

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No.5878 of 2017

Ashok Kumar Tiwari S/o Late B.P.Tiwari, aged about 58 years, Presently posted as Executive Engineer, at Maniyari Water Resources Division, Mungeli, District Mungeli (C.G.), R/o Behind Bachpan School, Shanti Nagar, Bilaspur, District Bilaspur (C.G.).

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Water Resources, Ministry, Mahanadi Bhawan, Naya Raipur, PS & PO Rakhi, District Bilaspur (C.G.).
2. The Joint Secretary, State of Chhattisgarh, Department of Water Resources, Ministry, Mahanadi Bhawan, Naya Raipur, PS & PO Rakhi, District Bilaspur (C.G.).
3. The Chief Engineer, Hasdeo Kachhar, Water Resources Department, Bilaspur, District Bilaspur (C.G.).
4. A.K.Yadu, Assistant Engineer, Posted at Office of Chief Engineer, Hasdeo Kachhar, Water Resources Department, Bilaspur, District Bilaspur (C.G.).

----Respondents

For petitioner	:	Shri B.P.Sharma and Shri Mateen Siddhiqui, Advocates.
For respondents No. 1 to 3	:	Shri Prafull Bharat, Addl.A.G.
For respondent No.4	:	Shri Praveen Das, Advocate.

Hon'ble Shri Justice P. Sam Koshy

CAV Order

Delivered on 16/03/2018

1. The present Writ Petition has been filed seeking for quashment of Annexure P/1 dated 27/10/2017.

2. Vide the impugned order, the petitioner who is working as an Executive Engineer (Supernumerary), Maniyari Water Resources Division, Mungeli (C.G.) has been transferred to the office of Superintendent Engineer, Water Resources, Circle Bilaspur (C.G.) and the respondent No.4 working as an Assistant Engineer and posted at the office of Chief Engineer, Hasdeo Kachhar Water Resources Department, Bilaspur has been transferred to the office of Executive Engineer, Maniyari Water Resources Division, Mungeli.
3. The said impugned order has been passed by the State Government under the orders of the Governor of the State duly signed by the Joint Secretary, Government of Chhattisgarh, Water Resources Department.
4. The grievance of the petitioner is that the order of transfer is malafide and is nothing but a colourable exercise of power by the respondents. It was also the contention of the counsel for the petitioner that pursuant to the reply filed by the State it also appears that the order was not only with malafides but also is a punitive transfer. Thus the pleadings of the Writ Petition itself establishes that there is malice in law as well as malice in fact while issuance of the impugned order dated 27/10/2017. The counsel for the petitioner contended that the order of transfer is bad in law to the extent that the petitioner has been working at the present place of posting i.e. at the office of Maniyari Water Resources Division only for a period of 14 months which is too short a period to hold that he has remained at Maniyari for his normal tenure. It was also the contention of the counsel for the petitioner that the order of transfer is nothing but has been issued only with an intention to

accommodate the respondent No.4 on the post of Executive Engineer at Maniyari. It was further contended that the respondent No.4 was a tainted officer and against whom an enquiry were pending and under such circumstances he should not have been firstly posted at Maniyari where he had already worked in the past and secondly he should not have been giving charge of the Executive Engineer. The further contention of the counsel for the petitioner was that different orders issued by the respondents on 27/10/2017 itself would reveal that the entire action was tainted with malafide and also undue haste has been shown by the respondents No. 1, 2 & 3 to handover the charge of the post of Executive Engineer to the respondent No.4 which further establishes the malafides on their part. According to the counsel for the petitioner, the respondent No.4 had not even being relieved from his earlier place of posting i.e. at Bilaspur when he was given charge of Executive Engineer which is impermissible and is bad in law and therefore prayed for setting aside of the impugned order. In support of its contentions the counsel for the petitioner relied upon **State of Uttaranchal & Anr. v. Sunil Kumar Vaish & Ors.**[2011 8 SCC 670], **Somesh Tiwari v. Union of India & Ors.**[2009 2 SCC 592], **Zenit Mataplast Private Limited v. State of Maharashtra & Ors.** [2009 10 SCC 388] and **Sumit Mandal v. State of West Bengal and Ors.** [2017 SCC online Calcutta 15131] to buttress the arguments of malice in law and malice in fact so also to establish the contention that the order passed was punitive in nature and not under administrative exigency. It was lastly contended that the fact that there was

no administrative exigency also stands established from the fact that at the place where the petitioner has been transferred vide the impugned order, there is no vacant post of Executive Engineer available and the salaries of the petitioner has been ordered to be drawn from Maniyari Division where the petitioner was working prior to the issuance of the impugned order.

5. Per contra the learned Additional Advocate General appearing for State opposing the petition submits that the entire contentions of the counsel for the petitioner are totally misconceived and devoid of merits. According to him, the order of transfer is a routine administrative order taking into consideration the facts and circumstances prevailing. According to him, the order of transfer has been done purely in accordance with the procedures under the transfer policy in as much as the order of transfer has been routed through the co-ordination committee which had approved the transfer. It was the contention of the State counsel that the order of transfer has been made purely on administrative reasons. So far as the malafides is concerned, the State counsel submits that, the respondent No.4 has incidentally got the charge of the Executive Engineer at Maniyari. Infact as is evident from Annexure P/1 the directions of the respondents/State while issuing the impugned order was that upon the petitioner being transfer, the next senior most Assistant Engineer in the department available in the division should be granted the charge. According to the State counsel, from among the Assistant Engineers available at the division senior most was one Rekhla Gautam. However the said person had given in writing his reluctance to accept the charge for personal and health reasons and it is only thereafter

that the next senior most person i.e. the respondent No.4 was ordered to be given the charge of Executive Engineer. Thus, there was no pre-plan on part of the respondents/State in granting the charge to the respondent No.4 who could get it only by chance that too by refusal of one Rekhlal Gautam. The State counsel also referring to the various documents in their response submits that the performance of the petitioner also was not satisfactory and there have been reports in this regard particularly from the accounts department in so far as the payments which were being made to the different Contractors without following the rules and procedures and also without taking note of the caution and observations made by the accounts department. It was further contended by the State counsel that the order of transfer has not adversely affected the petitioner in any manner. Firstly, since there is no change in the status of the petitioner at the two different places, neither is there any change in the service condition of the petitioner and lastly the distance between the two place of posting also is just about 50 Kilometers. The State counsel further referred to the transfer policy and submitted that as per the policy, only the officers who are posted at a particular place for less than a year period should not be disturbed. In the instant case the petitioner had already remained at the present place of posting for about 14-15 months. The counsel for the respondent No.4 also adopts the arguments put forth by the State counsel.

6. Having heard the contentions put forth on either side and on perusal of record what primarily has to be seen is the order under challenge issued by the State Government Annexure P/1 dated 27/10/2017. The said order

specifically enumerates the reason for transfer being on administrative grounds. The order of transfer also holds that the authority concerned should upon the petitioner being relieved handover the charge to the next senior most Assistant Engineer in the division. It is this order which is primarily under challenge in the Writ Petition.

7. So far as Annexure P/1 dated 27/10/2017 is concerned, there is not much which the petitioner could contend to establish that the order Annexure P/1 was malafide or was vindictive in any manner except for the fact that the order reflected transfer of the officers of two different ranks/cadre vide the same order.

8. As regards transfer is concerned under the service jurisprudence it is by now well settled that there is hardly any scope of interference left for the High Court to interfere with. The legal position as it stands is that, transfer can only be interfered if the employee/officer is able to show that the same has been issued in contravention to the service condition or the transfer order adversely affects the service condition in any manner or the order of transfer is hit with malafides. Malafides are not only to be alleged, it has to be proved by leading cogent and satisfactory evidence.

