

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

CWP-12920-2017 (O&M)

Date of Decision: 23.01.2018

Sushil

... Petitioner

Vs.

Union of India and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Rajeev Anand, Advocate for the petitioner.

Mr. Vishal Gupta, Advocate for the respondents-UOI.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the order of transfer dated 10.4.2017 and 23.05.2017 (Annexures P-5 and P-6 respectively).

One of the contention raised by the petitioner is that he is suffering from illness, therefore, he is entitled to certain relaxation in the post insofar as posting with reference to the guidelines issued by the respondent-department. When the petitioner was transferred from Sonapat to 96 Bn at Srinagar, he has submitted representation to the extent that he cannot discharge the duties having regard to the weather condition in Srinagar which may not be helpful for his health condition. Consequently, respondents have posted him to Ambikapur in Chhattishgarh. However, petitioner is not satisfied relating to re-posting in Ambikapur in Chhattishgarg. Hence, the present petition.

It was submitted that petitioner has rendered 19 years of service and if he completes another one year of service, he would get the benefit of pension. Therefore, he be continued at Sonapat itself.

Per contra, learned counsel for the respondents while resisting the petitioner's claim submitted that for nearly 11 years of service,

petitioner was accommodated in a peace station where he has completed his tenure. Therefore, he cannot stick to Sonapat. It was also submitted that guidelines in particularly para 8 quoted in replication is taken into consideration. In other words, petitioner whatever duty he was discharging at Sonapat, the same duties are assigned at Ambikapur. Therefore, there is no change of duty so as to contend health condition do not permit.

Heard learned counsel for the parties.

Court cannot interfere in respect of transfer unless and until there is mala fide or competency and violation of any rules such contentions are raised. Transfer is an administrative matter and it is prerogative of the employer to take a decision where to post its employee and to get work from an employee. Supreme Court in the case of **State of Haryana and others v. Kashmir Singh and another**; (2010) 13 SCC 306 has held in paras 12 and 14 as under:

“12. Transfer ordinarily is an incidence of service, and the courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. In particular, we are of the opinion that transfer and postings of policemen must be left in the discretion of the State authorities concerned which are in the best position to assess the necessities of the administrative requirements of the situation. The administrative authorities concerned may be of the opinion that more policemen are required in any particular district and/or another range than in another, depending upon their assessment of the law and order situation and/or other considerations. These are purely administrative matters, and it is well settled that courts must not ordinarily interfere in administrative matters and should maintain judicial restraint, vide Tata Cellular v. Union of India.

14. In our opinion, the High Court has taken a totally

impractical view of the matter. If the view of the High Court is to prevail, great difficulties will be created for the State administration since it will not be able to transfer/deploy its police force from one place where there may be relative peace to another district or region/range in the State where there may be disturbed law and order situation and hence requirement of more police. Courts should not, in our opinion, interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal right of the citizen. After all, the State administration cannot function with its hands tied by judiciary behind its back. As Holmes, J. of the US Supreme Court pointed out, there must be some free play of the joints provided to the executive authorities.”

In view of these facts and circumstances, petitioner has not made out a case so as to interfere with the order of transfer and re-posting. Petitioner is continued at Sonapat in view of the interim order dated 2.6.2017. Therefore, petitioner is directed to report at transferred place in the 2nd week of February 2018. As he required transit time.

Accordingly, petition stands dismissed.

23.01.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**