

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1828 of 2019

Plaintiff: Muhammad Azam Khan
Through Mr. Muhammad Kamran Bhutta
Advocate.

Defendants: M/s. P.I.A. Corporation Ltd. & another
Through Mr. Muhammad Asghar Malik,
Advocate along with Mr Fayyaz Masoomi,
Manager Legal, PIA.

For hearing of CMA No. 14079/2019.

Date of hearing: 04.02.2020.

Date of order: 04.02.2020.

ORDER

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration. Injunction and Damages and through listed application the Plaintiff seeks interim injunction against the Defendants to maintain status quo and not to release the Plaintiff from Karachi for joining at Islamabad station.

2. Learned Counsel for the Plaintiff submits that the Plaintiff is an employee of the Defendants and serving in Group-VII and is aggrieved by the Transfer Letter dated 11.10.2019 whereby, he has been transferred from Karachi station to Islamabad; that the said letter is against the Personnel Policies Manual including Chapter 40.23.01 as the transfers are banned; that the Plaintiff has been victimized and discriminated inasmuch as the Plaintiff's brother who is a retired employee of the Defendant, is presently the President of the Union i.e. Air League and because of some Press Conference conducted by him against the Management of Defendants, the Plaintiff has been transferred through impugned order; that the Defendants have not

controverted the stance of the Plaintiff regarding the imposition of ban of transfers; that even otherwise, after the transfer letter, an application on compassionate ground was filed with the Defendants to recall it; but the same has not been decided as yet; that other employees who have been transferred to Islamabad Station have been given one-step promotion, whereas, the Plaintiff has not been given similar treatment and if such one step promotion is given, he will be willing to join the Islamabad station; that earlier on 12.06.2019 the Defendants had written letter to all employees seeking consent for their transfer to Islamabad and after the Plaintiff refused to give any consent, as a penalty he has been transferred; that pending this application a Show Cause Notice was issued for remaining absent from duty and on 13.12.2019 an interim order was passed, whereas, salary has also been stopped; therefore, the listed application be allowed and the relief sought be given to the Plaintiff.

3. On the other hand, learned Counsel for the Defendants submits that compassionate grounds as provided in the Manual do not apply to the Plaintiff as he is in Group-VII and falls in Officer grade; that there is no ban on transfers as it pertains to some other category of employees; that in terms of Chapter 40.02 and 03 the employee can be transferred anywhere in Pakistan and there is no ground to oppose such transfer, whereas, in case of failure to attend the office, proceedings can be initiated and therefore, a Show Cause Notice has been issued; that around 70% of the flight operations is now originating from Islamabad, therefore, necessary transfers have been made in the interest of PIA; that the contention of the Plaintiff that other transferees have been given one step-promotion is incorrect and misconceived; that even medical grounds raised by the Plaintiff in his application filed with

the Department merits no consideration as the Medical Board constituted for him has given adverse findings; that he has failed to perform his duties; hence, not entitled for any salary; that there is no malafide or discrimination which could be attributed against the Defendants as it is a routine transfer; that 50 to 60% cabin crew has also been transferred and all have obeyed the transfer orders; that if the Plaintiff is otherwise, entitled for any promotion the same would be considered in accordance with the prevailing rules.

4. I have heard both the learned Counsel and perused the record. It appears that the Plaintiff is admittedly now working in Group-VII in Defendants as a permanent employee and pursuant to the impugned letter dated 11.10.2019 he stands transferred from Karachi station to Islamabad. Admittedly, the Plaintiff failed to join the new station and filed instant Suit on 24.10.2019. It is further case of the Plaintiff that an application was also filed for recalling of the transfer order on compassionate grounds which has not been considered or decided. It is further case of the Plaintiff that on 12.06.2019 a statement of willingness for transfer to Islamabad was issued by the Defendants and all employees were asked to give their consent and since Plaintiff did not give his consent; he has been penalized through the impugned transfer letter. Insofar as the first contention regarding compassionate ground is concerned, Chapter 40.03 of the Personnel Policy Manual deals with such transfers within Pakistan and it is the case of the Defendants that the Plaintiff does not fall in the category of staff as defined in Chapter 2 Clause 7 which reads as under: -

“7. Classification of employees. The permanent employees shall be classified under the following categories:

Officers	Covering all classes of employees from pay group V and above, including employees in special pay groups.
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Staff Covering all classes of employees in pay group I to IV.”

5. Perusal of the above classification of the employees reflects that insofar as the Plaintiff is concerned, he falls in the category of *Officers* as admittedly, he is in Pay Group VII, whereas, the question of considering his application on compassionate grounds and to retain him at Karachi station is not applicable. The same applies only to *Staff* category as defined above and not to the *Officer* category.

6. Insofar as the arguments of the Plaintiff's Counsel that there is a ban on transfer / promotion pursuant to Chapter 40.23.01 as notified vide Circler dated 13.06.2011, again the same is misconceived inasmuch as firstly it is of the year 2011 and cannot remain in field for all times to come. Secondly, the ban is only to the extent that it cannot be done without clear vacancy posting as per HRB (Human Resource Board) of the station. Since, as contended, that due to shift of major flight operations to Islamabad, the need of prior determination of vacancy is not relevant. Moreover, the said ban at the relevant time, was in fact to control unnecessary transfers without vacancy and to take favors of transfers by the employees from the management, as it was a burden on the Corporation. It is not, that if there is any requirement of an employee at a particular station, the same could not be done and for each such transfer the employee has to be first provided with the requirement of HRB as mentioned in Chapter 40.23.01. Such an interpretation would be absurd and does not appeal to a prudent mind. Nonetheless, it is the decision of the management and the Courts are always reluctant in interfering in such matters of policy; as it is for the management to run the Corporation and not the Court. Moreover, it has been clearly provided in Chapter 40.01 and 02

that any employee can be transferred anywhere within or outside Pakistan. The said provision reads as under: -

40.01.01	Every employee shall be liable for transfer anywhere within or outside Pakistan in any office, establishment or station of the Corporation; provided that employees in Pay Group I and II if transferred from one station to another may be paid such transfer grant as may, from time to time, be determined and allowed by the Competent Authority.
40.01.02	An employee who, within the specified time, fails to comply with the transfer order shall be liable to such disciplinary action as the Competent Authority may deem fit in the circumstances of each case.

7. Similarly, the Chapter 40.03.03 reads as under: -

40.03.03	<p><u>Transfer from Domestic Stations to Karachi</u></p> <p>All employees in Pay Group III and IV at domestic stations will be considered for transfer and posting to Karachi after completing tenure of 5 years and above. As a rule, every employee at domestic stations will be considered for posting back to Karachi after completing or having completed 5 years' tenure. The order of merit for transfer from domestic stations to Karachi will be, higher the number of years of posting, earlier the transfer and release from the station. Employees who are due for retirement in the next 3 years will, however, be left over to complete the service till superannuation.</p>
40.03.04	Any employees who does not report for duty within 30 days of the receipt of transfer order will be treated as absent from duty. He will not be paid salary at the station. The competent authority may decide to institute proceedings against him as per rules. His replacement, however, will report for duty according to his transfer order.

8. From perusal of the aforesaid provisions of the Manual which is an admitted document and has been relied upon by the Plaintiff himself, I am of the view that no case for any indulgence is made out by the Plaintiff as the transfer is to be regulated on the basis of the Manual in question and apparently, the employee who has agreed to the terms

and conditions of his employment can be transferred. It is not a right of an employee to seek posting at one place of his choice, as at the time of getting such employment he has agreed for posting anywhere in Pakistan; hence, on this premise he is precluded from raising any such objection. In somewhat similar circumstances the Hon'ble Supreme Court in the case reported as ***Tariq Iqbal v D.G. Military Land and Cantonment (2018 SCMR 335)*** has not appreciated such challenge by the employees of Cantonment Board and similar facts are found in this case. Insofar as the argument that 73 other employees have been transferred and given one step-promotion, Counsel was confronted as to from where such an inference is being drawn, however, he has failed to bring on record or refer to any such document nor it has been mentioned or described in the pleadings; therefore, the Defendants could not be confronted on this issue at this stage of the proceedings. Moreover, a categorical denial has been made by the Defendant's Counsel to that effect.

9. In view of hereinabove facts and circumstances of the case I am of the view that the Plaintiff does not have any prima facie case and balance of convenience also does not lie in his favour, whereas, no irreparable loss or injury would be caused, in the injunctive relief is withheld. In view of hereinabove facts and circumstances of this case, listed application was dismissed by means of a short order in the earlier part of the day and above are the reasons thereof.

J U D G E

ARSHAD/