

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.13556 of 2017

Date of Decision: December 18, 2017

Sanjay Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Sukhdeep Parmar, Advocate,
for the petitioner.

Mr. R.K. Doon, AAG, Haryana.

Amol Rattan Singh, J. (Oral)

Pursuant to the orders dated 07.07.2017, 13.07.2017, 07.12.2017 and 12.12.2017, a photocopy of the file pertaining to the transfer of the petitioner as Principal, Government Industrial Training Institute, Gohana, to the Government Industrial Training Institute, Nagina (Mewat), has been produced in Court by the learned State counsel, wherein it is seen that a noting has been made (at page 11 of the file produced before this Court), by the Minister for Industrial Training (shown as ITM), requesting the Chief Minister that “the following transfers may kindly be approved”; the number of persons sought to be transferred being 16, including petitioner Sanjay Kumar and one Sh. Sandeep Kumar Ahlawat, respondent no.3 herein.

In the said noting, it is proposed that the petitioner be transferred from GIT, Gohana to GIT, Nagina, against a vacancy, and similarly Sandeep

Kumar Ahlawat be transferred from GIT, Hansi to GIT, Gohana, “against Sh. Sanjay Kumar”.

The noting file further shows that as recorded by the OSD to the Chief Minister, the CM had approved the above proposal, except in the case of one Gajender, at Sr. No.15 of the list.

However, in the impugned order issued on 31.05.2017, Annexure P-3 with the petition, (a copy of which is on the photostat copy of the transfer file produced in Court today by the learned State counsel), the transfer of the petitioner, Sh. Sanjay Kumar, Principal of the Government Industrial Training Institute, Gohana, to the Government Industrial Training Institute, Nagina, is shown to be (in Hindi), “as per his request made”, against a vacant post.

Similarly, the transfer of respondent no.3, Sandeep Kumar Ahlawat, is shown to be from the Government Industrial Training Institute, Hansi, to the Government Industrial Training Institute, Gohana, also on his own request against a vacant post.

On query to the learned counsel for the petitioner as to when the petitioner was transferred to Gohana, he points to the order dated 31.10.2016 (Annexure P-1), i.e 7 months prior to the order dated 31.05.2017 (Annexure P-3), whereby the petitioner was shown to have been transferred from the Government Industrial Training Institute, Hansi, to the Government Industrial Training Institute, Gohana, in place of the aforesaid Sandeep Kumar Ahlawat, on the request of the petitioner.

In the reply filed by the respondent-State, a large number of judgments of the Supreme Court have been cited, that in administrative matters, the Court should not normally interfere.

It has also been stated that no transfer policy has been issued by the Department and the petitioner merely on the basis of a draft transfer policy, cannot claim that he should not be transferred out from one place before he spent three years at the said place. (A copy of the said draft policy is annexed as Annexure P-2 with the petition).

Whereas very obviously transfer of a Government employee is a normal exigency of service, however, when the reason for transfer is given to be on the request of a particular employee, no such request being on record and the Government defending that order by taking a wholly different stand, the stand taken in such reply, is to be rejected outright.

Even in the file produced in Court today, no request of the petitioner is pointed to by the learned counsel for the State, seeking his transfer from the Government Industrial Training Institute, Gohana, to the Government Industrial Training Institute, Nagina.

It also needs to be pointed out that in the reply filed by the State, it is stated that Nagina being in the Mewat area, posting of a Principal in the Government Industrial Training Institute there is also essential.

Very obviously that reasoning cannot be denied. Yet, with the transfer having been made shown to be at the request of the petitioner, with the Government not even expressing a minute regret that it is an inadvertent mistake, if at all it was a mistake, the stand taken by the Government is rejected.

Mr. Doon, however, points to a letter dated 09.09.1981 from the file produced in Court today, which is addressed by the Commissioner and Secretary to the Government of Haryana, Department of Finance, to all Heads

of Departments/Commissioners etc., observing therein that when transfers are ordered on the request of some relatives of a Government servant, or on the recommendations of a Member of Parliament/Member of the State Legislature, or in other similar circumstances (unless it is explicitly stated as being on a complaint), it shall be treated as a transfer on the request of the Government servant, and travelling allowance would not be paid to him.

Transfers made on the basis of notes sent by the Chief Minister or Minister incharge, or even on verbal orders, as per the said letter are also to be treated to be transfers made on request.

The reasoning given in the aforesaid letter is absolutely sound in the opinion of this Court, because usually when a transfer is made on verbal request or order of a superior authority, the rationale would be that the said authority had been requested by the employee concerned for such transfer.

However, no request of any sort having been made by the petitioner, with the stand of the Government in its written statement being as has been depicted above, the impugned transfer was obviously made on the request of respondent no.3 and not on the request of the petitioner.

Consequently, this petition is allowed with costs of Rs.10,000/- to be paid to the petitioner, it nowhere having been stated that the petitioner had spent a sufficiently long time in Gohana and therefore he had to be transferred out, and on the other hand, in the transfer order the entire onus being put on the petitioner, of having made a request for such transfer; and thereafter, the Governments' stand in the written statement being as it is shown herein above.

The transfer order is therefore quashed, qua the petitioner.

The aforesaid costs shall be paid to the petitioner within a period of two months from the date of receipt of a certified copy of this order.

December 18, 2017
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No