

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 7990 of 2019

Naveen Kumar Vaishnav S/o Late R. Vaishnav Aged About 28 Years
Presently Working as Forest Guard at Ambagarh Chowki (Production)
Forest Division Rajnandgaon, District- Rajnandgaon, Chhattisgarh.

---- Petitioner(s)

Versus

1. State of Chhattisgarh Through Principal Secretary, Department of Forest, Mahanadi Bhawan, New Raipur, Atal Nagar, District- Raipur, Chhattisgarh.
2. Under Secretary, Department of Forests, Mahanadi Bhawan, New Raipur, Atal Nagar, District- Raipur, Chhattisgarh.
3. Divisional Forest Officer(Territorial) District- Rajnandgaon, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Satish Gupta, Advocate.
For State	:	Shri Jitendra Pali, Deputy Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25.09.2019

1. The challenge in the present writ petition is to the order of transfer dated 23.08.2019 whereby the petitioner has been transferred from Ambagarh Chowki to Bemetara.
2. The contention of the petitioner is that, the order of transfer is in violation of transfer policy of the State Govt. itself. According to the petitioner, there is a clear violation of the provisions of Clauses 2.4, 2.6 and 5.2 of the transfer policy of the State.
3. On a query being put to the counsel for the petitioner, he submits that the petitioner is posted at Rajnandgaon district for a period of more than five years and as such the petitioner has already completed his normal tenure at a one station. Thus, this court is of the opinion that the order impugned cannot be said to be bad in law.
4. So far as reference to the guidelines of the transfer policy of the State is concerned, the Supreme Court has repeatedly held that guidelines of the

transfer policy of the State do not have force of law and they are not mandatorily to be followed upon. Those are mere guidelines which are borne in mind and acted upon, as far as possible. The order of transfer can be challenged only in case the same is in contravention to the service conditions governing the field or the same has been issued by an incompetent authority or have been issued with malafides. None of these are the grounds raised by the petitioner in this petition for challenging the order of transfer.

5. The Supreme Court have repeatedly held that If at all, if the employee is aggrieved by an order of transfer he can at best make representation to the authorities concerned and the High Courts can not substitute itself as another Higher Authority in the Administrative Hierarchy to decide the place of posting, tenure of posting or to decide as to who has to be transferred when and where.
6. In case of **State of U.P. Vs. Siyaram (2004) 7 SCC 405**, wherein the Supreme Court has held as under:-

“The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in **National Hydroelectric Power Corpn. Ltd. V. Shri Bhagwan**”.

7. A Similar view has also been taken by the Supreme Court in case of **Union of India and others V. Janardhan Debanath and others (2004) 4 SCC 245.**
8. Again, in the case of **State of U.P. and others V. Govardhan Lal**, wherein the Supreme Court referring to the transfer policy of the State Govt. have categorically held that such policies do not have force of law nor is it mandatorily to be followed. Those are only guidelines which the authorities have to bear in mind while making the transfer. The Supreme Court in Paragraph 7 & 8 in the said judgment has held as under:-

“7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/ servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights. Unless as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer”.

- 9.** The counsel for the petitioner referred to an order passed by this court on 03.09.2019 in WPS No.7021 of 2019. The facts of that case are quite distinguishable only on considering the place of posting of the person in the said writ petition, as compared to the place of posting of the present petitioner is concerned.
- 10.** Given the aforesaid facts and circumstances of the case, this court is of the opinion that no strong case is made out by the petitioner calling for an interference to the impugned order of transfer.
- 11.** Accordingly, the writ petition being devoid of merit deserves to be and is dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder