

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

**CWP No.312 of 2016**

**Date of Decision: 08.01.2016**

Vijay Kumar Syal

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present: Mr. Karanvir Singh Khehar, Advocate,  
for the petitioner.

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

**RAJIV NARAIN RAINA, J.**

1. The petitioner was appointed to the Punjab Civil Service (Executive Branch) from Register A-II on August 05, 2011 in compliance of directions issued in CWP No.9715 of 1999 delivered on September 08, 2008. On appointment to the State Civil Service, the petitioner was placed in the batch of 1994 retrospectively. He is due to retire in July 2016. His first posting was as a Sub Divisional Magistrate, Budhlada. He has been transferred to different stations in his short span of service as many as 15 times which by all means is rather frequent. He states that in the year 2008 he suffered injury in an accident which has resulted in permanent disability to the extent of 45%. As a result, he has an artificial right hip joint inserted. He holds a disability certificate issued by the Civil Surgeon, Sangrur. He has never had more than six months in any of his postings. He was transferred and posted as SDM, Faridkot with additional charge of District

Transport Officer, Faridkot and Assistant Commissioner, Grievances at the same station. The transfer order was passed on December 26, 2014. On May 28, 2015 he was posted/transferred as Sub Divisional Magistrate, Dharkalan, District Pathankot. The next day i.e. on May 29, 2015 he was given additional charge as Land Acquisition Collector, Shahpur Kandi and in addition thereto as Deputy Commissioner (Resettlement & Rehabilitation) Ranjit Sagar Dam Project, Shahpur Kandi against a vacant post.

2. Feeling aggrieved by his transfer order dated May 28, 2015 as SDM Dharkalan from Faridkot and the subsequent order giving him the additional charge [as said before] he approached this Court by filing CWP No.12130 of 2015 in which vide an interim order dated June 01, 2015 this Court while issuing notice of motion for July 01, 2015 stayed the operation of the impugned orders (P-3 & P-4) qua the petitioner.

3. It is argued that the petitioner is a permanently disabled person who is due to superannuate on July 22, 2016 at the age of 58 years and has suffered repeated transfers 15 times during a short span of 4 years of service and is protected by the transfer policy (P-5) which prescribes that an employee left with two years service before retirement should be retained at the same place. In this regard he cites Clause (b) of the transfer policy. His grievance deserves to be redressed in the manner provided in Clause (d) of the transfer policy. The writ petition is pending and the interim order continues to operate till date. As a result of the interim order, the petitioner has continued to serve at Faridkot as Sub Divisional Magistrate with additional charge as DTO, Faridkot. His transfer to Faridkot continues.

However, the Chief Secretary of the Government of Punjab being the Cadre Controlling Authority of the State Civil Service has by the present impugned order dated December 07, 2015, endorsed on December 17, 2015, posted the petitioner as Executive Magistrate, Faridkot against a vacant post due to administrative requirements and in public interest. By another order passed on January 04, 2016 the Deputy Commissioner, Faridkot gave additional charge of the posts of SDM and DTO, Faridkot to Mr. Harjit Singh, PCS in addition to his own assignment as Sub Divisional Magistrate, Kotkapura. The challenge in this petition is to the order passed by the Chief Secretary, Punjab in the name of the Governor of Punjab in the Department of Personnel (IAS Branch) dated December 07, 2015.

4. Mr. Karanvir Singh Khehar, learned counsel appearing for the petitioner makes a four-fold argument. Firstly, he submits that there is an interim stay of the orders dated May 28, 2015 and May 29, 2015 in the pending writ petition and the status quo ante has been disturbed contumaciously in flagrant disregard of the interim order, which means that his status quo at Faridkot deserves to have been maintained in the matter of the charge given to him and his client could not have been divested of the charge of Sub Divisional Magistrate, Faridkot and in addition, the District Transport Officer, Faridkot. His status has been lowered. This contention appears not to be well founded. The petitioner approached this Court for stay against transfer which was accepted ad interim. There was no direction in the interim order dated June 01, 2015 with respect to posting or holding any particular assignment. The petitioner remains in Faridkot in compliance of the interim directions in CWP No.12130 of 2015. This Court finds no

violation of the interim orders of this Court as the petitioner remains posted at Faridkot and has only been divested of two of the charges assigned to him and has now been posted as Executive Magistrate, Faridkot against a vacant post. Meaning thereby, the other offices have been divested from him. The impugned order is not a transfer order but merely a posting order within the same District and in the same station. He cannot claim posting as a matter of right. If the order has been passed on administrative requirements and in public interest then there will be a presumption that the order has been made in due course of administration as thought fit by the State Government speaking through its Chief Secretary; the competent authority to make transfers and posting of members of the State Civil Service. No mala fides have been alleged against the Chief Secretary in the petition. The Deputy Commissioner, Faridkot has been arrayed as 3<sup>rd</sup> respondent by name. No personal allegations have been levelled against the 3<sup>rd</sup> respondent in the petition which might smack of malafides. In para.5 of the petition, a grievance is made against Mr. Harjit Singh, PCS who has been posted as SDM, Kapurthala but is already holding the charge of Chairman, Improvement Trust, Kotkapura, Secretary, RTA, Bathinda and Secretary, RTA, Ferozepur. The further complaint is that the post of Executive Magistrate can be offered only to new entrants to service while the petitioner has the weightage of seniority retroactively from 1994 and is a senior officer whose rank deserves to be respected. He is senior to more than 100 PCS officers. Persons junior to him are enjoying senior level postings, including as Additional Deputy Commissioners, Deputy Director Local Government and Additional Managing Directors of Corporations etc.

