IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (C) No. 86 of 2018

Shri Thokchom Vikramjit Singh, aged about 40 years, S/o (L) Th. Navakumar Singh, resident of Sagolmang Mamang Leikai, P.O. & P.S. Lamlai, Imphal East District, Manipur.

... PETITIONER

- **Versus** -

1. The State of Manipur represented through its Chief Secretary, Department of Personnel & Administrative Reforms (Personnel Division), Govt. of Manipur.
2. The Joint Secretary (DP), Government of Manipur.
3. Shri M. Rajen Singh, MPS, C/o Director General of Police, having its office at Babupara, Imphal, Imphal West District, Manipur.

... RESPONDENTS

B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the petitioner	:	Shri M. Devananda, Advocate.
For the respondents	:	Shri N. Kumarjit, Advocate General asstd. by Shri P. Tamphamani, Advocate; Shri E. Premjit, Advocate with Shri N. Jotendro, Sr. Advocate.
Date of Hearing	:	19-03-2018.
Date of Order	:	26-03-2018

JUDGMENT AND ORDER

[1] Heard Shri M. Devananda, the learned Advocate appearing for the petitioner; Shri N. Kumarjit, the learned Advocate General, Manipur assisted by Shri P. Tamphamani, the learned counsel appearing for the State respondents and Shri E. Premjit, the learned Advocate with Shri N. Jotendro, the learned Sr. Advocate appearing for the private respondent.

[2] The order of transfer and posting dated 30-01-2018 issued by the Joint Secretary (DP), Government of Manipur is under challenge in this writ petition.

[3] The facts of the case as narrated in the writ petition are that the petitioner was initially appointed as MPS Grade-II in the year 2007 and after having served for more than seven years as MPS Grade-II, he was promoted to the post of MPS Grade-I in the year 2014. During the period from 2007 to 2014, the petitioner was posted at many places, both in the valley and in the hills. On 28-11-2016 the petitioner while serving as the Additional Superintendent of Police (Ops.), Imphal West, was transferred as the Commandant (i/c), 2nd Bn. Manipur Rifles and after having served for about six months, he was transferred as the Superintendent of Police, Jiribam vide order dated 23-05-2017 issued by the Deputy Secretary (DP), Government of Manipur and after having served hardly a one month therefrom, he was transferred as the Commandant, 3rd Indian Reserve Battalion

vide order dated 19-06-2017 issued by the Deputy Secretary (DP), Government of Manipur. After about seven months, the petitioner was again transferred as the Superintendent of Police (i/c), Railway vide impugned order dated 30-01-2018 issued by the Joint Secretary (DP), Government of Manipur. Being aggrieved by it, the petitioner submitted a representation dated 31-01-2018 to the Chief Secretary (DP), Government of Manipur for reviewing/ cancelling the transfer order on the ground that he has been subjected to frequent transfer with a malafide intention and that too, without assigning any reason thereof. Since the impugned order being given immediate effect, the petitioner approached this court by way of the present writ petition to quash and set aside the impugned order dated 30-01-2018 without awaiting the outcome of the said representation.

[4] In order to contest the writ petition, an affidavit on behalf of the respondent Nos.1 and 2 has been filed wherein it has been stated that since the extension of railways to all the North Eastern States of India and in particular, Manipur being given a priority, the petitioner being a young and energetic officer, was required to be transferred and posted as the i/c Superintendent of Police, Railways. The order of transfer and posting dated 28-11-2016 was issued by the earlier government while the subsequent orders dated 23-05-2017, 19-06-2017 and 30-01-2018 were issued by the present government keeping in mind the change in the government and due emphasis to be given to the development of newly created districts

and the railway project as well. After the impugned order dated 30-01-2018 being issued by the Joint Secretary (DP), Government of Manipur, the private respondent who was relieved on 30-02-2018, had joined his place of posting on the same day by taking self-charge. In the said affidavit, it has also been submitted that the interim order dated 02-02-2018 passed by this court has severely affected the functioning, administration and morale of the police administration more particularly, in an insurgent State like Manipur and moreover, the same has severely affected the transfer and posting of other officers who are not party in the present writ petition. There is no malafide in the transfer and posting and not a single plead is taken in the present writ petition with respect to the transfer order being issued in a mala fide manner. In order to support their contention, the decision rendered by the Hon'ble Supreme Court in ***Gujarat Electricity Board Vs. Atmaram Sungomal Poshani, (1989) 2 SCC 602*** has been referred to and relied upon. The impugned order has been issued in public interest and there is no intention on the part of the State Government to penalize any individual officer, who cannot claim to be posted at a particular place. In terms of the O.M. dated 05-12-2017, an employee who has not completed three years in a post, can be transferred under compelling reasons/ circumstances. In a similar line, an affidavit in opposition has been filed by the private respondent.

