



REPORTABLE

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 10th DAY OF SEPTEMBER, 2021

BEFORE

**HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN
&
HON'BLE MR. JUSTICE SATYEN VAIDYA**

CIVIL WRIT PETITION No.2573 of 2021

Between:-

**PRADEEP KUMAR S/O LATE
AMAR SAIN, R/O VILLAGE SUNDHA
BHONDA, P.O. CHIRGAON, TEHSIL
CHIRGAON, DISTRICT SHIMLA, H.P.
PRESENTLY WORKING AS SR. ASSISTANT.**

.....PETITIONER

(BY SH. V.D. KHIDTTA, ADVOCATE)

AND

**1. THE STATE ELECTRICITY BOARD LTD.,
THROUGH ITS EXECUTIVE DIRECTOR
(PERSONNEL), VIDYUT BHAWAN,
SHIMLA-4.**

**2. THE DEPUTY SECRETARY (NGE)
H.P.S.E.B.L. SHIMLA-4.**

.....RESPONDENTS

**(SH. VIKRANT THAKUR, ADVOCATE,
FOR RESPONDENTS 1 & 2)**

Reserved On: 04.09.2021

Decided On: 10.09.2021.

*This petition coming on for admission after notice this day, **Hon'ble Mr. Justice Tarlok Singh Chauhan**, passed the following:*

ORDER

Aggrieved by the order of transfer, the petitioner has filed the instant petition for grant of the following reliefs:-

“(i) That the impugned order of transfer dated 17.04.2021 (Annexure P-1) may kindly be quashed and set aside.

(ii) That the petitioner may be allowed to work as Sr. Assistant at Andhara Power House HPSEBL Chirgaon till the final disposal of this writ petition.”

2. The petitioner was appointed as a Clerk and joined as such in the year 1989 in the Office of ACT III Chirgaon where he worked till 30th April, 1990. Thereafter, the petitioner worked at various places and vide order dated 04.03.2019, he was transferred at Andhara Power House, Chirgaon, where he joined on 05.03.2019. Again, the petitioner was transferred vide order dated 17.04.2021 from Andhara Power House Division Chirgaon to Electrical Division, HPSEBL, Dalhousie (Chamba) and aggrieved

thereby has filed the instant petition for the reliefs as set out above.

3. It is the specific case of the petitioner that his transfer has neither been effected in administrative exigency nor in public interest, but has been effected on the basis of a D.O. Note issued by someone, who has nothing to do with the Administration and the governance of the respondent-Board.

4. The petitioner has appended a letter dated 09.03.2021 issued by one Smt. Shashi Bala to the Hon'ble Chief Minister and the same reads as under:-

*"Rural Development Bank Ltd.
SDA Complex, Kasumpti,
Shimla-171009 (H.P.)*

94595-72133

*Ref.No.ARDB/Chairperson/2020... Dated: 09/03/2021
PA.../2021*

*Respected Thakur Sahib,
Sadar Pranam.*

Sir,

It is humbly that the following govt. employees are indulging in party politics and they are contaminating the working culture in their organization/institutes. It is, therefore requested to approve their transfer in the larger interest of the public as under:-

1. Sh. Ramesh Kumar Chauhan, JE presently posted at Power House Andhra (Chirgaon) may kindly be transferred to anywhere in Distt. Chamba.

2. Sh. Suresh Kumar, presently posted as fitter at Andhra Power House (Chirgaon) may kindly be transferred to anywhere in Distt. Chamba.

3. Sh. Pradeep Kumar, Sr. Asstt. presently posted at Andhra power house (Chirgaon) may kindly be transferred anywhere in Distt. Chamba.

4. Sh. Vinod Kumar, lecturer Political Science presented posted at GSSS (Girls) Chirgaon may kindly be transferred to anywhere in Distt. Una.

5. Sh. Dilawer Singh, SEBPO, presently posted at Development Block Chhohara, Distt. Shimla may kindly be transferred to anywhere in Distt. Una.

6. Sh. Vikrant Thakur, presently posted at technician Gr.II at Mechanical Division, HPPWD Rohru for the past 20 yrs. May kindly be transferred to anywhere in Distt. Kangra District.

With profound Regards.

Yours sincerely,

sd/-
(Shashi Bala)
(Dt.-09 March, 21)

Shri Jai Ram Thakur Ji,
Hon'ble Chief Minister,
Himachal Pradesh-171002."

