

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2835 of 2015**

- Ainou Ram Sahu S/o Shri Punau Ram Sahu Aged About 52 years Assistant Grade II Janpad Panchayat- Gurur, P. S. Gurur, Pin 491227, Tah- Gurur, Distt Balod (Chhattisgarh)

---- **Petitioner****Versus**

1. State of Chhattisgarh Through Principal Secretary General Administration Department, Secretariate Mahanadi Bhawan, Naya Raipur, Pin 492002, Tah & Distt. Raipur, (Chhattisgarh)
2. Collector Balod District Balod, Pin 491226, Tah & Distt. Balod, (Chhattisgarh)

---- **Respondents**

For Petitioner	:	Shri VG Tamaskar, Advocate
For Respondent-State	:	Shri PK Bhaduri, GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****06/08/2015**

1. With the consent of the learned counsel for the parties, the matter is heard finally.
2. The petitioner, who is working as Assistant Grade-II in the Office of Janpad Panchayat, Gurur, has suffered transfer in the same capacity to Janpad Panchayat, Daundilohara under the impugned order passed by the Collector, Baold on 20.07.2015 (Annexure-P-2).

3. Learned counsel for the petitioner would submit that the petitioner is not subordinate to and is not working under the Collector, District Baid
because, he is an employee of Janpad Panchayat, Gurur and his
controlling department is the Department of Panchayat. He would submit
that even otherwise, under Rule 27 of the Chhattisgarh Panchayat Service
(Recruitment and General Conditions of Service) Rules, 1999 as amended
on 30.11.2012, the authority to issue inter panchayat transfer order is the
Chief Executive Officer of the Jila Panchayat, therefore, the impugned order
is without jurisdiction.
4. Learned State counsel would refer to the transfer policy of the State
Government for the year 2015-16 to submit that the services of Class-III
(non gazetted) and Class-IV employees can be transferred by the Collector
within his jurisdiction, therefore, the Collector is competent to pass the
impugned order.
5. Admittedly, the Collector of the district is not the appointing authority of the
petitioner. Proviso to Rule 27 of the Rules, 1999 confers power on the Jila
Panchayat to transfer any employee of a panchayat to any other panchayat
within his jurisdiction and thus, an order of transfer can only be made in
exercise of such power by the authority mentioned therein and not
otherwise.
6. It is settled law that the transfer policy issued by the Government has no
statutory backing as the same is mere guideline and the guidelines being
advisory in character *per se* do not confer any legal right. (See : **Poonam
Verma and others v. Delhi Development Authority**¹).
7. Similarly, it is equally settled that the provisions of any policy or guideline or

1 (2007) 13 SCC 154

circular cannot over ride the statutory provisions, be it in the form of an act of legislature or subordinate legislation. Thus, the Collector of the district, in purported exercise of power conferred upon him by the transfer policy, cannot issue transfer order concerning a panchayat employee, who is governed by the Rules, 1999 and the statutory authority to pass a transfer order concerning him, is the Jila Panchayat.

8. It is equally settled proposition of law that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all.
9. The Supreme Court in **Meera Sahni v. Lieutenant Governor of Delhi and Others**², held thus :

35. It is by now a certain law that an action to be taken in a particular manner as provided by a statute, must be taken, done or performed in the manner prescribed and in no other manner. In this connection we may appropriately refer to the decision of this Court in Babu Verghese v. Bar Council of Kerala wherein it was held as under: (SCC pp. 432-33, paras 31-32)

“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under: (IA pp. 381-82)

‘where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.’

This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindh Pradesh and again in Deep Chand v. State of Rajasthan. These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh and the rule laid down in Nazir Ahmad case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.”

2 (2008) 9 SCC 177

10. For the foregoing, the impugned order is quashed, however, the competent authority would be at liberty to pass fresh order keeping in view the administrative exigency.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Ashu