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(2015) 33 LCD 30

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

SINGLE BENCH

SANJAY NATH TIWARI — Appellant

Vs.

STATE OF U.P. — Respondent

(Before : Narayan Shukla, J)

Writ Petition No. 3120 (SS) of 2014

Decided on : 12-08-2014

A. Administrative Law — Transfer of Government Employees — Judicial Review — Scope of Interference — Courts generally do not interfere with administrative transfer orders unless mala fide intent, violation of statutory provisions, or incompetence of the issuing authority is clearly proven — Transfer is an ordinary incident of service. (Paras 7, 15)

B. Administrative Law — Transfer of Government Employees — Malice in Law/Fact — Proof — Allegations of mala fides must be specific and supported by cogent material, not vague assertions or conjecture — The burden of proof for mala fides is heavy and requires strong, convincing reasons; it cannot be inferred from insinuation. (Paras 8, 9, 10, 13)

C. Police Administration — Police Establishment Board — Powers and Functions — Board is responsible for decisions regarding transfers, postings, and other service matters for officers below Deputy Superintendent of Police rank, with limited state government interference in exceptional cases. (Para 5)

D. Police Administration — Minimum Tenure for Officers — Directives from Supreme Court — Police officers on operational duties (Superintendent of Police, Station House Officer) should have a minimum tenure of two years,

unless prematurely removed due to disciplinary proceedings, criminal conviction, corruption, or incapacitation; this is subject to promotion and retirement. (Para 6)

E. Administrative Law — Transfer Order — Effect of Complaints and Inquiry Reports — A transfer based on complaints, even if those complaints were later found unsubstantiated by an inquiry, can be upheld if the inquiry report was not before the decision-making authority (Police Establishment Board) when the transfer was approved, especially if the situation at the posting location warrants a change. (Paras 11, 13, 18)

F. Administrative Law — Political Influence in Transfers — Allegations of Mala Fide — A transfer order passed based on a complaint from an MLA or MP does not automatically imply mala fide intent; public representatives have a right to raise public grievances, and such complaints can bring relevant facts to the attention of authorities. (Paras 10, 12, 17)

Counsel for Appearing Parties

S.K. Kalia and Ramesh Pandey, Advocate for the Appellant; I.P. Singh, L.P. Mishra and Nirankar Singh, Advocate for the Respondent

Cases Referred

- [Narendra Kumar Rai Vs. State of U.P. and Others](#), (2002) 1 AWC 365 : (2002) 92 FLR 847 : (2002) 1 UPLBEC 369
- [Tata Cellular Vs. Union of India](#), AIR 1996 SC 11 : AIR 1994 SC 11 : (1994) 4 JT 532 : (1994) 6 SCC 651 : (1994) 2 SCR 122 Supp
- [State of Haryana and Others Vs. Kashmir Singh and Another etc. etc.](#), (2010) 127 FLR 728 : (2010) 11 JT 148 : (2010) 13 SCC 306 : (2011) 1 SCC(L&S) 376
- [M. Sankaranarayanan, IAS Vs. State of Karnataka and others](#), AIR 1993 SC 763 : (1992) 3 SCALE 90 : (1993) 1 SCC 54 : (1992) 2 SCR 368 Supp
- [Rajendra Roy Vs. Union of India \(UOI\) and Another](#), AIR 1993 SC 1236 : AIR 1992 SC 1236 : (1992) 6 JT 732 : (1993) LabIC 446 : (1992) 3 SCALE 218 : (1993) 1 SCC 148 : (1993) 1 SLJ 93
- [State of U.P. and Others Vs. Gobardhan Lal](#), AIR 2004 SC 2165 : (2004) 101 FLR 586 : (2004) 5 JT 454 : (2004) 3 LLJ 749 : (2004) 3 SCALE 574 : (2004) 11 SCC 402 : (2005) SCC(L&S) 55 : (2004) 1 SCR 337 : (2004) 3 SLJ 244 : (2004) AIRSCW 4571 : (2004) AIRSCW 2082 : (2004) 3 Supreme 92 : (2004) 6 Supreme 161
- [Gulam Mustafa and Others Vs. The State of Maharashtra and Others](#), AIR 1977 SC 448 : (1976) 1 SCC 800 : (1976) 1 SCR 875 : (1975) 7 UJ 934
- [Ajit Kumar Nag Vs. General Manager \(P.J.\), Indian Oil Corporation Ltd., Haldia and Others](#), AIR 2005 SC 4217 : (2005) 107 FLR 407 : (2005) 8 JT 425 : (2005) 7 SCC

