

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2751 of 2016**

Keshav Kumar Agrawal S/o Late Manmohan Lal Agrawal, Aged About
55 Years R/o Kilaward, Juna Bilaspur, Tahsil And District Bilaspur,
(Chhattisgarh) **---- Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Revenue And Disaster Management Department, Mantralaya, New Raipur, P.S. Rakhi, District Raipur, (Chhattisgarh)
 2. The Secretary, Chhattisgarh Board Of Revenue, Bilaspur, (Chhattisgarh)
 3. The Collector, Janjgir Champa, District Janjgir Champa, (Chhattisgarh)
-Respondents**

For Petitioner	: Mr. Keshav Kumar Agrawal, Petitioner in Person
For State/Respondents No.1 & 3	: Mr. Satish Gupta, Government Advocate
For Respondent No.2	: None appears

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****27/02/2017**

Heard.

1. This petition has been filed by the petitioner aggrieved by order dated 22.06.2016, by which, he has been transferred from Board of Revenue, Bilaspur to District Office at Janjgir Champa in the department of Revenue.
2. The impugned order has been challenged by the petitioner on the following grounds :
 - (a) During the pendency of earlier writ petition, in which, interim order was passed by this Court, protecting the petitioner against transfer order dated 21.12.2015, new transfer order could not be issued.
 - (b) The petitioner could not be transferred during mid session.

- (c) Approval of the Minister In charge has not been taken.
- (d) The petitioner having already been absorbed in the Ministerial Establishment of the Board of Revenue, he could not be transferred to District Establishment.
- (e) In any case, the petitioner ought to have been transferred only to the office of Collector, Bilaspur, wherefrom he was transferred to Board of Revenue.
- (f) In case, the petitioner is transferred to Janjgir Champa, he will lose his seniority.

3. The petitioner, in person, submits that the petitioner in the year 2009 had requested for transfer, he was transferred to Bilaspur in the office of Collector. Thereafter, on his own request, he was transferred to Board of Revenue, Bilaspur and finally his services were also absorbed. In support of the submission, reference is made to gradation list Annexure P/3, which contains the name of the petitioner also. It is submitted that the very fact that the name of the petitioner was included in the gradation list shows that the petitioner's services were permanently absorbed in the ministerial establishment of the Board of Revenue. The other submissions are that the petitioner has been transferred in the month of June, 2016, which is a mid session transfer and the approval of the minister in-charge has not been taken, as required under the law. There is serious apprehension raised that at present, where the petitioner is working, he enjoys a very high position of seniority, but if he is sent back to the establishment of the Revenue Department, Janjgir Champa, he may lose his seniority and ultimate chance of promotion.

4. On the other hand, learned counsel for the State submits that the petitioner has challenged the transfer order without there being any ground of interference made out before this Court. It is submitted that earlier transfer order was issued by the Board of Revenue and the competency of the Board of Revenue was challenged by the petitioner before this Court. This Court having been, prima facie, satisfied with the grounds raised in that petition, stayed the order of transfer issued by the Board of Revenue. Later on, the Government realized that the order of transfer could be passed only by the Government i.e. Controlling Authority of the petitioner, therefore, the impugned

order has now been passed. It is next contended that the petitioner was only transferred and that too, on his own request and he was not absorbed in the Ministerial Establishment of the Board of Revenue. It is next submitted that the transfer order of the petitioner was issued only in the transfer session as per transfer policy dated 11.06.2016. As far as the aspect of approval of the Minister is concerned, it is submitted that the petitioner has not made any such averment in the petition, on affidavit, that while transferring him, the procedure, as prescribed in the transfer policy, was not adhered to. Lastly, it is submitted that the petitioner's apprehension of lose of seniority is only on the basis of misconceived notion that he had been absorbed in the ministerial establishment of Board of Revenue. If he is being sent back to the Revenue Establishment of the District of Janjgir Champa, the petitioner will be definitely entitled to seniority from the date when he was appointed as Assistant Grade-III.

5. After hearing the petitioner, in person, and learned counsel for the State, I find that this petition is bereft of merit.

6. Submission that the petitioner was absorbed in services in the ministerial establishment of the Board of Revenue, has been raised only as an argument without there being cogent, foundational facts in the petition. In any case, I do not find any material on record to show that the petitioner services were permanently absorbed in the ministerial establishment of the Board of Revenue so as to say that he started holding lien on the post of Assistant Grade-III in the ministerial establishment of the Board of Revenue. It appears to a plain and simple case of transfer on his own request, which is clear from the order of transfer dated 11.10.2010 passed by the Government. The note-sheet which has been placed on record by the respondent also indicate that the petitioner, himself, was interested in coming to the Bilaspur, for which, he made a request and then he was transferred from Janjgir Champa to Bilaspur. While remaining posted at Bilaspur, he made an application for transfer on his own request in the Board of Revenue, which was also considered and he was posted in the Board of Revenue.

7. Reply of the respondent clearly shows that the petitioner has been transferred only on administrative exigency of service. It has been stated that the petitioner had been frequently proceeding on leave and notices were also issued. Therefore, in these circumstances, it was decided to send the petitioner back to the same District where he was originally appointed.

8. Submission that on account of transfer to his parent District where he was initially appointed, the petitioner will lose his seniority, is misconceived because the petitioner's seniority is to be counted only from the date of his initial appointment as Assistant Grade-III in the establishment at Janjgir Champa.

9. A mere fortuitous circumstances that upon his posting in the Board of Revenue, as there was very few officer, he was enjoying a higher seniority position, would do not confer a vested right on him to claim that he should always remain in the same position. Much stress was laid on the fact that in the gradation list, name of the petitioner was published. Even if it is there, it does not mean that the services of the petitioner were absorbed. Issuance of such list are many times, ministerial act and it would not result in any absorption of the petitioner in the establishment of the Board of Revenue in the absence of there being any order in that regard passed by the State Government with the consent and approval of the Board of Revenue.

10. The petitioner lastly submitted that he had his own health problem therefore, his request for transfer to Bilaspur may be considered.

11. This aspect can only be considered by the State Government and not by this Court. In the absence of there being any ground for interference by the writ Court in exercise of powers under Article 226 of the Constitution of India and in the absence of any allegation of malafide, lack of competency or illegality made out, no interference is called for.

12. There is no interim order passed by this Court. Due to oversight, in order sheet dated 29.11.2016, it was recorded that interim order shall continue. This will not give the petitioner any right to claim that he was enjoying any interim order passed by this Court.

13. With the aforesaid observations, the petition is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge