

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21500 of 2018

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Krisna Kumar Sharma, Son of late Pradeep Sharma Resident of Mohalla-
Chandpur Bela, P.S. Jakanpur, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Building Construction Department, Bisawaraiya Bhawan, Patna, Bihar.
2. The State of Bihar, through the Engineer-in-Chief, Building Construction Department, Patna.
3. The Chief Engineer, Patna.
4. The Superintending Engineer, South Bihar Circle Building Construction Department, Construction Department, Punaichak, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Ms. Nivedita Nirvikar, Advocate Mr. Pratyush Kumar, Advocate Ms. Suman Chandra, Advocate
For the Respondents	:	Mr. Raj Ballav Pd.Yadav, AAG-11

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 07-05-2019

Ms. Nivedita Nirvikar, learned advocate files a second supplementary affidavit during the course of the argument. Let it be taken on record.

2. Heard the learned counsel for the parties.

3. The petitioner has challenged the order dated 29.10.2018 contained in Memo No. 11079 issued by the Deputy Secretary to the Government, Building Construction Department, whereby the petitioner, who is serving as Correspondence Clerk, has been transferred



from the Regional Testing Laboratory, South Bihar Circle, Patna to Building Circle, Purnea which is under the authority of the Superintending Engineer, Building Circle, Purnea.

4. Though several grounds have been raised in the petition, challenging the order of transfer but more stress has been laid on only two of such grounds.

5. Ms. Nivedita Nirvikar, learned advocate for the petitioner has drawn the attention of this Court to the provisions of the Building Construction Department Clerical Cadre (Recruitment and Condition of Services) Rules, 2014, which indicate that the cadre of the Clerical Grade is circle level. For transfer and posting, the rules mandate that the concerned Superintending Engineer may transfer such Clerical Grade employee within his jurisdiction i.e. within the circle.

6. Two exceptions but have been carved out in the aforesaid rule viz. that if a person under the Clerical Cadre is transferred from one region to another, such order shall be passed by the Secretary or the Engineer-in-



Chief, Building Construction Department and that a departmental Secretary may transfer and post Assistant Administrative Officers.

7. Ms. Nirvikar, has submitted that in the past, the petitioner had been transferred within the circle i.e. from Buxar to Arrah to Patna, all of which places fell in one circle. For being allowed to remain in the same circle, the petitioner agreed to forego all promotional avenues which request was accepted by the departmental authorities. Precisely for this reason, the petitioner remained posted in Patna circle for eighteen years. It has also very fairly been conceded by the learned counsel for the petitioner that during the tenure of the petitioner at Patna circle, certain charges were levelled against him. Though an enquiry was mooted but the same was dropped because of paucity of any direct evidence.

8. The other ground of challenge is that the order has been passed by the Deputy Secretary, though with the approval of the Principal Secretary of the Department. In fact, such intra-regional transfer could have been made by



the Secretary of the department himself or Engineer-in-Chief of the Building Construction Department.

9. The additional ground of challenge is that the petitioner is to superannuate in the year 2020, leaving only one year of service to the petitioner.

10. Under that circumstance, it has been urged, the petitioner either ought not to have been transferred or if for administrative reason, transfer was perforce to be effected, choice of the petitioner ought to have been taken i.e. either the petitioner would have been permitted to have a choice posting or ought have been transferred to his home district.

11. The aforesaid arguments have not been met by the averments made in the counter affidavit.

12. Under the aforesaid circumstances, the petitioner is directed to first join the transferred place of posting and simultaneously make a representation before the Principal Secretary, Building Construction Department, Bisawaraiya Bhawan, Patna, Bihar (respondent no. 1) within a period of six weeks from today, who, on receipt of



the same, shall dispose of the representation of the petitioner, taking into account the grounds urged in the present petition, especially the fact that only one year is left for the petitioner to superannuate. The representation shall be disposed of within a further period of four weeks of the receipt of the same.

13. While saying so, the Court has taken note of the submissions on behalf of the petitioner that he is still ready to forego all his promotional avenues and the representation which had been filed earlier have gone unheeded.

14. With the aforesaid direction/observation, the writ petition is disposed of.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.05.2019
Transmission Date	

