

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

**CWP No. 20472 of 2015(O&M)**

**Date of decision: 25.2.2016**

Khushwant Singh

... Petitioner

Versus

State of Punjab & ors.

... Respondents

**CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Narinder Kumar Banka, Advocate,  
for the petitioner.

Mr. Harkesh Manuja, Addl.A.G., Punjab.

Mr. DS Pheruman, Advocate,  
for respondent No. 5.

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

**RAJIV NARAIN RAINA, J.(Oral)**

1. The first order passed by this Court was on September 24, 2015 calling upon the law officer of the State to obtain instructions as recorded in the order which reads as under:-

“Mr. Manuja to take instructions as to why the petitioner's posting orders to Manawala against vacant post has been cancelled on the next day and a person who has also been promoted and transferred to Tarn Taran has managed to get himself retained in Manawala where he has been working for the last 23 years. This appears unfair.”

2. The 5<sup>th</sup> respondent has filed a reply contesting the transfer case claiming that he is a heart patient and has had a Stent inserted in his heart and therefore the petition deserves to be dismissed against the

transfer order.

3. The State has filed a separate reply of the Director Health and Family Welfare, Punjab, on behalf of respondents No.1 to 4 explaining in para 3 on merits [at page 67 of the paper-book] that the 5<sup>th</sup> respondent Kanwar Kuldeep Singh submitted a representation to him dated September 16, 2015 [Annex R-1] enclosing his medical reports requesting that he is suffering from heart disease and he is the only caregiver of his family and therefore, he may be adjusted at PHC Manawala, Amritsar. The DH&FW confides in Court that he took up the application, considered it on humanitarian grounds and partially modified the order dated September 11, 2015.

4. The question is whether power and discretion to transfer an employee has been exercised within lawful limits. One could understand that even before making the transfers, the personal problems and grievances of employees ought to have been considered and accounted for but once orders are passed in exercise of general transfers discretion should be exercised judiciously. If the 5<sup>th</sup> respondent had a right to be treated on humanitarian grounds so did the petitioner. There has been no countervailing or balancing of competing interests of both sides and the decision is in the view of this Court one-sided, arbitrary, irrational and unreasonable and thus deserves to be set aside. The petitioner has a valid claim for retention of the first transfer order posting him to Manawala. The DH&FW, Punjab fell into misplaced sympathy on an emotional appeal of the 5<sup>th</sup> respondent citing illness. He should have taken into consideration the relative distances involved between Manawala and Tarn

Taran and the Fortis Hospital, Amritsar before making an informed decision. He took the decision varying the previous order behind the back of the petitioner. By then the petitioner had been conferred an accrued right of hearing which opportunity was denied. Post decisional hearing would no longer suffice to serve the ends of justice when the adverse decision made cannot be left to correction as the reason of changing places recorded in the written defence of the State signed by the DHS who is none other than the transferring authority himself. Judicial review is the only remedy available to the petitioner in the circumstances. It is well settled that when the reason behind an administrative order is found bad, the order must fall as no other reason can be supplied by the author or by the Court.

5. Learned counsel for 5<sup>th</sup> respondent admits that both the petitioner and 5<sup>th</sup> respondent belong to nearby villages which are not far from Manawala or Tarn Taran. Manawala is situated at short distance of about 10 K.M. from Amritsar City. Tarn Taran is no more than about 20 K.M. from Manawala. The medical certificate and the Fortis Hospital outdoor treatment record relied upon by the 5<sup>th</sup> respondent which are annexed to his written statement are of Fortis Hospital, Amritsar. The 5<sup>th</sup> respondent remains within striking distance from the hospital where he is taking treatment, in case of an emergency even if he stays put in the place of transfer i.e. Tarn Taran where he was originally posted following his promotion. Moreover, he has already spent 23 long years serving in CHC Manawala and he still wants to stick there to the disadvantage of the petitioner on a lame excuse, however much one may wish him good

health.

6. For the foregoing reasons, this petition is accepted and the impugned order [Annex P-4] is quashed.

**(RAJIV NARAIN RAINA)  
JUDGE**

**25.2.2016**  
**monika**