[5] Relying upon the decision rendered by the Hon'ble Supreme Court in **T*.S.R Subramanian & ors. Vs. Union of India & ors, (2013) 15 SCC 732***, it has been submitted by Shri M. Devananda, the learned counsel appearing for the petitioner that the petitioner has been subjected to frequent transfer without assigning any reason thereof. Since the O.M. dated 24-04-1991 having been issued by way of a policy decision, the State Government ought to have followed the same while issuing the transfer orders. Combating the submissions made by the learned counsel appearing for the petitioner, Shri N. Kumarjit, the learned Advocate General, Manipur has submitted that no material has been produced by the petitioner to establish malafide on the part of the State Government except using the expression "malafide intention" in the petition. No employee has got any right to be posted at a particular place. The guidelines contained in the O.M. dated 05-12-2017 are not enforceable in law and non-enforcement of any provisions of the guidelines shall not confer any right upon an employee. In order to support his contention, he has placed reliance on the decisions rendered by the Hon'ble Supreme Court in ***S.C. Saxena Vs. Union of India & ors., (2006) 9 SCC 583; Union of India & ors. Vs. S.L. Abbas, (1993) 4 SCC 357;*** and ***Rajendra Singh & ors. Vs. State of Uttar Pradesh & ors., (2009) 15 SCC 178.*** The submissions of Shri E. Premjit, the learned counsel appearing for the private respondent are similar to that of the learned Advocate General, Manipur and therefore, the

same are not repeated herein for the sake of brevity. However, in addition to the decisions being relied upon by the learned Advocate General, he has relied upon various decisions rendered by the Hon'ble Supreme Court in the cases of ***B. Varadha Rao Vs. State of Karnataka & ors., (1986) 4 SCC 131; Shilpi Bose (Mrs.) & ors. Vs. State of Bihar & ors. (1991) 2 SCC 659; Union of India & ors. Vs. H.N. Kirtania, (1989) 3 SCC 445; State of Punjab Vs. Joginder Singh Dhatt, AIR 1993 SC 2486; Rajendra Roy Vs. Union of India & anr., (1993) 1 SCC 148*** *and* ***National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan & anr., (2001) 8 SCC 574.***

[6] Before adverting to the rival contentions of the learned counsel appearing for the parties, this court proposes to examine the law laid down by the Hon'ble Supreme Court with respect to orders of transfer issued by various States in the country and in particular, the decisions relied upon by the counsel appearing for the parties.

In ***B. Varadha Rao Vs. State of Karnataka & ors., (1986) 4 SCC 131***, it has been held that it is well understood that transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of government service and no

government servant can claim to remain in a particular place or in a particular post unless, of course, this appointment itself is to a specified, non-transferable post. Distinguishing the decision in E.P. Royappa case, the Hon'ble Supreme Court has further held:

> ***"6.*** *One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of Class III and Class IV employees stand on a different footing. We trust that the government will keep these considerations in view while making an order of transfer****."***

In ***Union of India & ors. Vs. H.N. Kirtania, (1989) 3 SCC 445,*** the Hon'ble Supreme Court has held that transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds

rendering the transfer order illegal on the ground of violation of statutory rules or on the ground of malafides.

In ***Shilpi Bose (Mrs) & ors. Vs. State of Bihar & ors., 1991 Supp (2) SCC 659***, the Hon'ble Supreme Court held:

> ***"4.*** *In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made 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. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.*

In ***State of Punjab & ors. Vs. Joginder Singh Dhatt, AIR 1993 SC 2486***, the Hon'ble Supreme Court held:

> ***"3.*** *We have heard learned Counsel for the parties. This Court has time and again expressed its disapproval of the courts below interfering with the order of transfer of public servant*

*from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was 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**."***

In ***National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan, (2001) 8 SCC 574***, the Hon'ble Supreme Court held:

"5. *On a careful consideration of the submissions of the learned counsel on either side and the relevant Rules to which our attention has been invited to, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer. It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of*

administrative exigencies of the service concerned. On the facts and circumstances of the cases before us, we are also unable to agree with the learned counsel for the respondents that Rule 4.1.1 of the Seniority Rules interdicts any transfer of the employees from one office or project or unit to any one of the other as long as the seniority of such an employee is protected based on the length of service with reference to the date of promotion or appointment to the grade concerned irrespective of the date of transfer. We also consider it to be a mere submission in vain, the one urged on the basis of alleged adverse consequences detrimental to their seniority resulting from such transfer. In the facts of the present cases, at any rate, no such result is bound to occur since the Project undertaken to which the respondents have been transferred is itself a new one and, therefore, we see no rhyme or reason in the alleged grievance.

In ***S.C. Saxena Vs. Union of India & ors., (2006) 9 SCC 583,*** *the Hon'ble Supreme Court held:*

"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 unauthorisedly remaining absent from duty.

In ***Rajendra Singh & ors. Vs. State of Uttar Pradesh & ors., (2009) 15 SCC 178,*** *the Hon'ble Supreme Court held:*

> ***"8.*** *A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. 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 contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires (see State of U.P. v. Gobardhan Lal, SCC p. 406, para 7).*

[7] From the aforesaid decisions relied upon by the learned counsels appearing for the respondents, it is seen that the law laid down by the Hon'ble Supreme Court is that transfer is an incident of service. A government servant holding a transferable post has no

vested right to remain posted at one place or the other and he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Transfer order cannot be questioned by an employee except on the ground of violation of statutory rules or on the ground of malafide.

Transfer can be broadly divided into two types- one, a simple or an ordinary or a general transfer and two, a frequent transfer. There can be no doubt about the law being laid down by the Hon'ble Supreme Court but the law laid down by the Hon'ble Supreme Court therein is a general one applicable to a transfer which is simple or ordinary or for that matter, a general transfer relating to any department or any post. Frequent transfer was not the subject matter in issue in those cases. Frequent transfer is quite different from a simple or an ordinary or a general transfer and it means transfer for more than once in a short period of time. If one looks at the impugned order in isolation, it can be said to be a general transfer but the allegation is that the petitioner has been subjected to four transfers in a short period of hardly 13 months which is nothing but a frequent transfer. In other words, the present case falls in the second category namely the frequent transfer and since the facts of those cases are not similar, the law laid down therein will have no application to the facts of the present case. In ***B. Varadha Rao*** case (supra) relied upon by the counsel appearing for

the private respondent, the Hon'ble Supreme Court has observed that one cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation.

[8] The issue relating to transfer of a police officer has been specifically dealt with in ***Prakash Singh & ors. Vs. Union of India, (2006) 8 SCC 1*** and in fact, the issues involved therein have arisen out of the non-implementation of the recommendations of the various Commissions/ Committees and in particular, the recommendation of the National Police Commission relating to police reforms in the country. As has been observed by the Hon'ble Supreme Court, the second report of the said Commission which noticed the phenomenon of frequent and indiscriminate transfer order on political considerations as also other unhealthy influences and pressure brought to place on police, is relevant for the present case. The stand of the Union of India is evident from a letter dated 03-04-1997 of the Ministry of Home Affairs sent to all the State Government expressing that the popular perception all over the country appears to be that many of the deficiencies in the functioning of the police had arisen largely due to an overdose of unhealthy and petty political interference at various levels starting from transfer and posting of policemen of different ranks, misuse of police for partisan purposes and political patronage quite often extended to corrupt police personnel. While considering the said issues, the Hon'ble Supreme

Court referred to its earlier decision in ***Vineet Narain & ors. Vs. Union of India & anr., (1998)1 SCC 226*** *w*herein it had noticed the urgent need for the State Governments to set up the requisite mechanism and directed the Central Government to pursue the matter of police reforms with the State Governments and ensure the setting up of a mechanism for selection/ appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendent of Police and above. The Hon'ble Supreme Court had expressed its shock that in some States the tenure of a Superintendent of Police is for a few months and transfers are made for whimsical reasons which has not only demoralising effect on the police force but is also alien to the envisaged constitutional machinery. It was further observed that apart from demoralising the police force, it has also the adverse effect of politicising the personnel and therefore, it is essential that prompt measures are taken by the Central Government. Considering the contentions of the parties and keeping in mind the circumstances of that case, the Hon'ble Supreme Court had issued various directions, out of which the relevant direction for the present case is that 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 Office in-charge of a 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. Referring to and relying upon the said decision in Prakash Singh's case, the Hon'ble Supreme Court in ***T.S.R. Subramanian & ors. Vs. Union of India, (2013) 15 SCC 732***, held:

> ***"35.*** *We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. The necessity of minimum tenure has been endorsed and implemented by the Union Government. In fact, we notice, almost 13 States have accepted the necessity of a minimum tenure for civil servants. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also prioritise various social and economic measures intended to implement for the poor and marginalised sections of the society.*

The Hon'ble Supreme Court directed the Union, State Governments and Union Territories to issue appropriate directions to secure providing of minimum tenure of service to various civil

servants within a period of three months. It may be noted that in these decisions of the Hon'ble Supreme Court, the scope of challenging order of transfer has been widened by it.

[9] The case of the petitioner is that he has been subjected to frequent transfer, without assigning any reason thereof, with a malafide intention. Frequent transfer is not denied by the State Government and all that it has submitted, is that it has been done in public interest and the petitioner has no right to remain posted in one place. On perusal of the impugned order, it is seen that no reason has been given for frequent transfer of the petitioner except stating that the transfer order has been issued in public interest. But it is interesting to note that in all the transfer orders which are placed on record, the expression "public interest" has been used, thereby intending to show as if all transfer orders have been issued in public interest. The mere statement that the transfer order is issued in public interest, is not sufficient and reasons are to be assigned or recorded, if an employee is to be transferred frequently. Frequent transfer cannot be said to be an ordinary or a general transfer and it being an exception to a general transfer, reasons for it are to be recorded by the State Government. In this regard, the observations made by the Hon'ble Supreme Court in ***E.P. Royappa Vs. State of T.N., (1974) 4 SCC 3*** are relevant wherein it has been observed that frequent transfers, without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is malafide 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, that is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair.

[10] It is not in dispute that the State Government being an institution, ought to act fairly and reasonably and any action which is unreasonable, arbitrary, malafide etc. will attract the provisions of the Article 14 of the Constitution. Article 14 strikes at arbitrariness of State action in any form. The act of malafide which takes place within four walls of the State Government, is something which is to be discerned and inferred on the basis of circumstances only. In the present case, in order to ascertain whether the frequent transfer was malafide or not the following circumstances have been considered:

First, it is not in dispute that the petitioner has been subjected to four transfers with a period of 13 months;

Second, in Vineet Narain's case; Prakash Singh's case and TSR Subramanian's case, the Hon'ble Supreme Court had already directed the State Governments including the State of Manipur to provide minimum tenure of service to police officers above the rank of Superintendent of Police

and other civil servants as well. It is not clear as to whether the State of Manipur has complied with it or not;

Third, no reasons have been assigned by the State Government for frequent transfer of the petitioner except stating that it has been done in public interest which is common for all;

Fourth, it is no doubt true that it is the discretionary power of the State Government to decide as to how, when and where an employee be transferred but it is settled law that it shall be exercised by the State Government in accordance with a principle. It appears that no such principle has been incorporated in the Recruitment rules except the guidelines contained in the O.M. dated 05.12.2017. But it may be noted that while issuing the transfer orders, the said guidelines are not strictly followed and the stand of the State Government is that non-enforcement of the said guidelines will not confer any right upon the employee. It is true to that extent but if the guidelines which are executive instructions, are not to be followed by the State Government itself, there is no point of issuing such instructions;

Fifth, the only explanation given in the affidavit as to why petitioner has been transferred as the i/c SP, railways is

that since a young and energetic MPS officer with good service record is required for the said post, he has been chosen for transfer to it. It is again well settled that what is not there in the document, cannot be explained in the affidavit. Document speaks for itself. Moreover, since there are other eligible police officers to hold the said post, one cannot be singled out by the State Government to treat him differently without taking into account the earlier transfers.

Considering the above circumstances and the fact that the Hon'ble Supreme Court had deprecated the short tenure of service provided to the police officer, this court is of the view that the impugned order as regards the petitioner, is bad in law and is liable to be quashed and set aside.

[11] In view of the above, the instant writ petition is allowed and consequently, the impugned order dated 30-01-2018 is quashed and set aside in respect of the petitioner with no order as to costs.

[12] Before parting from the matter, this court proposes to make certain observations. In the affidavit filed on behalf of the respondent Nos.1 & 2, it has been stated that the interim order dated 02-02-2018 passed by this court has severely affected the functioning, administration; morale of the police administration and the transfer & posting of the officers who are not party in the writ petition. Being the parties in the above matter, the respondent Nos.1 & 2 are not

supposed to criticise the court's order which is highly contemptuous for which suo motto contempt proceedings can be initiated against them and in case they are aggrieved by any order of the court, it is open to them to challenge it before the appellate forum. The said affidavit appears to have not been vetted by either the law Department or the learned Advocate General. The respondent Nos. 1 & 2 being the responsible officers of the State Government, ought to be very careful while making statement in the form of affidavit before the court and to refrain from indulging in such activities. This being the first incident of this nature, no action is being taken against them by this court but the respondent Nos. 1 & 2 are being warned not to repeat the same in future.

JUDGE

Devananda