

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2582 of 2015

- Dinesh Singh Tomar S/o Shri Badri Singh Tomar, Aged About 30 years Presently Working as Constable (GD) No. 279, STF Headquarter, Baghera, P.S. Poolgaon, Revenue District Durg, (Chhattisgarh)

---- Petitioner

Versus

- State of Chhattisgarh Through its Secretary, Department Of Home Affairs, Mahanadi Bhawan, P.S. Rakhi, New Raipur, District Raipur, (Chhattisgarh)
- Director General of Police, Police Headquarter, Civil Lines, Raipur, (Chhattisgarh)
- Additional Director General of Police (CAF/Naxal Operation/ STF), Police Headquarter, Civil Lines, Raipur, (Chhattisgarh)
- Superintendent Of Police, Special Task Force, Baghera, Distt. Durg, (Chhattisgarh)
- M T O, M.T. Pool, Police Headquarter, Civil Lines, Raipur, (Chhattisgarh)
- Sheikh Mushtaq, Head Constable No. 165, M T Pool, 3rd Battalion, C A F, Mahadeoghat, Durg, (Chhattisgarh)
- Rajesh Kumar Choudhary Constable No. 379, M T Pool, 11th Battalion, C A F, Janjgir Champa, (Chhattisgarh),
- Arun Kumar Verma Constable No. 484, M T Pool, 13th Battalion, C A F, Bango, Korba, (Chhattisgarh)
- Ashwini Tiwari Constable No. 555 MT Pool, 8th Battalion, C A F Rajnandgaon, (Chhattisgarh)
- Dhananjay Pandey Constable No. 78, 4th Battalion, C A F, Mana, Raipur, (Chhattisgarh)

---- Respondents

For Petitioner

Mr. Rakesh Jha, Advocate

For Respondent/State

Mr. P.K. Bhaduri, Government Advocate

S.B.: Hon'ble Mr. Prashant Kumar Mishra, J.

Order On Board

20/7/2015

Heard finally with the consent of learned counsel for the parties.

(2) Petitioner has called in question the order dated 30.03.2015 and the two impugned orders dated 22.05.2015, whereby, his representation preferred against the earlier order dated 30.03.2015, passed by the DGP, sending the petitioner back to his original place of posting.

(3) Mr. Jha, learned counsel for the petitioner, would submit that while deciding the petitioner's earlier writ petition, this Court had directed the authorities to decide the representation considering the personal difficulty of the petitioner, however, in the impugned order, none of the grounds raised in the representation has been addressed.

(4) In the earlier order passed by this Court, reference has been made to several judgments of the Supreme Court to conclude that transfer/posting of a government servant is in the exclusive domain of the employer and the Court has limited jurisdiction to interfere in such matters. Once the authorities have undertaken the exercise for sending back the petitioner to his original place of posting, which by itself is not a transfer order, but is an order passed due to administrative exercise, this Court would not sit over the same as appellate Court to substitute the administration decision of the authorities and pass an order unsettling the same.

(5) At this stage, Mr. Jha, learned counsel for the petitioner, would submit that the petitioner's batch-mates or juniors appointed as Constable (GD) in the 7th Battalion, Bhilai at STF, Baghera, Durg have been promoted on the next higher post and now, after passing of the order dated 30.03.2015, the petitioner is compelled to work under his

juniors. He would submit that even otherwise, transfer of the petitioner to the M.T. Pool at Raipur was an order absorbing him in the M.T. pool, inasmuch as, under similar orders, several other Constable (GDs) posted at M.T. Pool, prior to the petitioner's posting, have been working and getting promotion at the M.T. Pool.

(6) A reading of the order dated 12.01.2014, by which, the petitioner was transferred to M.T. Pool, Raipur would nowhere indicate that the same was an order absorbing his services at the M.T. Pool, Raipur. The order is a simple order of transfer from STF Baghera, Durg to the M.T. Pool, Raipur. To substantiate the fact that some other employees posted at M.T. Pool in similar manner have, later on, been promoted at the M.T. Pool itself, no documents have been submitted. Even otherwise, the writ Courts do not enforce negative equality. The petitioner has to succeed on the strength of the orders passed for his posting or absorption.

(7) For the forgoing, the writ petition, in so far as it seeks quashment of the two orders passed on 22.05.2015 and the order dated 30.03.2015, all the three made part of Annexure P/1, is dismissed. However, the petitioner would be at liberty to submit a representation with regard to the prayer made in para 10.4. If such representation along with copy of the writ petition is filed, the respondents shall consider the same in accordance with law and decide it by a speaking order, at the earliest, preferably within a period of 3 months from the date of submission of representation.

Sd/-
Judge

(Prashant Kumar Mishra)