

A COMPREHENSIVE STUDY GUIDE ON THE LAW OF TRANSFER IN PUBLIC SERVICE

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I. The Foundational Principles of Employee Transfer

Understanding the complex legal framework that governs employee transfers in public service begins with grasping the fundamental nature of the concept itself. In relation to service, a "transfer" is simply a change of an employee's place of employment within an organization. It is an inherent and accepted feature of public service, and this foundational principle shapes the entire legal doctrine surrounding it.

The Legal Meaning of Transfer

Service rules often provide a precise legal definition of transfer. For instance, Supplementary Rule 2(18) of the Fundamental Rules, which governs Central Government servants, defines transfer as the movement of an employee from one headquarters station to another, either to take up a new post or as a consequence of a change in their headquarters.

This definition carries a critical distinction, as explained by Jagannatha Shetty, J in **UM Anigol v State of Mysore** while interpreting the nearly identical Rule 8(19) of the Mysore Civil Services Rules. An employee is only considered "transferred" when they are posted to a location *outside* their former

headquarters. A simple change of post within the same headquarters does not legally constitute a transfer.

An Incident of Public Service

The core legal principle is that transfer is an "incident of public service." This means it is a normal, expected feature of the employment relationship between the state and its employees. Consequently, an employee's consent is generally not required for a valid transfer order. While the Bombay High Court in **Seshrao Nagorao Umap v State of Maharashtra** described transfer as an "implied condition of service," the Supreme Court in **B Varadha Rao v State of Karnataka** clarified that "incident of service" is the more precise terminology. The term "incident" connotes an "inbuilt component" of the total concept of public service. This legal construction is the basis for negating the requirement of consent; a person is presumed to have accepted this reality upon joining public service with the knowledge that transfer is an established feature. This doctrine has been firmly established through several landmark judicial pronouncements:

- In **B Varadha Rao v State of Karnataka**, the Supreme Court affirmed that transfer is a normal feature and incident of Government service. It held that no employee has a vested right to remain in a particular post unless their appointment is to a specified, non-transferable post.
- The Court reiterated this in **Rajendra Singh v State of UP**, stating that transfer is implicit as an essential condition of service and a government servant has no vested right to be posted at a place of their choice.

- However, the power is not absolute. In ***TSR Subramanian v UOI***, the Supreme Court observed that frequent and arbitrary transfers, often driven by political considerations, are "deleterious to good governance" and contrary to the public interest.

It is also vital to distinguish a transfer *simpliciter*—which is a routine posting to a similar post within the same cadre—from "recruitment by transfer." The latter is a distinct mode of selection and recruitment to a service, which results in the employee losing their lien (the right to hold a post) in their previous position.

This understanding of what constitutes a transfer sets the stage for distinguishing it from the related but legally distinct concept of deputation.

II. Distinguishing Transfer from Deputation

While both transfer and deputation involve the movement of an employee, it is strategically important for both employers and employees to understand their fundamental differences. The legal basis for each, the implications for an employee's service conditions, and, most critically, the requirement of consent, are entirely distinct. The key distinctions, articulated by D.A. Desai, J in the ***Bhagwati Prasad case*** and further clarified in ***Parasha Rani v State of Madhya Pradesh***, are summarized below.

Basis of Distinction	Transfer	Deputation

Scope of Movement	Movement to an equivalent post within the same parent department and cadre.	Service outside the parent department or cadre, often for a temporary duration.
Requirement of Consent	Not generally required, as it is an incident of service.	Consent of the employee is essential, as they are being moved outside their home organization.
Nature of Post	Must be an equivalent post in terms of status and responsibility.	The post may not be equivalent, and the employee continues to look to their parent cadre for promotion and confirmation.
Source of Power	An inherent power of the employer, rooted in the implied conditions of public service.	Arises from a tripartite agreement between the lending employer, the borrowing employer, and the employee.

The Critical Role of Consent

The general rule is that an employee's consent is not necessary for a transfer within their cadre. However, this rule is not absolute. Consent becomes mandatory in specific circumstances, most notably when the movement is from one employer to another. The Supreme Court in **Jawaharlal Nehru University v KS Jawalkar** made it clear that no employee can be transferred without their consent from one employer to another. This principle also extends to transfers from one service cadre to another.

Having defined transfer and distinguished it from deputation, we now turn to the legal source and scope of the employer's authority to effect a transfer.

III. The Legal Basis and Scope of the Power to Transfer

The power to transfer is considered an inherent authority of the state as an employer. It is so fundamental to the management of public service that it is regarded as an "implied condition of service," meaning it exists even in the absence of explicit rules or contractual terms to that effect. This implied power is the primary legal justification for why employee consent is generally not a prerequisite for a transfer.

The Implied Power to Transfer

The Supreme Court and various High Courts have consistently held that the power to transfer exists even without express service rules because it is an "incident of Government service." In the case of **B Varadha Rao v State of Karnataka**, the Supreme Court established that this power is an inbuilt component of the concept of public service. Because a person joins public service with the knowledge that transfer is an established feature, the need for their consent is negated.

Limitations on the Extent of Power

While the *existence* of the power is rarely in doubt, its *extent* can be limited by the employee's terms of appointment. The principle, articulated in **SK Srivastava v UOI**, is that the range of transferability depends on the nature of the recruitment. If a person is recruited for a specific, singular post and not to a service cadre, their transferability is restricted.

This is illustrated in the case of **Prem Behari Lal Saxena**, where an individual was recruited specifically for the post of Anesthetist in a state hospital in Kanpur. When the government attempted to transfer him to a hospital in Varanasi, the court sustained his challenge. It found that his appointment was to an individual post attached to a specific hospital, not to a state-wide cadre, and therefore the normal implied liability to transfer could not be inferred.

The Exercise of Power

It is crucial to differentiate between the *existence* of the power to transfer and the propriety of its *exercise*. The competent authority to exercise this power is typically the employer. However, exceptional circumstances exist, such as the power of the Election Commission under Article 324 of the Constitution to transfer officials to ensure free and fair elections.

The existence of this inherent power is not a license for its arbitrary use. Its exercise is strictly governed by legal rules and the doctrine of *bona fides*.

IV. The Doctrine of *Bona Fide* Exercise of Power

While the power to transfer is broad, it is not absolute. Administrative law demands that this power, like any other, be exercised *bona fide*—that is, fairly, reasonably, and for genuine administrative needs. It cannot be used for extraneous, irrelevant, or malicious reasons. An order that fails this test is considered a *mala fide* or colorable exercise of power and is liable to be invalidated by the courts.

Malice in Law and Malice in Fact

Mala fides in this context has two components:

1. **Malice in Fact:** This involves personal ill-will, spite, or a corrupt motive on the part of the authority issuing the order.

2. **Malice in Law (Colorable Exercise of Power):** This is a broader concept and does not require personal animosity. As explained by Krishna Iyer, J in ***State of Punjab v Gurdial Singh***, an action is invalidated by legal malice when power is used for a purpose other than the one for which it was entrusted. The action is deemed a "fraud on power" if it is driven by considerations foreign to the scope of that power.

Exigencies of Administration: The Justifying Principle

The primary justification for any transfer is the "exigencies of administration"—the needs and demands of running a good and efficient public service. The government is generally considered the best judge of these needs (***KB Shukla v UOI***). However, this determination is not beyond judicial scrutiny.

- **Valid Exigency:** In ***TD Subramaniam v UOI***, the Supreme Court upheld the transfer of a competent officer who was found to lack tact in managing his staff. The Court reasoned that the ability to handle staff is crucial for good administration, and the transfer was therefore in the exigencies of service.

- **Invalid Exigency:** In contrast, Umesh Chandra Banerjee, J in ***SV Singh v UOI***, criticized a decision to transfer only one of two officers who were constantly at odds. He observed that removing one person while allowing the other to continue is not a fair solution and cannot be termed a valid administrative action.

Grounds for Invalidating a Transfer Order

A transfer order can be invalidated if it is found to be a *mala fide* or colorable exercise of power. Key grounds for such a challenge include:

- **Acting at the Instance of an Incompetent Authority:** The competent authority must apply its own mind and cannot abdicate its function by acting at the behest of an external or unauthorized party, such as a politician. In ***Achyutananda Behera v State of Orissa***, a transfer made at the "prodding of the legislator" was struck down because the administrator had failed to apply his own mind.
- **Punitive and Stigmatic Transfer:** Using a transfer as a cloak for punishment is illegal. As observed by Lord Denning in ***Merrick v Nott-Bower***, the range of punishments does not include transfer. If an employee is suspected of misconduct, the proper course is to initiate disciplinary proceedings. The Supreme Court has applied this principle in cases like ***Syndicate Bank Ltd. v Workmen*** and ***State of UP v Jagdeo Singh***.
- **Transfer to Accommodate Another Person:** It is well-settled that transferring one employee simply to make way for another is a *mala fide* exercise of power. The Bombay High Court affirmed this in ***Seshrao Nagorao Umap v State of Maharashtra***, where an exemplary medical officer was transferred to accommodate another who wanted a posting near his private nursing home.
- **Transfer by an Incompetent Authority:** The order must be issued by the authority legally empowered to do so. An order made by an unauthorized officer is void from the outset.

- **Transfer Outside Cadre:** Transferring an employee to a different service cadre is generally impermissible. As explained in *Prem Parveen v UOI*, such a transfer can be highly prejudicial, as it can negatively impact an employee's seniority, rank, and promotional prospects by placing them at the bottom of a new seniority list.

- **Breach of Statutory Provisions:** It is an axiomatic rule that a transfer made in violation of a mandatory statutory provision or rule is illegal. The Supreme Court confirmed this in *Rajendra Roy v UOI*.

These limitations highlight that the power to transfer, while essential, must be exercised within a strict legal and ethical framework, ensuring it does not unfairly prejudice the employee's service conditions.

V. Impact of Transfer on Employee Status, Seniority, and Personal Life

A fundamental principle governing transfers is that a valid order should not fundamentally alter or prejudice an employee's status, seniority, or other core conditions of service without a clear legal basis. Any transfer that has such a negative effect is vulnerable to legal challenge.

Protection of Status

A transfer must not result in the extinguishment of an employee's status as a civil servant. In *The State of Mysore v H Papanna Gowda*, the Supreme Court held that transferring a government servant to a body corporate, such as a university, was invalid. The Court reasoned that such a move effectively terminated their status as a civil servant, which would amount to removal from a civil post in contravention of Article 311 of the Constitution.

Transfer to an Equivalent Post

An employee must be transferred to an equivalent post. In ***Vice Chancellor Lalit Narain, Mithila University v Dayanand Jha***, the Supreme Court clarified that equivalence is not determined merely by pay scale. The true criterion is the **status, nature, and responsibility of the duties** attached to the post. The Court set aside an order transferring a college Principal to the post of a Reader, noting that even though the pay scale was the same, the post of Principal carried significantly higher duties, responsibilities, and statutory rights.

Impact on Seniority

The effect of a transfer on seniority is a complex issue governed by specific rules:

- **Transfer in Public Interest:** The general rule is that when an employee is transferred in the public interest to a similar post within the same cadre, the transfer does not wipe out their prior length of service. This period must be counted for computing their seniority in the new post.
- **Transfer at Employee's Own Request:** The rule is different when a transfer is made at the employee's own request. In such cases, the employee typically forfeits their past service for seniority purposes and is placed at the bottom of the seniority list in the new cadre.

Relevance of Personal Hardship

While courts acknowledge that transfers can cause significant personal hardship, the prevailing judicial opinion is that hardship alone is usually not a sufficient ground to strike down a transfer order. However, it is considered a relevant factor for the administration.

In cases like **Rajendra Roy v UOI**, courts often refrain from quashing the order but direct the employee to make a representation to the competent authority regarding their hardship. This implies an expectation that the administration will consider these factors reasonably. Common hardships cited, such as the disruption of children's education during a mid-academic term, are expected to be given due weight by the authorities, especially if the administrative exigencies are not urgent.

The legal recourse available to an employee who believes their transfer order is unjust or illegal is judicial review.

VI. Judicial Review of Transfer Orders

There is a common perception that courts have very limited power to interfere with transfer orders. While it is true that courts are generally reluctant to intervene in what is considered a managerial function, judicial review is available on specific and judicially manageable grounds. The court's role is not to act as an appellate authority over administrative decisions but to ensure that the power to transfer is exercised lawfully.

As Khalid, J powerfully observed in **P Pushpakaran v The Chairman, Coir Board**, when alerted to a potential injustice, the court can and should "tear the veil of deceptive innocuousness" of a transfer order to find the real motive behind it.

Grounds for Judicial Review

The scope and limitations of judicial review in transfer cases have been extensively clarified by the judiciary. The Calcutta High Court, in **Bank of India**

Staff Union v Bank of India, provided a useful analytical summary of the prevailing principles, which establishes the following grounds:

1. **Foundational Principle of Non-Interference:** The starting point is that an order of transfer is an incident of government service. The decision of who should be transferred and where is a matter for the appropriate authority. Consequently, a court will not interfere unless the order is vitiated by *mala fides* or is made in violation of a binding statutory provision.

2. **High Evidentiary Burden for Proving Malice:** Allegations of *mala fides* must be proven with a high degree of certainty. A claim of malice in fact requires a "firm foundation of facts" and cannot be sustained on the basis of mere insinuation or vague suggestions.

3. **Absence of Judicially Manageable Standards:** Courts recognize their lack of expertise in personnel management. The assessment of an employee's suitability for a particular post involves many imponderables and requires a subjective opinion. As such, there are no "judicially manageable standards" for scrutinizing the administrative wisdom of every transfer. This function is left to the departmental heads.

4. **Review Limited to Mala Fides or Infraction of Norms:** While the assessment of suitability is a subjective decision for hierarchical superiors, it is not entirely beyond review. Judicial scrutiny is permissible, but it is limited to determining if the decision was vitiated by *mala fides* or if it constituted an infraction of a "professed norm or principle" that governs transfers.

5. Preservation of Service Conditions as a Factor: A key consideration for the courts is whether the transfer adversely affects the employee's career prospects and service conditions. Judicial interference is rare, and must be eschewed, in cases where these factors remain unaffected and there is no other judicially permissible ground for challenge.

Procedural Expectations and Locus Standi

Before seeking judicial remedy, there are procedural expectations. In **SC Saxena v UOI**, the Supreme Court noted that a government servant should first comply with the transfer order by reporting to their new post and then ventilate their grievances. It is their duty to first report for work and then make a representation regarding their personal problems.

Furthermore, a legal challenge must be brought by the proper party. The principle of **locus standi** requires that, generally, only the transferred employee themselves has the right to challenge the transfer order, as established in **K Ashok Reddy v Govt of India**.

Ultimately, if a transfer order is found to be valid, an employee has a clear duty to comply.

VII. Compliance and Consequences of Non-Compliance

A valid transfer order is a lawful directive from the employer, and compliance is mandatory. A public servant cannot refuse to obey an order simply because they find it inconvenient or have submitted a representation against it.

In **Gujarat Electricity Board v Atmaram Sungomal Posbani**, the Supreme Court stated unequivocally that a public servant must comply with a transfer

order unless it is stayed, modified, or cancelled by a competent authority. The act of making a representation does not automatically operate as a stay on the order.

Consequences of Non-Compliance

Failure to comply with a valid transfer order can have serious consequences. An employee who does not report to their new posting exposes themselves to disciplinary action for disobedience of lawful orders. This can range from minor penalties to severe consequences, including dismissal from service for continued unauthorized absence.

However, there is a critical counterpoint. An employee can successfully resist penal consequences if the transfer order itself is proven to be illegal and void. The Supreme Court in ***Ramesh Chandra Tyagi (Dr.) v UOI*** held that if an initial transfer order is invalid (e.g., passed by an incompetent authority), then a subsequent dismissal for non-compliance with that order will also be illegal, as one cannot be punished for disobeying a void order.