

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6553 of 2015**

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Prakash Kumar Malakar S/o Late Ram Chandra Pd. Malakar, Resident of  
Begumpur, Bhitri, P.O.- Begumpur, P.S.- Chowk, District- Patna  
..... Petitioner

Versus

1. The Union of India through the Finance Secretary, Govt. of India, New Delhi
2. The National Insurance Co. Ltd., through the Chief General Manager of the National Insurance Co. Ltd., Registered Head Officer, at 3 Midletent Steet, P.O. Box No.- 9229/, Kalcutta (W.B.)
3. The Senior Divisional Manager, Patna, D.O.-2 of The National Insurance Co. Ltd., Patna Regional Officer, Fourth Floor, Sone Bhawan B.C.P. Marg, Patna, District- Patna (Bihar)
4. The Branch Manager, D.A.B., Patna of the Company
5. Sophia Singh, the Regional Incharge, Patna Regional Office of the Company

..... Respondents

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**Appearance :**

For the Petitioner/s : Mr. Chittranjan Sinha, Sr.Adv.  
For the Respondent/s : Mrs. Kanak Verma, CGC

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**CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA**  
**ORAL JUDGMENT**

2      01-05-2015                      Heard learned counsel for the parties as with regard to the following prayer made in this writ application:

“That this writ application is being filed for issuance of a writ in nature of mandamus against the respondents asking and commanding them to cancel the office order dated 3.2.2015 (Annexure 7) by which the petitioner who has been working as development Officer/ Administrator D.A.B., Patna D.O.-2 under the National Insurance Company Ltd. (A Public Undertaking of Govt. of India) has been transferred to the Chatra Business Centre attached with Kodarma, B.O. under Hazaribag D.O. as Business Centre Incharge with immediate effect in utter violation of the Different Notification setting out norms of

transfer to allow the petitioner to continue at the present place of posting at last for the next two years nearly so that three years of service may be completed.”

Mr. Chittranjan Sinha, learned Senior counsel appearing on behalf of the petitioner, while assailing the impugned order of transfer as also the order rejecting the representation of the petitioner places reliance on the policy of transfer of National Insurance Company and in this regard has highlighted on Clause 5.3 and 5.4 which for the sake of clarity and convenience is quoted hereinbelow:

“5.3 Every employee other than a Development Officer (Administration) who exceeds the stipulated cost limit continuously for 3 years shall be liable to transfer to another station immediately on expiry of the said 3 years.

Provided, however, the competent authority may, instead of transferring all such employees liable to be transferred under this paragraph, restrict such transfers upto 25% of the total number of such employees in a particular year.

5.3.1 For the purpose of restricting transfer to 25% as referred to in this paragraph, a list of all development officers in the company who are again exceed the stipulated cost limit continuously for the past 3 years shall be drawn in descending order of their average excess over the stipulated limits in the past 3 years and from the top of such list a number equal to 25% of the total number in the list shall be taken out for consideration of transfer in the

current year in terms of this policy.

5.3.2 The drawing of the list referred to in para 5.3.1 above, shall be on a rolling basis every year based on observance of stipulated cost limits by the development Officers during the immediately preceding 3 years.

5.3.3 A development Officer transferred under this paragraph shall not be included in the list referred to in para 5.3.1 above for a period of 3 years from the date of such transfer.

5.4 Transfer of an employee from one station to another shall ordinarily be restricted to a radius of 150 kms from his present station of posting.

Provided that where, in a particular case, no office of the company is available within a radius of 150 kms. from the present station of posting of a development officer required to be transferred under the policy, the Competent Authority may consider his transfer to any of the 3 nearest stations, depending upon the organizational requirements, where the company has its office.”

On the basis of reading of those clauses of transfer policy

Mr. Sinha is of the view that since the petitioner had never completed the tenure of three years he could not have been transferred. Mr. Sinha in this regard has also explained that when the petitioner had filed his representation explaining the non-observance of transfer policy of National Insurance Company a cryptic order has been passed rejecting the representation of the petitioner.



Learned counsel for the respondents, on the other hand, has submitted that this writ application is wholly misconceived, inasmuch as neither the order of transfer can be said to be in violation of statutory rules nor it can be assailed on the ground of its being without jurisdiction. Mrs. Kanak Verma, learned counsel for the respondents, has in this regard submitted that the transfer of an employee is an incidence of service and therefore, there can be no right for an employee to continue at a particular place. She has defended the impugned order rejecting the representation of the petitioner on the ground that the matter relating to transfer was examined by the authorities and it was found that there was nothing which could require passing of a detailed order because there is no provision in the service regulations for disposing of even a representation against an order of transfer by a speaking order.

In the considered opinion of this Court a transfer policy like the present one of National Insurance Company is an executive decision. It has been framed only for regulating the decision of transfer. Even in Clause 5.3 or for that purpose Clause 5.4 it fixes the tenure of three years. Moment there is, therefore, a provision for transfer and the tenure normally or ordinarily is for a period of three years, the power of employer to transfer even



before expiry of the period of three years cannot be taken away. The administrative exigencies in which such transfer orders are issued by the employer can never be made subject matter of judicial review. Way back the Division Bench of this Court having analyzed the similar transfer policy of the Govt. of Bihar in the case of **Man Singh v. the State of Bihar & ors., reported in 1982 BBCJ 392**, had held it to be directory and not enforceable under writ jurisdiction. The passage of more than three decades has never gone to change the law and it remains the same.

Coming to the next issue as to whether the respondents were under obligation to give reasons in support of the order rejecting the representation of the petitioner, this Court would find that when a representation is filed the respondents are usually required to disclose the reasons which would go to show the application of mind. Here in the present case the impugned order does refer to consideration of the case of the petitioner and in fact the plea of the petitioner of staying his transfer on his personal ground alike his mother being ill or some other reasons can never overweigh the administrative exigencies. That is how the impugned order also deals the issue by using the word “request cannot be considered”. The request of the petitioner was that he should be retained at old place for looking after his ailing mother

but then if the administrative exigencies under which the petitioner was transferred to work as a Business Centre Incharge at Kodarma had overweighed the same cannot be now gone into again by this Court in exercise of power under Article 226 of the Constitution of India.

When such observations have been made Mr. Chittranjan Sinha, learned Senior counsel, submits that the issue relating to transfer of the petitioner has been raised at the level of Union (Association) and a representation of the Union (Association) is still pending consideration of the respondents.

This Court has not find any merit in this writ application wherein an order of transfer and/or a representation of the petitioner against such order of transfer was rejected and therefore, all that can be said that if the representation of the Union (Association) espousing the cause of the petitioner is still pending, an appropriate decision will be taken without being influenced by anything said in this order.

Subject to the aforementioned observations, this application fails and is, accordingly, dismissed.

**(Mihir Kumar Jha, J)**

surendra/-

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