

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.7094 of 2022
Reserved on: 10.01.2023
Pronounced on:12.01.2023

Sumit Dhiman

.....Petitioner

Versus

Himachal Pradesh Power Transmission
 Corporation Ltd. and Others

...Respondents

Coram:

Hon'ble Ms. Justice Sabina, Judge.

Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting?

For the petitioner : Mr. Sanjeev Bhushan, Senior
 Advocate with Mr. Ashok K.
 Verma, Advocate.

For the respondents : Mr. Dinesh Bhanot, Advocate, for
 respondents No.1 & 2.

Mr. Vinay Sharma, Advocate, for
 respondent No.3.

Sabina, Judge.

Petitioner has filed the writ petition under Article 226

of the Constitution of India, seeking the following relief:-

“i. That the impugned office order dated 23.09.2022 (Annexure P-4) may kindly be quashed and set aside and petitioner may kindly be allowed to complete his normal tenure at the present place of posting i.e. office of Sr. Manager (P) 220 KV Dehan, Hamirpur, H.P.”

2. Learned Senior Counsel for the petitioner has submitted that the petitioner was appointed as Junior Engineer(E) with the respondent-Corporation in the year 2017 and had worked initially in a tribal area. In November, 2020, petitioner was transferred to his present place of posting, i.e. 220 KV Dehan, Hamirpur. Vide impugned order, Annexure P-1, dated 17.08.2022, petitioner has been transferred to the office of Managing Director, HPSLDC, Totu, Shimla. Vide order Annexure P-4, dated 23.09.2022, the representation submitted by the petitioner in terms of the order passed by this Court, was rejected. The petitioner has been transferred vide the impugned order in view of the U.O. Note procured by respondent No.3.

3. Learned counsel for the respondent-Corporation has submitted that the post held by the petitioner was a transferable one. The petitioner was working in the office of PIU Chambi (220 KV Dehan-Hamirpur Line) and has been transferred to the office of Managing Director, HPSLDC, Totu, Shimla, vide Annexure P-1, as the work of 220 KV Dehan-Hamirpur Transmission Line has been completed and there was no requirement of Junior Engineer (E) at that place. So far as respondent No.3 is concerned, he has been transferred from office of the Managing Director, HPSLDC, Totu, to 220 KV

Dehan S/S, PIU Chambi Sub-Station, which shows that it was not a case of *vice versa* transfer. Learned counsel for the respondent-Corporation has further submitted that petitioner had also sought his transfer earlier on the basis of U.O. Note.

4. Learned counsel for respondent No.3 has adopted the submissions made by learned counsel for the respondent-Corporation.

5. Learned counsel for the respondent-Corporation was directed to produce the relevant record, vide order dated 23.12.2022. A perusal of the record reveals that U.O. Note No.Secy/CM-17013/2017-VIP-A-411924, dated 28.06.2022, was received by the Corporation from the office of the Hon'ble Chief Minister and it was approved by the Hon'ble Chief Minister that respondent No.3 be transferred from his present place of posting to 132/220 KV GIS Sub Station Dehan, situated at Rajpur Patti, PIU Chambi, HPPTCL against a vacancy. It is further revealed from the record that it was found by the Department that there was no vacant post of Junior Engineer (E) at Dehan Sub-Station. Consequently, after discussing the matter on 01.08.2022, it was observed that work of Dehan-Hamirpur Line had been completed and there was no requirement of Junior Engineer (E) at this line. Consequently,

the matter had been discussed with the Managing Director and it was desired to transfer respondent No.3 vice the petitioner.

6. Thus, from the record, it is evident that respondent No.3 has been transferred on the basis of U.O. Note. Although, the case set-up by the respondents in their reply, is that it was not a *vice-versa* transfer between the petitioner and respondent No.3, but the record reveals otherwise.

7. A perusal of the record also reveals that the petitioner had also got a U.O. Note entered in the record of the Corporation vide No.279, dated 27.08.2022, from the Speaker's office, to the effect that the Hon'ble Chief Minister had been kind enough to approve the cancellation of transfer order of the petitioner, vide CM Office No.431380, dated 22.08.2022, and the Hon'ble Speaker had desired the Managing Director, HPPTCL, Shimla, to issue the orders accordingly. Apparently, no order was issued by the Corporation in pursuance to the said U.O. Note.