5. We were informed in the open Court that the author of the aforesaid letter is the Chairperson of the Rural Development Bank Ltd., which fortifies the contention of the petitioner that she has nothing to do with the working of the Administrative Department of the petitioner.

6. In **CWP No. 2862 of 2021** titled **Vipender Kalta vs. State of H.P. and others**, decided on 20.07.2021, we had clearly observed that how people, having nothing to do with the administration and the governance of the State are calling the shots being in some kind of dominating position and getting the employees, who happen to be the government servants, transferred as per their wishes and choice by issuing recommendations to this effect and the same, in turn, are unfortunately being acted upon.

7. Like in Vipender Kalta's case, here also, we are appalled to note that the transfer of the petitioner has been effected on the basis of the recommendations made by a politician, who as stated above, has no concern or connection with the Administration or functioning of the respondent-Board.

8. It is trite that transfer is an incidence of service and as long as the authority acts keeping in view the administrative exigency and taking into consideration the public interest as the paramount consideration, it has unfettered powers to effect transfer subject of course to certain disciplines. Once it is admitted that the petitioner is

State government employee and holds a transferable post then he is liable to be transferred from one place to the other within the District in case it is a District cadre post and throughout the State in case he holds a State cadre post. A government servant holding a transferable post has no vested right to remain posted at one place or the other and courts should not ordinarily interfere with the orders of transfer instead affected party should approach the higher authorities in the department. Who should be transferred where and in what manner is for the appropriate authority to decide. The courts and tribunals are not expected to interdict the working of the administrative system by transferring the officers to "proper place". It is for the administration to take appropriate decision.

9. Even the 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 redressal 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. Even if the order of transfer is made in transgression of administrative guidelines, the same cannot be interfered with as it does not confer any legally enforceable rights unless the same is shown to have been vitiated by mala fides or made in violation of any statutory provision. The government is the best judge to decide how to distribute and utilize the services of its employees.

10. However, this power must be exercised honestly, bonafide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations without any factual background foundation or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, such as on the basis of complaints. It is the basic principle of rule of law and good administration, that even administrative action should be just and fair. An order

of transfer is to satisfy the test of Articles 14 and 16 of the Constitution otherwise the same will be treated as arbitrary. ◇

11. Judicial review of the order of transfer is permissible when the order is made on irrelevant consideration. Even when the order of transfer which otherwise appears to be innocuous on its face is passed on extraneous consideration then the court is competent to go into the matter to find out the real foundation of transfer. The Court is competent to ascertain whether the order of transfer passed is bonafide or as a measure of punishment.

12. The law regarding interference by Court in transfer/posting of an employee, as observed above, is well settled and came up before the Hon'ble Supreme Court in ***E.P. Royappa vs. State of Tamil Nadu, (1974) 4 SCC 3;*** ***B. Varadha Rao vs. State of Karnataka, (1986) 4 SCC 131;*** ***Union of India and others vs. H.N. Kirtania, (1989) 3 SCC 445;*** ***Shilpi Bose (Mrs.) and others vs. State of Bihar and others, 1991 Supp (2) SCC 659;*** ***Union of India and others vs. S.L. Abbas, (1993) 4 SCC 357;*** ***Chief General Manager (Telecom) N.E. Telecom Circle and another vs. Rajendra CH. Bhattacharjee and others, (1995) 2 SCC 532;*** ***State***

of M.P. and another vs. S.S. Kourav and others, (1995) 3 SCC 270; Union of India and others vs. Ganesh Dass Singh, 1995 Supp. (3) SCC 214; Abani Kanta Ray vs. State of Orissa and others, 1995 Supp. (4) SCC 169; National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan and Shiv Prakash, (2001) 8 SCC 574; Public Services Tribunal Bar Association vs. State of U.P. and another, (2003) 4 SCC 104; Union of India and others Vs. Janardhan Debanath and another, (2004) 4 SCC 245; State of U.P. vs. Siya Ram, (2004) 7 SCC 405; State of U.P. and others vs. Gobardhan Lal, (2004) 11 SCC 402; Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey and others, (2004) 12 SCC 299; Somesh Tiwari vs. Union of India and others, (2009) 2 SCC 592; Union of India and others vs. Muralidhara Menon and another, (2009) 9 SCC 304; Rajendra Singh and others vs. State of Uttar Pradesh and others, (2009) 15 SCC 178; and State of Haryana and others vs. Kashmir Singh and another, (2010) 13 SCC 306 and the conclusion may be summarised as under:-

1. *Transfer is a condition of service.*

2. It does not adversely affect the status or emoluments or seniority of the employee.
3. The employee has no vested right to get a posting at a particular place or choose to serve at a particular place for a particular time.
4. It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required.
5. Transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee nor it should be passed under political pressure.
6. There is a very little scope of judicial review by Courts/Tribunals against the transfer order and the same is restricted only if the transfer order is found to be in contravention of the statutory Rules or malafides are established.
7. In case of malafides, the employee has to make specific averments and should prove the same by adducing impeccable evidence.
8. The person against whom allegations of malafide is made should be impleaded as a party by name.
9. Transfer policy or guidelines issued by the State or employer does not have any statutory force as it merely provides for guidelines for the understanding of the Department personnel.
10. The Court does not have the power to annul the transfer order only on the ground that it will cause personal inconvenience to the employee, his family members and children, as consideration of these views fall within the exclusive domain of the employer.
11. If the transfer order is made in mid-academic session of the children of the employee, the

Court/Tribunal cannot interfere. It is for the employer to consider such a personal grievance.

13. Bearing in mind the aforesaid exposition of law, it would be noticed that the transfer in the instant case has been effected solely on political consideration, that too, at the instance of a person, who has no concern with the administration or functioning of the respondents-Department.

14. The Courts are reluctant to interfere with the orders of transfer since this is an ordinary incidence of service, yet this Court has repeatedly held that the transfers and postings should be effected only by the administrative departments.

15. In this country, we follow the British system of a non-political bureaucracy and hence, it is for the bureaucrats, and not for the politicians, to effect transfers and postings.

16. The treatise on the subject is the judgment rendered by learned Division Bench of this Court in ***Amir Chand versus State of Himachal Pradesh, 2013(2) HLR (DB) 648***, wherein this Court prefaced the judgment with the following observations:-

"1. This Court is flooded with litigation filed by employees aggrieved by their transfer and sometimes, even by their non-transfer when they are not shifted out of tribal areas. The time has come when we must lay down the law with regard to the powers of the legislators to influence transfers. Should political pressure and political influence be necessary to run the administration? Should transfers be ordered on the asking of the legislators, members of a particular ruling party, persons belonging to certain groups without even making a reference to the administrative department concerned? Is the policy of transfer always binding upon the Government and its employees or can the Government flout with impunity the policy framed by it? No doubt, the employer is the master and can decide which employee is to be posted at which particular place, but we must remember that we are governed by the Constitution of India. Does not each and every employee have a right to claim that he should be treated fairly? Why is it that favoured employees, who are either well connected or can exercise political or bureaucratic clout are never transferred out of the main cities and those employees who do not enjoy such political or bureaucratic patronage have to stay in remote/tribal areas for years on end.

2. Another disturbing feature which we have found is that in the State of Himachal Pradesh after the period earmarked for normal transfers is over, the transfers have to be ordered only after approval of the competent authority which normally is the Hon'ble Chief Minister. We have found that people directly approach the Hon'ble Chief Minister using political influence and patronage without first making a

representation to the department concerned. This is a total violation of the Conduct Rules. Despite this violation of the Conduct Rules, these requests of the employees who are backed by political patronage are accepted without even considering what will be the effect of such transfers on the people who are to be served by these employees, or on those employees who may be affected by such transfers.

3. Does anybody care about the students who are studying in the schools? If no teacher is willing to go to the rural/remote areas, where will the students of these rural and remote areas study? Does anybody care in some remote areas, dispensaries are without Doctors or paramedical staff whereas there is more than the sanctioned number of doctors in the State and District headquarters. It was only after the intervention of the Court that the Female Health Workers, who were to serve in the rural areas, were actually transferred there. Almost all the Female Health Workers had been adjusted in Shimla town itself. This shows that neither the interest of the public at large nor that of the administration was kept in view while adjusting these Female Health Workers at Shimla. When the employees want a job then they are willing to join at any place. However, soon thereafter, political patronage is employed to get themselves transferred to a particular place. There is more than sufficient material before the Courts to prove that transfers are made for extraneous reasons without considering the administrative exigencies and the interests of the students.
4. This does not speak well of the system of the administration. We are clearly of the view that normally we would not like to interfere in transfer orders passed in administrative interests. We are also of the

considered view that all the employees, such as teachers, doctors, nurses etc., will necessarily have to be posted in rural/remote area at some stage in their careers. The administration has to be stern and strict in matters of transfers. At the same time, it also has to be fair and just and should treat all the employees equally. It is only because the administration itself is lax and transfer orders are passed on extraneous considerations and the administration reverses its decisions day in and day out, that the courts are forced to intervene. These types of cases clearly highlight the fact that transfers are being made not on the basis of administrative exigencies but on other extraneous considerations.

5. *Rule 20 of the Central Civil Services (Conduct) Rules, 1964 lays down that it will be misconduct for an employee to bring in political pressure or get recommendations from others in matters relating to his service. It seems that both, the administration as well as the employees, have forgotten that such a rule exists. Our experience is that unless an employee gets a "suitable recommendation" or brings in political pressure, he can never get posted to a station of his choice. If action is taken against the employee for breach of the Conduct Rules, the employee could very well say that he is damned if he does not use political pressure and damned if he does.*
6. *It would be apposite to quote a humorous poem from Shri A.S Bhatnagar's Commentary on Conduct Rules. 'Ban on recommendation', a humorous poem -Who am I? A victim to the jealousies of those Who, to me have been quite close, Suspended from work And, for no fault of mine. Oh Justice, what a heavy fine ! I am expected not to seek Help from one mighty or weak.*

They name it pressure or canvassing, A fruit from the Forbidden Tree. Which to touch none is free. Is this bar justified, When there are cases multiplied, Where in favours have been done, And ends foul have been badly won?"

17. It was further observed that there can be no manner of doubt that a legislator, who is the elected representative of the people, has a right to place his difficulties before the Hon'ble Chief Minister or the Minister concerned. It would be well within his rights to complain to the authorities concerned in case he finds that a particular employee is not doing his job properly. The Court further went to observe that transfer is never meant to be a punishment but nobody can deny the fact that many times incompetent and inconvenient officials are transferred.

18. The Court thereafter, while discussing the judgments of the various High Courts including the one referred to above, observed as under:-

"33. From the files which this Court has seen including the files of these cases, it is apparent that transfers are being made day in and day out at the behest of public representatives. It is true that public representatives have a right to complain against the working of government officials. However, these complaints must be verified by the administrative department and final action has to be taken by the administrative

department. Transfer is not a punishment and if transfer is inflicted as a means of punishment, then the whole purpose of making transfers in the public interest is set at naught. An employee who is rude or inefficient at one station will not become polite or efficient at another station. Transfer does not serve any purpose. If the allegations of the public representatives made in the complaints against the government servants are found to be correct, then disciplinary action should be taken against such government employees. We live in a democracy and our elected representatives under the constitution are to work in the legislature and not as administrators. They cannot start interfering in the administration or the working of the Executive. This has already resulted in government servants rushing to please the political masters at the cost of doing their duties. This also demoralizes the officers who are in charge of the administration of the department. It is they who are the best judges to decide how the department has to be administered and which employee should be transferred to which place. The politicians cannot don the role of administrators. The earlier such inherently illegal and improper practices are put to an end, the better it would be for the smooth functioning of the administration of the State.

34. As far as the concept of judicial review is concerned, the Apex Court again observed that the Court should be reluctant in interfering in transfer orders. The scope of judicial review in the matter of transfer of a Government employee is limited and the Court should not interfere in the transfer. The Court cannot substitute its own opinion for the opinion of the employee.

35. *After reviewing the entire law on the subject, we can without any hesitation come to the conclusion that the scope of judicial review in transfer matters is very limited. This court cannot interfere in the day to day functioning of the Government departments and it is for the administrative heads to decide which employee should be posted at which place. Even earlier, we had clearly given a number of judgments on these lines.*

36. *At the same time, this Court cannot shut its eyes to the increasing number of transfers being made not for administrative reasons but only with a view to accommodate favoured employees. As indicated by us earlier, an employee of the department is also a citizen of the country and is entitled to the equal protection of laws. Therefore, the State should always be fair to its employees. They must all be treated equally."*

19. It is then that the following directions came to be passed:-

"1. *The State must amend its transfer policy and categorize all the stations in the State under different categories. At present, there are only two categories, i.e. tribal/ hard areas and other areas. We have increasingly found that people who are sent to the hard/ tribal areas find it very difficult to come back because whenever a person is posted there, he first manages to get orders staying his transfer by approaching the political bosses and sometimes even from the Courts. Why should the poor people of such areas suffer on this count. We are, therefore, of the view that the Government should categorize all the stations in the State in at least four or five categories, i.e. A, B, C, D and E also, if the State so requires. The*

most easy stations, i.e. urban areas like Shimla, Dharamshala, Mandi etc. may fall in category A and the lowest category will be of the most difficult stations in the remote corners of the State such as Pangri, Dodra Kwar, Kaza etc. At the same time, the home town or area adjoining to home town of the employee, regardless of its category, otherwise can be treated as category A or at least in a category higher than its actual category in which the employee would normally fall. For example, if an employee belongs to Ghumarwin, which is categorized in category B, then if the employee is serving in and around Ghumarwin, he will be deemed to be in Category A.

2. After the stations have been categorized, a database must be maintained of all the employees in different departments as to in which category of station(s) a particular employee has served throughout his career. An effort should be made to ensure that every employee serves in every category of stations. Supposing the State decides to have four categories, i.e. A, B, C, D, then an employee should be posted from category A to any of the other three categories, but should not be again transferred to category A station. If after category A he is transferred to category D station, then his next posting must be in category B or C. In case such a policy is followed, there will be no scope for adjusting the favourites and all employees will be treated equally and there will be no heart burning between the employees.
3. We make it clear that in certain hard cases, keeping in view the problems of a particular employee, an exception can be made but whenever such exception is made, a reasoned order must be passed why policy is not being followed.

4. *Coming to the issue of political patronage. On the basis of the judgments cited hereinabove, there can be no manner of doubt that the elected representative do have a right to complain about the working of an official, but once such a complaint is made, then it must be sent to the head of the administrative department, who should verify the complaint and if the complaint is found to be true, then alone can the employee be transferred.*
5. *We are, however, of the view that the elected representative cannot have a right to claim that a particular employee should be posted at a particular station. This choice has to be made by the administrative head, i.e. the Executive and not by the legislators. Where an employee is to be posted must be decided by the administration. It is for the officers to show their independence by ensuring that they do not order transfers merely on the asking of an MLA or Minister. They can always send back a proposal showing why the same cannot be accepted.*
6. *We, therefore, direct that whenever any transfer is ordered not by the departments, but on the recommendations of a Minister or MLA, then before ordering the transfer, views of the administrative department must be ascertained. Only after ascertaining the views of the administrative department, the transfer may be ordered if approved by the administrative department.*
7. *No transfer should be ordered at the behest of party workers or others who have no connection either with the legislature or the executive. These persons have no right to recommend that an employee should be posted at a particular place. In case they want to complain about the functioning of the employees then the*

complaint must be made to the Minister In charge and/or the Head of the Department. Only after the complaint is verified should action be taken. We, however, reiterate that no transfer should be made at the behest of party workers."

20. As held by this Court in **Amir Chand's** case (*supra*), we live in a democracy and our elected representatives under the Constitution are to work in the legislature and not as administrators. They cannot start interfering in the administration or the working of the Executive. It is they (Administrative Heads) who are the best judges to decide how the department has to be administered and which employee should be transferred to which place. The politicians cannot don the role of administration.

21. It is rather unfortunate that cases are coming up repeatedly before this Court, in which the impugned transfer orders or transfer cancellation orders unabashedly and brazenly state that the transfer order or transfer cancellation is being done by or at the instance of persons, who have no role, position or authority in the administration of the department.

22. The result of such political interference in the matter of transfers and postings of government servants is that the government servants get demoralized and they become affiliated to some political party or politician, which is wholly destructive of all norms of administration.

23. This court has repeatedly held that the transfer of officials/officers is required to be effected on the basis of set norms and guidelines; and this power cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians, who has no concern with the working of the department.

24. For better administration, the employees/officers must be shielded from fear of being harassed by the repeated transfers or transfers ordered at the instance of someone, who has nothing to do with the business of administration.

25. In **Sarvesh Kumar Awasthi vs. U.P. Jal Nigam and others (2003) 11 SCC 740**, the Hon'ble Supreme Court has clearly held in para 3 as under:-

"In our view, transfer of officers is required to be effected on the basis of set norms and guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent

officer or at the instance of politicians, whose work is not done by the officer concerned. For better administration, the officers concerned must have freedom from fear of being harassed by the repeated transfers or transfers ordered at the instance of someone, who has nothing to do with the business of administration."

26. The citizens have a fundamental right to good governance, which is possible only if government servants including the employees of the Board/Corporation, who are governed and controlled by the State Government, are politically neutral and are not transferred or otherwise victimized at the instance of a political party or politician.

27. It is only when the Court notices gross irregularities being committed by the Government, Board/Corporation in the matters of transfer, it becomes necessary for the court to interfere. Therefore, its time to turn the searchlight on the State Government, Board/Corporation, as the case may be, and remind them that the transfer policy should not be taken lightly and or made a mockery or a tool to transfer the employees on the whims and fancies of the politicians.

28. The Government including the Board/Corporation as ideal employers have a bounden duty to strictly

safeguard the interest of its employees against the machinations of politicians. The public servants need to discharge their functions without fear or favour and they need not to toe the line drawn by the politicians.

29. If such transfer is allowed to take effect, it would embolden the other political cadre and influential local level politicians of all hues to seek the transfer of unfavourable and upright government officials from their pocket boroughs and to see that they are posted somewhere else. This would demoralize the government servants, as the case may be, and may inspire them to amend their ways in such a way of pleasing each and every one whoever come under the banner of some political party. If the government machinery has to serve well the people, their functioning and official routines are to be insulated against the extraneous influences. **(Refer Akash Sharma vs. State of U.P., 2007(4) AWC 2899).**

30. Adverting to the facts of the case, what disturbs the Court is that the transfer of the petitioner along with many other employees working in various Departments has been recommended on the ground as is contained in the

opening paragraph of the letter dated 09.03.2021, which is again reproduced and reads as under:-

"It is humbly that the following govt. employees are indulging in party politics and they are contaminating the working culture in their organization/institutes. It is, therefore requested to approve their transfer in the larger interest of the public."

31. If that was not enough, the recommendations have been made to transfer the employees outside the District to anywhere in District Chamba, District Una and District Kangra. Under what authority such recommendations could have been made, is obviously wanting. But, more disturbing is the fact that these recommendations have been approved on administrative grounds.

32. We need to strongly emphasize that the government servants including the employees of the Board/Corporation are not at the mercy of the politicians and cannot be made subservient to any political person(s). These public servants are in service by virtue of dint of their hard work and majority of them have entered the

service through a selection process and not because of the “blessings of the politicians”.

33. Therefore, it is high time that the Employers, be it the State, Board or Corporation, strongly safeguard the interest of their employees against the mechanization of politicians so as to enable the employees-public servants to discharge their functions without fear and favour and are not compelled to toe the line drawn by the politicians.

34. Even otherwise, upholding such kind of transfers would mean compromising with the rule of law, which is a basic feature of the Constitution, which permeates the whole of the constitutional fabric and is an integral part of the constitutional structure.

35. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being.

36. Since the recommendations to transfer the petitioner had been mooted by an extra constitutional authority, who has no role in the functioning and business of the administration, therefore, the impugned transfer of the petitioner on the basis of such recommendations cannot be sustained and is accordingly quashed.

37. The Government including the Board/Corporation, as the case may be, would be well advised not to entertain much less encourage such extra constitutional authority to interfere with the administration and governance of the State, or else, there is every likelihood of there being a complete breakdown of rule of law.

38. As noticed above, the specific ground on which the petitioner and other employees have been recommended for transfer is that they are indulging in party politics and are alleged to have been contaminating the working culture in their organization/institute.

39. Firstly, as observed above, we are at a complete loss to understand as to the source of power and authority of the author of this letter to make the recommendations to the Hon'ble Chief Minister. After-all, we are governed by the rule of law.

40. That apart, the transfer cannot be used as a medium to scuttle or choke the voice of dissent. If at all there was any complaint regarding the work and conduct of the persons proposed to be transferred including the petitioner, then the only legitimate legal course open was

that of taking disciplinary action by initiation of disciplinary proceedings.

41. The voice of dissent cannot be silenced through administrative arbitrariness. However, we need to clarify that no freedom can be absolute. As freedom walks with its head held high, a shadow of responsibility follows it. Responsibility is the epiderm within which freedom stays free and secured and secured for all. Constitutional responsibility belongs to this variety and exists as an invisible layer, a membrane, between the right to free speech and the reasonable restrictions that may operate on it. Remove the responsibility from all, it will be chaos.

42. In view of the aforesaid discussion and for the reasons stated above, we find merit in this petition and the same is accordingly allowed. Consequently, the impugned transfer order dated 17.04.2021 (Annexure P-1) is quashed and set aside. The parties are left to bear their own costs. Pending application, if any, also stands disposed of.

(Tarlok Singh Chauhan)
Judge

(Satyen Vaidya)
Judge

10th September, 2021.(krt)