

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Petition (S) No.3939 of 2021

R. K. Singhai S/o Late Shri D. C. Singhai Aged About 57 Years Posted Sub Divisional Officer (Regular Assistant Engineer) Water Resources Department Sub Division, Deobhog District Gariyaband Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Water Resources Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh.
2. Deepak Kumar Pathak (Temporary Assistant Engineer) of the post of Non Numeric At Sub Division Deobhog, Water Resources Department District Gariyaband Chhattisgarh

---- Respondents

For Petitioner	:	Shri BP Singh, Advocate.
For State	:	Shri Jitendra Pali, Dy. Advocate General.
For Respondent No.2	:	Shri Aniket Verma, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

03/09/2021

1. Aggrieved by the order of transfer dated 22.07.2021 the present writ petition has been filed. Vide the impugned order the petitioner has been transferred from Water Resources Department, Sub Division, Deobhog to the office of the Engineer in Chief, Naya Raipur, Chhattisgarh.
2. The primary contention upon which the present petition has been filed opposing the transfer order was in respect of the respondent No.2 being ordered to replace the petitioner as Sub Divisional Officer (in short, SDO) of Sub Division of the Water Resources Department at Deobhog, District Gariyaband. The contention of the petitioner is that the respondent No.2 substantively was a Sub Engineer and was recently promoted by creation of a supernumerary post. That as per their order of promotion itself it was specifically envisaged that they shall not be given the responsibility of Assistant Engineer and therefore the respondent No.2 would not be

entitled to be appointed as SDO. Highlighting this aspect, the petitioner submits that shifting of the petitioner from Deobhog to Naya Raipur was only to accommodate the respondent No.2 and therefore it smacks malafide and the same should therefore be interfered with by this court.

3. Plain reading of the pleadings to the writ petition would clearly show that the petitioner infact had been working at the present place of posting i.e. at Deobhog for more than a couple of years. Another fact which is revealed from the pleadings is that there is no averment on the part of the petitioner alleging malafide against any particular officer in the department which has resulted in the issuance of the impugned order of transfer. Neither is the order of transfer under challenge on the ground of it being arbitrary, nor has the order of transfer being attacked on the ground of it being contrary to the service rules governing the field.
4. Learned counsel appearing for the State opposing the petition drew attention of the court to a document Annexure R/4 dated 13.01.2020 issued from the Water Resources Department wherein it has been clarified so far as officers promoted on supernumerary post being granted the charge of SDO. The department further went to the extent of saying that in the event of an administrative exigency when a Sub Engineer can be given the charge of the Sub Division a Sub Engineer when promoted by creation of supernumerary post also can be considered for being assigned the responsibilities of an Assistant Engineer and also if warranted can be appointed as a Sub Division Officer. This meets the argument of the petitioner who was primarily opposing the petition on the ground of respondent No.2 not being competent to replace the petitioner.
5. Another fact which needs to be appreciated is that as has been discussed the order of transfer is mainly challenged on the ground of competency of the officer who has been posted in place of the petitioner. It is not the claim

of the petitioner that this transfer is in any manner bad in law. Moreover, the transfer of the petitioner cannot be tested on the ground of competency of the officers who is replacing the petitioner. An order of transfer can be tested independently so far as person who has been transferred. The petitioner would not be in any manner prejudiced by the posting of respondent No.2 in his place as SDO at Deobhog nor is it going to adversely affect the service condition of the petitioner or any of the service conditions of the petitioner in any manner.

6. Given the said facts and circumstances of the case, this court does not find any strong case made out by the petitioner calling for interference to the impugned order of transfer.
7. However, right of the petitioner stands reserved for availing appropriate remedies on the administrative side. In case if the petitioner is aggrieved by the order of transfer, he may prefer a representation to the authorities concerned and the authorities in turn may consider and decide the same on its own merits at the earliest preferably within a period of 45 days from the date the petitioner makes representation.
8. The writ petition accordingly stands disposed of.

Sd/-
(P. Sam Koshy)
Judge