

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13859 of 2017

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Yogendra Prasad Singh, Son of Sri Shardanand Sharma, resident of Village
Dariyapur, P.O. + P.S.- Bihta, Distt.- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Planning and Development Department, Bihar, Patna.
2. The Special Secretary, Planning and Development Department, Bihar, Patna.
3. The Deputy Secretary, Planning and Development Department, Bihar, Patna.
4. The District Magistrate, Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Choudhary, Adv.
Mr. Anil Kumar Tiwary, Adv.
Mr. Akshansh Ankit, Adv.

For the Respondent/s : Mr. Vinay Kirti Singh, GA-2
Mr. Kunal Tiwary, AC to GA-2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 28-11-2017

Heard Mr. Ashok Kumar Choudhary, learned counsel appearing
for the petitioner and Mr. Kunal Tiwary, learned Assisting Counsel to
Government Advocate No.2 for the State.

The petitioner is aggrieved by his transfer vide notification
bearing No.4640(S) dated 22.8.2017 passed by the respondent no.2, the
Special Secretary, Planning and Development Department, Government
of Bihar, Patna.

Mr. Choudhary, learned counsel appearing for the petitioner
while questioning the transfer order on grounds of frequent transfer, has
also challenged the same on grounds that it is penal in nature as it is
founded on a complaint made against the petitioner as to the discharge of
his duty. Relying upon a decision of this Court reported in **2015(1)**
PLJR 405 (Sheikh Kalam Vs. Union of India) he submits that the legal



position is settled and penal transfer is to be preceded with an opportunity of hearing which has not been done.

A counter affidavit has been filed and Mr. Tiwary, learned Assisting Counsel to Government Advocate No.2 in reference to the statements made at paragraphs 7 to 15 has submitted that for the complaints against the petitioner, he was put on notice and not being satisfied by the reply that in administrative interest, the transfer has taken place which has the approval of the Chief Minister.

The arguments have been contested by Mr. Choudhary to submit that even though the petitioner was put on notice on complaint but the order of transfer is a distinct action of the State and in case it was founded on those allegations then he needed a separate notice on the same.

I have heard learned counsel for the parties and I have perused the records.

Law is well settled and a penal transfer has to be preceded with a notice and opportunity of hearing. While it is the contention of Mr. Choudhary that the hearing given to the petitioner on the complaint has nothing to do with the order of transfer inasmuch as the order of transfer does not indicate that it was in consequence of the said proceeding but in my opinion Mr. Chaudhary learned counsel is riding on a mere technicality to question the transfer order. The pleading on record would satisfy that it is consequence of the proceedings so initiated against the petitioner and not being satisfied by the explanation that the transfer has taken place. An order of transfer is an exigency of service and when it is in administrative interest the discretion lies with the controlling



authority.

In so far as the case in hand is concerned, records confirm that there were complaints against the petitioner as to the discharge of his duty and the petitioner being put on notice, his reply may not have satisfied the controlling authority. Now even if the transfer order while resting on such allegation makes no mention, in my opinion there is neither any requirement in the transfer order to mention in so many words that it is consequence of such administrative action nor a transfer order founded on a complaint requires a separate notice apart from the one given on the complaint. The transfer in the present case is confirmingly in consequence of the administrative action led against the petitioner. Every proceeding need not be disciplinary in nature to result in a penal action under the Disciplinary Rules but certainly can be motive for administrative action to result in an order of transfer. The record also confirms that the transfer order has also the Government sanction.

No case for indulgence is made out in the circumstances discussed.

The writ petition is disposed of.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11-12-2017
Transmission Date	NA

