

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH**Date of decision : 12.12.2017**
CWP-24190-2017

1.

Dilbag Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

2.

CWP-25882-2017

Ramesh Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

3.

CWP-21978-2017

Satish

... Petitioner

Versus

State of Haryana and others

... Respondents

4.

CWP-24310-2017

Phool Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

5.

CWP-24329-2017

Dharambir Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

6.

CWP-24336-2017

Karamjit

... Petitioner

Versus

State of Haryana and others

... Respondents

7.

CWP-24345-2017

Dharambir

... Petitioner

Versus

State of Haryana and others

... Respondents

8.

CWP-24525-2017

Wazir Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

9.

CWP-25186-2017

Bharm Parkash

... Petitioner

Versus

State of Haryana and others

... Respondents

10.

CWP-25645-2017

Surinder Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

11.

CWP-25646-2017

Satish Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

12.

CWP-23257-2017

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Sunil Kumar	... Petitioner
Versus	
State of Haryana and others	... Respondents
13.	CWP-25725-2017
Surender Singh	... Petitioner
Versus	
State of Haryana and others	... Respondents
14.	CWP-26037-2017
Gainender Pal	... Petitioner
Versus	
State of Haryana and others	... Respondents
15.	CWP-14642-2017
Amit Kumar	... Petitioner
Versus	
State of Haryana and others	... Respondents
16.	CWP-24995-2017
Mukesh Kumar	... Petitioner
Versus	
State of Haryana and others	... Respondents
17.	CWP-27038-2017
Harbir Singh	... Petitioner
Versus	
State of Haryana and others	... Respondents

18.

CWP-26517-2017

Balwan Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

19.

CWP-26574-2017

Dalbir Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

20.

CWP-26337-2017

Manoj Kumar and others

... Petitioners

Versus

State of Haryana and others

... Respondents

21.

CWP-26890-2017

Sandeep Kumar and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Jagjeet Beniwal, Advocate;
Mr.Pardeep Kumar Sehrawat, Advocate;
Mr.Angel Sharma, Advocate;
Mr. R.K.Girdhwal, Advocate;
Mr. Shalender Mohan, Advocate;
Mr. Ramesh Goyat, Advocate;
Mr. Sumit Sangwan, Advocate;
Mr.Ram Kumar Saini, Advocate;
Mr.S.S.Duhan, Advocate;
Mr. Rajat Mor, Advocate;
Mr. Vivek Suri, Advocate;
for the petitioners.

Mr. R.K.Doan, AAG, Haryana.

AMOL RATTAN SINGH, J.(ORAL)

Pursuant to previous orders, an affidavit of Sh.Vikas Gupta, Director General, State Transport, Haryana, has been filed in Court today by learned State counsel, with the Director General also present in Court.

Reasons for why earlier the orders of this Court, directing therein filing of the affidavit, were not complied with, have been given in the affidavit filed, which are not being gone into in detail and the explanation given in the affidavit today, it having been now filed, is accepted by this Court.

2. Coming to the merits of controversy in all these petitions, as to transfers of drivers and conductors in the Haryana Roadways from one depot to another, this Court has already dealt with that issue vide its judgment dated 01.09.2017, passed in CWP no.17899 of 2017 and connected petitions.

However, today, with the affidavit of the Director General having been filed, annexing therewith the lists, depotwise, of all drivers and conductors posted in each depot, giving therein the length of stay of each employee, the transfer policy (dated 06.10.2004, Annexure P-3 with CWP no.24190 of 2017) is being taken up parawise, to further lay down the criteria by which the transfers should be made by the respondents, in terms of the aforesaid policy itself.

3. As regards clause (i) of the policy, it stipulating that an employee may generally not be transferred out of his current place of posting before he has completed two years at that post, except for compelling administrative reasons, no 'interpretation' is called for by this Court, except to the extent already stated in the order dated 01.09.2017, that if there are such compelling administrative reasons for a transfer before 2 years, they would be spelt out in

detail in the order of transfer, with such reasons to be genuine and not simply because a person is being transferred at the whim and fancy of some functionary or the other in the government / department.

Obviously, each case if it comes before the Court, with regard to transfers made on “administrative grounds”, would be seen on its own merit, but it is again made absolutely clear that all “compelling administrative reasons” shall have to be spelt out in detail in the order making the transfer for such reasons, there being no explainable reasons given in such cases, even upon specific queries made by the Court.

As regards clause (ii) of the aforesaid policy, which stipulates that the two year criteria of posting on a particular post need not be followed in case a transfer is made on mutual request by two or more employees, it is directed that if any such request for transfer on mutual basis is made, a notice shall be put up on the notice board in each depot, as also uploaded on the website of the department, inviting applications from any other employees with a longer stay than the original applicants, for such mutual transfer in each depot, and thereafter, upon receiving all such applications, the person with the longest stay in one depot shall be transferred on mutual basis to the other depot, with a similar process followed in such other depot also.

Clause (iii) again firstly refers to transfer on mutual basis, which has been dealt with hereinabove, and as regards the 2nd part of the clause, which refers to transfers against vacant posts, it is made clear that unless a person is being transferred out on any of the valid exceptions within the policy, i.e. on medical grounds or specific cases of hardship, which would be considered by the Director General on a case to case basis (with an order to be passed as to the nature of the hardship and the reasons for transfer out of a

particular depot before 2 years, or for retention at a particular depot beyond two years), even transfers to vacant posts shall be made from amongst employees with longer stays, in order of such longer stays.

As regards retention on grounds of hardship, before passing a speaking order, again the case of the person claiming hardship will be uploaded on the website of the department as also put up on the notice board of the depot concerned, for any other employee of the same cadre to raise objections within a reasonable time, which would be dealt with in the transfer order to be passed, or by way of a separate order in that regard.

When general transfers are made, wherein a large number of employees may have to be transferred out from one depot to another on account of fact that they have spent more than two years in that depot, the transfers would again be made keeping in view of the length of stay, with the employee with a shorter stay having precedence of continuing to stay at the depot concerned, over and above those who have been there for a longer time, in order of the date of transfer to that depot from which the transfer is proposed to be made.

Coming to the next clause in the policy, pertaining to not transferring out persons who are superannuating within one year of the transfer, no interference is called for in clause (iv) of the policy, except that it may be looked into that if the person being transferred out has simply got 13 to 14 months left to superannuate, his case would be considered sympathetically.

It is admitted that clause (v) of the transfer policy, with regard to transfer of employees outside the cadre does not apply to the present cases, with the cadres of the drivers and conductors in the Haryana Roadways being a state wide cadre.

As regards clause (vi), pertaining to employees with a serious handicap in their movements, and blind employees, no comment is required by this Court on the exception carved out for them, with regard to their transfers.

Similarly, in clause (vii) which pertains to transfer of husband and wife, to the effect that they may generally be posted at the same or nearby stations, no comment again, is called for.

As regards clause (viii), it would not apply to the present cases, no female driver and conductor having been recruited so far by the State Government.

Clause (ix), which pertains to cases of hardship with regard to transfers made in the year 2004-05, is actually a redundant clause now.

Clause (x) is again already dealt with, in the cases of genuine hardship, hereinabove.

It may however be noticed that other than handicapped persons, transfer of persons with a chronic illness, either themselves or in their immediate family, would also be need to be dealt with on a case to case basis as hardship cases, with of course a preliminary requirement of each person claiming to be suffering from such illness, either himself or in the case of a member of his immediate family, required to produce a certificate of such illness issued by a Medical Board headed by the Civil Surgeon of each district. The Medical Board would naturally consist of a specialist within the Civil / General Hospital, “in the field of the handicap”, i.e. depending on whether the handicap is orthopaedic in nature/ hearing disability or visual disability etc., as would be the case with each chronic disease.

Other than the above, it is also directed that in cases where children of employees are studying in Classes 11 and 12, those two years

being crucial years in the academic career of students, as already noticed many times in previous orders of this Court, they would be dealt with as hardship cases by the Director General, and generally it would be ensured that a person is not posted out when his ward is studying in Class 11 and 12, but with the employee concerned required to make an application in that regard to the General Manager concerned, who would then forward it within one week to the Director General, to be a hardship case, when the ward is already in Class 10.

After verifying the genuineness of the claim as regards the ward of the employee actually studying in Class 11 or 12, it would be treated to be a hardship case.

4. The aforesaid observations of this Court shall be duly taken into consideration and adhered to by the respondents in any new policy to be framed, with of course any additions or any improvements in the policy to be added at the discretion of the respondents.

5. It needs to be stated here that, without a doubt, framing of a policy is the prerogative of the Government with which the Court would not be concerned, unless of course it is shown to be a wholly arbitrary policy, or violative of any statutory provision. However, these directions, and the ones issued on 01.09.2017, have been considered necessary in view of the fact that even the terms of the transfer policy dated 06.10.2004 (copies annexed with each of these petitions), have been flouted by the respondents, inasmuch as, transfers have been made on a mass scale, retaining persons with very long stays in a particular depot, while transferring out those with much shorter stays, stating in the transfer order that such transfer is “on account of a longer stay”.

Thus, with certain employees staying on at the same depot for 10 years or more, others who had not been even completed the usually mandatory

period of two years as per the policy, were being transferred out, being shown in the impugned transfer orders as persons with a longer stay.

Other such violations in the policy were also seen, with those with genuine hardships often not accommodated, simply to accommodate those who had some influence in some quarter of the Government or the other.

Hence, the directions issued in these petitions, as also the ones issued on 01.09.2017 in CWP no.17899 of 2017 and connected petitions, generally being the same, were considered necessary to be so issued.

6. These petitions are therefore now disposed of with a direction to the Director General, State Transport, Haryana, to comply with the aforesaid directions, as also those passed on 01.09.2017 as regards transfer of employees referred to as the “first and second set of employees” in that order, within a period of two months from the date of receipt of a certified copy of this order, failing which even employees who were not petitioners before this Court would be at liberty to approach this Court by way of filing proceedings under the Contempt of Courts Act 1971, for non-compliance of the general directions issued in these two orders.

(AMOL RATTAN SINGH)
JUDGE

December 12, 2017.

Davinder Kumar/dinesh

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No