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C.Kurian Vs. The Fact

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Court : Kerala

Decided On : Jun-23-2015

Judge : Honourable Mr. Justice Anil K.Narendran

Appellant : C.Kurian

Respondent : The Fact

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN TUESDAY, THE23D DAY OF JUNE20152ND ASHADHA, 1937 WP(C).No. 13356 of 2015 (T) ---------- PETITIONER: ---------- C.KURIAN, AGED54YEARS S/O.CHERIAN KURIAN, CHIEF MANAGER, (PROJECT) FACT ENGINEERING AND DESIGN ORIGANIZATION UDYOGAMANDAL, RESIDING AT KODUVATH HOUSE KALPAKAAVENUE, EDAPPALLY P.O., KOHI-682 024. BY ADVS.SRI.T.RAMPRASAD UNNI SRI.S.M.PRASANTH SRI.G.RENJITH RESPONDENT(S): ---------- 1. THE FERTILIZERS AND CHEMICALS TRAVANCORE LIMITED UDYOGAMANDAL-683 501, REPRESENTED BY ITS CHAIRMAN2 FACT ENGINEERING AND DESIGN ORGANIZATION (FEDO) UDYOGAMANDAL-683 501 REPRESENTED BY ITS GENERAL MANAGER BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR BY ADV. SRI.P.GOPINATH BY ADV. SRI.P.BENNY THOMAS BY ADV. SRI.K.JOHN MATHAI BY ADV. SRI.JOSON MANAVALAN BY ADV. SRI.KURYAN THOMAS THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION

ON2306.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 13356 of 2015 (T) ---------- APPENDIX PETITIONER'S EXHIBITS: ---------- EXT.P1. TRUE COPY OF COMMUNICATION NO.GM (F)-FE.O.2/12 DATED154/2015 BY THE GENERAL MANAGER & COO/FEDO. EXT.P2. TRUE COPY OF INVITATION FOR EXPRESSION OF INTEREST N.0064/NIT-N/EO/01-13/2014 DATED161/2014 BY THE NATIONAL INSTITUTE OF TECHNOLOGY,NAGALAND. EXT.P3. TRUE COPY OF THE REPRESENTATION DATED174205 SUBMITTED BY THE PETITIONER EXT.P4. TRUE COPY OF THE NEWS ITEMS PUBLISHED IN MALAYALA MANORAMA DAILY DATED204/2015. EXT.P5: COPY OF COMMUNICATION DT.9.3.15 FROM DEPUTY GENERAL MANAGER. EXT.P6: COPY OF E-MAIL COMMUNICATION DT.6.5.14 FROM THE GENERAL MANAGER, FEDO TO THE DY.GENERAL MANAGER, ENGINEERING. EXT.P7: COPY OF COMMUNICATION DT.21.2.2015 SHOWING THE DEPLOYMENT OF STAFF AT PROJECT SITES. RESPONDENTS' EXHIBITS: ---------- ANNEXURE A: COPY OF APPOINTMENT

ORDER
DT.6.11.1985 ISSUED BY THE RESPONDENTS. ANNEXURE B: COPY OF

ORDER
DT.1.6.09 POSTING THE PETITIONER AS CHIEF MANAGER (CONSTRUCTION)FEDO. ANNEXURE C: COPY OF

ORDER
DT.30.1.12 ISSUED TO THE PETITIONER POSTING HIM AS CHIEF MANAGER (PROJECTS) ANNEXURE D: COPY OF OFFICE

ORDER
DT.3.7.14 ISSUED BY THE RESPONDENTS. ANNEXURE E: COPY OF OFFICE

ORDER
DT.8.10.14 ISSUED BY THE RESPONDENTS. ANNEXURE F: COPY OF REPLY DT.29.4.2015 SUBMITTED BY THE RESPONDENT TO THE PETITIONER.

TRUE COPY P.S.TO JUDGE dsn ANIL K.NARENDRAN, J.

---------- W.P.(C)No.13356 of 2015
---------- Dated this the 23rd day of June, 2015

JUDGMENT

The petitioner is working as Chief Manager (Project) in FACT Engineering and Design Organisation (hereinafter referred to as 'FEDO'). He is a qualified Mechanical Engineer. According to the petitioner, presently he is directly handling two major projects of FEDO, namely, Project Management Contract (PMC) for crude tank construction for Bharat Petroleum Corporation Limited at Kochi Refineries and LPG import terminal project of the Indian Oil Corporation Limited. He is also co-ordinating all major and minor projects of FEDO, as Head of the Project Department and is in charge of all tender related activities of FEDO. While so, the petitioner was issued with Exhibit P1 order dated 15/4/2015 of the General Manager of FEDO by which he is posted to NIT Nagaland site, with immediate effect, consequent to the absence of Smt. B.K.Geetha, RCCM (NIT Nagaland). Going by Exhibit P1, the petitioner will be responsible for all project and construction W.P.(C) No.13356 of 2015 2 activities at site and will direct the construction team at NIT Nagaland site to enable FEDO to achieve the targeted progress and sales turnover and adherence to quality of work, until further orders or till Smt.B.K.Geetha, RCCM (NIT Nagaland) resumes duty. Exhibit P-1 further states that, the petitioner will continue to report to DGM (Projects & Construction) and all officers and staff at NIT Nagaland site will report to the petitioner.

2. The petitioner would contend that, as per Exhibit P2 invitation for Expression of Interest (EOI) issued by NIT Nagaland, the activity involved at the project site is construction of academic buildings, administrative buildings, residential buildings and utility buildings for NIT. Further, going by the minimum eligibility criteria prescribed in Exhibit P2 (Clause Nos. 2 & 5) for the Project Management Consultant, the Central Public Sector Undertaking (CPSU) shall have experience in civil engineering construction works and consultancy services for at least a period of 10 years and the said undertaking should have adequate number of architects/structural/civil/electrical engineers and design engineers on their rolls on

full time basis to plan/ design/execute the work. Therefore, the petitioner would point out that, he being a Mechanical Engineer is not competent to take W.P.(C) No.13356 of 2015 3 up the entire responsibility of the building construction activity at NIT Nagaland site, due to lack of necessary qualifications. It was in such circumstances, the petitioner has submitted Exhibit P3 representation dated 17/4/2015 before the DGM (Project & Construction) of FEDO to cancel his transfer to NIT Nagaland site.

3. In the writ petition, the petitioner has contended that, the order of transfer is wholly arbitrary and is a high handed action on the part of the respondents, without appreciating the real nature of the work involved. The projects already undertaken by the petitioner as Chief Manager (Project) mainly involved mechanical works, for which the best possible efforts had been made by him. But the project work at NIT Nagaland site being a work predominantly civil in nature, it requires a person having competence in civil works, even for monitoring daily works. Therefore, according to the petitioner, Exhibit P1 order of transfer is irrational and made without properly appreciating the relevant criteria required for the job. Relying on Exhibit P4 press report appeared in Malayala Manorama daily dated 20/4/2015, the petitioner would contend that, even the General Manager who issued Exhibit P1 order of transfer has offered to resign in protest against the arbitrary exercise of power. The petitioner has also W.P.(C) No.13356 of 2015 4 pointed out that, FEDO is executing a similar project of civil nature for the residential township for Bharat Petroleum at Ernakulam, for which a Civil Engineer is posted as construction- in-charge. Immediately after submission of Exhibit P3 representation, the petitioner has approached this Court in this writ petition, seeking a writ of certiorari to quash Exhibit P1 order and seeking a writ of mandamus commanding the respondents to permit the petitioner to continue as Chief Manager (Project) at FEDO, Udyogamandal, irrespective of the issuance of Exhibit P1 order of transfer.

4. A statement has been filed on behalf of the respondents, stating that, the petitioner joined FACT in the year 1983 as Management Training (Tech Mechanical). On successful completion of training, he was absorbed in FACT as Engineer (Mechanical) and at present he is working as Chief Manager (Project). Relying on the terms and conditions contained in Annexure A appointment order

dated 6/11/1985, by which the petitioner was absorbed in FACT, the respondents would contend that, the order of appointment carries with it the liability of the petitioner to serve the company anywhere in India or abroad including liability, when directed by FACT, to serve in any other W.P.(C) No.13356 of 2015 5 Public Sector Undertaking on the former's behalf. The respondents would state that, the nature of business of FEDO, which is one of the divisions of FACT, is project consultancy, detailed engineering, project construction, site management, etc. Of late, since there is practically no fresh investments in the fertiliser sector, the business prospects of FEDO have been diminishing. In order to revive the division and to make it sustainable on its own, initial steps were taken for diversification into civil/infrastructure development projects and one of such projects undertaken by FEDO is the construction of NIT at Nagaland. It is a prestigious project of FEDO, which has to be completed within a period of 30 months, and the project is in progress. The project is being managed by a dedicated team formed for its implementation. Since the project has been identified to be lead by a team leader in the level of Chief Manager, the petitioner who being a senior Engineer was identified to be part of the project team. According to the respondents, it was taking into consideration the merit of the petitioner in the field of engineering, Exhibit P1 order of transfer has been issued posting him to NIT Nagaland site until further orders or till Smt. B.K.Geetha, RCCM (NIT Nagaland) resumes W.P.(C) No.13356 of 2015 6 duty.

5. The respondents would contend that, in the year 2009, the petitioner was posted as Chief Manager (Construction) by Annexure-B order dated 1/6/2009. Subsequently, in the year 2011, he was given the post of Chief Manager (Project). Thereafter, in the year 2012, he was given charge of all other projects and Planning Section, on working arrangement, by Annexure C order dated 30/1/2012. Thereafter, in the year 2014, the petitioner was given charge of PMC for LPG import terminal project of the Indian Oil Corporation Limited and other projects handled by FEDO, by Annexure D office order dated 3/7/2014. When Smt. B.K.Geetha, Chief Manager (Construction) who was holding additional charge of DGM (Project & Construction) was posted as RCCM (NIT Nagaland), the petitioner who was working as Chief Manager (Project) was given additional charge of Chief Manager (Construction), by Annexure E order dated 8/10/2014.

The respondents would contend further that, Smt. B.K.Geetha, who had taken charge as RCCM (NIT Nagaland) pursuant to office order dated 27/9/2014, applied for medical leave during March 2015 and absented from duty. In such circumstances it became necessary to post the petitioner, who was holding the additional W.P.(C) No.13356 of 2015 7 charge of Chief Manager (Construction) to lead the team at Nagaland, which resulted in Exhibit P1 order.

6. According to the respondents, the statement of the petitioner that he being a Mechanical Engineer is not competent to take up the entire responsibility of a major building construction activity due to lack of necessary qualification is false. Further, as per the policy of FEDO functional categorisation is applicable only up to Deputy Chief level. Above this, i.e., from Chief Manager level it becomes corporate cadre, wherein the functional differentiation ceased to exist. The officers in the corporate cadre are expected to handle any assignment assigned to them from time to time. As far as the qualification is concerned, the minimum qualification prescribed for Chief Manager (Project) in FEDO is degree in Engineering and hence the policy envisages Mechanical Engineer also to lead/head projects of any nature as Chief Manager. According to the respondents, the petitioner is a suitable and capable person in the company to be deputed to the project site at Nagaland, taking into account his calibre in the field of engineering. FEDO has posted several Engineers at NIT Nagaland site and the duty assigned to the petitioner is with respect to the supervision of the W.P.(C) No.13356 of 2015 8 day to day activities and ensuring quality of work and progress as per schedule and that, the responsibility assigned to him is mainly of management nature. Further, the posting of the petitioner is not of a permanent nature and it is in consequence to the absence of Smt. B.K.Geetha, RCCM (NIT Nagaland), until further orders or till she rejoins duty.

7. The respondents have also stated that, Exhibit P3 representation submitted by the petitioner was considered and he was given Annexure F reply dated 29/4/2015, by which he was directed to proceed to NIT Nagaland site and take charge immediately in terms of Exhibit P1 order. In Annexure F, it was also pointed out that, for leading the construction team at NIT Nagaland site, an experienced Manager (Chief level) is a must. The petitioner was also informed

that, as per Exhibit P1 order, he is expected to co-ordinate the functions of RCCM at the project site till Smt. B.K.Geetha resumes duty or until further orders and that, the functions of RCCM are mainly to lead and co-ordinate project site management activities such as planning and scheduling site activities, co-ordinating with clients/consultants subcontractors/home office/local bodies, site administration, etc., to enable FEDO to achieve the targeted progress and that, for W.P.(C) No.13356 of 2015 9 physical supervision of works at site and also for quality control, discipline wise Engineers are posted at site. Therefore, for successful completion of the project and to lead the team at Nagaland the service of the petitioner is highly essential. The respondents would also contend that, the petitioner has not alleged any malafides in the order of transfer and the writ petition is only to be dismissed.

8. The petitioner has also filed a reply affidavit, reiterating his contentions in the writ petition. According to the petitioner, he has been transferred to Nagaland when qualified Civil Engineers at Managerial level are available in FEDO and that, the promotion policy of the company stipulates that, promotion up to and including the post of Chief Engineer is discipline wise only. There are instances where junior persons are promoted to the level of Chief Engineers following the discipline/category criterion and that, up to and including the post of Chief Engineers job allocation is only in their respective discipline. Further, the petitioner is now aged 55 years and it has been the practice of FEDO that, persons who are at the fag end of their career are not sent to far away places. In addition to this, the health condition of the petitioner is also not supportive of serving at such difficult W.P.(C) No.13356 of 2015 10 stations and that, FEDO has not made available proper medical facilities for the staff working at NIT Nagaland site. The petitioner would also point out that, many persons who were posted to NIT Nagaland site had to return after developing health issues and for security reasons. Along with I.A.No.8065/2015, the petitioner has produced Exhibits P5 and P7 communications dated 9/3/2015 and 21/2/2015 respectively and also Exhibit P6 e-mail dated 6/3/2014, in order to contend that the requirement at NIT Nagaland site is that of a Civil Engineer.

9. Heard arguments of the learned counsel for the petitioner and also the learned Standing Counsel for the respondents.

10. The learned counsel for the petitioner would contend that, there is no administrative exigency in transferring the petitioner to NIT Nagaland site and as such Exhibit P1 order of transfer is without any factual foundation and is vitiated. He would also contend that, the alleged administrative exigency stated in Exhibit P1 order of transfer will not be met by transferring the petitioner to NIT Nagaland site, since the work undertaken at that site is predominantly civil in nature and the petitioner being a Mechanical Engineer is not competent to take W.P.(C) No.13356 of 2015 11 up the entire responsibility at the construction site.

11. Per contra, the learned Standing Counsel for the respondents would contend that, by Exhibit P1 order the petitioner has been posted at NIT Nagaland site on administrative exigencies and that, in the absence of any allegation that the said order of transfer is vitiated by malafides, the petitioner is not entitled for any of the reliefs prayed for in the writ petition. Further, as per the policy of FEDO, functional categorisation is applicable only up to Deputy Chief level and from Chief Manager level it becomes corporate cadre, wherein the functional differentiation ceased to exist, and the officers in the corporate cadre are expected to handle any assignment assigned to them from time to time. At NIT Nagaland site the petitioner is expected to co-ordinate the functions of RCCM till Smt. B.K.Geetha resumes duty or until further orders and that the functions of RCCM are mainly to lead and co-ordinate project site management activities to enable FEDO to achieve the targeted progress and that, for physical supervision of works at site and also for quality control, discipline wise Engineers are posted. Therefore, the learned Standing Counsel would contend that, no interference of Exhibit P1 order of transfer is warranted. W.P.(C) No.13356 of 2015 12 12. I have considered the rival submissions made at the Bar.

13. The main contention raised by the learned counsel for the petitioner is that, there is no administrative exigency in transferring the petitioner to NIT Nagaland site and as such Exhibit P1 order of transfer is without any factual foundation and is vitiated. In order to buttress the aforesaid contention, the learned counsel would

rely on the judgment of a Division Bench of this Court in Gopinathan M. and another v. State of Kerala and others (2014 (4) KLT285.

14. It was while working as Chief Manager (Project) in FEDO, the petitioner was ordered to be transferred to NIT Nagaland site by Exhibit P1 order of transfer, with immediate effect, consequent to the absence of Smt. B.K.Geetha, RCCM (NIT Nagaland), who went on medical leave. In the writ petition, the petitioner has absolutely no case that Exhibit P1 order of transfer is vitiated by malafides. The main contention raised by the learned counsel for the petitioner is that, there is no administrative exigency in transferring the petitioner and that, the alleged administrative exigency stated in Exhibit P1 order of transfer will not be met by transferring the petitioner to that site, W.P.(C) No.13356 of 2015 13 since the work undertaken is predominantly civil in nature. But as evident from Annexure-B order dated 1/6/2009, the petitioner was posted as Chief Manager (Construction) in FEDO and while continuing as such he was given the post of Chief Manager (Project) in the year 2011, by Annexure C order, and put in charge of all projects undertaken by FEDO, on working arrangement. By the very same order Smt. B.K.Geetha, Chief Manager (Construction) was posted as Head of Construction Department, on working arrangement. Thereafter, in the year 2012, the petitioner was given charge of PMC for LPG import terminal project of the Indian Oil Corporation Limited and other projects handled by FEDO, by Annexure D order. Later, in the year 2014, when Smt. B.K.Geetha, Chief Manager (Construction) was posted as RCCM (NIT Nagaland), the petitioner who was working as Chief Manager (Project) was given additional charge of Chief Manager (Construction), by Annexure E order. Thereafter, when Smt. B.K.Geetha RCCM (NIT Nagaland) applied for medical leave, during March 2015, and absented from duty, the petitioner who was holding the additional charge of Chief Manager (Construction) was asked to lead the team at NIT Nagaland site, which resulted in Exhibit P1 order of transfer. W.P.(C) No.13356 of 2015 14 15. In State of M.P. v. S.S. Kourav (1995 (3) SCC270 the Apex Court held that, "the Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by malafides or extraneous considerations without any factual background foundation." In Somesh Tiwari v. Union of India (2009 (2)

SCC592 the Apex Court held that, "an order of transfer passed on material which was non-existent not only suffers from total non-application of mind on the part of the authorities, but also suffers from malice in law." Following the aforesaid judgments of the Apex Court, a Division Bench of this Court (in which I was a party), in Gopinathan M and another v. State of Kerala and others (2014 (4) KLT285, a decision relied on by the learned counsel for the petitioner, held that "the order of transfer does not affect any legal rights of the employee and the Court or Tribunal cannot interfere with an order of transfer or posting, which is made in public interest or on administrative exigency. However, if the power of transfer is abused or the transfer is not made in public interest, but for collateral purposes and with oblique motive, the order would W.P.(C) No.13356 of 2015 15 stand vitiated, warranting interference of the Court or Tribunal. When an order of transfer is found to be one without any factual foundation or legal support, it is only a colourable exercise of power and such exercise of power cannot be sustained in the eye of law." 16. In the case on hand, the petitioner has no case in the writ petition that, Exhibit P1 order of transfer is vitiated by malafides. According to the petitioner, there is no administrative exigency in transferring him to NIT Nagaland site and that the alleged administrative exigency stated in Exhibit P1 order of transfer will not be met by transferring him to that site since the work undertaken is predominantly civil in nature. The fact that Smt. B.K.Geetha RCCM (NIT Nagaland) applied for medical leave during March 2015 and absented from duty is not in dispute. It was due to the absence of Smt. B.K.Geetha the petitioner who was holding additional charge of Chief Manager (Construction) was posted to NIT Nagaland site. Therefore, the contention of the learned counsel for the petitioner that there is no administrative exigency in transferring the petitioner can only be rejected.

17. As I have already noticed, in the year 2009 the petitioner was posted as Chief Manager (Construction). Later, W.P.(C) No.13356 of 2015 16 while continuing as Chief Manager (Project) the petitioner was holding additional charge of all projects undertaken by FEDO and also the Planning Section, on working arrangement, which continued even in the year 2014, as evident from Annexure D order. Thereafter, based on Annexure E order dated 8/11/2014 he was holding the charge of Chief Manager (Construction), a post which was occupied by Smt.

B.K.Geetha till her posting as RCCM (NIT Nagaland). In such circumstances, the petitioner, on his transfer to NIT Nagaland site based on Exhibit P1 order, cannot contend that, he being an Mechanical Engineer is not competent to supervise or monitor the project work at NIT Nagaland site, which is predominantly civil in nature.

18. The specific stand taken by the respondents in their statement is that, since the project at NIT Nagaland has been identified to be led by a team leader in the level of Chief Manager, the petitioner who being a senior Engineer was identified to be a part of the project team and accordingly, taking into consideration his merit in the field of engineering, Exhibit P1 order of transfer has been issued posting him to NIT Nagaland site until further orders or till Smt. B.K.Geetha resumes duty. In Annexure F reply dated 29/4/2015, it has been categorically W.P.(C) No.13356 of 2015 17 stated that, for leading the construction team at NIT Nagaland site an experienced Manager (Chief level) is a must. The additional documents produced as Exhibits P5 to P7 would not in any manner indicate that, the requirement at NIT Nagaland site is that of a Chief Manager with Civil Engineering. Further, the petitioner has also no case that, any Civil Engineer at Chief Managerial level is available at FEDO, for leading the construction team at NIT Nagaland site. Therefore, Exhibit P1 order of transfer is one issued on administrative exigencies and supported by factual foundation and the contention to the contra raised by the learned counsel for the petitioner can only be rejected. Further, there is nothing on record to infer that, Exhibit P1 order of transfer has been issued for any collateral purpose or with any oblique motive. The petitioner has also not made out any specific case in this regard, warranting interference of this Court.

19. In Gopinathan's case (supra), a decision relied on by the learned counsel for the petitioner, this Court was dealing with a case in which the materials on record indicate that, the order of transfer was issued without any factual foundation or legal support. It was held that, an order of transfer passed on materials which were non-existent not only suffers from total W.P.(C) No.13356 of 2015 18 non-application of mind, but also suffers from malice in law. Paragraph 13 of the judgment reads thus;

"3. In the case on hand, the materials on record clearly indicate that, Annexure-A1 order of transfer was issued without any factual foundation or legal support. Annexure- A1 order of transfer passed on materials which were non- existent not only suffers from total non-application of mind on the part of the 3rd respondent, but also suffers from malice in law. The said order is only a colourable exercise of power by the 3rd respondent. Similarly, the finding of the 2nd respondent in Annexure-A4 order that the transfer of the petitioners is essential to maintain the harmonious atmosphere of the school and to have a good educational environment is also without any factual foundation or legal support. Therefore, in our view, the Tribunal failed to take note of the above crucial aspects of the matter while passing Ext. P2 order." Therefore, the decision of this Court in Gopinathan's case (supra) was on an entirely different factual matrix and the principle laid down in the said judgment cannot be extended to a case like one on hand, in which the order of transfer is one issued on administrative exigencies and supported by factual foundation.

20. The learned counsel for the petitioner would contend that, it was without appreciating the real nature of the work involved at NIT Nagaland site, the petitioner is ordered to be W.P.(C) No.13356 of 2015 19 transferred to that site. The work at NIT Nagaland site being predominantly civil in nature require a person having competence in civil works and the petitioner being a Mechanical Engineer is not competent to take up the responsibility of the construction activity at that site. The specific contention taken by the respondents in their statement is that, FEDO has posted several engineers at NIT Nagaland site and that the functions of RCCM are mainly to lead and co-ordinate project site management activities, co-ordinating with clients/sub-contractors/consultants/ home office/local bodies, site administration, etc., to enable FEDO to achieve the targeted progress and that, for physical supervision of work at site and also for quality control, discipline wise Engineers are posted at site. Exhibits P5 to P7 communications/email are not sufficient to draw an inference that, the required number of engineers and other technical staff are not posted at NIT Nagaland site. As I have already noticed, as per the policy of FEDO, officers in the corporate cadre are expected to handle any assignment assigned to them from time to time. Further, the minimum qualification prescribed for Chief Manager (Project) in FEDO is degree in Engineering and

hence, the policy envisages a Mechanical Engineer also to lead/head W.P.(C) No.13356 of 2015 20 projects of any nature as Chief Manager. When the specific case of the respondents is that, the petitioner was deputed to NIT Nagaland site taking into account his calibre in the field of engineering and that he is a suitable and capable person for that assignment, the contention of the learned counsel for the petitioner that, it was without appreciating the real nature of work the petitioner was transferred to NIT Nagaland site can only be rejected.

21. In State Bank of India v. Anjan Sanyal and others (2001 (5) SCC508, a decision relied on by the learned Standing Counsel for the respondents, the Apex Court held that, "an order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is malafide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order." 22. In the case on hand, it is not in dispute that, going by the terms and conditions of Annexure A order of appointment the petitioner is liable to serve the company anywhere in India or W.P.(C) No.13356 of 2015 21 abroad and he is also liable to serve in any other Public Sector Undertaking, when directed by FACT. The petitioner could not make out a case warranting interference on Exhibit P1 order of transfer. When Exhibit P1 order was issued on administrative exigencies, the petitioner who has attained the age of 55 years, cannot contend that he cannot be sent to far away places, at the fag end of his career. Further, the posting of the petitioner is not of a permanent nature and it was in consequence to the absence of Smt. B.K.Geetha, RCCM (NIT Nagaland), until further orders or till she rejoins duty.

23. In the result, I find absolutely no grounds to interfere with Exhibit P1 order of transfer. The petitioner is not entitled for any of the reliefs prayed for. The writ petition fails and the same is dismissed. No order as to costs. Sd/- ANIL K. NARENDRAN, JUDGE dsn

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