

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

Date of decision: 16.08.2016

CWP No.16514 of 2016

Mahabir Singh

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sandeep Goyat, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

Cites Clause (iv), Para.3 of the Inter District Transfer Policy – 2015 (Annex P-3), which lays down the ‘Order of Preference’ for inter-district transfers. In terms of such clause, teachers suffering from terminal diseases i.e. Cancer/AIDS etc. or from chronic illness of a serious nature, which requires special medical treatment and constant care of their family members, shall be considered for inter-district transfer. The Government considers valid only certificates issued by the Pandit Bhagwat Dayal Sharma PGIMS, Rohtak (Government of Haryana) or Post Graduate Institute of Medical Science and Research (PGIMER), Chandigarh or AIIMS, Delhi. No other illness/disease shall be considered for the purpose.

The request made by the petitioner is under Clause (iv) of Para.3. The medical certificate relied upon by the petitioner before the Government and in this petition has been issued on 01.09.2015 by the Senior Professor & Head, Department of Cardiology, PGIMS, Rohtak (Annex P-2) expressing the opinion that the petitioner’s father Dheer Singh is a known

case of Dilated Cardiomyopathy (DCM), which is a chronic disease and his illness is of a serious nature, which requires special medical treatment and constant care by their family members, repeating the words in the policy. Apparently, the certificate has not been issued by the competent authority at PGIMS, Rohtak and is in fact meant to be 'Confidential' and at best it can be regarded as opinion of a senior medical doctor, but not authenticated by the institution or issued under its seal to give authority to it.

This is not to dispute the illness of the father, but only to see whether the medical certificate it falls strictly within provisions of the inter-district transfer policy and the terms stipulated therein. Besides, it has been issued in 2015 and the present transfer has been made on 01.04.2016 and the present recorded status of the medical condition of the father of the petitioner is not known.

It may be noted that the petitioner had earlier approached this Court by way of CWP No.10096 of 2016, which was ordered to be dismissed as withdrawn with permission to file a fresh petition. Thereafter, the petitioner filed another writ petition bearing CWP No.10411 of 2016, which was disposed of on 24.05.2016 with direction to respondent No.2 to decide the representation dated 05.04.2016 submitted by the petitioner to the authorities. Pursuant thereto, the representation was decided and has been rejected vide order dated 18.07.2016. The petitioner has not come to this Court against the transfer order, but on a request that he should be transferred from Rewari to Rohtak or Jhajjar. This factor has not been considered in the impugned order. The reasons for rejection are as follows:

“I have gone through the entire record of the case and heard the petitioner/appellant in person on 30.06.2016. During the course of hearing, he reiterated the facts of his appeal/writ petition and reiterated that he

is eligible to be transferred in District Rohtak or Jhajjar under the Transfer Policy 2015. But he failed to submit any available vacant sanction post on which his claim can be considered. He also failed to put forth any substance which may prove that any junior to him in District Rewari has been transferred in District Rohtak or Jhajjar under preference – XVI-B.

The petitioner cannot seek transfer as a matter of right as he failed to submit any ground of discrimination. In view of the above, the petitioner is not found eligible for transfer after considering all the corners of the Inter-District Transfer Policy 2015, therefore, the representation dated 05.04.2016 carries no merits and the same is hereby declined.” [emphasis added]

Are the reasons relevant to the order? I think it is not the business of the petitioner to show vacancy position or identify a sanctioned post on which his claim can be considered. That is for the department where the record lies to see and confirm the position from the field offices. Assuming that there was no vacant sanctioned post available, then by the reasoning of the Director Elementary Education, Haryana himself it follows that petitioner’s case could have been considered in such an event. The Director has not even cared to check from the record whether there is vacant sanctioned post at Rohtak/Jhajjar for which stations the request has been made. It is one thing to say that transfer is an incidence of service or that Rule 12(1) authorizes Government to transfer employee to serve at any place but the shield is not impregnable, not to allow meaningful review of the request by assigning relevant reasons. It is not that an employee can claim transfer as a matter of right, but before this Court sits in judicial review over the work of the administrator to see whether the reasons are germane to the decision and to the request, but duty is cast on the administrator to see

whether all relevant and possible considerations, in the first instance have been taken into account and irrelevant consideration shut out and discretion is exercised properly and the grievance dealt with sensitively and with a human heart. Also I do not find due application of mind in the rather long and labored order passed, running unnecessarily into 5/6 pages, to approve the reasoning in it which may qualify the order to be a speaking one, even on the core issues.

The length of the order has nothing to do with its being speaking it only makes for verbosity and clouds reason. When this Court directs speaking orders to be passed on representations, it means only that it should contain reasons cogent and germane to the task at hand bearing relation to the end result as fair and just dispensation of justice amid the rules and policies of Government called in issue.

The order as I read it appears to be far from satisfactory work in resolution of the request for transfer based on medical grounds where the core issue itself has been ignored in decision-making. Therefore, instead of keeping this matter to await the decision of the Government to justify its action in case State/department is put to Court notice by issuing summons, this Court is of opinion that the impugned order deserves to be set aside and re-done for being non-speaking because other relevant factors have not been considered logically and meaningfully for the court to know at one glance what has weighed in the mind of the competent authority while dealing with a request under Clause (iv) of Para.3 of the Inter District Transfer Policy. The order does not say that the medical certificate can be relied upon or else even call upon to the petitioner to strictly follow the procedure in Clause (iv) regarding his father's illness and then take a view on whether the petitioner deserves to be transferred to Rohtak/Jhajjar or not. He seems not to have

applied mind to the requirements of the Clause (iv) of Para.3 at all, since the Clause under which the request is made is not even mentioned in the impugned order nor dealt with it, for which lacuna it cannot be sustained. The respondent authority could have easily given time to the petitioner to furnish authenticated medical certificate from the Pandit Bhagwat Dayal Sharma PGIMS, Rohtak issued under its seal even though weight has to be attached to the 'confidential' medical opinion of the Professor & Head of the Department at Rohtak. At the same time he could have called for a first-hand report from field office through an officer posted there of the medical condition of the father and whether it justified the request of the petitioner for transfer to care for him in the evening of his life. This was a verifiable fact. Instead of proceeding in the right direction the Director got muddled up with an irrelevant consideration rejecting the case also for the reason that the petitioner "failed to put forth any substance which may prove that any junior to him in District Rewari". This was bad thinking and shows lack of probity as a reading of the impugned order ex facie shows. He was not deciding a promotion or seniority issue but a plain and simple request for transfer under Clause (iv) of Para.3. This was the only issue which fell for consideration and unfortunately was not even broached upon.

As a result of the preceding discussion, the petition stands partially allowed. The impugned order is invalidated and quashed being illegal and arbitrary. The authority will pass a fresh order. In making the fresh order, the petitioner will be effectively heard and he will be at liberty to produce evidence in support of his request along with proper medical certificate and it would then be for the respondent authority to consider the same. A fresh order be passed within a fortnight from the date of receipt of certified copy of the order. It must containing relevant reasons for the

conclusions reached in case his request is not conceded. In case the petitioner’s representation is found genuine and bona fide, then relief can be given to him without there being any necessity of passing an order in writing comprising reasons.

[RAJIV NARAIN RAINA]
JUDGE

16.08.2016
Vimal

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>