

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 5323 of 2018**

Mahesh Kumar Tunde S/o Shri Rambaks Tunde, Aged About 38 Years, Forester, R/o Village and P.O. Budhar, Tahsil Baikunthpur, District Koriya, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Forest Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
2. Chief Conservator of Forest, Forest Circle Sarguja, Ambikapur, District Ambikapur, Chhattisgarh.
3. Divisional Forest Officer, Koriya Division, Baikunthpur, District Koriya, Chhattisgarh

----Respondents

For Petitioner	:	Smt. Meena Shastri, Advocate
For State	:	Shri Dhreej Wankhede, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****21/08/2018**

1. The challenge in the present writ petition is to Annexure P-1 dated 07.08.2018 passed by respondent no.2 whereby revoking the order of suspension the place of posting of the petitioner has been shifted from Khadgawan, District Koriya to the Office of the Director, Guru Ghasidas National Park, Baikunthpur.
2. The contention of the counsel for the petitioner is that, the petitioner while working as a Forester at Khadgawan, District Koriya was placed under suspension vide order dated 16.04.2018 contemplating departmental enquiry. The said order of suspension subsequently vide impugned order

dated 07.08.2018 was revoked pending the enquiry. However, while revoking the order of suspension, the appellate authority has changed the place of posting of the petitioner from Khadgawan, District Koriya to the Office of the Director, Guru Ghasidas National Park, Baikunthpur. According to the petitioner, once when the order of suspension has been revoked by the higher authority, as a natural consequence the petitioner should be reinstated at the same place from where he was placed under suspension.

3. Counsel for the petitioner relied upon the judgment of this Court in the case of Kaushal Kishore Mishra Vs. State of Chhattisgarh and others decided on 01.08.2016 in WPS No. 269 of 2016 and also in the case of Bhopal Tande Vs. State of Chhattisgarh and others decided on 10.08.2015 in WPS No. 2498 of 2015 wherein it has been held that on the suspension order being revoked, the delinquent is liable to be reinstated at the same place from where he was placed under suspension.

4. State counsel, however, opposing the petition submits that it is a case where the change of posting has been done considering the administrative exigency particularly the fact that the enquiry against the petitioner is still pending and it may not be fruitful for placing the petitioner at the same place where the alleged misconduct is said to have been committed by him. Thus, prayed for dismissal of the writ petition.

5. Having heard the contentions put forth on either side and on perusal of record it would be relevant at this juncture to refer to the judgment of this Court passed in the case of Bhopal Tande and the subsequent decision in the case of Kaushal Kishore Mishra (supra). In both the writ petitions it has been held by this Court that on the suspension order being revoked by the higher authorities, as a natural consequence the petitioner

would have to be given posting at the same place from where he was placed under suspension reserving the right of the State Govt. to change the posting subsequently.

6. On due consideration of the facts and the judgments of this Court in the case of Bhopal Tande and Kaushal Kishore Mishra (*supra*), the State counsel did not oppose the legal position as enumerated in the aforesaid two judgments.

7. That the order of suspension in the instant case has been passed by the Divisional Forest Officer, Koriya, Forest Division Baikunthpur. The order of revocation has been passed by the Chief Conservator of Forest i.e. the appellate authority. It reflects that the order of the Chief Conservator of Forest/appellate authority was in the light of an order passed by this Court in WPS No. 3749 of 2018 decided on 21.05.2018. Since Annexure P-1 has been passed in exercise of the appellate powers, all that the appellate authority could decide was whether the order of suspension was justified or not? If it was justified, the appeal ought to have been rejected and if it was not justified, the order of suspension was liable to be interfered/revoked by the appellate authority. Under both the circumstances, there would not be any change of posting of the petitioner. Of course, in the event of the suspension order being revoked and after giving joining to the petitioner at the place from where he was put under suspension, the respondent State had all the powers of issuing an order of transfer or change in posting. But while passing the order of revocation, the appellate authority could not have decided the place of posting of the petitioner. It is in this circumstance that the ratio laid down in the judgment of Bhopal Tande and the subsequent decision in the case of Kaushal Kishore Mishra (*supra*) would come into play.

8. The impugned order in the present case thus to the extent of change of posting is set aside/quashed. However, the right of the respondents is reserved and they are at liberty to pass a fresh order of posting/transfer so far as the petitioner is concerned in the administrative exigency as and when required.

Sd/-
(P. Sam Koshy)
Judge

Bhola