764 : (2005) SCC(L&S) 1020 : (2005) 3 SCR 314 Supp : (2006) 1 SLJ 267

- [Purushottam Kumar Jha Vs. State of Jharkhand and Others](#), AIR 2006 SC 3655 : (2006) 7 JT 46 : (2006) 3 LLJ 238 : (2006) 4 SCALE 561 : (2006) 9 SCC 458 : (2006) SCC(L&S) 1840 : (2006) 1 SCR 215 Supp : (2006) 3 SLJ 482 : (2006) AIRSCW 2628 : (2006) 5 Supreme 92
- [Somesh Tiwari Vs. Union of India \(UOI\) and Others](#), AIR 2009 SC 1399 : (2009) 1 JT 96 : (2009) 1 SCALE 63 : (2009) 2 SCC 592 : (2009) 1 SCC(L&S) 411 : (2009) 3 SLR 506 : (2009) AIRSCW 854
- [Prakash Singh and Others Vs. Union of India \(UOI\) and Ors.](#), (2007) 103 CLT 69 : (2006) 12 JT 225 : (2006) 9 SCALE 444 : (2006) 8 SCC 1 : (2006) 6 SCR 473 Supp
- [C.P. Arora Vs. State of U.P. and Another](#)

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JUDGMENT

Narayan Shukla, J.—Heard Mr. S.K. Kalia, learned Senior Advocate assisted by Mr. Ramesh Pandey, learned counsel for the petitioner as well as Mr. I.P. Singh, learned Chief Standing Counsel, Dr. L.P. Mishra and Mr. Nirankar Singh, learned Advocates as interveners. The petitioner has assailed the order dated 23rd of June, 2014, issued by the Deputy Inspector General of Police, Lucknow Circle, Lucknow, whereby the petitioner has been transferred from district Raebareli to district Hardoi in public interest.

2. A bare perusal of the transfer order shows that it has been issued pursuant to the decision taken by the Police Establishment Board in its meeting dated 23rd of June, 2014. As per direction of this Court the learned Chief Standing Counsel produced the minutes of the meeting dated 23rd of June, 2014 of the Police Establishment Board, which show that the petitioner was posted at Raebareli on 9th of December, 2013 and the source of transfer is indicated that the several public complaints from the different sources about the petitioner's misbehaviour with the public have been received, in the light of which the Board expressed the opinion that it is not proper to retain the petitioner at district Raebareli. Therefore, it took a decision to transfer the petitioner at Hardoi.

3. The learned counsel for the petitioner Mr. Kalia submits that those complaints have already been enquired by the Additional Superintendent of Police, Raebareli, who reported that persons belonging to different sect have appreciated the petitioner's working and conduct. The petitioner has been successful to control the communal riots and everybody is taking breath in the open and a sound atmosphere. Thus, no allegations levelled against the petitioner, were found proved. Therefore, he reported that no action is required in the matter. He further submitted that the aforesaid inquiry report has not been placed before the Police Establishment Board. Had it been placed before the Board, there would have been a decision otherwise.

4. The record of Police Establishment Board produced before me also does not contain any such report, nor is there any discussion of the Board on any such report. Therefore, I also form the opinion that the said inquiry report has not been considered by the Board. So far as the allegations and counter allegations by the different classes of the society, including businessmen are concerned, I upon perusal of record, find that one class has appreciated the petitioner's working, whereas another class has condemned him for his misconduct. According to them the petitioner has exceeded his jurisdiction to maintain the peace, law and order in the society.