8. Petitioner had filed CWP No.6172 of 2022 and the said petition was disposed of on 6th September, 2022, by passing following order:-

"Petitioner has filed the petition under Article 226 of the Constitution of India, seeking following relief:-

i) That the impugned transfer order dated 17.08.2022 (Annexure P-1) may kindly be quashed and set aside and petitioner may be allowed to complete his normal tenure at the present place of posting, i.e. office of Sr. Manager(P) 220 KV Dehan, Hamirpur, H.P.”

2. Learned counsel for the petitioner has submitted that vide order dated 17.08.2022, petitioner has been transferred from 220 KV Dehan, Hamirpur, H.P. to HPSLDC, Totu, Shimla, though, petitioner has not completed his normal tenure. Petitioner has made a representation for redressal of his grievances, but no action has been taken qua the same so far. Petitioner has not yet been relieved from his duties from the present place of posting.

3. Accordingly, without adverting to the merits of the case, we deem it proper to dispose of the writ petition with a direction to respondent No.1, to dispose of the representation dated 22.08.2022 (Annexure P-2) moved by the petitioner expeditiously, in accordance with law, preferably within three weeks from the receipt of the copy of this order. Till the disposal of the representation moved by the petitioner, he may not be relieved from the present place of posting, i.e. 220 KV Dehan, Hamirpur, if not already relieved.

Pending applicaton(s), if any, also stand disposed of.”

9. In pursuance to the order passed by this Court, the representation moved by the petitioner was rejected by respondent No.2-Corporation, vide order (Annexure P-4) dated 23.09.2022.

10. Record of CWP No.6172 of 2022 was called and a perusal of the same reveals that the writ petition was filed by the petitioner on 03.09.2022. In the said writ petition, petitioner had not disclosed the fact that he had also got a U.O. Note for cancellation of the impugned transfer order. It was the case of the petitioner in the said writ petition that he had not completed his normal tenure at the present place of posting and his wife was also working as a Horticulture Extension Officer in the Horticulture Development Block, Nagrota Bagwan, District Kangra and as per Clause 5.4 of the Transfer Policy, issued by the State, in a case where husband and wife were both in Government employment, efforts should be made by posting them at one place or near places as far as possible, subject to vacancy. It was also pleaded that the petitioner was 50% disabled person and representation moved by him for considering his case for cancellation of the impugned transfer

order was pending before respondent No.1. Hence, order dated 06.09.2022, was passed by this Court.

11. However, now the record produced by the respondent-Corporation reveals a very peculiar situation. It is a case where respondent No.3 got a U.O. Note from the office of the Hon'ble Chief Minister, seeking his transfer to Sub Station Dehan on the pretext that there was a vacancy at the said place. However, there was no vacancy at Sub Station Dehan, as the petitioner was posted there as Junior Engineer.

12. Keeping in view the U.O. Note, the respondent-Corporation, on 01.08.2022, decided to transfer respondent No.3 in place of the petitioner and the respondent-Corporation decided to pass a *vice-versa* transfer order between the petitioner and respondent No.3. However, now while filing the reply, the respondent-Corporation has taken up a different stand that the Sub-Station where the petitioner was posted, was different than the station where respondent No.3 had been posted. Petitioner had also procured a U.O. Note for cancellation of his transfer order, but as the same was not acted upon by the respondent-Corporation, he approached this Court challenging his transfer order without disclosing the fact

that he had also got a U.O. Note, whereby, his transfer order was approved to be cancelled.

13. In **CWP No.5915 of 2020**, titled **Devanand** versus **State of H.P. & Others**, decided on 30th October, 2021, it has been held by this Court as under:-

“13. In CWP No.5351 of 2012, titled Amir Chand vs. State of H.P. & ors., the Division Bench of this Court, analyzed the aforesaid Clause 17 of the Transfer Policy and also allegations of political patronage and interference in the matter of transfers by politicians in breach thereof and held in Paragraphs No.4 to 7 as under:-

“4. Coming to the issue of political patronage. On the basis of the judgments cited hereinabove, there can be no manner of doubt that the elected representative do have a right to complain about the working of an official, but once such a complaint is made, then it must be sent to the head of the administrative department, who should verify the complaint and if the complaint is found to be true, then alone can the employee be transferred.

