

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPS No. 6945 of 2016**

- Chandrabhusan Mahto, S/o Kapil Narayan Mahto, Aged About 51 Years, Working As Clerk Grade I, S.E.C.L. Dipka, District Korba Chhattisgarh

**---- Petitioner**

**Versus**

1. South Eastern Coal Fields Ltd. Through Chief Managing Director, S.E.C.L. Head Quarter, Seepat Road, Post S.E.C.L. Post Box No 60, P.S. Sarkanda, District Bilaspur Chhattisgarh
2. General Manager, (Personal/Manpower ) S.E.C.L. Seepat Road, Post S.E.C.L. Post Box No.60, P.S. Sarkanda, District Bilaspur Chhattisgarh
3. General Manager, S.E.C.L. Dipka Area Korba, District Korba Chhattisgarh
4. Regional ( Personal / Manpower ) S.E.C.L. Raigarh Chhattisgarh

**---- Respondents**

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For Petitioner

Ms. Renu Kochar, Advocate

For Respondent-SECL

Shri K. K. Shrivastava, Advocate

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**Hon'ble Shri Justice Prashant Kumar Mishra**

**Order On Board**

**25/04/2017**

1. Petitioner was earlier transferred on 23.05.2016 from Dipka Area to Johila Area of SECL. The order was assailed in WPS No.2500/2016, which was disposed of with direction to the respondents to consider and decide the same keeping in view his submission that the petitioner suffers from Kidney ailment, for which sufficient medical facility is not available at Johila Area.

When the representation was rejected, the petitioner preferred yet another writ petition bearing WPS No.3963/2016, which was dismissed by this Court. Against this order, the petitioner also preferred Writ Appeal No.494/2016, which came to be dismissed as withdrawn. Despite dismissal of petitioner's second petition and withdrawal of writ appeal, the petitioner kept on representing the SECL, which eventually culminated into the impugned order, whereby his request for transfer to Raigarh Area was accepted, but the same was treated as a transfer at his own request dis-entitling him to claim transfer allowance and other benefits.

2. It is argued that if the later part of the impugned order remains intact, the petitioner may lose his seniority in the Cadre of Clerk Grade-I, as he is likely to be provided bottom seniority at the newly transferred place, which is treated to have been passed at his own request, therefore, the petitioner is likely to suffer throughout his career.
3. Despite dismissal of earlier writ petition and withdrawal of the writ appeal, the order (Annexure-P-1) has given rise to a fresh cause of action. It is for the SECL to consider as to whether when an employee is transferred to a place at his own request on medical grounds, the same would occasion application of the principle under Article 21 of the Constitution of India, because the right to serve an employer while at the same time enjoying medical facility for treatment of the ailment, from which an employee is suffering, would be covered as his right to life. In such a case, if the transfer is not for enjoying posting at a particular place, but it has occasioned by way of compulsion for obtaining better medical

facility, the employee may not be deprived of his previous seniority. At this stage, Shri Shrivastava, learned counsel for the respondent SECL, would suggest that if the petitioner makes a representation to the Competent Authority, the same shall be adverted to and considered objectively keeping in view the extant guidelines, service regulations as well as its effect on other similar cases, wherein other employees have accepted such transfer on request basis losing their previous seniority.

4. Accordingly, the writ petition is disposed of reserving the above stated liberty. Let the representation be decided within six months of its submission before the competent authority of SECL.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala