his 30% disability in the vision suffered by him. On this background, the Andhra Pradesh High Court was pleased to hold that the level of vision possessed by the petitioner therein was not such as would render him physically handicapped. Therefore, he should be treated on par with other candidates and there did not exist any justification to deny the petitioner the benefit or treatment, which others were entitled to. Accordingly, it was directed that the petitioner therein should be treated on par with other candidates and he should not be discriminated on account of the visual disability he was suffering as a person with single functional eye. We find no reason to disagree with the reasoning given in the said decision. Having regard to the 6/6: N6 vision in the left eye with correcting lenses, the petitioner/respondent herein cannot be treated as disabled person.

8.5. Therefore, none of these provisions can at all be applied in the case of the petitioner/respondent. Inasmuch as she is already employed and is on the verge of retirement when she had sustained an injury due to which she has not been discriminated upon, neither there has been any effect on her employment. Therefore, the induction of the provisions or principles of 1995 Act by the learned Single Judge seems to be wholly misplaced.

Transfer : Rejection of representation : Vis-a-vis Article 21 :

9. The learned Single Judge had imported the principle of life enshrined under Article 21 of the Constitution of India in the matter of transfer. We are afraid that the horizon of right to life enshrined under Article 21 can be expanded to include the incidence of transfer. No one can claim that by reason of his/her transfer, he/she is being deprived of his/her right to life that includes right to live with dignity. Transfer of a judicial officer from one Court to another Court or posting in a particular post would in no way affect his/her life. She was in the rank of Additional District Judge

and she was being so posted as Additional District & Session Judge, Paschim Midnapore. The ground that she would not get the same kind of medical facilities available in the city of Kolkata at Midnapore cannot be stretched to attract the principle of right to life when she would not be prevented from getting herself treated at Kolkata by undertaking a journey hardly up to two hours when the city of Midnapore is well-connected with Kolkata both by rail and road. The road to Midnapore is one of the most important roads of the Golden Quadrangle Scheme of the Government of India for connecting East-West-North-South and is very well maintained; whereas the rail service includes A.C. coaches. That apart, she was supposed to visit Chennai once a year, which would be about 115 km. closure than Kolkata. In such circumstances, the principle of right to life cannot be injected in the present case and the entire attempt is based on sheer misconception and misapplication of the principles.

9.1. The principle enunciated in Apparel Export Promotion Council (supra) has no manner of application in the present case. Similarly, the ratio decided in Githa Hariharan (supra) also cannot be attracted. Neither the principles laid down in Municipal Corporation of Delhi (supra) nor those in Indian Council of Legal Aid & Advice (supra) and Javed Abidi (supra) could at all be conceived to have any application in the present case.

Transfer : Administrative function : The present case : Scope of interference under Article 226 :

10. Admittedly, transfer is an incidence of service. The employer is the best person to decide the question of transfer. Admittedly, the order of transfer was passed in administrative exigencies. In the absence of any allegation of mala fide, the order of transfer cannot be said to be justiciable. In the writ petition, there was no allegation of mala fide or infraction of any statutory rules or procedures. If the order of transfer was passed, as was held in K.B. Shukla (supra), in exigency of administration, then such order cannot be interfered with. The order of transfer cannot be interfered with, as was held in N. P. Thomas (supra), until it is shown that there was any violation of statute. Unless mala fide is proved, as laid down in S. L. Abbas (supra), the Court cannot interfere even on the ground of health; inasmuch as the Court does not sit on appeal over the order passed by the administrative authority. The High Court cannot interfere with an order of transfer except on the principles enunciated and established through judicial decisions, as, was held in Joginder Singh Dhatt (supra). The Court can interfere with an order of transfer where it is proved that there was mala fide or the order of transfer was passed for oblique; purpose or for wreaking vengeance. But the Court cannot interfere on the ground of difficulty of the employee, as was held in Rajendra Roy (supra). In Chandra Gupta I.F.S. (supra) and S.S. Kourav (supra), the Apex Court had laid down that the wheels of administration should be allowed to run smoothly. Order of transfer cannot be interfered with unless it is shown that there was mala fide or extraneous consideration, which even is to be backed by factual materials.

10.1. In a transferable post an order of transfer is a normal consequence. Personal difficulties are matters for consideration of the Department. The difficulties or the ground of health are factors to be weighed with and for consideration by the Department. Admittedly, in this case the order of transfer was issued in a routine manner along with other several transfers in the exigencies of the administration. From the facts disclosed, it does not appear to us that the writ petitioner was able to

make out and substantiate any case of malice or mala fide. It may not be always possible to establish malice in a 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 or vague suggestion.

10.2. As to the applicability of natural justice, while rejecting the representation by a speaking order, the Apex Court pointed out in Union of India v. E. G. Nammtdiri that there are many areas of administrative activity where no reasons are recorded or communicated, if such a decision is challenged before the Court for judicial review, the reasons for the decision may be placed before the Court. The superior authority while considering the representation of a Government servant is not required by law to act judicially, it is under no legal obligation to record or communicate reasons for its decision to the Government servant. The decision, rejecting the representation does not adversely affect any vested right of the Government servant nor does it visit him with any civil consequences. In many cases having regard to infinite variations of circumstances, it may not be possible to disclose reasons for the opinion formed. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant, the competent authority is not under any obligation to record reasons. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons, and it is not open to the Court to interfere with such orders merely on the ground of absence of any reasons.

10.3. The Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts and Tribunals are not expected to interdict the working of the administrative system by transferring the officer to proper place. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background or foundation. When the order of transfer is issued on administrative grounds the Court cannot go into the expediency of posting an officer at a particular place.

10.4. In Shili Bose and Ors. v. State of Bihar and Ors. referred to and followed in Union of India and Anr. v. N.P. Thomas, it was held that the Court should not interfere with an order of transfer made in public interest or for administrative reasons unless the order is passed 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. Order of transfer does not violate any legal right of the Government servant. Even if an order of transfer is passed in violation of executive instructions or orders, the Court ordinarily should not interfere with the order. If the Courts continue to interfere with day-to-day transfer orders issued by the administration there will be complete chaos in the administration not conducive to public interest 10.5. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is

made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect of his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right. The jurisdiction of the High Court under Article 226 of the Constitution of India in service matters is not that of an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer.

10.6. In Bank of India v. Jagit Singh Mehta , it is observed that there can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. They cannot as of right claim to be relieved of the ordinary incidence of transfer to a different place. No doubt the guideline required the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees, Union of India v. S. L. Abbas .

10.7. The Apex 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 what point of time a public servant is to be transferred. Ordinarily the Courts have no jurisdiction to interfere with the order of administration. The High Court is not justified in extending its jurisdiction under Article 226 of the Constitution of India in a matter where on the face of it no injustice was caused. It was so held in a case where the High Court had found that the order of transfer was contrary to the instructions and was a midterm transfer within two years of the superannuating in a case where there were Government instructions in that regard, State of Punjab v. Joginder Singh Dhutt .

10.8. It is true that formation of opinion as to the existence of exigencies of service is a pre-requisite for the exercise of the power. But the formation of such opinion is a matter, in view of the peculiar nature of the function, primarily left to the subjective satisfaction of the Government. Indeed, it is as it ought to be. The responsibility for good administration is that of the Government. The maintenance of an efficient, honest and expedient administrative service is a must for the due discharge of that responsibility. Therefore, the administration alone is best suited to judge as to the existence of exigencies. The term 'exigency' being understood in its widest and pragmatic sense as a rule, the Court would not judge the propriety or sufficiency of such opinion by objective standards, save where the subjective process of forming it, is vitiated by mala fides, dishonesty, extraneous purpose, or transgression of the limits circumscribed by the legislation, K.B. Shukla, .

10.9. A plain reading of paragraphs 13 and 14 of the writ petition quoted above clearly show that her difficulties were that she required periodical check up once or twice a month at Rotary Narayana Sankara Nethralaya at Kolkata and that she was unable to do without her husband who was practising in two medical institutions after retirement from Government service at Kolkata. Her children being married were living separately and it was not possible for her to take her children or her husband and that the children could not be asked to go to Paschim Midnapore sacrificing their work and family life in Kolkata, therefore, she required to remain in Kolkata. As we have seen that it is not very difficult a journey from Midnapore to Kolkata which she was capable of undertaking once or twice a month. It would not be such a hardship even though hardship is not a ground. At the same time, a supplementary affidavit has been filed on behalf of the appellant in order to show that she had undertaken a journey to A & N Islands on LTC. A copy thereof was served upon the Counsel for the respondent. No opposition thereto, despite sufficient time having lapsed in between, had since been filed nor any prayer was made therefor. Therefore, it was not that she was incapable of undertaking necessary journey when she was not averse in undertaking pleasure trips even to the remote and distant A & N Islands.

10.10. The principles laid down in an unreported judgment in the case of A.K. Mittal and Ors. v. Hindustan Paper Corporation Ltd. and Ors. FMAT No. 1205 of 1985 disposed of on 3rd June 1985 by Their Lordships, the Hon'ble Murari Mohan Dutt and Hon'ble Justice Jitendra Nath Chaudhuri, as Their Lordships then were, against which the SLP was dismissed by the Apex Court on 5th August 1985, distinguished by Mr. Mitra, does not seem to apply in the facts and circumstances of the present case in view of the peculiar facts and circumstances of the said case. Inasmuch as, the said decision was given relying on a report by Dr. S.S. Dalmiya, a cardiologist, who advised the petitioner therein after his By-Pass Surgery that he should lead a regulated life free from mental and physical strain and that daily travel of 35 km. would be quite strenuous to create cardiac complications and should undertake limited amount of workload free from overstrain and that it was imperative that Mr. Mittal takes heed to the above suggestions, otherwise he would land himself in a situation, which may be quite serious and even life-threatening. He further opined that it was difficult to prognosticate the future but it could be possible after observation for about a year. In such circumstances, the order of transfer, which required Mr. Mittal to undertake a daily journey of 35 km. a day to the place where he was posted was held to be sufficient ground for recalling the order of transfer. The present case does not seem to be one of such cases where the principle enunciated in the said decision could be attracted, particularly when the gravity of the situation weighed with the authority was not only different but also the opinion relied upon was obtained by the petitioner after the second rejection of her representation but before the writ petition was filed.

10.11. Mr. Mitra had relied on the decision in Shirish Kumar Rangrao Patil (supra) in order to explain the power of the High Court in the matter of transfer of the officers of the subordinate judiciary. The principles are well-settled. The High Court has jurisdiction and is competent to transfer a judicial officer. The competence and jurisdiction have never been assailed by Mr. Kundu before us.

10.12. Mr. Kundu, on the other hand, had contended relying on the Higher Judicial Service Rules that the transfer was bad. But he was unable to draw our attention to any provisions of the Higher

Judicial Service Rules, which could persuade us to hold that the order of transfer was bad. He contended that the note placed by the Registrar was incomplete and biased. We have examined the records produced before us. We do not find anything from which it could be said that the note placed by the Registrar (Judicial Service) was incomplete or biased. On the other hand, he had narrated the factual events as pleaded in the representation by the petitioner/respondent. The rejection of the representation was made by the Transfer Committee for the first time and the second time it was made by the Judge-in-charge of the Transfer Committee. But none of the other members had taken any exception thereto, therefore, it cannot be said that the decision was not taken by the Committee. At the same time, the other Judge with whom the petitioner/respondent sought an interview had rejected her prayer therefor. Therefore, this cannot be considered to invalidate the order of rejection of the representation.

10.13. The allegation that mind was not applied on the ground pleaded in the representation cannot be sustained. Inasmuch as, the materials placed before the Transfer Committee at the time of the consideration of the representation could only be considered and relied upon. In the writ petition, the learned Single Judge had considered and relied upon the materials, which had surfaced after the rejection of the representation. Those materials, which came into existence after the rejection of the representation, cannot be looked into for the purpose of deciding as to whether the rejection of the representation was bad on account of non-application of mind or otherwise.

10.14. Though Mr. Kundu had argued that the order suffers from bias, non-application of mind, violations of principles of allowing a person retiring to be posted at a place of her choice, but no allegation of bias was made within the four-corners of the pleading of the writ petition. There was no policy nor any provision for retaining or posting a person at his or her place of choice preceding retirement under the rules. Therefore, such a contention cannot at all be sustained.

10.15. Considering the question that the petitioner was about to retire in August, 2005, this Court in its order dated 21st of February, 2005 agreed to the proposal of a reasonable solution sorted out at the intervention of Mr. Kundu and to which Mr. Ghosh, the learned Counsel for the appellant, had no objection to such proposal being made an order of the Court. Accordingly, the terms was so recorded in the order dated 21st February, 2005 in the following manner:

In course of hearing it appeared that the respondent/writ petitioner had been suffering from aggravation of her ailments. At the intervention of Mr. Kundu, a reasonable solution has been proposed. Mr. Ghosh, learned Counsel appearing on behalf of the appellant has no objection to such proposal being made an order of the Court. After having considered the facts and circumstances of this case, we are of the view that such proposal would enure to the benefit of the respondent herself.

We therefore agree to the said proposal that the writ petitioner/respondent shall join her duties at Paschim Midnapore on 7th March, 2005 in terms of the order of transfer since set aside by the learned Single Judge without prejudice to her rights and contentions in the appeal. However, it would be open to the writ petitioner to join on any date earlier than 7th March, 2005. Having regard to her state of health she would be at liberty to apply for leave after she joins her transferred post at Paschim Midnapore. If such leave application is made the Administration shall allow such leave

application having regard to the state of health of the writ petitioner/ respondent.

It appears that the writ petitioner is due to retire in August, 2005. She is also carrying indifferent health. In the circumstances, she is granted liberty to make a representation immediately after she joins the post at Paschim Midnapore. The Administration shall place the representation before the Chief Justice or the Acting Chief Justice, as the case may be. It is expected that the Chief Justice or the Acting Chief Justice shall take immediate decision on such representation and place the matter before the Transfer Committee the meeting whereof is to be convened within a period of fortnight from the date of making such representation and the Transfer Committee shall take a decision and communicate such decision to the writ petitioner/ respondent within a fortnight from the date of the matter being referred to the Transfer Committee by the Chief Justice or the Acting Chief Justice. All steps shall be without prejudice to the rights and contentions of the parties. The Court expects that having regard to the state of health and the fact that she would be retiring in August, 2005, endeavour should be made to place her in any post lying vacant in Calcutta.

Let the matter be listed 'For Orders' on 12th April, 2005.

All parties are to act on a signed xerox copy of this dictated order on the usual undertaking.

10.16. Thereafter the matter appeared successively in the list and was being adjourned from time to time and ultimately Mr. Kundu in his usual fairness submitted that her client had instructed him that on account of the prevailing situation, she was unable to join her post even for a single day and then to apply for and go on leave until her representation was considered and she was posted in any post lying vacant at Kolkata and that he was instructed to argue the case on merit.

The concession :

11. At one place the learned Single Judge had observed that Mr. Alok Ghosh, the learned Counsel for the appellant, had made certain concession. But Mr. Ghosh submitted before us that there was no occasion for him to concede before the learned Single Judge since he had never argued before the learned Single Judge. It was Mr. Jayanta Mitra, the learned Senior Counsel, who had argued the case. Mr. Ghosh stated this before us in the presence of Mr. Mitra and the learned Counsel for the writ petitioner/respondent, who did not take any exception to that. Mr. Kundu in his usual fairness altogether omitted to deal with this concessional part of the judgment dealing with the alleged concession. No reliance, therefore, can be placed on this part of the judgment.

Conclusion :

12. In these circumstances, we are of the view that in exercise of writ jurisdiction, this Court cannot interfere with the administrative decision of the High Court and there was no infirmity in the order of transfer and we do not find any ground for interference with the order of transfer. The rejection of the representation being wholly an administrative affair and the materials available at the time of rejection was such that a reasonable person could pass such an order. Even if the Court might be of some other view, it could not substitute its view in exercise of writ jurisdiction. The Court does not

sit on appeal over the orders purely administrative in nature. From the materials available, we do not find any infirmity or illegality in the order of rejection of the representation.

12.1. The order of transfer is the exclusive domain of the administration. The administration knows better where the shoe pinches. It has its exigencies and necessities. This could be understood and appreciated by the authority who considers the entire situation. The Court is not supposed to put forth its assessment of its views in the matter of administration. Neither the Court could question the sufficiency or justifiability of the decision. The administration must have its own playing joints. The administration should be allowed to run smoothly. The Court is not supposed to interfere with the administration particularly with regard to transfers, which are not outcome of mala, fide, bias or vindictiveness. Ground of health or personal difficulties would not be factors to compel the administration to cancel the order of transfer or to post a person at his/her place of choice. Neither the fact of superannuating within two years confers any enforceable right on an officer holding transferable post.

12.2. As discussed above, it appears that as on the date when the representation was rejected the petitioner/respondent was supposed to visit Chennai once a year and herself being periodically checked up at Sankara Nethralaya at Kolkata. During this period she had undertaken a journey on LTC to the distant and remote A & N Islands.

12.3. The grounds taken in the writ petition are mainly difficulties of taking her husband, a retired Government doctor, with her on the ground that her retired husband was practising at Kolkata and that her children were established at Kolkata. We do not think, that such personal difficulties if do not weigh with the authority can be said to attract the principles of perversity or biasness, mala fide or vindictiveness.

12.4. She was given an opportunity in terms of the proposal of Mr. Kundu appearing on her behalf. She did not avail of the same, which she could do by joining the post for one single day and then applying for leave and make a representation and could be on leave till her representation was considered and which the authority was directed to consider in terms of the said order dated 21st February, 2005.

12.5. On the other hand, it appears that notifications had already been issued and she was asked to deliver charge and after the rejection of her representation dated 19'1' of January, 2003, she obtained the medical certificate dated 22th January, 2003 on which she banked upon and there was no occasion for the Transfer Committee to consider such report. The other report was not such as was sought to be interpreted by the learned Single Judge.

Order:

13. In the result, the appeal succeeds. The order of the learned Single Judge is hereby set aside. The petitioner/respondent is directed to join the post within a week. She would be at liberty to apply for leave whenever she is required to report for check up at Kolkata, or elsewhere.

13.1. The writ petition is dismissed. There will, however, be no order as to costs.

13.2. Xerox certified copy of this judgment, if applied for, be given to the parties within 7 (seven) days on usual undertaking.

Soumitra Pal, J.

13.3. I agree.