5. We are, however, of the view that the elected representative cannot have a right to claim that a particular employee should be posted at a particular station. This choice has to be made by the administrative head, i.e. the Executive and not by the legislators.

Where an employee is to be posted must be decided by the administration. It is for the officers to show their independence by ensuring that they do not order transfers merely on the asking of an MLA or Minister. They can always send back a proposal showing why the same cannot be accepted.

6. We, therefore, direct that whenever any transfer is ordered not by the departments, but on the recommendations of a Minister or MLA, then before ordering the transfer, views of the administrative department must be ascertained. Only after ascertaining the views of the administrative department, the transfer may be ordered if approved by the administrative departments.

7. No transfer should be ordered at the behest of party workers or others who have no connection either with the legislature or the executive. These persons have no right to recommend that an employee should be posted at a particular place. In case they want to complain about the functioning of the employee then the complaint must be made to the Minister In charge and/or the Head of the Department. Only after the complaint is verified should action be taken. We, however, reiterate that no transfer should be made at the behest of party workers.”

14. *The aforesaid judgment was cited before the Division Bench of this Court in CWP No.801 of 2013, titled **Sanjay Kumar vs. State of H.P. & ors. and the connected matters.** In Paragraphs-30 to 33, while relying upon the judgment of Division Bench in Amir Chand's case (supra) and dealing with the allegations of political patronage and interference, on a detailed analysis of the facts and law on the subject and perusal of the note sheets, it was held as under:-*

"30. The transfer at the instance of a person, who has no role to play in the Government, will not only be extraneous consideration, but also against public policy. It shakes the confidence of the people and creates an impression in the mind of a common man that the centre of power is somewhere else and not the Government. In order to curb this tendency and inspire confidence in general public and more particularly in the employees, it is necessary that no one should get an impression that employee can be transferred for asking at the instance of a person, who has no concern with the Government. This, if goes unchecked, is bound to affect the morale of the employees and their independent working and will not be in the interest of general public. There is, however, one caveat. That, any person has a right to make a complaint against an employee regarding his conduct to his superior or

Chief Minister and even request for his transfer. It is, however, only for the competent authority to consider the request and to take appropriate action in accordance with law. Further, it is unfathomable that such large number of transfers could be made at the instance of a person who is not in the Government, nor a people's representative as such. Issuing transfer orders at the instance of an outsider, who incidentally happens to be a Party worker, cannot be a co-incidence, but a concerted effort of the duty holders, who were otherwise responsible to preserve rule of law. Such action not only shakes the conscience of the Court, but also, inevitably, impinges upon the validity of such orders as the same are the product of colourable exercise of power.

31. In Amir Chand (supra), it has been held that no transfer should be ordered at the behest of the party worker or others, who have no connection either with the legislature or the executive. In case they want to complain about the functioning of the employee then the complaint must be made to the Minister Incharge and /or the Head of the Department. Only after the complaint is verified should action be taken. It has been reiterated that no transfer should be made at the behest of the party

workers. It is not the case of the respondents in the petitions in which petitioners have been transferred outside Dharampur that Mr. Chandershekhar is holding any position in the government or he is a Legislator. It has not been explained by the respondents in three petitions how the requests for transfer of three petitioners outside Dharampur were considered by the Chief Minister before ordering their transfers.

32. On perusal of the original record, it is noticed that the proposal for transfer has not originated from the concerned Administrative Department, but because of the direction received from the office of the Chief Minister. That is the common pattern in respect of each of these cases. The Special Secretary to the Chief Minister informed the Head of the concerned Department/Board that the Chief Minister has approved transfer of the incumbent from his present posting to the specified station against vacancy, with direction to take necessary action accordingly. In response to that communication, the Head of the Department immediately wrote back to the Special Secretary to the Chief Minister. By way of illustration, we would produce the copy of the communication sent by the Under Secretary (TE) of HPSEBL,

addressed to the Special Secretary, to the Chief Minister, which reads thus:

*“HIMACHAL PRADESH STATE
ELECTRICITY BORAD LTD.*

A State Government undertaking

Subject: Regarding transfer of Shri Jaswant Singh, Foreman (TTM) (at Sr.No.1 of U.O. Note) from Giri PIID, Girinagar to out of Distt. Sirmour.

