

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2004 of 2016

N. R. Chhipa S/o Shri Panna Lal Chhipa, Aged About 54 Years
Posted As Assistant Engineer, Chhattisgarh State Power
Distribution Co. Ltd. Posted At Bhilai Power House Zone, City
D.Bn. East Bhilai, District Durg Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Energy Secretary, Department Of Energy Office Situated At Mahanadi Bhawan New Raipur District Raipur Chhattisgarh
2. Chhattisgarh State Power Distribution Company Ltd. Through Managing Director, Office Situated At Daganiya, District Raipur Chhattisgarh
3. Deputy General Manager(H.R.), Office Of Executive Director H.R. Chhattisgarh State Power Distribution Co Ltd. Raipur Chhattisgarh
4. T.N. Banchhore, Posted As Assistant Engineer, Chhattisgarh State Power Distribution Co. Ltd. Posted At Office Of Executive Director Commercial Office At Danganiya, District Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Praveen Dhurandhar, Advocate.
For State/Respondent No.1	:	Mr. Chandresh Shrivastava, Panel Lawyer
For Respondents No.2 & 3	:	Mr. Abhishek Sinha, Advocate.
For Respondent No.4	:	Mr. Ravindra Sharma, Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

04/10/2016

Heard on admission.

1. This petition is directed against order dated 16.05.2016 by which, the petitioner has been transferred from Bhilai to Korba.
2. The transfer order is under challenge on the ground of violation of transfer policy dated 27.08.2005 (Annexure P/5) particularly provision contained in clause 3 & 5 wherein, it has been provided that ordinarily, an employee becomes eligible for transfer on completion of three years

period at one place and further that in case, transfer from one region to another region, transfer shall be made where an employee has remained posted for more than 10 years. It is also submitted that the petitioner has been transferred to another district only in order to accommodate respondent No.4. It is also submitted that the wife of the petitioner is working in the Cooperative Society at Durg. Lastly, it is submitted that the petitioner is an office bearer. Therefore, in view of policy dated 09.12.1980, the petitioner ought not to have been transferred.

3. On the other hand, learned counsel for the respondents oppose the petition and submit that the petitioner has already remained posted at the same station and after about 8 years, the petitioner has been shifted from Bhilai to Korba. It is next contended that the policy of transfer is not enforceable in Court of law and in exigency of service transfer can take place any time. According to him, the policy only deals with the transfer of the periodic nature but the administrative power is always with the competent authority to transfer an employee in exigency of service and public interest. Lastly, it is submitted that the petitioner is falsely claiming to be an office bearer. Even otherwise, it is contended, the protection against the transfer is not absolute and the policy dated 09.12.80 itself provides that exigency of service, transfer can always take place.

4. As disclosed in the return, the petitioner was locally shifted vide order dated 19.05.2015 in the Power House Zone from Durg to Bhilai which is next to each other under the jurisdiction of the same Superintending Engineer. The petitioner, prior to that, had remained posted at Durg since 2008.

5. It is well settled legal position that an order of transfer can be challenged only on limited grounds viz illegality, malafides or violation of any law. It is a case where the petitioner seeks to challenge the transfer order only on the ground of the policy that an officer shall not be ordinarily transferred before completion of three years of posting at a particular place. But this policy is not enforceable in the Court of law. Once there is an administrative exigency, the employee cannot seek any relief, only on the ground of violation of transfer policy which is not statutory document but merely administrative policy. In this case, apart from the fact that the petitioner has remained under jurisdiction of the same Superintending Engineer for last about 8 years, on affidavit, it has also been stated that

certain complaints were made. Though the petitioner disputes the correctness of those complaints, I am not inclined to go into all the aspect taking into consideration that under the jurisdiction of one particular office the petitioner has remained posted for about 8 years in nearby place. The order does not visit the petitioner with any evil consequences.

6. The protection on the ground that the petitioner is an office bearer, has also been seriously disputed. In any case, circular dated 09.12.80 in para 3 clearly speaks that the competent authority can always transfer an office bearer even during the tenure of his holding office, if it is considered desirable in the larger interest of the public and the organization. As far as the posting of the petitioner's wife in a Society is concerned, it has to be seen that she is not in the employment of the same employer. There is nothing in the policy shows that the adjustment of husband wife will take place even when one of the spouse is working in any other organization, society or private employment. It is not a case where the petitioner's wife is posted and working in the same organization. Therefore, I do not find any merit and the petition is dismissed.

Sd/-

(Manindra Mohan Shrivastava)
J U D G E