

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2698 of 2020**

1. Syed Khasim Ali S/o S.A.K. Pasha Aged About 40 Years R/o Constable (Gd) Service No. 100090622, 167 Battalion, Durgu Kondal, District Kanker, Chhattisgarh

---- Petitioner**Versus**

1. Union Of India Through The Secretary Ministry Of Home Affairs, CGO Complex, Lodhi Road New Delhi
2. Director General Border Security Force, Block 10, 5th Floor, C.G.O. Complex, Lodhi Road, New Delhi, Pin 110003
3. Inspector General HQ, (Spl Ops), Border Security Force Bsp HS Building Opp. Sbi Maroda Branch Risali Sector, Bhilai, District Durg, Chhattisgarh, 490006
4. Dy. Inspector General TAC, SHQ, BSF Bhiali, Opposite Sbi Maroda Branch, Risali Sector Bhiali, District Durg, Chhattisgarh, 490006

---- Respondents

For Petitioner : Shri Shrawan Agrawal, Advocate.

For Union of India : Shri R.K. Kesharwani, Asstt. S.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****11.12.2020**

1. Challenge in the present is to the order of transfer dated 16.04.2020 (Annexure P/1). Vide the said order of transfer, the petitioner has been transferred from his earlier place of posting Bhilai to Kanker. The petitioner meanwhile had challenged the said order of transfer by another writ petition i.e. WP(S) No. 2009/2020. The said earlier writ petition came up for hearing on 22.05.2020, when this Court disposed of the writ petition by making the following observation. For ready reference, the relevant paragraph is reproduced here-in-under:-

“The petitioner was transferred to Bhilai vide Annexure P-3. It has

not been established before this Court as to whether the Bhilai falls within the subject frontier as the frontier normally denotes wherein the aggressive activities are being carried out. The petitioner having been transferred from Bhilai to Durgukondal, District Kanker, the respondents would be in a better position to appreciate the demand of a particular person at a particular place. It is well settled law that the transfer of a Government Servant appointed to a particular cadre of transferable post from one place to the another is an incident of service, which cannot lightly be interfered with by Court unless it is shown to be clearly arbitrary or visited by malafide or infraction of any prescribed norms of principles governing the policy of transfer which causes serious prejudice. The documents further shows that the petitioner has filed the representation and the said application for reconsideration of the transfer has not been canceled at the threshold and the liberty is reserved in favour of the petitioner that on joining at the transferred place, his representation would be considered. Taking into such fact, I do not find any merit in this case to interfere with the transfer order. It is expected that the petitioner, if he joins at the new place of posting, his representation which is pending would be considered objectively.”

2. In pursuance to the order dated 22.05.2020 passed by this Court, the petitioner is said to have been given his joining at the transfer place on 26.05.2020 thereafter he has made certain representations seeking for reconsideration of his order of transfer by posting him back to his original place at Bhilai.
3. According to the petitioner, in-spite of the fact that he has made repeated representations, those representations have till date not been decided or if at all if it has been decided, the copy has not been served upon the petitioner. The respondents have filed their return wherein they have stated that the said representation has been rejected but the date of rejection has not been reflected in the reply nor is the copy of the rejection enclosed along with reply.
4. Having heard the contention put forth on either side and on perusal of records, some of the admitted factual matrix of the case as it stands that the petitioner vide order dated 16.04.2020 has been transferred from Bhilai to Kanker. The petitioner had assailed the said order of

transfer by way of a writ petition i.e. WP(S) 2009/2020 and the said writ petition was disposed of on 22.05.2020. While disposing of the said writ petition on 22.05.2020, this High Court had already held that the Court did not find any merit to interfere with the order of transfer, however since his representations were pending before the authorities concerned and they were directed to consider and decide the same objectively. No subsequent development has been challenged in the present writ petition, it is the same transfer order which has already been challenged in the previous writ petition, which is again being challenged by the petitioner herein.

5. Another fact which needs to be considered is that the service of the petitioner is a transferable service and as has been held by this Court in the earlier round of litigation in WP(S) No. 2009/2020, it is the department which is the best person to decide which person has to be posted at which place and for what duration, the Courts don't have much scope for interfering on a transfer of an employee/ Officer made on an administration exigency, unless the transfer is contrary to the service Rules or is vitiated by malafide or infraction of Rules..
6. Another aspect which in the instant case also needs consideration is that subsequent to the disposal of the earlier writ petition the petitioner now has joined at the transfer place i.e. Kanker and as such the order of transfer stands duly complied with. As regards the document Annexure P/11 referred to by the petitioner, the said order could have been pressed upon before joining the transfer place for the reason that the said order Annexure P/11 dated 03.06.2020 only

provides for deferring of any order of transfer if already issued and not to issue any order of transfer in case if it has not been issued but in case if an order of transfer having been issued and the employee has joined, the said circular would not come to the rescue of the petitioner.

7. The only relief that the petitioner could have got was the observation made by this Court in the earlier round of litigation disposed of on 22.05.2020 whereby the application/ request of petitioner for being transferred back or being posted at an elsewhere location and which is exclusively within the domain of the employer to consider and decide. The petitioner serving on a transferable post would not have much right /remedy available to him of being choosy in respect of the place of posting. Transfer is an incident to service and in case when the services are transferable, the employee is bound to honour the order of transfer issued by the employer.
8. This Court in exercise of its writ jurisdiction would find it difficult to issue a writ of mandamus to the respondents for cancellation of an order of transfer, unless the same was vitiated by malafide, particularly when the service being a transferable service.
9. In view of the same, this Court does not find any strong case made out by the petitioner calling for an interference with the impugned action on the part of the respondents so far as the order of transfer dated 16.04.2020 is concerned. The reluctance of this Court in entertaining the writ petition would not come in the way of the petitioner for pursuing his representation or by making fresh representation to the respondents seeking for either cancellation of

the earlier order of transfer or by modifying to the earlier order of transfer by way of further change of place of posting to the petitioner.

10. With the aforesaid observation/direction, the writ petition accordingly stands disposed of.

Sd/-

(P. Sam Koshy)
Judge

Jyotijha