5. Mr. Kalia also drew attention of this Court towards the judgment of the Hon'ble Supreme Court, rendered in the case of [Prakash Singh and Others Vs. Union of India \(UOI\) and Ors](#), in which the Hon'ble Supreme Court has discussed the problems of the police. After considering the hazardous background as to why the police functioning has caused so much disenchantment and dissatisfaction the Hon'ble Supreme Court provided that there shall be a Police Establishment Board in each State, which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The State Government has been empowered to interfere with the decision of the Board in exceptional cases, only after recording its reasons for doing so. The Board has also been authorized to make appropriate recommendations to the State Government regarding the postings and transfers of officers and above the rank of Superintendent of Police.

6. On the matter of transfer the Hon'ble Supreme Court has provided that the police officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge District and Station House Officer in-charge of the Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging his responsibilities. This would be subject to promotion and retirement of the officer.

7. In terms of the aforesaid directives of the Hon'ble Supreme Court Mr. Kalia, Senior Advocate submitted that none of the conditions are available with the petitioner to consider his transfer nor have any of such conditions been discussed by the Board, therefore, the petitioner's transfer is completely in violation of the directives of the Hon'ble Supreme Court. He further drew attention of this Court towards paragraph 524 of the Police Regulations, which provides that officers-in-charge of police stations shall ordinarily be retained in their charges for at least two years. Thus, he submits that the petitioner's transfer is also in violation of the provisions of para 524 of the Police Regulations also. He further claimed the respondents' action as malicious on the ground that the petitioner's transfer has been made at the behest of one Hon'ble Minister who is also local MLA and is the General Secretary of the Akhil Bhartiya Yuva Vyapar Mandal, who is one of the

complainants. He has brought on record the several complaints, one of which is made by the office bearers of the aforesaid Vyapar Mandal, over which the said Hon'ble Minister recommended for appropriate action. Thus, it is stated that behind the transfer of petitioner there are some interested persons including the Hon'ble Minister of the Ruling party, who has been behind the curtain to manage the petitioner's transfer order. Thus, it is fully tainted and based on mala fide action of the respondents.

8. In support of his submission he also cited a decision of the Hon'ble Supreme Court rendered in the case of [Somesh Tiwari Vs. Union of India \(UOI\) and Others](#), of which is reproduced hereunder:

"16. Indisputably an order of transfer is an administrative order. Here cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds-one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

9. He further submitted that the order of petitioner's transfer suffers from malice in law.

10. On the other hand Dr. L.P. Mishra, learned Advocate who has been permitted to assist the Court in the matter as an Intervener, placed several decisions of the Hon'ble Supreme Court before this Court and submitted that the Court has a very limited jurisdiction to interfere in the matter of transfer. The decisions placed by him are referred to as under:

(1) [Rajendra Roy Vs. Union of India \(UOI\) and Another](#), relevant part of paragraph 7 of which is reproduced hereunder:

"7.In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. We are in agreement with the Central Administrative Tribunal that the appellant has not been able to lay any firm foundation to substantiate the case of malice or mala fide against the respondents in passing the impugned order of transfer. It does not appear to us that the appellant has been moved out just to get rid of him and the impugned order of transfer was passed mala fide by seizing an opportunity to transfer Shri Patra to Orissa from Calcutta. It may not be always possible to establish malice in 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 and vague suggestions....."

(2) [M. Sankaranarayanan, IAS Vs. State of Karnataka and others](#), of the which is reproduced hereunder:

"12. After considering the respective contentions of the learned counsels appearing for the parties it appears to us that the appellant has not been able to lay any firm foundation warranting a finding that the impugned order of transfer was passed mala fide and/or for an oblique purpose in order to punish the appellant and/or to humiliate him. The pleadings of the appellant before the Central Administrative Tribunal only indicate that some of his suggestions in the matter of posting of senior bureaucratic officers of the State had not been accepted by the present Chief Minister of the State. Such facts alone do not constitute any foundation for a finding that because the appellant was not agreeable to oblige the Chief Minister by accepting all his suggestions and putting up notes to that effect, he had incurred the displeasure of the Chief Minister and the impugned orders had been passed not on administrative exigencies but only to malign the appellant and to humiliate him. It may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture. In the instant case, we are unable to find that there are sufficient materials from which a reasonable inference of malice in fact for passing the impugned order of transfer can be drawn. It is an admitted position that the Chief Secretary and the Chief Minister had differences of opinion on a number of sensitive matters. If on that score, the Cabinet and the Chief Minister had taken a decision to relieve the appellant from the post of Chief Secretary and post a very senior officer of their confidence to the post of Chief Secretary, it cannot be held that such decision is per se illegal or beyond the administrative authority. The position in this regard has been well explained in Royapa case by this Court."

(3) State of U.P. and others v. Gobardhan Lal with Civil Appeal No. 409 of 2004 [State of U.P. and Others Vs. Gobardhan Lal](#), of which are reproduced hereunder:

"7. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. 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. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violation of any statutory provisions (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. 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. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also 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.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reasons that Courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

(4) S.C. Saxena v. Union of India and others, (2006) 9 SCC 583, relevant paragraph 6 of which is reproduced hereunder:

"6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a Government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a Court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Apart therefrom, if the appellant really had some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted. We too decline to believe the story of his remaining sick. Assuming there was some sickness, we are not satisfied that it prevented him from joining duty either at Tezpur or at Amritsar. The medical certificate issued by Dr. Ram Manohar Lohia Hospital proves this point. In the circumstances, we too are of the opinion that the appellant was guilty of the misconduct of unauthorizedly remaining absent from duty."

(5) [Purushottam Kumar Jha Vs. State of Jharkhand and Others](#), of which is reproduced hereunder:

"23. It is well-settled that whenever allegations as to mala fides have been levelled, sufficient particulars and cogent materials making out prima facie case must be set out in the pleadings. Vague allegations or bald assertion that the action taken was mala fide and malacious is not enough. In the absence of material particulars, the Court is not expected to

make "fishing" inquiry into the matter. It is equally well established and needs no authority that the burden of proving mala fides is on the person making the allegations and such burden is "very heavy". Malice cannot be inferred or assumed. It has to be remembered that such a clause can easily be "made than made out" and hence it is necessary for the Courts to examine it with extreme care, caution and circumspection. It has been rightly described as "the last refuge of a liesing litigant". (Vide [Gulam Mustafa and Others Vs. The State of Maharashtra and Others,](#) ; [Ajit Kumar Nag Vs. General Manager \(P.J.\), Indian Oil Corporation Ltd., Haldia and Others,](#)..")

(6) [State of Haryana and Others Vs. Kashmir Singh and Another etc. etc.,](#) of which are reproduced hereunder:

"12. Transfer ordinarily is an incidence of service, and the Courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. In particular, we are of the opinion that transfer and postings of policemen must be left in the discretion of the State authorities concerned which are in the best position to assess the necessities of the administrative requirements of the situation. The administrative authorities concerned may be of the opinion that more policemen are required in any particular district and/or another range than in another, depending upon their assessment of the law and order situation and/or other considerations. These are purely administrative matters, and it is well-settled that Courts must not ordinarily interfere in administrative matters and should maintain judicial restraint, vide [Tata Cellular Vs. Union of India,](#) .

14. In our opinion, the High Court has taken a totally impractical view of the matter. If the view of the High Court is to prevail, great difficulties will be created for the State administration since it will not be able to transfer/deploy its police force from one place where there may be relative peace to another district or region/range in the State where there may be disturbed law and order situation and hence requirement of more police. Courts should not, in our opinion, interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal right of the citizen. After all, the State administration cannot function with its hands tied by judiciary behind its back. As Holmes, J. of the US Supreme Court pointed out, there must be some free play of the joints provided to the executive authorities."

(7) [Narendra Kumar Rai Vs. State of U.P. and Others,](#) of which are reproduced hereunder:

"9. Sri T.P. Singh has strenuously urged that strict and good measures adopted by the petitioner resulted in seizing of a large number of vehicles and this caused annoyance to those who were operating transport vehicles in fragrant violation of the Rules. A local politician felt aggrieved by the result whereof he has been transferred. It is thus contended that the transfer order has been passed for mala fide reasons. Reliance is also placed on a decision of this Court on [C.P. Arora Vs. State of U.P. and Another](#) , wherein it has been held that ordinarily no interference in writ jurisdiction is called for in the matter of transfers but where it appears that same are made in colourable exercise of powers or are

actuated with malice or are made frequently within a short span of time, the Court would not lag behind in quashing such transfer orders. Alongwith the rejoinder-affidavit, the petitioner has filed a letter purported to have been written by the President of local unit of Bhartiya Janta Party to the Chief Secretary and also a photo copy of a letter purported to have been written by a local MLA. To the Chief Minister wherein a complaint has been made against the petitioner regarding his making of money by illegally detaining the vehicles and working contrary to the Rules. Learned counsel has contended that the impugned order of transfer had been passed on the basis of the complaint made by the aforesaid political people and consequently it is liable to be struck down on the ground of mala fide.

10. We have given our careful consideration to the submission made. We are clearly of the opinion that from the mere fact that a Government servant is transferred on the basis of a complaint made by a M.L.A. or M.P. or a leader of the political party, it cannot be held that the same is mala fide and the transfer order can be struck down on the said ground alone without there being anything more. A M.L.A. or M.P. Is the representative of the people and common public has access to him. Often it is very difficult for a common man to meet the higher officers and to bring to their notice the misdeeds or the wrong for a common man to go to the capital of the State namely, Lucknow, and then to meet the higher officers to lodge a complaint against the wrong manner of functioning of a Government servant. The M.L.A. and M.P. visit their constituency frequently and meet the members of the public. It is far easier for the public to lodge a complaint against the improper functioning of a Government servant with their representative namely the M.L.A. or M.P. of the area than with the higher officers. If in such circumstances, the M.L.A. or M.P. takes up the matter and brings to the notice of the higher officers or the minister of the concerned department about the misdeeds of a Government servant no exception can be taken to such a course of action. The representatives of the people (M.L.A. and M.P.) hold responsible constitutional position and there is no presumption that whenever they draw attention of the misdeeds of a Government servant they do so with mala fide intention. A transfer order passed soon after a letter or complaint lodged by M.L.A. or M.P. or a political persons cannot be branded as having been done at the dictate of such a person. There is no presumption that the authority passing the transfer order has not applied his independent mind. It is quite likely that the authority was not aware of the situation and after the full and correct facts were brought to his notice he decides to take appropriate action on objective consideration. We are, therefore, clearly of the opinion that without there being anything more, the mere fact that a transfer order has been passed soon after a complaint has been sent by a M.L.A. or M.P. or a political person to the minister or superior officers of the concerned department, it cannot be branded as having been passed without application of mind or of the dictate of a political person. In the present case there is nothing on record to show that the concerned M.L.A. or leader of the political party had any personal animosity with the petitioner or that they had made complaint against him or account of any oblique motive for some personal gain. There is no material to show that

any action taken by the petitioner in the discharge of his official duty has caused any personal injury to the President of B.J.P. or to the local M.L.A. In these circumstances, the contention raised by the learned counsel for the petitioner cannot be accepted."

