

**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH**

Sr. No.207

**CWP-7509-2020 (O&M)**  
**Date of decision : 31.07.2020**

Sandeep Kumar

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Mazlish Khan, Advocate, for the petitioner.

Mr. Sanjay Mittal, AAG, Haryana.

Mr. V.S. Bhardwaj, Advocate, for respondents No.2 to 4.

Mr. Sumit Sangwan, Advocate, for respondent No.5.

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**SUDHIR MITTAL, J.**

Through this writ petition, challenge has been raised to order dated 20.5.2020, transferring the petitioner from Bhiwani to Hisar and order dated 21.5.2020, relieving the petitioner of his duties at Bhiwani.

The brief factual matrix of this case is that the petitioner served the Indian Navy for about 17 years, whereafter, he sought pre-mature retirement. His request was accepted and he was released from service on 28.2.2018. Thereafter, he joined service with Choudhary Charan Singh Haryana Agriculture University, Hisar as a Clerk w.e.f. 15.11.2019. Within three weeks of his joining, he submitted a request dated 7.12.2019 for transfer to Krishi Vigyan Kendra, Bhiwani on compassionate grounds. In the request letter, it was stated that his aged mother is staying at Bhiwani on account of her treatment for asthma, joint

pain and Alzheimer disease and that she needs his care and assistance. His wife lives in Bhiwani and cannot be transferred out of the District as initially, she joined service as JBT Teacher in the said district. They have two small children and the wife cannot devote adequate time to them as well as her to mother-in-law as she has to work in rural areas. The request was considered favourably and vide order dated 10.1.2020, the petitioner was transferred to the Krishi Vigyan Kendra, Bhiwani, against vacant post of Clerk. Within four months of his transfer, order dated 20.5.2020, was issued, re-transferring the petitioner to Hisar and posting respondent No.5 in his place. The petitioner submitted a representation dated 20.5.2020 itself, but he was relieved from his duties vide order dated 21.5.2020.

Notice of motion was issued vide order dated 28.5.2020 and operation of order dated 21.5.2020 was stayed.

A common written statement has been filed on behalf of respondents No.2 to 4 and a separate written statement has been filed on behalf of respondent No.5. Pleadings therein are similar. It is submitted that respondent No.5 suffered acute superior end plate fracture of L1, L2, L3 and L4 vertebrae in February, 2020. Report of MRI Scan dated 25.2.2020 in support of this averment, has been annexed. The father-in-law of respondent No.5 is a chronic heart patient and her husband is a practicing Lawyer at Bhiwani. She has to travel to Hisar on a daily basis, but on account of the fracture in the backbone, movement has become extremely difficult. Thus, a representation dated 19.3.2020 was submitted for transfer to Bhiwani. On receipt of favourable

recommendation, order dated 20.5.2020 was issued. Transfer is a condition of service and unless and until, the transfer order is shown to be mala fide, Court would not normally interfere in the discretion of the employer. No mala fide exists and none has been pleaded. The competent authority felt that the case of respondent No.5 had greater merit and thus, ordered her transfer to Bhiwani. Reliance has been placed upon 'Davinder Pal Singh Vs. Central Administrative Tribunal, Chandigarh, 2016 (2) SCT 771.

Parties have been heard.

During the course of arguments, learned counsel for the petitioner has circulated through email appreciation letter dated 29.4.2020 showing the work and conduct and efficiency of the petitioner. A communication dated 22.6.2020 has also been referred to argue that the petitioner earned 'very good' grading in his ACR.

The appreciation letter and the fact that the petitioner got a 'very good' grade in his ACR has not been disputed by learned counsel for respondent No.5.

Learned counsel for the petitioner has argued that re-transfer of the petitioner to Hisar after four months is un-reasonable. The petitioner had been transferred on compassionate grounds and the same exists till date. Thus, the transfer is illegal.

Learned counsel for the respondents, on the other hand, support the order of transfer by arguing that services of the petitioner are transferable in nature and that he has no right to remain at one particular place of posting. That apart, the merits of the case of the petitioner and

respondent No.5 were evaluated and the competent authority felt that respondent No.5 had greater need to stay at Bhiwani. This is because she had suffered a fracture of vertebrae in February, 2020 and expecting her to travel on daily basis from Hisar to Bhiwani would be cruel. The law on the subject of transfer is very clear and that unless and until, the transfer is shown to be violative of statutory provisions or a mala fide exercise of administrative authority, the Courts will not interfere in the discretion exercised by the administrative authority. Thus, the writ petition deserves to be dismissed.

In the judgment of Davinder Pal Singh (supra), the Hon'ble Single Judge of this Court has referred to various judgments of the Supreme Court to hold that transfer is not only an incident of service, but is a condition of service, where an employee is appointed to a transferable post. The transfer orders cannot be interfered with by the Courts, as a matter of routine, as though, they are appellate authorities. No interference should be done with orders passed in the interest of administrative exigencies. The only exception is if there is a violation of a statutory provision or a patent mala fide exercise of administrative authority. The position in this regard has been settled and there is no doubt in it.

In the facts and circumstances of this case, I failed to see any mala fide or capricious exercise of administrative authority. Admittedly, respondent No.5 has suffered a fracture of her spine in February, 2020. It has not been disputed that she resides at Bhiwani and that she has to commute on daily basis to Hisar. Under the circumstances, she cannot be

expected to transfer to Hisar and expediency requires that she should remain at Bhiwani. The transfer order thus, does not suffer from any illegality and is upheld.

Consequently, the writ petition is dismissed. The petitioner may however, seek transfer to Bhiwani once again on compassionate basis after the medical condition of respondent No.5 has improved substantially.

**(SUDHIR MITTAL)**  
**JUDGE**

**31.07.2020**  
Ramandeep Singh  
Whether speaking / reasoned  
Whether Reportable

Yes / No  
Yes/ No