5. Mr. Khehar submits that the impugned order is actuated with bias, malice and malafides in view of the above explained position. It is further stated in the grounds that the post of Executive Magistrate is a redundant post and no PCS Officer has ever been posted in Faridkot for the last 20 years to be an Executive Magistrate. The reason ascribed for the “avenge upon the petitioner” is that he may have irked the authorities for getting his transfer stayed by this Court. These assertions are made in para.6 which contain the grounds of challenge to the impugned order. However, in the verification clause the contents of para.6 are acknowledged on legal advice of the counsel and, therefore, the averments cannot be taken as statements of facts verified as true and correct to the knowledge of the petitioner. Other than paras.6 & 7 of the petition the remaining paragraphs have been verified as true and correct to the knowledge of the petitioner as derived from the records. No part of the petition is verified on personal knowledge. Though this is a technical flaw in the foot of the petition, yet verification of facts deposed to in affidavit jurisdiction in writ petitions have a valuable place which cannot be disregarded. Despite the legal position obtaining on the point, this Court has considered the facts stated in the petition and even if they were true to be true even then the impugned order is not open to be flawed on the first contention of malice etc.

6. The second contention raised by Mr. Khehar is that the impugned order could not have been passed in the face of directives issued by the Election Commission of India regarding Special Summary Revision of Photo Electoral Rolls the work on which has commenced w.e.f. January 01, 2016. The Commission has only reminded that the revision schedule is

prepared in such a manner that the electoral rolls are finally published much before the National Voters' Day is celebrated which is marked every year on 25<sup>th</sup> January, one day before the Republic Day celebrations. It is argued that the fiat from the Commission is in the nature of an election code of conduct and State Government have been advised to provide adequate staff and manpower deployment in the office of EROs/DEOs and CEOs in view of the forthcoming revision. Clause (b) of the circular imposes ban on transfers of officers and staff engaged in the revision of rolls. From here, it is argued that prior concurrence of the Election Commission was required during the period of Special Summary Revision in the State before issuing the impugned order. The circular has been issued for meticulous compliance and the same has been circulated to all the Financial Commissioners, Principal Secretaries and Administrative Secretaries for information and necessary action by the Government. On a reading of the circular it is revealed that the arrangements are required for strengthening of EROs/DEOs or CEOs. This argument has only to be noticed and rejected. The petitioner has not been transferred out of the station where interim order operates. He remains posted at Faridkot and would be available for performance of duties under the circular of the Commission, if such work is assigned to him. No orders have been produced on the record which confers on him a duty to perform within the mandates of the Election Commission of India any prescribed duty. It is, therefore, not possible for this Court to hold that the impugned order violates the exercise to be undertaken by officials in the State of Punjab.

7. The third contention of the petitioner is that the transfer policy

protects him since he should not be displaced within two years of retirement, the retirement being around the corner. The transfer policy guidelines have been held not to be justiciable in courts even though they are ordinarily required to be kept in view while making transfers and postings. The petitioner relies on **Union of India and others vs. S.L. Abbas**, AIR 1993 SC 2444. The Supreme Court in this ruling has enumerated the grounds of challenge to transfer and posting orders and held they are not normally to be disturbed when taken in public interest unless the transfer order suffers from malafides etc.

8. Members of the State Civil Service belong to the premier service upon whom the burden lies of implementing policy. Merely because the petitioner is close to retirement would not mean that the impugned order is illegal or malafide or that such an order could not have been made in the exigencies of administration and in public interest. It is for the Chief Secretary, Punjab to assess who has to be posted where for the smooth functioning of the District Administration. The Chief Secretary remains the best judge of the needs of the administration. If the petitioner perceives that he has been lowered in status by posting him as Executive Magistrate, Faridkot then he labours under a mistaken notion that he has a right not to be disturbed. His status as a PCS officer has not been lowered. He has not been demoted. He has only been assigned work, while some other work has been withdrawn in public interest. He remains a member of the State Civil Service and broadly the principles enunciated by the Constitution Bench of the Supreme Court in **E.P. Royappa vs. State of Tamil Nadu**, AIR 1974 SC 555 that the matter of posting is the prerogative of the executive. The

broad principles laid down therein would apply in some measure to the case in hand. I would, therefore, not accept this contention as a cogent ground to interfere in the impugned order.

9. Lastly, it is contended by Mr. Khehar that petitioner is a person who suffers from disability and, therefore, the impugned order should not have been passed. There is not much weight in this argument since the petitioner has not been transferred out of Faridkot and remains posted there with an alteration in the work assigned by the Government. There is no physical movement involved in such a posting. In any case, transfer is an incidence of service. The exigencies of administration can well accommodate some free play in the joints of the transfer policy in the hands of the Chief Secretary, Punjab, especially when dealing with senior officers of the State Civil Service. Unless brought about by colourable exercise of power to transfer or oblique motive no intervention is called for in writ jurisdiction in the present case. It is well settled that matters of transfer and posting are not actionable *per se* in a court of law. I would, therefore, reject this argument as well in challenge to the impugned order. However, this order will not preclude the petitioner from representing to Government, if he still feels aggrieved.

10. As a result of the above discussion, I do not find any valid or cogent ground to interfere with the impugned orders and would dismiss the petition in limine.

**(RAJIV NARAIN RAINA)**  
**JUDGE**

**08.01.2016**  
**manju**