

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Writ Appeal No. 332 of 2020**

*(Arising out of order dated 05.08.2020 passed in Writ Petition (S)
No.2984 of 2020 by the learned Single Judge)*

Smt. Archana Kujur W/o Babu Lal Kujur, Aged About 39
Years, R/o Saal Parisar, Forest Colony, Quarter No. 107,
Pratappur Naka, Ambikapur, District Surguja, Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh Through- The Secretary, Forest Department, Mantralaya, Mahanadi Bhawan, Atal Nagar Nawa Raipur, District Raipur, Chhattisgarh,
2. Principal Chief Conservator of Forest, Aranya Bhawan, Sector-19, North Block, Atal Nagar Nawa Raipur, District Raipur, Chhattisgarh,
3. Upper Principal Chief Conservator of Forest, Aranya Bhawan, Sector-19, North Block, Atal Nagar Nawa Raipur, District Raipur, Chhattisgarh,
4. Chief Conservator of Forest (Wild Life) and Regional Director (Elephant Reserve) Surguja Forest Circle Ambikapur, District Surguja, Chhattisgarh,
5. Chief Conservator of Forest, Surguja Forest Circle Ambikapur, District Surguja, Chhattisgarh,
6. Shri Atushosh Mishra, at present posted in the office of Chief Conservator of Forest, Surguja Forest Circle Ambikapur, District Surguja, Chhattisgarh,

---- Respondents

For Appellant : Shri Keshav Prasad Gupta, Advocate
 For Respondent/State : Shri Gagan Tiwari, Dy. Govt. Advocate
 For Respondent No.6 : Shri V.K. Pandey, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

26/08/2020

1. Correctness and sustainability of the order dated 05/08/2020 passed by learned Single Judge in Writ Petition (S) No.2984 of 2020 is put to challenge in this writ appeal whereby the petition challenging order of posting of appellant after promotion was dismissed.
2. The appellant while working as Stenographer in the Office of Elephant Reserve Surguja, Surguja Circle, Ambikapur was promoted on 01/07/2020 on the post of Personal Assistant. Along with the appellant, three other employees were promoted as Personal Assistant by same order including respondent No.6. Appellant after her promotion was posted at the Office of Chief Conservator of Forest Surguja, Surguja Circle, Ambikapur and respondent No.6 after promotion has been shown to be posted in the Office of Chief Conservator of Forest Bilaspur, Bilaspur Circle, Bilaspur from his earlier place of posting i.e. Office of Chief Conservator of Forest Surguja, Surguja Circle Ambikapur. Appellant was relieved from her earlier place of posting i.e. Office of Elephant Reserve Surguja, Surguja Circle, Ambikapur on 04/07/2020

and joined her new place of posting on 04/07/2020. Respondent No.2 issued another order on 04/07/2020 showing amendment in the posting order of the appellant and respondent No. 6. In the amended posting order dated 04/07/2020, places of posting of the appellant and respondent No.6 has been interchanged. By amended posting order, appellant has been shown to be posted from Elephant Reserve Surguja, Surguja Circle Ambikapur to the Office of Chief Conservator of Forest Bilaspur, Bilaspur Circle, Bilaspur and respondent No.6 has been shown to be posted from the Office of Chief Forest Conservator Surguja, Surguja Circle, Ambikapur to the Office of Chief Conservator of Forest Surguja, Surguja Circle, Ambikapur, which is the same office where respondent No.6 was posted prior to his promotion. This made the appellant to approach this Court by filing Writ Petition (S) No.2984 of 2020, which came to be dismissed on 05/08/2020.

3. Shri Keshav Prasad Gupta, learned counsel for the appellant submits that initially after promotion, appellant has been transferred from the Office of Elephant Reserve Surguja, Surguja Circle, Ambikapur to the Office of Chief Conservator of Forest Surguja, Surguja Circle, Ambikapur and respondent No.6 was transferred from the Office of Chief Conservator of Forest Surguja, Surguja Circle, Ambikapur to the Office of Chief Conservator of Forest Bilaspur, Bilaspur

Circle, Bilaspur. The competent authority has issued the order of posting after application of his mind, but subsequently, posting order has been amended within three days of the order of promotion and the appellant has been transferred from Ambikapur to Bilaspur. He further submits that this is an arbitrary exercise of powers by the respondent authorities only to accommodate respondent No.6 on his earlier place of posting. Adding that, appellant is a lady having a small child and her husband is also posted in the Government Office at Balrampur and she will face great hardship to commute as the distance from Ambikapur to Bilaspur is more than 200 Kms.

4. During the course of previous hearing, learned counsel for the State pointed out that the appellant is aggrieved with regard to her posting after promotion and it is not an order of transfer. He submits that appellant is posted at Ambikapur since last five years, therefore, she has been given a posting at Bilaspur by amending the order of promotion only with respect to place of posting.
5. Upon considering the submission made by learned counsel for the appellant and looking to the order of amended place of posting within three days of promotion as well as posting of the appellant and respondent No.6, we put a specific query on 19/08/2020 to the counsel appearing for the State

that who is the senior most person and who has worked for more period at Ambikapur, for which, learned counsel for the State took time to verify the position. When the case was taken up for hearing on 24/08/2020, learned counsel for the State on instructions submitted that respondent No.6 was serving at Ambikapur for last ten years whereas the appellant was having only five years of service at Ambikapur. During the course of hearing, learned counsel appearing for respondent No.6 submitted that appellant has been brought back to her original place of posting i.e. Office of Elephant Reserve Surguja, Surguja Circle, Ambikapur vide order dated 13/08/2020 and no grievance subsists for the appellant to pursue the appeal any further. The said submission of learned counsel for respondent No.6 was resisted by learned counsel for the appellant by submitting that as per his information, there is no correction and amendment in the amended posting order dated 04/07/2020 and looking to the disputed fact, we have directed the State as well as learned counsel appearing for respondent No.6 to produce a copy of order dated 13/08/2020, if any, as stated by them.

6. Today, when the case came up for hearing, learned counsel for the State submitted that the reply has been filed enclosing copy of order dated 13/08/2020, which was issued by the Principal Chief Conservator of Forest, Naya Raipur

and the appellant has been permitted to work at her initial place of posting i.e. the Office of Elephant Reserve Surguja, Surguja Circle, Ambikapur and now, the appellant's grievance has been redressed. The submission of learned counsel for the State was objected by learned counsel for the appellant while referring to Annexure R/4, which is an order dated 13/08/2020, and argued that it is only a temporary arrangement looking to the pandemic COVID-19 period, the amendment order of posting dated 04/07/2020 has not been corrected and as soon as the situation will generalize, the appellant has to join in the Office of Chief Conservator of Forest Bilaspur, Bilaspur Circle, Bilaspur. He further pointed out that in the order dated 13/08/2020 it is mentioned that respondent No.6 is already joined in the amended place of posting i.e. Office of Chief Conservator of Forest Surguja, Surguja Circle, Ambikapur and place of posting has not been changed, but it is mentioned in the bottom of page-12 of the reply filed by the respondent-State that place of posting of the employees mentioned therein is as it is i.e. appellant's place of posting will be the Office of Chief Conservator of Forest Bilaspur, Bilaspur Circle, Bilaspur.

7. Shri V. K. Pandey, learned counsel for respondent No.6 submits that respondent No.6 has already joined his promoted place of posting i.e. Ambikapur and he will face

difficulty if his place of posting is changed, whereas the appellant has been permitted to work in her earlier place of posting i.e. the Office of Elephant Reserve Surguja, Surguja Circle, Ambikapur.

8. We have heard learned counsel appearing for the respective parties and also perused the documents annexed with the writ appeal as well as writ petition.
9. Perusal of the impugned order would show that the reason assigned for dismissal of writ petition was posting of the appellant/writ petitioner to be in the same block from one place to another, whereas the change of place of posting by way of amended order is from one District to another District Headquarter.
10. Annexure P/2, is an order of promotion dated 01/07/2020 would show that respondent No.2 after application of mind, had promoted the employees mentioned therein including the appellant as well as respondent No.6 and have ordered to join their new place of posting as mentioned in Column No.4 of Annexure P/2. In the said order, appellant is to join in the Office of Chief Conservator of Forest Surguja, Surguja Circle, Ambikapur and respondent No.6 is to join in the Office of Chief Conservator of Forest Bilaspur, Bilaspur Circle, Bilaspur, but suddenly, amended order was issued on 04/07/2020 for change of place of posting upon promotion

of only two employees i.e. appellant and respondent No.6 within three days of order of promotion, out of the four promoted employees.

11. Learned counsel for the State could not place on record any material for issuance of amended posting order of appellant as well as respondent No.6, but for his submission that employee cannot choose her/his place of posting; appellant is holding a transferable post and she has worked at Ambikapur though in other Office for five years.
12. The submission made by learned counsel for the State cannot be accepted in the facts and circumstances of this case. If submission made by learned counsel for the State is accepted that consideration for issuance of amended transfer order is for number of years worked at a place of posting at Ambikapur by the appellant then, the same yardstick is to be applied for respondent No.6 also, who is not only working and posted at Ambikapur for last ten years, but also in the same Office i.e. the Office of Chief Conservator of Forest Surguja, Surguja Circle, Ambikapur. True, it is that employee cannot choose her/his place of posting to be on a particular place and it is for the employer to utilize the services of an employee but at the same time the rule and criteria of shifting of an employee from one office and place is to be applied uniformly. There cannot be

any arbitrary exercise of power in the garb of administrative exigency.

13. In the case at hand, when once the authority upon consideration of record placed along with DPC proceedings for consideration of the candidature for promotion found fit to place appellant as well as respondent No.6 on a particular place of posting upon their promotion, then within three days, change of place of posting of appellant and bringing back the 6th respondent to the office of respondent No.5 where he was posted for last ten years, *prima facie* appears to be an arbitrary action and is malafide in law.
14. For the foregoing reasons, the order dated 04/07/2020 (Annexure P/1), which is an order amending the place of posting in order of promotion dated 01/07/2020 (Annexure P/2) is quashed. The appellant and respondent No.6 shall join the place of posting as mentioned in order dated 01/07/2020 (Annexure P/2).
15. The appeal is allowed.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge