

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 4485 of 2015

Fredrick Kerketta S/o Late Shri Francis Kerketta, Aged About 52 Years R/o Janakpur, Tahsil Bharatpur, P.S. Janakpur District Koriya Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home & Police Mantralaya, Mahandi Bhawan, Raipur Chhattisgarh
2. The Director General Of Police Chhattisgarh, Police Head Quarter Raipur, District Raipur, (Chhattisgarh)
3. The Inspector General Of Police, Sarguja Range Sarguja Chhattisgarh
4. Superintendent Of Police, Koriya, District Koriya Chhattisgarh
5. Dhaniram Shukla S/o Shri Rajmani Shukla, Aged About 47 Years R/o Village Ganjar, Police Station Janakpur, District Koriya Chhattisgarh
6. Ramakant Dubey, S/o Late Shri Ramnihore Dubey, Aged About 26 Years R/o Village Ganjar, Police Station Jankapur, District Korea Chhattisgarh
7. Smt. Rambai, Wd/o Late Shri Ramnihore Dubey, Aged About 47 Years R/o Village Ganjar, Police Staiton Janakpur, District Koriya Chhattisgarh

---- Respondents

Shri Rishi Rahul Soni, counsel for the petitioner/s.
Shri S.P.Kale, Dy.A.G. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

20/06/2016

The transfer order dated 12/09/2015 is under challenge on two grounds.

2. Learned counsel for the petitioner submits that against statutory mandate which provide minimum period of stay at one station for a period of two years, the petitioner has been transferred within a short time of three months.

The other ground is that apart from statutory mandate, the petitioner has

been victim of frequent transfer and from August, 2013 to September, 2015, he has been subjected to as many as six transfers. This has, therefore, resulted in serious hardship to the petitioner because the petitioner had to shift frequently to new places with his bag and baggages.

3. Learned State counsel submits that the petitioner is posted as a Police Officer. Against working of the petitioner, complaints were received and therefore, in view of those complaints, it was administratively decided to shift the petitioner from the concerned police station to Baikunthpur. It is next submitted that in case of administrative exigency, if the petitioner has been frequently transferred, that might have caused some hardship which cannot be given precedence over public interest. It is also submitted that earlier a petition was filed by the petitioner which was dismissed as withdrawn. Therefore, this petition is not maintainable.

4. The objection to the maintainability of the petition on the ground that first petition was dismissed, needs to be rejected at the threshold. Earlier, it was dismissed with liberty to file fresh petition.

5. Transfer is an incident of service. It does not affect any of the terms and conditions of service. It is too well settled legal position and needs no authority to propound that an order of transfer can be challenged only on limited grounds like absence of jurisdiction, malafide or arbitrariness of such a nature which would create serious hardship.

6. The first ground of challenge must fall to the ground in view of the provisions contained in Section 14 (2) of C.G. Police Act, 2007. Even though, the period of minimum tenure of stay at one station has been prescribed as two years, considering the nature and sensitivity of job which a police officer has to discharge, discretion can be exercised to transfer an officer before expiry of the tenure prescribed in Section 14 (2) of the Act. If there exists an administrative exigency, the powers of transfer can be exercised by the competent authority.

7. The submission of learned counsel for the petitioner that the impugned order is in violation of the statutory requirement, cannot be sustained. The only requirement of the provision is that the administrative exigency shall be recorded in writing in the order itself. A perusal of the impugned order (Annexure P/1) clearly shows that the reason assigned for transfer of the petitioner is complaints.

8. In the considered opinion of this Court that much of mention in writing is sufficient compliance of statutory requirement of the provision which requires reasons to be recorded in the order. It is an administrative transfer and not any quasi judicial exercise.

9. Taking into consideration the reasons assigned in the transfer order, which does not affect any conditions of service, what has been stated in the order is in compliance of the statutory requirement. There may be a substance in the submission of learned counsel for the petitioner that within a short period, he has been subjected to number of shifting. But keeping in view the sensitivity of the job which a police officer is required to perform and the reason assigned in the order, no relief can be granted. Even if it is found that such a transfer is frequent, but the operative reason for transfer mentions overwhelming reasons. Personal grievance of hardship must yield to public interest and administrative exigency. In public employment, duty of an employee overpowers personal difficulties. Hardship, personal difficulties etc. cannot be set up to assail the order of transfer. The petitioner is a police officer. On the complaints received against him, administrative exigency do not allow the petitioner to remain posted in the concerned police station as the job of the police is to deal with individual liberty, registration of criminal cases, law and order etc.

10. In view of above, no relief can be granted to the petitioner. The petition is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge