

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 282 of 2015**

Anand Kumar Ekka S/o Late Aglus Ekka Aged About 39 years Resident Of Public Health Engineering, Sub-Division, Pratappur, Police Station and Post- Pratappur, District- Surajpur Chhattisgarh.

---- Appellant

Versus

1. State Of Chhattisgarh through the Chief Secretary, Public Health Engineering Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur Chhattisgarh.
2. The Undersecretary, Government Of Chhattisgarh, Public Health Engineering Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur Chhattisgarh.
3. The Engineer-In- Chief, Public Health Engineering, Raipur, District- Raipur Chhattisgarh.
4. U.S. Pawar, Sub- Engineer, Public Health Engineering, Sub-Division, Baikunthpur, District- Korea Chhattisgarh.
5. Gyanesh Mishra Sub- Engineer, Public Health Engineering, Office of Superintending Engineer, Circle Ambikapur, District- Surguja Chhattisgarh.

---- Respondents

For Appellant	:	Shri B.P. Sharma and Shri Rahul Mishra, Advocates.
For Respondent/ State	:	Shri U.N.S. Deo, Government Advocate.

**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.**

Judgment On Board**Per NAVIN SINHA, C.J.****14/5/2015**

1. The present appeal arises from order dated 10.4.2015 dismissing Writ Petition (S) No. 1220 of 2015. The Learned Single Judge declined to

interfere with the order for transfer of the Appellant dated 15.7.2014 from Pratappur District Sarguja to Jagdalpur.

2. Learned Counsel for the Appellant submits that against the order for transfer dated 15.7.2014, he came to the Court in Writ Petition (S) No. 3492 of 2014. On 4.2.2015, this Court permitted him to represent. In the representation the Appellant had specifically referred to the Circular dated 20.10.2005 which provides that if a person was posted in a Scheduled Area for five years he could be considered for a choice posting thereafter. The representation of the Appellant has been rejected referring to the transfer policy of 2014-15 without any reference or discussion to the circular dated 20.10.2005. It is next submitted that the representation was required to be disposed by a reasoned order in absence of which it is arbitrary. It is lastly submitted that under Clause 6 of the Transfer Policy dated 5.6.2014 for the year 2014-15 the representation was required to be considered by the Committee constituted for the purpose and not individually by the Under Secretary.

3. Learned Counsel for the State submitted that Writ Petition (S) No.3492 of 2014 was dismissed on merits. The observation to file a representation thereafter does not constitute a fresh cause of action to maintain a fresh writ application. It is next submitted that from the impugned order itself it is manifest that the representation has been considered in the prescribed manner by the Committee as required in the policy dated 5.6.2014.

4. We have considered the submissions on behalf of the parties.

5. The law regarding interference with orders for transfer under Article 226 of the Constitution of India stands settled. Unless there are allegations for violation of statutory provisions, the order for transfer is mala fide, it results in loss of status, rank or pay, it is not for the Courts to

interfere with the domain of the Executive in the garb of Judicial Review. Notwithstanding this settled law and the long line of precedents on it, matters still keep coming to Court devoid of substance for grounds of challenge.

6. The Petitioner assailed the order dated 15.7.2014 in Writ Petition (S) No. 3492 of 2014 unsuccessfully. Writ Appeal No. 185 of 2015 was dismissed as withdrawn. Matters thus attained finality with regard to the validity of order dated 15.7.2014.

7. In (2008) 10 SCC 115 (C. Jacob vs. Director of Geology and Mining), referring to the representation syndrome, it was observed that a sympathetic direction to decide the representation does not give a fresh cause of action after it is decided, if the Court at the original stage declined to interfere on merits. The subsequent order does not resurrect the cause of action which stood extinguished when the Court declined interference on merits. If he is given relief on his representation, it is his fate and if the representation is rejected, it is again his fate.

8. A Government Servant is bound by disciplinary rules of conduct. Once an order for transfer is issued, he is first required to join his place of posting and then pursue matters in a representation or otherwise if he so desires failing which it may amount to a misconduct exposing him to disciplinary action as observed in (1989) 2 SCC 602 (Gujarat Electricity Board v. Atmaram Sungomal Poshani) as follows:

“4. Transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant

is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case”.

9. The Appellant seeks protection under the Circular dated 20.10.2005 for non-consideration of his representation on the grounds mentioned in the same. Before he seeks protection of the Circular, the Appellant is required to demonstrate that he has complied with the conditions of the Circular only after which the Respondents are under any obligation to consider the same. On the own showing of the Appellant in his representation dated 2.3.2015 he did not mention five options but only requested that on personal grounds he may be transferred to District Surguja. Even if the Circular provided an option, the law stands well-settled that the exercise of the option does not create a vested right to demand acceptance of the option. The Appellant stands on a far worst footing when he did not give five options as required in the Circular. It is not open for the Appellant to seek relief under the Circular even while he refused to perform his obligations under the same Circular.

10. The impugned order has not been issued by the Under Secretary but it has been issued in the name of the Governor of the State. It is therefore an order of the Government and not of the Under Secretary. Clause 6 of the impugned order states that the representation of the Petitioner was considered in accordance with the transfer policy and was

not acceptable for administrative reasons.

11. We have gone through the pleadings in the writ petition also. There is no pleading that his representation was not placed before the Committee. The pleading only is that the matter was not sent before the Committee and rejected by Respondent No.2 alone. Under Section 114(e) and (f) of the Evidence Act there is a presumption in the law that all Official Acts have been performed in due course in accordance with the Rules of the business. If the Appellant desired to rebut it, it was for him to lead evidence.

12. We therefore find no merit in the appeal. It is dismissed.

(Navin Sinha)
CHIEF JUSTICE

(P. Sam Koshy)
JUDGE