

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 16.03.2016

CWP No.15629 of 2015

Buta Singh

...Petitioner

Vs.

Punjab State Power Corporation Limited & others

...Respondents

COCP No.2251 of 2015

Buta Singh

...Petitioner

Vs.

Gurpreet Singh, Additional Superintending Engineer,
PSPCL, Estate Division (Special), Ludhiana & anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

1. *To be referred to the Reporters or not?*
2. *Whether the judgment should be reported in the Digest?*

Present: Mr. Amrindra Pratap Singh, Advocate, for the petitioner.

Mr. Sehaj Bir Singh, Advocate, for respondents No.1 to 4.

RAJIV NARAIN RAINA, J. (ORAL)

This order will dispose of the above two cases bearing CWP No.15629 of 2015 and COCP No.2251 of 2015 arising out of the same main order, as common questions of law and fact are involved in them, which can conveniently be decided by a common order.

2. The relevant facts first: Petitioner was a Lower Division Clerk (LDC) working in the respondent Punjab State Power Corporation Limited (PSPCL). He made a request for transfer to Sub Division Sahnewal from Estate Division [Commercial Branch] Ludhiana. His request was considered on compassionate grounds and he was posted at Sub Division Sahnewal on 17th April, 2005 vide Annex P-5 as per his choice. It is pointed out that when the request was made by the petitioner for posting at Sub Division Sahnewal, he had earlier served at Sub Division Sahnewal for two years. The PSPCL obviously was alive to the petitioner's previous tenure and the predicament faced with an ailing wife who needed support on a daily basis. Resultantly, one Parshotam Lal, LDC, in the same rank as the petitioner, was transferred from Sub Division Sahnewal to Estate Division [Commercial Branch], Ludhiana by office order dated 5th May, 2015 (Annex P-6). As a result, the petitioner was displaced and posted at Sub Division Sahnewal while Parshotam Lal was transferred to Estate Division [Commercial Branch] Ludhiana.

3. One fine day and out of the blue by office order dated 27th May, 2015 (Annex P-10), the petitioner was re-transferred from Sub Division Sahnewal to Estate Division [Commercial Branch,] Ludhiana while retaining Parshotam Lal at Ludhiana. The change of posting was made rather interestingly after about 40 days of the petitioner being posted at Sub Division Sahnewal. Against this action, the petitioner has approached this Court in the present writ petition filed under Article 226 of the Constitution of India. It is prayed that a direction be issued to the respondents to post the petitioner back at Sub Division Sahnwal where he was transferred to work in his special circumstances which were accepted as germane to the posting and this position retracted from is unfair.

4. In defence of the writ petition, the respondents have contested the case urging that the transfer policy of the Government of Punjab has not been adopted by the PSPCL but of which no proof has been disclosed in the case papers. In counter measure the learned counsel for the petitioner points out that the transfer policy has been issued by the Government of Punjab, Department of Personnel on 8th June, 2015 (Annex P-13) which not only is addressed to all the Heads of Departments of State etc., but also to the Chairmen/Managing Directors of all the Boards/Corporations of the State. There is no dispute that PSPCL is a Corporation owned and run by the State Government being its instrumentality which is amenable to writ jurisdiction. Therefore, it would be no contentious argument to suggest that the transfer guidelines would not apply to Boards and Corporations established in the State of Punjab.

5. When the transfer guidelines (Annex P-13) in the opening part itself refer to the subject of 'Transfers and Postings' and all concerned have been informed that it covers employees of State Government/Public Sector Enterprises for the year 2015-16 and the exercise of general transfers would be undertaken within the period 1st June, 2015 to 30th June, 2015. It was, in these circumstances, the petitioner was posted on compassionate grounds at Sub Division Sahnewal though on his request.