9. If we look into the writ petition the contents can be divided into two parts, first is the order of transfer (Annex.P/1) issued by the State Government and the second part is the couple of orders passed at the local level i.e. at Maniyari Water Resources Division, District Mungeli.

10. In the given facts and circumstances, the petitioner would first have to establish that the first order issued at the Government level i.e. Annexure-P/1 is bad in law or has been issued with malafides. From the pleadings and the averments made by the petitioner except for the facts that the transferred place Bilaspur does not have a vacant post of Executive Engineer, there does not appear to have been any strong ground or objection raised to establish the malafide part. All the allegations or malafides or vindictiveness and the order being arbitrary are alleged to have occurred at the second stage i.e. after the impugned order Annexure-P/1 have been passed by the State Government and sent at the division at Maniyari.

11. All the allegations made by the petitioner in respect of the impugned order of transfer being issued in favour of the respondent No.4 are based on the allegations which have arisen at the divisional office level at Maniyari.

12. If the order Annexure-P/1 is taken into consideration all that it is mentioned is the posting of the petitioner to Bilaspur and the respondent No.4 to Maniyari. At the same time it was also envisaged that since the petitioner who was holding the post of Executive Engineer was been transferred from Maniyari to Bilaspur, the next senior most person at the division should be given the charge and which at that moment of time was not the respondent No.4 in any case and perusal of record would show that the next senior most person in the division was one Rekhmal Gautam. The record which were produced before the Court show that the said senior most person had been asked to take a charge of the post of Executive Engineer

but he expressed his inability for some personal reasons including health grounds and gave an NOC to the higher authorities for handing over the charge to any other person. That it was in this circumstance the respondent No.4 was given the charge of the Executive Engineer. The fact that he is being given the charge is also to be construed as only a temporary arrangement till the regular Executive Engineer is posted and it cannot be presumed to be a longterm feature. The moment the department makes a regular posting of Executive Engineer at Maniyari, the respondent No.4 may loose the charge that has been given to him.

13. The petitioner has not been able to give any plausible explanation or reason as to why Shri Rekhilal Gautam, the senior most Assistant Engineer in the department does not want to discharge the duties of incharge Executive Engineer, nor is there any justified reason or any other material available on record to show that, there was malafides on the part of Rekhilal Gautam in not accepting the assignment of incharge Executive Engineer and on the contrary he has willing to suffer the loss and also expressed his willingness to work under a junior person in the department.

14. So far as the reply of the government is concerned, the stand of the State Government was that the order of transfer has been made purely on administrative exigency. At the same time the government has also levelled certain allegations in respect of the performance of the petitioner at Maniyari which was not satisfactory enough and this could have weighed in the minds of the department and which must have necessitated the transfer on administrative exigency.

15. It is not a case where non performance or unsatisfactory performance would always amount to misconduct which would require a show cause to a delinquent employee if the department is of the view that a particular person need to be shifted from one place for the better functioning of the department. It is within the domain and power of the State Government to issue an appropriate order of transfer on administrative grounds and if under such circumstances the order is passed, there would not be any scope of interference that could be made by the High Courts in exercise of its power under Article 226 of Constitution of India.

16. So far as the allegation that the respondent No.4 is a tainted officer and he in the past is said to have been involved in corruption, the learned counsel for the respondent No.4 produced documents whereby in the preliminary enquiry conducted by the department, no such allegation were found to be true and that it was the finding of the committee that the complaints were fictitious and without any basis and accordingly all charges were dropped.

17. The legal position regarding interference by Courts in the matter of transfer is also by now too well established to be repeated here. As early as in the case of **Gujarat Electricity Board v. Atmaram Sungomal Poshani [1989 2 SCC 602]** it was held that, transfer of government servant appointed at a particular cadre of transferable post is an incident of service. No government servant or an employee of public undertaking has a legal right for being posted at any particular place and the employee has no

choice in the matter. Transfer from one place to other is necessary at times in public interest and efficiency in the public administration.

18. The issue of transfer and posting has been considered time and again by the Supreme Court as also by practically every High Courts and the law stands settled by a catena of decisions. It is entirely upon the competent authority to decide when, where and at what point of time a public servant has to be transferred from his present posting. The transfer is not only an incident but is an essential condition of service.

19. In the instant case also admittedly, the order of transfer does not affect the condition of service in any manner. The employee holding a transferable post cannot claim any vested right to work at a particular place as the transfer order does not affect any of his legal rights.

20. Moreover, the Courts cannot interfere with a transfer/posting which has been made in public interest or on administration exigency unless malafides alleged are proved by sufficient material or transfer order is in contravention to the service rules in any manner. In **State of Punjab v. V.K.Khanna & Ors. [AIR 2001 SC 343]** the Supreme Court dealing with the issue of bias and malafides observed as under:-

“Whereas fairness is synonymous with reasonableness bias stands included within the attributes and broader purview of the word malice which in common acceptance means and implies spite or ill will. One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purposes of

indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a malafide move.”

21. Given the aforesaid legal position what can be summarized is that, an employee has no vested right to get or remain posted at a particular place. Unless the order of transfer adversely affects the status, emoluments, seniority or any of the condition to service of the employee. It is within the exclusive domain of the employer to determine as to at what place and for how long an employee should be posted. It is also within the exclusive domain of the employer to resort to transfer of an employee for smooth and efficient administration of government function.

22. In addition to the aforesaid legal position the law is also well settled that, so far as judicial review by Courts/Tribunals are concerned, there is very little scope for interference and the interference also is permitted only if it is found to be in contravention to the statutory rules or on the malafides being proved before the Courts with cogent evidence.

23. In the instant case what clearly reflect is that, Annexure-P/1-the order of transfer was issued at the State level which only reflect two officers of two different post being posted to two different places. Annexure-P/5 dated 27/10/2017 has been passed by the Chief Engineer only after the senior most Assistant Engineer in the division namely Shri Rekhlal Gautam in writing (Annexure-R/3) having expressed his unwillingness to accept the charge of an Executive Engineer and also giving no objection in the department giving the said charge to the next man available.

24. It is pertinent to take note that, if in case Rekhla Gautam would have accepted the charge of an Executive Engineer at Maniyari, then the entire grievance of the petitioner so far as the respondent No.4 is concerned would have got collapsed rather would not have arisen at all. It is only by chance that Rekhla Gautam has expressed his unwillingness in accepting the assignment of an incharge Executive Engineer that, the charge fell upon the respondent No.4 which cannot be presumed to have been made with malafide intention. If the department really wanted to give the charge to the respondent No.4, they could have also thought of transferring Rekhla Gautam to a different place by which the respondent No.4 would have become the senior most person and therefore it is difficult to draw an inference or to presume that, there has been malafide on part of the Government more particularly the respondent No.3 in granting the charge to the respondent No.4.

25. It is also pertinent to take note of the fact that, there is not much grievance raised by the petitioner of his being transferred to Bilaspur. The only grievance seem to be the subsequent development which has arisen after his transfer.

26. Thus, the petitioner have not been able to point out any violation of statutory provisions, nor could the petitioner demonstrate any of his service being adversely affected. Likewise there is also no strong allegation so far as transferring of the petitioner from Maniyari to Bilaspur except for the fact that, it was to accommodate the respondent No.4 who incidentally appears

to have got the charge of an Executive Engineer only on the un-willingness shown by the senior most person in the division i.e. Rekhlal Gautam.

27. For all the aforesaid reasons, this Court does not find any force in the petition and the same deserves to be and is accordingly rejected.

28. So far as the judgments which have been cited by the petitioner, the same are all under different factual backdrop and therefore they are distinguishable on the facts of the present case and would not come to the aid of the petitioner.

29. As a consequence, the petition being devoid of merits deserves to be and is accordingly rejected.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit