

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5510 of 2017

- Satyendra Kumar Kar S/o Shri K.C. Kar Aged About 52 Years Present Post-Engineering Asst. O/o Doordarshan Kendra, Raipur, Chhattisgarh 492001-Applicant

---- Petitioner

Versus

1. Union Of India Through- Its Secretary, Ministry Of Information & Broadcasting, A Wing, Shastri Bhawan, New Delhi 110001- Respondent No. 1
2. The Director General, Door Darshan, Door Darshan Bhawan, Copernicus Marg, New Delhi 110001- Respondent No. 2
3. The Director General, Aakashwani, Directorate, Sansad Marg, New Delhi 110001- Respondent No. 3
4. The Additional Director General, Air & Door Darshan (W.Z.) Old Cgo Building 101, M.K. Road, Mumbai (Maharashtra) 400001- Respondent No. 4
5. The Dy. Director (Engineering) (P-Cell) O/o The Additional Director General, Air & Door Darshan (W.Z.) Old Cgo Building 101, M.K. Road, Mumbai (Maharashtra) 400001- Respondent No. 5
6. The Director, Door Darshan Kendra, Raipur, Chhattisgarh 492001- Respondent No. 6

---- Respondents

For Petitioner	:	Shri A.V. Sridhar, Advocate.
For Respondents	:	Shri B. Gopa Kumar, Assistant Solicitor General of India

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Order On Board

P. Diwaker, J

24/10/2017

1. Heard on admission.

2. Challenge in the present writ petition is to the order dated 03.10.2017 passed by the Central Administrative Tribunal, Jabalpur (for short 'the Tribunal') in Original Application No.200/00783/2017 rejecting the application for grant of interim relief as filed by the petitioner seeking stay of the impugned transfer order dated 22.9.2017.
3. Learned counsel for the petitioner would submit that even though transfer is an incidence of service and an employer has always authority to transfer employees, such transfers shall be made always in the public interest or in the cause of the institution but not according to his or its whims and fancies. In the case in hand, the petitioner has been transferred before completion of normal tenure of four years, which is contrary to the guidelines of transfer policy. He further submits that authorities who exercise powers of transfer, shall exercise such powers dis-compassionately and not with vindictive attitude, however, the impugned transfer order has been issued in order to victimized the petitioner as certain anonymous complaints were made against him. He also submits that the transfer of the petitioner would hamper the education of his children as he has been transferred during mid academic session to a far off place which is about 1400 kilometer away from his present place of posting.
4. Opposing the submissions advanced by learned counsel for the petitioner, it has been argued by the learned counsel for the respondents that it is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required and therefore there is a very little scope of judicial review by the Court against the transfer order and only if it is found to be in contravention of the statutory rules or for malafide then the Court can interfere. He further

submits that the transfer of the petitioner had been in administrative exigency and no mala fide could be attached to the same. Even the petitioner has almost completed the tenure of four years which is short of only three months. The transfer policy does not have any statutory force and it merely provides for guidelines for the understanding of the departmental personnel. He also submits that transfer of a government servant who is appointed on a transferable post from one place to another is an ordinary incident of service and it does not violate any legal right of the employee concerned.

5. We have given serious considerations to the said submissions and have perused the record.
6. The issue of transfer and posting has been considered time and again by the Apex Court and the entire law has been settled by catena of decisions. It is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting. Transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. The employee does not have any vested right to be posted at a particular place. In **Gujarat Electricity Board v. Atmaram Sungomal Poshani** reported in **1989 AIR 1433** the Hon'ble Supreme Court has observed as under:-

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the another is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration."

7. In **Union of India v. H.N. Kirtania** reported in **1989 AIR 1774** the Hon'ble Apex Court observed as under:-

"Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafide."

8. In **Union of India vs. S.L. Abbas** reported in **1993 AIR 2444** the Apex Court has observed that the Government instructions on transfer are mere guidelines without any statutory force and the Court or Tribunal cannot interfere with the order of transfer unless the said order is alleged to have been passed by malice or where it is made in violation of the statutory provisions.
9. From the above, the legal position can be summarized that the transfer is a condition of service and it is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required. There is very little scope of judicial review against the transfer order and only if it is found to be in contravention of the statutory rules or for malafide then the Court can interfere. Further, the transfer policy does not have any statutory force and it merely provides for guidelines for the understanding of the department personnel.
10. In view of above, we feel that the Tribunal has given detailed reasons for rejecting the application filed by the petitioner with which we are in complete agreement more so in view of the fact that the impugned transfer order has been made on administrative ground after obtaining due approval of the competent authority and posting the petitioner against a vacant post. Even otherwise, the main petition assailing the impugned

transfer order is still pending consideration and the petitioner has opportunity to establish the grounds raised by him in the original application.

11. Consequently, the writ petition has no substance, the same is liable to be dismissed and it is hereby dismissed in limine. We make it clear that the original application shall be decided by the Tribunal on the basis of the facts and on its merits without being influenced by any observation made by this Court in any manner.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Arvind Singh Chandel)
Judge

roshan/-