6. The petitioner relies upon Clauses 2 (e) & (f) of the transfer guidelines. Clause 2 (e) prescribes as a broad rule that posting should be for a minimum of three years and a maximum of five years at a particular place of posting. Clause 2(f) of the transfer guidelines requires the Government as the transferring authority to ensure that no official/employee is transferred before a minimum period of three years posting spent at a particular place. The exceptions to the normal guideline are cases of conviction recorded by criminal

courts or for any specified administrative grounds, then such transfers before the expiry of three years period can be effected.

7. The petitioner claims protection of the period prescribed in the transfer guidelines to enforce through court directions the transfer policy. Even though transfer policies are not statutory in nature and are mere guidelines, but the Government cannot be heard to say it wishes to depart from its policy without describing reason for the transfer. In a case where transfer is affected on compassionate grounds, then a special right accrues to an employee to be protected and a change would normally be made for overriding public interest and after hearing the petitioner as to the changed circumstances which had weighed in the mind of the transferring authority to bring about the transfer.

8. This is not to say or suggest that in the matter of postings and transfers employees have to be heard before making changes. They have no such fundamental right to press or call in question the impugned action. They have only a right to represent to the concerned departments of their special circumstances for which they deserve consideration for transfer at a particular place. It is nobody's case that the petitioner was heard before the impugned order was passed transferring him to Estate Division [Commercial Branch], Ludhiana after 40 days of his posting at Sub Division, Sahnewal on own request after making a conscious decision to agree to his request.

9. In the circumstances, it appears to this court rather unfair that once power to transfer has been exercised on compassionate grounds that compassion should not continue within the frame-work of the guidelines. Learned counsel for the PSPCL would then submit that the Sub Division Sahnewal is over-staffed with LDCs and there is no space or requirement of work for the petitioner to be seen as a burden. If this was so then the PSPCL has not explained for a valid reason as to why the petitioner was transferred

from Sub Division Sahnewal to Estate Division Commercial Branch, Ludhiana and continues to be stationed there. However, no material particulars have been pleaded in the written statement of the staffing pattern and how much work is assigned to each of the LDCs posted there. Therefore, in the absence of showing the boundaries of work or their overlapping amongst the LDCs, it cannot be said that the posting of the petitioner at Sub Division Sahnewal would create an administrative imbalance in the smooth running of the office at Sahnewal or that there is no work to be offered to him. All this must have been gauged by PSPCL while posting him to Sahnewal or is there case that the right hand did not know what the left was doing and an enormous mistake was committed which requires to be rectified.

10. Having heard learned counsel for the parties at length, an impression has been created in the mind of the Court that the Assistant Executive Engineer, who was the superior officer of the petitioner at Sub Division Sahnewal has not been fair to the petitioner, which may be a result of inter-personal problems with which the court is not concerned.

11. Learned counsel for the petitioner states at the Bar that the Assistant Executive Engineer has been placed under suspension after the passing of the impugned order but not because of it, which is also a positive circumstance which would weigh in favour of the petitioner.

12. As a result, it appears to this court that there has been no fairness-in-action in the PSPCL in passing the impugned order. It is well settled that judicial review is not directed against the decision, but the decision making process. The decision making process appears to be somewhat flawed when compassion once exercised has been made to run out in 40 days. I would, therefore, allow the petition and quash the impugned order dated 27th May, 2015 (Annex P-10). A protection direction is issued to the PSPCL to regularize

the period of service of the petitioner between the impugned order and his joining at Sahnewal. If a man is cornered and pushed against the wall, then it would be no argument in PSPCL to contend that there has been willful absence from duty without permission when the fault in the first instance lies in the unreasonable actions of the PSPCL perhaps originating from the actions of the Assistant Executive Engineer which dislocated the petitioner from his posting at Sub Division Sahnewal to Estate Division [Commercial Branch], Ludhiana.

13. Coming now to the contempt petition i.e. COCP No.2251 of 2015, I find that in view of the observations made above and directions issued, no further orders are required to be passed in the contempt petition and the same is closed. Accordingly rule is discharged.

**[RAJIV NARAIN RAINA]
JUDGE**

16.03.2016
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