

C.W.P. No. 17625 of 2017

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

C.W.P. No. 17625 of 2017

DATE OF DECISION:08.08.2017

Sukhbir Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

**BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

Present:- Mr. VK Sandhir, Advocate  
for the petitioner.

\*\*\*\*

**DAYA CHAUDHARY, J.**

The prayer in the present petition is for quashing of impugned order dated 28.7.2017 (Annexure P-7), whereby, the petitioner has been transferred from Sub Centre Abankher, Gurdaspur to PHC Machiwara by withdrawing the order dated 10.7.2017, vide which, the petitioner was transferred from Machiwara to Dorangla during mid session.

Learned counsel for the petitioner contends that the petitioner has been transferred contrary to the terms and conditions of the policy during mid session, whereas, there was no complaint or administrative exigency. Neither any reason has been mentioned in the transfer order nor the petitioner has been given any opportunity of hearing. Learned counsel further contends that the son of the petitioner is a student of college and her husband is also in job. There is no other person in the family to look after

the household activities. Moreover, the petitioner has been transferred thrice within a period of one month.

Heard the arguments advanced by learned counsel for the petitioner and have also gone through the impugned transfer order dated 28.7.2017, earlier orders as well as transfer policy dated 11.4.2017.

On perusal of transfer orders and after hearing arguments advanced by learned counsel for the petitioner, it is apparent that the petitioner was transferred from PHC Dorangla, District Gurdaspur to PHC Machiwara, District Ludhiana vide order dated 7.7.2017. Thereafter vide order dated 10.7.2017, she was transferred from PHC Machiwara, District Ludhiana to PHC Dorangla, District Gurdaspur, meaning thereby, the petitioner was posted at the earlier place of posting. The second transfer order is only cancellation of the earlier transfer order. Thereafter vide order dated 24.7.2017, the petitioner was directed to join Head Quarter Sub Center Abankher and take complete charge of Smt. Shashi Kanta being transferred at her place. This order shows that only the petitioner has been informed to join in place of one Smt. Shashi Kanta. Thereafter vide order dated 28.7.2017, the transfer order dated 10.7.2017 of Smt. Shashi Kanta from PHC Dorangla, District Gurdaspur to PHC Machhiwara, District Ludhiana was cancelled and the employee was directed to work at her previous place of posting at PHC Dorangla itself. It cannot be said that the petitioner has been transferred on three occasions as vide order 10.7.2017 also, the petitioner was directed to be posted at the initial place of posting i.e. PHC Dorangla, District Gurdaspur. Moreover, neither any intimation was required to be given at the time of transfer of the petitioner as transfer is an incident of service. Neither any mala fide has been alleged against any

of the respondent nor the transfer is punishment. The transfer policy issued by the State Government and the terms and conditions contained therein do not vest an enforceable right with an employee. A transfer policy can never be taken to be the pedestal of a statutory rule. The transfer policy is mere guideline, which cannot be said to be mandatory and does not create any legal right. Transfer is an incidence of service and no enforceable right vest with the petitioner.

In **B.Varadha Rao Versus State of Karnataka and others**, AIR 1986 S.C. 1955, the Supreme Court observed as under:-

“We agree with the view expressed by the learned Judges that transfer is always understood and construed as an incident of service. The words ‘or other conditions of service’ in juxtaposition to the preceding words ‘denies or varies to his disadvantage his pay, allowances, pension’ in R.19(1)(a) must be construed ejusdem generis. Any alteration in the conditions of service must result in prejudice to the Government servant and some disadvantage touching his pay, allowances, pension, seniority, promotion, leave etc. It is well understood that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a

particular post unless, of course, his appointment itself is to a specified, non-transferable post. As the learned Judges rightly observe:

'The norms enunciated by Government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer in the Government servants.' ”

**In Mrs. Shilpi Bose and others Versus State of Bihar and others**, AIR 1991 S.C. 532, their Lordships of the Apex Court laid down as under:-

“The Courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department.” In **Union of India and others Versus S.L.Abbas**, AIR 1993 S.C. 2444, the Supreme Court held as under:-

“Guidelines issued by Government – Transfer of Government

employee – Order made without following guidelines – cannot be interfered with by Courts unless it is vitiated by mala fides or is made in violation of statutory provision.

While ordering the transfer of Government employee, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject, but the said guidelines do not confer upon the Government employee a legally enforceable right. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it.

xx xx xx xx xx xx

The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Art.226 of the Constitution of India in service matters. This is evident from a perusal of Art.323-A of the Constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Art.323-A. The Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer.”

The above mentioned law has been consistently reiterated by the Apex Court in the subsequent judgments as well. A few of them are as follows:-

1. Chief General Manager (Telecom), N.e. Telecom Circle and

another Versus Rajendra Ch.Bhattacharjee and others, AIR 1995 S.C. 813;

2. State of Madhya Pradesh and another Versus S.S.Kourav and others, AIR 1995 S.C. 1056;

3. State of U.P. and others Versus Gobardhan Lal, (2004) 11 S.C.C. 402; and

4. Mohd. Masood Ahmad Versus State of U.P. And others, (2007) 8 S.C.C. 150.

The above position of law leaves no manner of doubt that the Tribunal has erred in interfering in an order which was purely administrative in nature and passing of which was within the domain of the petitioners.

A Division Bench of this Court in **Jit Singh Mallan Vs. Punjab State Electricity Board and another** 2007 (2) RSJ 527 has observed as under:-

“We are unable to accept any of the submissions made by the learned counsel. Firstly, the petitioner being a Government servant has no inherent right to choose the place of his posting. Secondly, the instructions relied upon by the petitioner are mere guidelines. The said guidelines cannot said to be mandatory and do not, therefore, create any legal right in favour of the petitioner. This question has been specifically considered by the Supreme Court in the case of **B. Vardha Rao V. State of Karnataka and others**, AIR 1986 SC 1955, wherein, it has been clearly held that the guidelines such as

Annexure P-11 do not confer any legal right on an employee. The transfer of an employee is not only an incident of service but a condition of service as well. It is the prerogative of the authorities concerned and this Court is not to normally interfere except when it is shown to be vitiated by mala fides or is in violation of a statutory provision or has been passed by an incompetent authority. None of the said factors has been shown or even pleaded in the present case. We are also of the opinion that the order passed by the respondent is purely administrative in nature and, therefore, cannot be termed as either arbitrary or whimsical.”

In view of the facts and law position as explained above, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

August 08, 2017  
pooja

**(DAYA CHAUDHARY)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

Yes  
Yes