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LEGITIMATE EXPECTATION IN TRANSFERS; TRANSFER DISPUTES AND ADMINISTRATIVE POLICIES

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I. Introduction

The scope of judicial review under Article 226 concerning transfer orders has long been debated. Initially, uncertainty prevailed over whether courts could intervene in administrative decisions regarding transfers. However, this issue has now been conclusively settled. The Supreme Court of India, in *Pubi Lombi v. State of Arunachal Pradesh*,⁴¹⁸ reaffirmed the established legal position by relying on key precedents that shaped the jurisprudence on transfer orders.

Transfer orders fall within the domain of administrative discretion, serving organizational efficiency and governance. Courts have traditionally refrained from interfering in such decisions unless they violate constitutional rights, statutory provisions, or principles of natural justice. Judicial review under Article 226 is limited in scope and applies only when a transfer order is arbitrary, mala fide, or contrary to established legal principles.



⁴¹⁸ 2024 SCC OnLine SC 279

In *Pubi Lombi v. State of Arunachal Pradesh*, the Supreme Court clarified that judicial review of transfer orders should not become a routine intervention. This aligns with the precedent set in *Union of India v. S.L. Abbas*,⁴¹⁹ where the court ruled that transfers should not be challenged unless clear evidence of illegality or bad faith exists.

Several landmark judgments have contributed to defining the legal framework for transfer orders. *Union of India v. N.P. Thomas*,⁴²⁰ reinforced the principle that courts should be cautious in reviewing administrative transfers unless statutory violations occur. *N.K. Singh v. Union of India*,⁴²¹ clarified that personal inconvenience or preference is not a valid ground for challenging a transfer order.

In *Mohd. Masood Ahmad v. State of U.P.*,⁴²² the Supreme Court emphasized that judicial review should only be exercised when a transfer violates service rules or involves mala fide intent. Similarly, *State of Punjab v. Joginder Singh Dhatt*,⁴²³ established that procedural irregularities in transfers may warrant intervention, but courts should otherwise refrain from interference.

The ruling in *Ratnagiri Gas and Power Private Limited v. RDS Projects Limited*,⁴²⁴ underscored the need for prioritizing public interest and organizational efficiency over individual grievances. Together, these precedents reinforce that judicial scrutiny of transfer orders must be based on clear violations rather than subjective discontent.

The *Pubi Lombi* judgment further solidifies the principle that transfer matters remain within the purview of executive discretion. By reaffirming existing precedents, the court ensures consistency in judicial decisions regarding transfers, preventing unnecessary litigation. The judgment clarifies that while judicial review is

permissible, it is strictly limited to instances of legal violations, ensuring administrative efficiency remains intact.

The Apex Court identified the following four essential criteria for judicial review of transfer orders: (i) pleadings regarding mala-fide, (ii) non-joining the person against whom allegations are made, (iii) violation of any statutory provision, and (iv) the transfer being demonstrably detrimental to the employee holding a transferable post.

Does the right to transfer constitute a fundamental right? In the case of *SK Nausad Rahaman & Ors. Versus Union of India and Ors.*,⁴²⁵ while addressing the matter of transfers within the All India Services, the Apex Court held that an employee does not possess a fundamental or vested right to claim a transfer.

One crucial point of law that remains unresolved, despite numerous judgments, is whether a transfer order can be challenged under writ jurisdiction on the grounds of violating the state's transfer policy, as the government's policy invokes legitimate expectations among employees.

II. Judicial Checks on Government Policies

In the case of *Jitendra Singh v. State of U.P. and others*,⁴²⁶ the division bench of Allahabad High Court while relying upon case of Apex Court *A.L. Kalra v. Project and Equipment Corporation of India Ltd.*,⁴²⁷ was of view that if there exist Government order or transfer policy of state then there exist a 'Legitimate expectation' of employee to receive the advantages from such policy or orders. Thus, A Government Order holds binding authority over the entity that issued it and that derives benefits from its implementation. However, the concept of legitimate expectation, borrowed from *A.L. Kalra*, originally pertained to an employee's removal from service.

⁴¹⁹ (1993) 4 SCC 357

⁴²⁰ 1993 Supp (1) SCC 704

⁴²¹ (1994) 6 SCC 98

⁴²² (2007) 8 SCC 150

⁴²³ (1990) 2 SCC 661

⁴²⁴ (2013) 1 SCC 524

⁴²⁵ Civil Appeal No. 1243 of 2022

⁴²⁶ 2024 (8) ADJ 769 (DB)

⁴²⁷ (1984) 3 SCC 316

In *Home Secretary, U.T. Chandigarh v. Darshjit Singh Grewal*,⁴²⁸ the Supreme Court ruled that administrative policy guidelines, once established and communicated, become binding on the administration. Although the administration has the authority to amend policies, it must comply with existing guidelines until they are officially revised. This judgment underscores the principle that administrative actions must conform to declared policies to uphold principles of consistency and fairness.

In this case, the Supreme Court addressed the issue of migration of students between engineering colleges affiliated with Punjab University. The case involved students who had secured admission under the management quota in private colleges but later sought transfer to centrally located institutions like Chandigarh Engineering College.

The Court ruled that migration policies must be strictly followed, emphasizing that transfers should not be granted arbitrarily, especially when students had secured admission with lower marks. It held that academic integrity and merit-based admissions must be upheld, preventing misuse of the transfer system.

By reinforcing fair admission practices, the judgment ensured that students admitted under lower criteria could not bypass merit-based selection through migration. This ruling set a precedent for regulating student transfers in higher education, maintaining transparency and fairness in academic institutions.

In *Deepa Vashishtha v. State of U.P.*,⁴²⁹ the Allahabad High Court addressed the issue of government employee transfers, particularly in cases where both spouses are in government service. The petitioner, Smt. Deepa Vashishtha, a lecturer in Vocal Music, challenged her transfer from Rampur to Ranikhet, arguing that it violated established guidelines preventing the transfer of spouses working at the same station.

The court acknowledged that transfers are a routine aspect of government service, but emphasized that they must comply with existing policies designed to protect employees and their families. It noted that arbitrary transfers causing undue hardship should be reconsidered, especially when guidelines discourage separating spouses.

The court directed the authorities to reconsider the transfer order within 15 days, ensuring adherence to established protocols. This ruling reinforced the principle that government transfers must align with policy objectives, balancing administrative efficiency with employee welfare.

III. Concept of Legitimate Expectation

The doctrine of legitimate expectation arises when an authority's representations or consistent practices create a reasonable anticipation of certain actions. Judicial review is confined to ensuring fairness within these limits. The claimant must demonstrate a valid foundation for the expectation and establish their locus standi to challenge the administrative action.⁴³⁰ The doctrine of legitimate expectation was introduced by Lord Denning in *Schmidt v. Secretary of State for Home Affairs*⁴³¹ to review public authority actions. It works alongside principles like fairness, non-arbitrariness, and proportionality to prevent the misuse of power and ensure justice.⁴³²

An individual may reasonably anticipate specific treatment from an administrative authority, even without a legal right. This expectation stems from explicit or implied representations, promises, or established practices, provided the authority has consistently upheld such actions in the past.

⁴³⁰ DOCTRINE OF "LEGITIMATE EXPECTATION", by A. K. Srivastava Deputy Director, JTRIUP; J.T.R.I. JOURNAL – First Year, Issue 2, April – June, 1995

⁴³¹ (1969) 1 ALL ER 904 (CA),

⁴³² THE DOCTRINE OF LEGITIMATE EXPECTATION: FROM DEVELOPMENT IN ENGLAND TO INDIAN SCENARIO; by Foram R. Patel and Rishin Patel; ILJ Law Review, Winter Issue 2021

⁴²⁸ JT 1993 (4) SC 387

⁴²⁹ 1995 SCC OnLine All 897

Judicial review ensures fairness within these boundaries.⁴³³

In the case of *U.P. Awas Evam Vikas Parishad v. Gyan Devi*,⁴³⁴ the Apex Court held that an individual must be heard if an order has civil consequences, even without an enforceable right. The doctrine of legitimate expectation applies when a public authority's actions affect or are likely to affect someone, creating a reasonable anticipation of fair treatment in administrative decisions. Judicial review ensures fairness.

The case of *R v. North and East Devon Health Authority, Ex parte Coughlan*,⁴³⁵ is a landmark example of substantive legitimate expectation in administrative law. Miss Coughlan, a disabled individual, was promised permanent residence at Mardon House, a facility suited to her needs. However, the Health Authority closed the facility due to financial constraints, offering no viable alternative. The Court of Appeal ruled in her favor, stating that her legitimate expectation had been breached. Promises must be honored unless compelling public interest justifies otherwise, highlighting the balance between administrative discretion and protecting individual rights in such cases.

The case *Regina v. Commissioners of Inland Revenue, ex parte Unilever plc*⁴³⁶, highlights how legitimate expectation shapes administrative law. Over the years, Unilever's late tax relief claims were accepted by the Inland Revenue, forming a consistent practice. Later, the Revenue rejected similar claims on procedural grounds, breaking this pattern. The court deemed the sudden policy shift unfair as it contradicted the legitimate expectations Unilever had developed from prior actions. Ruling in Unilever's favour, the court emphasized that administrative authorities must ensure fairness and consistency, balancing procedural

rules with equitable treatment when prior conduct has created reasonable expectations.

State Transfer Policy: Without Statutory Backing

The Supreme Court, in the majority of its judgments, has held that state policies lack statutory authority and are unenforceable. As per various court decisions, the sole remedy available to state employees against arbitrary decisions violating such policies is to represent their case before higher departmental officials. This principle is rooted in the understanding that courts should not encroach upon administrative functions and powers. Judicial decisions in support of statements are as follows;

In *Shilpi Bose (Mrs) and Others v. State of Bihar and Others*⁴³⁷ The Supreme Court ruled that transfer orders issued by competent authorities should not be interfered with by courts unless they are mala fide or in violation of statutory provisions. The case involved lady teachers in Bihar who were transferred to locations where their husbands were posted. The High Court had set aside these transfers, but the Supreme Court overturned this decision, holding that transfers made to accommodate employees and reduce hardship are valid if issued by a competent authority.

In the *State of U.P. and others v. Gobardhan Lal*⁴³⁸, the court held that administrative guidelines for transfers allow officers to seek redress from higher authorities. However, they do not restrict competent authorities from transferring individuals when public interest or service exigencies demand it, provided no adverse impact occurs on their official status, seniority, pay scale, or career prospects. Transfer orders violating administrative guidelines cannot be challenged unless they involve mala fides or breach statutory provisions, as administrative guidelines lack enforceable rights.

⁴³³ Halsbury's Laws of England Vol. I (1) 4th Edition para 81 at page 151-152.

⁴³⁴ (1995) 2 SCC 326

⁴³⁵ [1999] EWCA Civ 1871

⁴³⁶ [1996] S.T.C. 681

⁴³⁷ 1991 Supp (2) SCC 659

⁴³⁸ (2004) 11 SCC 402

In the case of *Rajendra Singh and Others v. State of U.P. and Others*,⁴³⁹ a Division Bench of the Apex Court held that a transfer order can be challenged only if it is actuated by mala fides or violates statutory rules. In the case of *Attorney General for New South Wales v. Quin*,⁴⁴⁰ the Australian high court observed that the court cannot usurp jurisdiction to review an administrative act or decision that is unreasonable in the opinion of the court.

IV. Conclusion

Administrative guidelines and transfer policies play a vital role in ensuring fairness and consistency in governance, particularly in matters related to public service transfers. These policies provide a structured framework for decision-making, preventing arbitrary actions by authorities. However, courts have consistently held that such guidelines lack statutory authority, meaning they do not carry the force of law unless explicitly codified within legislation. Despite this, the doctrine of legitimate expectation serves as an essential legal principle, allowing individuals to seek judicial remedies when administrative policies are allegedly violated.

In the case of *Arun Kumar Srivastava v. State of UP and 4 Others*,⁴⁴¹ the Allahabad High Court examined whether transfer policies could be challenged under the doctrine of legitimate expectation before the Writ jurisdiction of the High Court. A learned single judge referred the matter to a division bench, recognizing the complexity of the issue and the need for a broader judicial interpretation. The case remains sub judice, meaning it is still under judicial consideration, and the final ruling will likely clarify the extent to which government employees can invoke legitimate expectation in transfer-related disputes.

This case highlights the tension between administrative discretion and judicial oversight, particularly in matters affecting public servants'

rights and expectations. While transfer policies aim to streamline governance, their inconsistent application can lead to legal challenges, prompting courts to intervene when fairness is compromised. The forthcoming decision by the division bench will be crucial in determining whether employees can rely on legitimate expectation to contest transfer orders, potentially shaping future jurisprudence on administrative fairness.

⁴³⁹ (2009) 15 SCC 178

⁴⁴⁰ (1990) 170 CLR 1

⁴⁴¹ WRIT - A No. - 14511 of 2024