11. The facts of the case, discussed above, show that the allegations as well as the counter allegations have been enquired by the Additional Superintendent of Police, Raebareli and no allegation has been found proved. Therefore, the same cannot be the basis for transfer of the petitioner. The Police Establishment Board has approved the petitioner's transfer only for the reason that keeping in view the misbehaviour of the petitioner with the public at large it was not proper to retain the petitioner at Raebareli. The Board approved the transfer on 23rd of June, 2014, on this very ground, whereas the inquiry officer had already submitted his report on 17th of April, 2014, in which no allegation was proved against the petitioner. Thus, it appears that the inquiry report was not placed before the Board. Such type of transfer, particularly within two years from the date of posting, has not been appreciated by the Hon'ble Supreme Court, rather it has been held that the officer incharge should have the prescribed minimum tenure of two years, unless it is found necessary to remove them prematurely following disciplinary proceeding against them or their conviction in a criminal offence or in a case of corruption or the incumbent is otherwise incapacitated from discharging his responsibilities. None of these capabilities, discussed above, has been reported in the petitioner's matter. Therefore, there was also no occasion for the Board to approve such a transfer, particularly within short tenure of posting as the petitioner was posted at Raebareli on 7th of February, 2014.

12. Persuasive action of the political personality in the matter of posting is also not appreciated. No doubt being public representative he has the right to raise the public grievances, but it is not proper for him to act upon by parting himself with any particular group.

13. On the allegation of malice, I am of the view that persuasion of any political leader cannot be said to be based on malice as he works in the interest of public and being a public representative he has a right to raise a public grievance. So far as the decision of the Board is concerned, that also cannot be said to be mala fide as it has acted upon only on the basis of the complaints reported to them. The inquiry report was not before the Board, therefore, the Board had no option but to approve the petitioner's transfer keeping in view the complaints against the petitioner.

14. In this matter some interveners have intervened, which appears to be of a different group; one may have been liking the petitioner and the other may have been disliking the petitioner, but I am of the view that it would not be healthy decision to permit such a group to intervene in the matter of transfer of a Government officer because in such a case the wishes of any particular group should not be allowed to prevail to keep any officer posted at their choice or to oust him.

15. Indisputably, the order of transfer is an administrative order and it is ordinarily an

incident of service, which should not be interfered with unless mala fide action of the authority is proved.

16. Mr. Kalia, learned Senior Advocate appearing for the petitioner also took a plea that it is a case of malice in law as deliberately the petitioner has been transferred to different place, whereas I am of the view that once the inquiry report was not before the Board, keeping in view the complaints made against the petitioner there was no option with the Board but to approve his transfer so that there may not be any clash amongst the local public just because of posting of an officer either as per their wish or against their wish, as the case may be.

17. When I take note of the facts of the complaints, I find that issuance of order of transfer is purely an administrative matter and the Courts should not ordinarily interfere with the administrative matter unless it is unjustified. I am informed that by means of transfer order impugned the petitioner has been posted may be in different district, but in the same cadre. In the case of Narendra Kumar Rai (Supra) the Hon'ble Supreme Court has held that mere fact that the Government servant is transferred on the basis of a complaint made by an MLA or MP or a leader of the political party, it cannot be held that the same is mala fide and the transfer order can be struck down on the said ground alone without there being anything more. It was further held that an MLA and MP is representative of the people and common public has access to him. It is easier for the public to lodge a complaint against the improper functioning of a Government servant with their representative, in such circumstances they take up the matter and bring to the notice of the higher officers about the misdeeds of a Government servant, therefore, there is no presumption that whenever they draw attention of the misdeeds of a Government servant, they do so with mala fide intention.

18. From the facts of the case, it is evident that the different groups are pursuing the matter of petitioner's transfer either way and there was also complaints, though the same have not been found proved, but keeping in view the situation, as has arisen at the place of petitioner's posting, I am of the view that interest of justice demands to post him at different place. Therefore, I do not feel it appropriate to interfere in the petitioner's transfer. It is further observed that in the matter of transfer the inquiry is not the necessary step before issuing any transfer order.

19. In the result the writ petition stands dismissed. The relevant record is returned to the learned Standing Counsel for keeping the same in the office concerned.