

**Arun Vs. State**

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**Court :** Madhya Pradesh

**Decided On :** Aug-16-2005

**Reported in :** 2005(4)MPHT365

**Judge :** K.K. Lahoti, J.

**Acts :** [Constitution of India](#) - Articles 141, 226 and 323A

**Appeal No. :** Writ Petition No. 7523/2005 (S)

**Appellant :** Arun

**Respondent :** State

**Advocate for Def. :** Jaideep Singh, Adv.

**Advocate for Pet/Ap. :** Sanjay Singh, Adv.

**Judgement :**

ORDER

**K.K. Lahoti, J.**

1. The petitioner has challenged the transfer order Annexure P-6 issued by respondent No. 3, by which the petitioner has been transferred from District Office, Panchayat and Social Justice, Betul to the District Office, Panchayat and Social Justice, Chhindwara on administrative grounds. This order has been assailed by

the petitioner on the following grounds :--

(i) That within a period of 3 years, the petitioner has been transferred frequently and near about 7 transfer orders has been passed against the petitioner.

(ii) That, transfer order is in violation of the Transfer Policy Annexure P-7 (Para 10.6), which provides that the transfer order of the Executive Officer and Employees shall be made ordinarily after completion of 3 years period at one place.

2. It is submitted by the learned Counsel for the petitioner that in view of the law laid down by the Supreme Court, in the case of Home Secretary, U.T. of Chandigarh and Anr. v. Darshjit Singh Grewal and Ors. : (1993)4SCC25 , the transfer policy has binding effect on the respondent and in view of Para 10.6 of the Transfer Policy, the said order should be quashed.

3. From the perusal of the orders filed in the petition, it is apparent that vide order Annexure P-1, dated 27-9- 2002, the Director Panchayat and Social Justice, Madhya Pradesh had cancelled the petitioner's allocation to Chhattisgarh and he was posted in the Office of District Panchayat and Social Justice, Balaghat. Thereafter, though certain orders have been issued but it appears that the order has been issued by Dy. Director Panchayat and Social Justice posting the petitioner within the District of Betul. Thereafter, the petitioner was transferred to Betul District, vide order dated 15-7-2004 passed by the Director, Panchayat and Social Justice, Bhopal. This order is not on record. Now, by the impugned order Annexure P-6 the petitioner has been transferred to another District Chhindwara.

4. In Darshjit Singh Grewal (supra), the Apex Court considering the effect of transfer policy, held in Para 15 :--

'15. It may be relevant to emphasize at this juncture that while the Rules and Regulations referred to above are statutory, the policy guidelines are relatable to the executive power of the Chandigarh Administration. It is axiomatic that having enunciated a policy of general application and having communicated it to all concerned including the Chandigarh Engineering College, the Administration is

bound by it. It can, of course, change the policy but until that is done, it is bound to adhere to it.'

5. The question of guidelines issued by the Government in respect of transfer policy has been considered in the case of Union of India and Ors. v. S.L. Abbas : (1993)11LLJ626SC decided on 27-4-1993, wherein the Apex Court held in Paras 7 and 8 :--

'7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court can not interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.

8. The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the [Constitution of India](#) in service matters. This is evident from a perusal of Article 323A of the Constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Article 323A. (We find it all the more surprising that the learned Single Member who passed the impugned order is a former Judge of the High Court and is thus aware of the norms and constraints of the writ jurisdiction). The Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It can not substitute its own judgment for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if it were sitting in appeal over the order of transfer made by Senior Administrative Officer (Competent Authority).'

(Emphasis supplied)

6. The case of Darshjit Singh Grewal was decided on 12-7-1993, and the case of S.L. Abbas has not been referred or explained by the Apex Court in the said judgment. The case of S.L. Abbas is of Coordinate Bench and prior in time and is having binding effect. In the aforesaid circumstances, the law laid down by the Apex Court in S.L. Abbas has to be followed, as held by Full Bench of this Court in Jabalpur Bus Operators Association and Ors. v. State of M.P. and Anr., 2003(1) M.P.H.T. 226 (FB) : 2003(1) MPJR 158, in Para 10, which is quoted thus :--

'10. In case of conflict between two decisions of the Apex Court, Benches comprising of equal number of Judges, decision of earlier Bench is binding unless explained by the latter Bench of equal strength, in which case the later decision is binding. Decision of a Larger Bench is binding on smaller Benches. Therefore, the decision of earlier Division Bench, unless distinguished by latter Division Bench, is binding on the High Courts and the Subordinate Courts. Similarly, in presence of Division Bench decisions and Larger Bench decisions, the decisions of Larger Bench are binding on the High Courts and the Subordinate Courts. No decision of Apex Court has been brought to our notice which holds that in case of conflict between the two decisions by equal number of Judges, the later decision is binding in all circumstances, or the High Courts and Subordinate Courts can follow any decision which is found correct and accurate to the case under consideration. High Courts and Subordinate Courts should lack competence to interpret decisions of Apex Court since that would not only defeat what is envisaged under Article 141 of the [Constitution of India](#) but also militate hierarchical supremacy of Courts. The common thread which runs through various decisions of Apex Court seems to be that great value has to be attached to precedent which has taken the shape of rule being followed by it for the purpose of consistency and exactness in decisions of Court, unless the Court can clearly distinguish the decision put up as a precedent or is per incuriam, having been rendered without noticing some earlier precedent with which the Court agrees. Full Bench decision in Balbir Singh's case (supra) which holds that if there is conflict of views between the two co-equal Benches of the Apex Court, the High Court has to follow the judgment which appears to it to state the law more elaborately and more accurately and in conformity with the scheme of the Act, in our considered opinion, for reasons recorded in the preceding paragraph of this judgment, does not lay down the

correct law as to application of precedent and is, therefore, over-ruled on this point.'

7. The Apex court in the case of S.L. Abbas has considered the effect of guidelines issued by the State Government in respect of transfer of an employee. The aforesaid guidelines can not be given effect to in the Court of Law as are mere instructions, nor any mandamus can be issued on the basis of the aforesaid guidelines. Unless transfer order is malafide, arbitrary, against the statutory provisions, no interference can be made.

8. However, the petitioner may make representation to respondent No. 1 agitating his grievance. If such a representation is made by the petitioner, it shall be considered and decided by respondent No. 1 in accordance with law.

9. With the aforesaid liberty, this petition is finally disposed of. No order as to costs.

C.C. as per rules.

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