Special Secretary to the Hon'ble Chief Minister, HP may kindly refer to his U.O. No.Secy/CM-E1101/2012-DEP-B-11143 dated 4.3.2013, on the above noted subject.

In this context, it is informed that Shri Jaswant Singh, Foreman (HM) has been transferred from Giri Power House Division, Girinagar to Andhra Power House Division, Chirgaon i.e. out of Distt. Sirmour against vacancy with TTA/joining time vide order No.69 dated 15.3.2013.

The Hon'ble Chief Minister (HP) may kindly be apprised accordingly.

*Sd/ Under Secretary (TE), H.P.
State Electy. Board Ltd.
Shimla-171004.*

*The Special Secretary
to the Hon'ble Chief Minister
H.P. Shimla-171002.”*

33. Notably, the basis of and the background in which communication was required to be issued from the office of the Chief Minister and the correspondence preceding the said communication, is not produced before us. The loose notings file in the respective cases merely refer to the approval of transfer given by the Chief Minister and the fact that the incumbent has completed his normal tenure at his present place of posting and, therefore, the proposal for transfer may be approved, so that the approval given by the Chief Minister can be implemented. The tenor of the said notings leave no manner of doubt that the understanding of the Head of the Administrative Department was that, compliance of the communication received from the office of the Chief Minister was inevitable. In other words, the impugned transfer orders have been issued under dictation and for extraneous consideration and are neither for administrative exigency nor for public interest as such.”

15. The decision of the Division Bench of this Court dated 22.11.2013, was challenged before the Supreme Court of India in Special Leave to Appeal (C) No.21772/2014, titled **State of H.P. and Ors. vs. Tara Devi and Anr.** The Hon'ble Supreme Court, after taking 14 note of

Clause 17 of the aforementioned Transfer Policy and approvingly quoting Paragraph-4 to 7 of Amir Chand's case (supra), held as under:-

"It is the contention of the learned senior counsel for the petitioners, that a perusal of Clause 17 clearly reveals, that the norms depicted in Amir Chand's case (in paragraphs 4 to 7) were duly incorporated in Clause 17 of the transfer policy.

*We agree with the submission advanced by learned senior counsel for the petitioners, and therefore, hereby set aside the direction of the High Court in quashing Clause 17 of the transfer policy. It is, however, directed that Clause 17 of the transfer policy should for all intents and purposes be read as was expressed in paragraphs 4 to 7 of the judgment rendered in **Amir Chand's** case supra."*

14. Thus, a perusal of the said judgment reveals that whenever any transfer order is passed on the basis of recommendation of Minister or Member of Legislative Assembly (M.L.A.), then before ordering such a transfer, the Administrative Department must give its views and the transfer

may be ordered, if it is approved by the Administrative Department.

15. In the present case, when the matter was taken up by the respondent-Corporation, it transpired that, although, the transfer of respondent No.3 had been recommended against a vacant post, but there was no vacant post. Consequently, acting upon the said recommendation, the Corporation ordered *vice-versa* transfer of the petitioner and respondent No.3. Thus, the action of the Corporation was also not justified in ordering the transfer of the petitioner by taking up the plea that there was no work available *vis-a-vis* the post where the petitioner was working and yet respondent No.3 has been transferred in the place of the petitioner. Before this Court, while filing the reply, respondent-Corporation has taken up a different stand that respondent No.3 has been transferred to a different line than the one where the petitioner was working.

16. Be that as it may, the fact remains that the petitioner himself had also not come to the Court with clean hands while filing CWP No.6172 of 2022. Although, petitioner had taken up the plea that respondent No.3 has got the transfer order on the basis of a U.O. Note, but the petitioner himself had also

obtained a U.O. Note, whereby, the transfer order was recommended to be cancelled.

17. Hence, we are of the opinion that the petitioner, who has come to this Court, seeking equitable relief, was expected to come to the Court with clean hands. In this view of the matter, we are of the opinion that no ground for interference, while exercising extra ordinary jurisdiction by this Court under Article 226 of the Constitution of India, is made out.

18. Dismissed.

19. Pending miscellaneous application(s), if any, shall also stand disposed of.

(Sabina)
Judge

January 12, 2023
(Yashwant)

(Sushil Kukreja)
Judge