

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.702/2010**

% **Date of Decision: 03.02.2010**

UOI & Ors. .... Petitioners  
Through Mr.G.C.Nagar, Advocate

Versus

Smt. Kiran Bala Sharma & Anr. .... Respondents  
Through Mr. F.K.Jha, Advocate for respondent  
No.1.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KUMAR**

**HON'BLE MR. JUSTICE MOOL CHAND GARG**

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| 1. | <i>Whether reporters of Local papers may be allowed to see the judgment?</i> | YES |
| 2. | <i>To be referred to the reporter or not?</i>                                | NO  |
| 3. | <i>Whether the judgment should be reported in the Digest?</i>                | NO  |

**ANIL KUMAR, J.**

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The petitioner UOI through Secretary of Ministry of Agriculture challenges the order dated 11<sup>th</sup> January, 2010 passed in OA No. 3473/2009 titled as Mrs. Kiran Bala Sharma Vs. UOI holding that the transfer order dated 23<sup>rd</sup> September, 2009 and order dated 12<sup>th</sup> November, 2009 rejecting the respondents' representation being punitive in nature and contrary to established principles and procedure adopted for a transfer of employee are bad and thus quashing and setting aside the transfer orders. The Tribunal has also allowed the respondent to continue in the post which she was occupying prior to

23<sup>rd</sup> September, 2009.

The respondent had joined the service of the petitioner in the year 1970 and was promoted to the post of Personal Secretary (PS) in the year 2000. She was transferred to the present post on 23<sup>rd</sup> October, 2008.

In September, 2009, the respondent was transferred vide order dated 23<sup>rd</sup> September, 2009 to the office of the Director, National Research Centre for Plant Bio Technology (NRCPB). The respondent submitted a representation against her transfer and as the representation was not decided she preferred an original application being OA No. 2789/2009 which was disposed of at the admission stage directing the petitioners to consider the representation and to pass a speaking and reasoned order before transferring the respondent.

The representation of the respondent was rejected by the petitioners by order dated 12<sup>th</sup> November, 2009 which was challenged by her in the OA No. 3473/2009 titled as Mrs. Kiran Bala Vs. UOI & Ors. which was allowed against which another original application was filed before the Tribunal, Principal Bench.

The respondent had challenged her transfer on the ground that it was not on account of administrative exigencies and was punitive and also on the ground that since her transfer is on account of transfer of post from one office to another, in the first instance, the option is to be

called from the officials who are agreeable to the transfer and thereafter junior most officials were to be transferred first. The respondent contended that being a Senior Private Secretary, she should not have been transferred and she relied on (1989) Supp (1) SCC 679, Jawaharlal Nehru University Vs. Dr. K.S. Jawatkar and Ors. The respondent also contended that she has been suffering from Osteoporosis and Hyperthyroidism and it was difficult for her to climb the stairs of the office of NRCPB as it was located at 2<sup>nd</sup> floor.

The original application of the respondent was contested by the petitioners contending, inter-alia, that the respondent had not been working properly and had been suffering from the punctuality problem for which she had been surrendered by various divisions of the Indian Agricultural Research Institute (AIRI). The petitioners rather produced many letters and communications between different authorities to drive the point that the respondent had been violating the working norms and was not acceptable to various departments because of which she was sent to various divisions. Regarding her personal disability, it was contended that the office of NRCPB has the lift facilities and therefore transfer would not affect her physical ailment and her mobility in the building.

After considering the rival contentions, the Tribunal held that the respondent is a Senior Private Secretary in Indian Agricultural Research Institute being 11<sup>th</sup> out of 18 Personal Secretary and there are vacant

posts of Personal Secretaries in the said organization which could have been transferred to NRCPB and no option was called from the respondent for her transfer. Considering the letters and communications produced by the petitioner, the Tribunal has held that the transfer of the petitioner is not on administrative ground but it is punitive in nature. Even the order passed by the petitioners pursuant to directions given by the Tribunal in OA No. 2789/2009, the petitioners in their order dated 12<sup>th</sup> November, 2009 highlighted that the respondent had to be transferred to different division since concerned authorities were not satisfied with her working and non-punctuality and disciplinary actions were also initiated against her twice and penalty of censure was imposed on her and on account of this she was transferred to NRCPB.

The Tribunal in the circumstances, accepted the contention of the respondent that her order for transfer was not on account of administrative exigencies and it was rather punitive in nature and despite the respondent being one of the senior most Personal Secretaries, she has been transferred without obtaining her consent and in the circumstances it cannot be called not a punitive transfer. Such a transfer which is not for administrative exigencies cannot be permitted in the facts and circumstances.

The Tribunal has relied on *Jawaharlal Nehru University Vs. Dr. K.S. Jawatkar and Others*, AIR 1989 SC 1577, *Masood Ahmad Vs. State*

of UP, 2007 STPL(LE) 39042 SC & Somesh Tiwari Vs. Union of India, AIR 2009 SC 1399 holding that there cannot be any doubt whatsoever that the transfer is ordinarily an incident of service and transfer for administrative exigencies is not to be interfered with except in cases where malafide on the part of the authorities is proved. It was held that malafides are of two kinds:- one malice in fact and the second malice in law. It was further held that if an order of transfer is based on any factor which are not germane for passing an order of transfer and is based on some other irrelevant grounds or is punitive in nature then it cannot be said to be an order for administrative exigencies and in that case, the order of transfer is by way of order in lieu of punishment and such an order is liable to be set aside.

The learned counsel for the petitioner has not been able to deny that there are categorical and specific allegations against the respondent that she had not been working properly and had been suffering from punctuality problem in the office because of which she was transferred from various divisions. That has also not been disputed that the disciplinary proceedings were taken against her however, they resulted only in the censure and no other punishment could be imposed on the respondent and consequently she has been transferred. Such an order cannot be sustained on any of the grounds raised by the petitioners.

This also has not been disputed that there are posts in Indian

Agricultural Research Institute and the petitioner being a Senior Personal Secretary, the option for transfer ought to have been obtained from her. The learned counsel for the petitioner is also unable to say whether the junior Personal Secretaries were willing to go for transfer to NRCPB or not. Taking it from any point of view, the inevitable interference is that the transfer of the respondent is not for administrative exigencies but on account of being punitive and cannot be sustained on any of the grounds raised by the petitioners.

In the circumstances, the order of the Tribunal setting aside the order of transfer dated 23<sup>rd</sup> September, 2009 and order dated 12<sup>th</sup> November, 2009 rejecting the representation of the respondent cannot be faulted on any of the grounds raised by the petitioners. Thus there is no illegality or irregularity in the order of the Tribunal dated 11<sup>th</sup> January, 2010, which would require any interference by this Court. Therefore, the writ petition is without any merit and is therefore dismissed.

**ANIL KUMAR, J.**

**FEBRUARY 03, 2010**  
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**MOOL CHAND GARG, J.**