

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 208 of 2019

Kanhaiya Lal Yadav S/o Late Anjori Ram Yadav, aged about 40 years, Presently posted as Head Constable at C.T.J.W. College, Kanker (C.G.), R/o C.T.J.W. College, Kanker, Premises District Kanker (C.G.).

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Its Secretary, Department Of Home, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. Director General Of Police, Police Head Quarters, Atal Nagar, District Raipur Chhattisgarh
3. Additional Director General Of Police, Chhattisgarh Armed Forces Police Head Quarters, Atal Nagar, District Raipur Chhattisgarh
4. Director C.T.J.W. College, Kanker, District Kanker Chhattisgarh

---Respondents

For Petitioner	:	Mr. Faisal Akhtar, Advocate
For State	:	Mr. Jitendra Pali, Dy.A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14/01/2019

1. The petitioner through the present writ petition assailed an order dated 06/10/2018 whereby the petitioner has been transferred from the CTJW, College, Kanker to 19 Battalion, Chhattisgarh Armed Forces, Jagdalpur.
2. Learned counsel for the petitioner submits that the impugned order is violative to the Section 22 of the Chhattisgarh Police Act, 2007. Other contention of the petitioner is that since the petitioner is an expert and a trained officer in the naxal areas and therefore his services should be utilized by the authorities at the hardcore naxal areas which has not been properly considered by the authority. He submits that the petitioner has however, been transferred from the College at Kanker to Jagdalpur. He further submits that under the Chhattisgarh Police Act, 2007 the authority who has issued the impugned

order, is not the competent authority to transfer. It should have been by the Police Establishment Board as envisaged under Section 22 of the Chhattisgarh Police Act, 2007.

3. The State counsel opposing the provision, however, submits that it is not a case where the petitioner has been victimized or an order has been passed with malafide intention but the impugned order shows that it is under administrative exigency that the same has been passed in respect of a large number of candidates which is reflected from the impugned order (Annexure P/1) dated 06/10/2018.
4. Having heard the contention put forth on either side and perusal of the records, this Court clearly reflects that this Court in a couple of writ petitions have repeatedly held that so far as transfer of an officer up till particular rank can be done by Police Establishment Board alone, it could not have been done by any other person, therefore, the impugned order seems to be bad in law.
5. In a similar case this Court in WPS No. 7719/18 decided on 28/11/2018 where the Court has held as under :-

“2. The solitary ground of challenge is that the said order of transfer is in violation to Section 22 of the Chhattisgarh Police Act, 2007. The sub- section 2 of Section 22 reads as under:

“22. Police Establishment Board.-

(1) xxxxxx

(2) The Board shall perform the following functions and duties-

(a) Transfer of subordinate ranks up to the level of Inspector from one Zone or Range or District to another;

(b) Receive and examine representation from police officers aggrieved by any order of superior officers, other than the orders passed under the rule made under the Article 309 of the Constitution of India and-

I. Decide such representation if it is received from a police officer of the subordinate rank;

II. Make recommendation to the State Government in other cases.”

3. From the aforesaid reading of the statutory provisions, it clearly reflects that for the transfer of all officers up to the level of Inspector from one zone, or range or district to another, it is only the police establishment board, which has been constituted by the State which is empowered to issue the order of transfer.

4. The impugned order Annexure P/1 in the present writ petition does not disclose any such exercise having being done by the police establishment board.

5. Given the said facts, let the petitioner make a detailed representation to the respondent No.2 in this regard within a period of 10 days from the date of receipt of certified copy of this order, who in turn shall take a final decision on the representation of the petitioner within a period of three months from the date of receipts of representation. Meanwhile, there shall be a stay of the effect & operation of the order, so far as the petitioner is concerned.”

6. In view of the facts and the circumstances this Court in the past having taken the stand that the order of transfer issued by an authority other than the Police Establishment Board is not sustainable. The said judgment clearly applies in the case of the petitioner also. Accordingly the impugned order in respect of the petitioner is concerned is not sustainable for the same reason and the same deserves to be set-aside/ quashed reserving the rights to the

respondents to pass an appropriate fresh order in accordance with the provisions of the Chhattisgarh Police Act, 2007.

7. The petition stands allowed and quashed.

Sd/-
(P. Sam Koshy)
Judge

Sumit