

Court No. - 20

Case :- WRIT - A No. - 8454 of 2023

Petitioner :- Nafis Khan

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Environ. Forest Climate Lko. And 3 Others

Counsel for Petitioner :- Anuj Dayal, Lalita Prasad Misra, Mukesh Kumar, Reshu Sharma, Shyam Mohan

Counsel for Respondent :- C.S.C.

And

Case :- WRIT - A No. - 8760 of 2023

Petitioner :- Nafis Khan

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Environment Forest Climate Change Govt. Lko And 3 Others

Counsel for Petitioner :- Ajay Tiwari, Akhilesh Kumar Kalra, Jai Shrinet, Shyam Mohan Pradhan

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.
2. In Writ A No.8454 of 2023, petitioner has challenged order dated 06.09.2023 whereby he has been removed as Regional Forest Officer, Karwi Range, Chitrakoot and has been kept in waiting. Also under challenge is order dated 20.09.2023 whereby in pursuance of order dated 06.09.2023, the petitioner has been attached to the office of field Director, Ranipur Tiger Reserve Chitrakoot.
3. During pendency of the aforesaid writ petition, opposite parties have passed order dated 27.10.2023 whereby the order dated 06.09.2023 has been modified and petitioner while being kept under waiting has been directed to be attached in the Office of Principal Chief Conservator of Forest, Lucknow.
4. Learned counsel for petitioner submits that earlier petitioner had been transferred vide order dated 03.11.2018 which was challenged before this Court in Writ Petition No.35177 (S/S) of 2018 which was disposed of vide order dated 23.12.2021 granting liberty to opposite parties to include petitioner in the annual transfers to the next effected. It is submitted that in pursuance thereof, petitioner was transferred vide order dated 28.07.2023 but the entire list was postponed by the Government due to unavoidable reasons and thereafter petitioner has been kept under waiting without any transfer.

5. It is submitted that petitioner could not have been kept in waiting once the earlier transfer order issued in July, 2023 itself stood postponed/withdrawn. It is also submitted that even subsequently by the impugned order, petitioner has been attached without any departmental proceedings being pending against him or even indicating any administrative reasons for same.

6. It has been submitted that in fact petitioner has been transferred as a measure of punishment since there was certain allegation earlier levelled against him pertaining to non-removal of encroachments in the forest area. It is submitted that a Committee was thereafter constituted to consider the aforesaid allegation and by means of report dated 06.09.2023, has not only exonerated the petitioner but has appreciated his work with regard to removal of such encroachment. Learned counsel submits that despite the aforesaid exoneration, petitioner has thereafter been transferred which is directly connected with the allegations levelled against him and therefore also the order of transfer has been issued as a measure of punishment which is therefore against the judgment rendered by Hon'ble the Supreme Court in the case of **Somesh Tiwari** versus **Union of India & Ors.** reported in **(2009)2 Supreme Court Cases 592**.

7. Learned State counsel appearing on behalf of opposite parties has however refuted submissions advanced by learned counsel for petitioner primarily on the basis of averments made in the counter affidavit. It is submitted that although the transfer order dated 28.07.2023 was withdrawn/postponed by the State Government but petitioner's present waiting and attachment are not in any manner related to the inquiry in the allegations levelled against him. It is submitted that on the contrary, impugned orders have been passed only on the ground that petitioner has been posted in Chitrakoot District for six years and seven months and in the division for more than 32 years. It is therefore submitted that impugned orders have been passed only with regard to administrative exigency.

8. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that earlier petitioner was transferred in the year 2018, which was challenged before this Court and the petition was disposed of granting liberty to opposite parties to consider petitioner's transfer in the next annual transfers. In pursuance thereof, petitioner was transferred vide order dated 28.07.2023 but as per admission of opposite parties themselves, the said order of transfer was postponed by the State Government due to unavoidable reasons.

9. Counter affidavit thereafter does not indicate any fresh transfer order having been passed pertaining to petitioner. Paragraph-5 of counter affidavit indicates the reasons for passing of impugned orders with primary reason being that he has been posted in the particular Division for more than 32 years and in the the District, for more than six years. However, the averment also indicates impugned orders having been passed due to petitioner's lack of supervision and indifference in Government work. It is also stated that in view of lack of transfer/attachment of petitioner from Chitrakoot to any other District, petitioner has been attached under control of the supervising authority.

10. The aforesaid averments clearly indicate that impugned orders have been passed not only with regard to length of service rendered by petitioner in the particular District and Division but also is indicative of functioning of petitioner. However, the report of a Three-Member Committee dated 06.09.2023 which has been brought on record as Annexure-6 in WRIT- A No.8454 of 2023, the allegations levelled against petitioner were examined and not only was the petitioner exonerated from such allegations but on the contrary his working in removal of encroachment in forest area was also appreciated.

11. It is also not the submission of opposite parties that the waiting and attachment are as a result of any transfer order pertaining to petitioner. On the contrary, impugned orders keeping petitioner in waiting for transfer orders to be passed and his subsequent attachment appear to be quite alien to service jurisprudence. Counter affidavit does not indicate any such legal provision whereby opposite parties can resort to keeping an employee under waiting or attachment without any transfer order or disciplinary proceedings or even without administrative exigency.

12. Considering aforesaid facts, the impugned orders dated 06.09.2023, 20.09.2023 and 27.10.2023 are hereby quashed by issuance of a writ in the nature of Certiorari again leaving it open to opposite parties to consider petitioner's regular transfer during the annual transfers.

13. Resultantly, the petitions succeed and are **allowed**. The parties to bear their own costs.

Order Date :- 18.12.2023
Subodh/-