

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17460 of 2016

=====

Prafull Chand Singh, Son of Late Hari Narayan Singh, Resident of Village and P.O. Manikpur, P.S.- Dhansoi, District- Buxar, presently working as Accounts Clerk in the office of Executive Engineer, Building Construction Department, Building Division, Sasaram.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Deputy Secretary, Building Construction Department, Government of Bihar, Patna.
4. The Chief Engineer (South), Building Construction Department, Government of Bihar, Patna.
5. The Superintending Engineer, Building Construction Department, Building Circle, Ara.
6. The Executive Engineer, Building Construction Department, Building Division, Sasaram.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. S.B.K. Manglam, Adv.
Mr. Anita Kumari, Adv.

For the Respondent/s : Mr. Syed Md. Najmul Bari, AC to SC-20

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-07-2017

Heard Mr. S.B.K. Manglam, learned counsel appearing for the petitioner and Mr. Syed Md. Najmul Bari, learned Assisting Counsel to Standing Counsel No.20 for the State.

The petitioner is aggrieved by his order of transfer bearing Memo No.995 dated 16.09.2016 impugned at Annexure-4 to the writ petition.

A short submission has been made by Mr. Manglam, learned counsel appearing for the petitioner in reference to a Division Bench judgment of this Court reported in **2015(1) PLJR 405 (Sheikh Kalam**



Vs. The Union of India) to submit that even though the transfer of the petitioner has been effected on alleged complaint so received and thus is penal in nature and even though the transfer order would reflect that it is on administrative ground but the order of transfer is stigmatic and the petitioner is entitled to a hearing before such transfer.

The argument of Mr. Manglam is supported by the stand taken by the respondent at paragraphs 8 to 18 of the counter affidavit filed on behalf of the respondent nos.2 to 6. The respondents do admit that since there were complaint against the petitioner as to his integrity that on the direction issued by the Deputy Chief Minister the transfer order was effected on administrative ground.

It is not in dispute that no opportunity was given to the petitioner to defend himself on the complaint before the transfer was made. A somewhat similar issue came up for consideration in the case of **Sheikh Kalam** (*supra*) and the opinion of the Division Bench at paragraph 19 would squarely apply to the case in hand which runs as under:

“19. Though the case of **S.R. Tewari** (*supra*) and **Anoop Jaiswal** (*supra*) dealt with the question of termination of service, what clearly follows from the decisions, in **S.R. Tewari** (*supra*) and **Anoop Jaswal** (*supra*), is that the form of an order, whereunder a Government employee is transferred, may not, in a given case, be conclusive of the true nature of the order inasmuch as the form may be merely a camouflage for an order of punishment and it is always open to the Court before which such an order is challenged to lift the veil and go behind the form of the order and ascertain the true character of the order and if the Court holds that the order, though in the form of merely administrative order, is, in reality, a cloak for an order of punishment, the Court would not be debarred from interfering with such an order merely because the form



of the order is not punitive in nature. The Court, in a given case, thus can go through the records, where the basis or the foundation of the order stands laid, and, then, determine if a transfer is a transfer *simpliciter* or a transfer is penal in nature. This apart, when a transfer order is stigmatic in nature, such a transfer order, too, cannot be sustained if the order has been made without giving any opportunity to the affected employee to have his say in the matter.”

As in the case of **Sheikh Kalam** (supra), in the present case although the transfer order has been passed in administrative interest but the foundation for the same stands explained in paragraphs 8 to 18 of the counter affidavit which in no certain terms accepts that it is in view of the complaint so received against the petitioner.

In view of the legal position so settled the punitive transfer order dated 16.9.2016 impugned at Annexure-4 cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed.

The authority concerned however is not precluded from proceeding afresh but in accordance with law.

Let the records produced by the learned State Counsel be returned to him.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11-08-2017
Transmission Date	NA

