

IN THE HIGH COURT FOR THE STATES OF PUNAJB AND
HARYANA AT CHANDIGARH
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CWP No.16460 of 2018
Date of Decision : 05.12.2018

Ravi Parkash Gupta ... Petitioner
Versus
Union of India and others ... Respondent(s)

**CORAM : HON'BLE MR.JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

Present:- Mr.Sunil K. Nehra, Advocate
for the petitioner.

None for respondent No.1.

Mr.Apoorv Garg, D.A.G., Haryana.

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Rajiv Sharma, J.

This petition is directed against the order dated 28.5.2018 rendered by Central Administrative Tribunal (hereinafter referred to as the 'Tribunal') in Original Application No. 060/01289/2017 vide which the Original Application filed by the petitioner was dismissed.

The brief facts necessary for the adjudication of this petition are that the petitioner was appointed as Junior Administrative Grade IAS Officer of Haryana Cadre 2007 Batch. It is admitted case that the petitioner is a visually impaired person. He was posted as Deputy Commissioner, Kaithal on 25.4.2016. Normally, the tenure of an IAS Officer is two years. He was transferred vide order dated 7.11.2016 to the post of Director (Food and Supplies), Haryana. He was again transferred to the post of Director,

Medical Education and Research, Haryana on 3.1.2017. Thereafter, he was transferred to the post of Chief Vigilance Officer, HUDA on 22.8.2017. Now the petitioner has been transferred again on 22.10.2018.

The posting of IAS Officers is governed by Rule 7 of the Indian Administrative Services (Cadre) Rule 1954 (hereinafter referred to as the 'Rules'). Rule 7 (3) and (5) of the Rules read as under:-

- “7. Posting.-(1) All appointments of cadre of officers shall be made on the recommendation of the Civil Services Board as specified in the Schedule annexed to these rules:-
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- (3) A cadre officer, appointed to any cadre post shall hold the office for at least two years, unless in the meantime he or she has been promoted, retired or sent on deputation outside the State or training exceeding two months.
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- (5) The Central Government or the State Government as the case may be, may transfer a cadre officer before the minimum specified period on the recommendation of the Civil Services Board as specified in the Schedule annexed to these rules.”

The procedure has also been laid down for constitution of Civil Services Board. The State of Haryana has constituted the Civil Services Board on 28.1.2014. It is apparent from the plain language of Sub rule 3 of Rule 7 that a cadre officer, appointed to any cadre post shall hold the office for at least two years, unless in the meantime he or she has been promoted, retired or sent on deputation outside the State or training exceeding two months

Sub rule 3 is required to be read in conjunction with rule 5. Rule 5 postulates that the Central Government or the State Government, as the case may be, may transfer a cadre officer before the minimum specified period on the recommendation of the Civil Services Board as specified in

the Schedule annexed to these rules. The petitioner's transfer was recommended by the Civil Services Board vide Annexure R/2-1 in a meeting held on 7.11.2016.

The word used in Sub Rule 3 of Rule 7 are mandatory and imperative. The recommendation has been made by the Civil Services Board after its constitution on 28.01.2014. However no reasons have been assigned. The scope of judicial review in transfer matter is limited but the Court can intervene when the order is issued in contravention/breach of mandatory procedure and actuated with malafide, legal and factual.

The learned Tribunal has erred in law by making the observations that the assigning of reasons would have adversely affected the career of the petitioner. However in what manner his career could be affected by disclosing the reasons, is beyond our apprehension.

Their Lordships of the Supreme Court in ***M/s. Kranti Associates Pvt. Ltd. & Anr. vs. Sh.Masood Ahmed Khan & Others, 2010 (9) SCC 496*** have held that order of Authority whether administrative or quasi judicial must be a speaking order. Their Lordships have held as under:-

*“15. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognized a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in **A.K. Kraipak and others vs. Union of India and others***

reported in AIR 1970 SC 150.

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17. *The expression ‘speaking order’ was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report).*

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48. *But, however, the present trend of the law has been towards an increasing recognition of the duty of Court to give reasons (See **North Range Shipping Limited vs. Seatrans Shipping Corporation, (2002) 1 WLR 2397**). It has been acknowledged that this trend is consistent with the development towards openness in Government and judicial administration.”*

Accordingly the writ petition is allowed, impugned order dated 28.05.2018 is set aside, the transfer of the petitioner made vide orders dated 07.11.2016, 03.01.2017, 22.08.2017 and the latest order dated 22.10.2018 are quashed and set aside. Respondent no.2 is directed to re-consider the case of the petitioner for posting him in the field strictly in accordance with law within a period of three weeks from today.

(RAJIV SHARMA)
JUDGE

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05.12.2018	(HARINDER SINGH SIDHU)
sd	JUDGE
§	Whether speaking/reasoned : Yes/No
	Whether reportable : Yes/No