

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5145 of 2020**

1. D. R. Deshmukh, S/o C. R. Deshmukh, Aged About 50 Years, Working As Head Constable Railway Protection Force, Presently Posted In Wagon Repair Shop (WRS) Raipur (Unit No. 9902227), R/o Kanhaiyapuri, Kasaridih, Police Chauki-Padmnabhpur, Police Station: Durg, Civil And Revenue, District: Durg, Chhattisgarh

---- Petitioner**Versus**

1. Union of India Through Secretary Department of Railway, (Railway Board) Mantralaya, New Delhi
2. Chief Security Commissioner, Railway Protection Force (R.P.F.), South Eastern Central Railway, Bilaspur Chhattisgarh
3. Divisional Security Commissioner, Railway Protection Force (R.P.F.), S.E.C. Railway, Raipur Chhattisgarh
4. Assistant Security Commissioner, South Eastern Central Railway, Bilaspur Chhattisgarh

... Respondents

For Petitioner	:	Mr. Anumeh Shrivastava, Advocate
For Respondents	:	Mr. Ramakant Mishra, A.S.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****14.12.2020**

1. The challenge in the present writ petition is to the order of transfer dated 18.11.2020; whereby the petitioner has been transferred from R.P.F, Post Wagon Repair Shop (WRS), Raipur Division to the Nagpur Division of S.E.C.R.
2. The contention of the counsel for the petitioner is that as per the policy of the respondents the normal tenure for posting is 5 years wherein the petitioner has worked for 3 ½ years in the present place.

He further submits that there is no complaint whatsoever levelled against the petitioner which called him for disciplinary proceeding on the other hand it was the petitioner who has been making complaint against the persons who was not permitting him to discharge his duties peacefully. It was further the contention that the order of transfer is a mid session transfer and shifting of the petitioner at this juncture would be causing great inconvenience. The counsel for the petitioner refers to the R.P.F. Rules and the correspondences which the petitioner made to the respondent authorities.

3. A plain reading of the impugned order itself would show that the same has been done purely on the administrative exigency as would be reflected from the contents of the order dated 18.11.2020. Another facts which needs to be considered is the fact that the petitioner on an earlier occasion on 16.10.2020 had himself written a letter to the higher authorities expressing his anguish and inability to discharge his duties peacefully and that he was working under great pressure under the respondents.
4. Taking into consideration the said correspondence and also the contents of the documents, this Court is of the opinion that the impugned order of transfer has been issued considering the administrative exigency that arose on account of the correspondences that the petitioner had made to the authorities in the Department. Even-otherwise, so far as the scope of interference of this Court is concerned, the law has been well settled by a catena of decisions had held as under:

“7. 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.”

8. 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.

9. 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 a 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”

10. So far as contention of the petitioner that the impugned transfer order is contrary to the policy of the State Government is concerned, the policies are mere guidelines and not controlled by any statutory provisions. The effect thereof is a advisory in character and thereby no legal right is conferred upon the employee. Chief Commercial Manager, Sought Central Railway, Secundarabad & others V. G. Ratnam & others 2007 (8) SCC 212.

11. The Supreme Court, in Airports Authority of India V. Rajeev Ratan Pandey & others, 2009 (8) SCC 337 held that “In a matter of transfer of a government employee, scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so

because the Courts do not substitute their own decision in the matter of transfer.

12. Even otherwise, there is no challenge to the impugned order on any permissible legal grounds as aforestated, warranting interference.

13. This Court has limited jurisdiction to interfere with the transfer matter except in the cases of proved mala fide, non-competence of authority passing the transfer order and not being in conformity with the rules and regulations. The petitioner/employee cannot be permitted to remain at one place forever. Under the provisions of service rules, employer has all the powers to post an employee at a particular place in view of public interest and administrative exigency. (See High Court of Judicature of Madras Vs. R. Perachi (2011) 12 SCC 137.

14. In view of the aforesaid judgments by the Supreme Court and which have been followed by all the High Courts in the country, this Court does not find any strong case made out by the petitioner calling for interference with the impugned order of transfer, thus, the petition being devoid of merits deserves to be and is accordingly dismissed.”

5. When the Hon'ble Supreme Court in catena of decisions has held that transfer is an incident of service and the guidelines on transfer issued by the employer would not have statutory force. All that needs to be seen is, whether the service of employee is transferable or not and whether there is any rule governing the field so far as transfer is concerned. The correspondences made by the petitioner himself would show that he was facing certain difficulties in functioning at the present place of posting at the behest of the others working in the Department. Considering all the aforesaid facts, if the respondents have passed the order, the same cannot be said to be in any case to be with malafides or arbitrary nor can it be said contrary to the Rules governing the field. The writ petition therefore does not have merits and deserves to be dismissed.

6. The reluctance of this Court in not interfering with the order would not preclude the petitioner from availing the remedy open to him by making suitable representation to the higher authorities in the Department; so far as the transfer or place of posting is concerned.
7. The present writ petition stands rejected.

Sd/-
(P. Sam Koshy)
JUDGE

Rahul