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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3900 of 2020**

Atul Raj Pegwar (A. R. Pegwar) S/o Shri O.J. Pegwar, Aged About 54 Years, R/o House No. 315, In Front Of Nagdaune Floor Mill, Magarpara, Bilaspur, Police Station- Civil Line Bilaspur, District- Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through- The Secretary, Public Works Department, Mahanadi Bhawan, New Raipur, Chhattisgarh
2. The Under Secretary, Public Works Department, Mahanadi Bhawan, New Raipur, Chhattisgarh
3. The Engineer In Chief, Public Works Department, Mahanadi Bhawan, New Raipur, Chhattisgarh
4. The Executive Engineer, Public Works Department, Division Korba, District- Korba, Chhattisgarh
5. Ramnaresh Dubey, Sub Divisional Officer/ Assistant Engineer, Public Works Department, R/o MIG-02/23,C1/C2, R.P. Nagar, Phase-1, Kosabadi Korba, District- Korba, Chhattisgarh
6. S. P. Sahu, Sub Divisional Officer/ Assistant Engineer, Public Works Department, Sub Division No.2 Katghora, District- Korba, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. R. R. Soni, Advocate
For State	:	Ms. Akanksha Jain, Dy. Govt. Advocate
For Respondent no.5	:	Mr. Anshul Tiwari, Advocate

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

04.03.2021

1. The challenge in the present writ petition is to the order dated 07.09.2020 whereby the petitioner has been posted from Korba to the Office of Engineer-in-Chief, PWD, New Raipur.
2. The facts of the case in the instant writ petition are that respondent no.5 namely Ramnaresh Dubey was working as Sub Divisional Officer, PWD, Sub Division No.2 Katghora, District Korba. Vide Annexure P-2 dated 17.08.2019 the services of the respondent no.5 stood transferred from Katghora to Jagdalpur. The said order of transfer was subjected to challenge in WPS No. 7019/2019 which was heard and disposed of vide order dated 03.09.2019. While disposing of the said writ petition, this Court had permitted the respondent no.5 to approach the authority concerned by way of a representation and till the representation is decided, the effect and operation of the impugned order was stayed. It is said that the subsequent representation, which the petitioner had made, stood rejected vide order dated 25.11.2019 and thereafter, the respondent no.5 was relieved from his place of posting on 18.06.2020.
3. It appears that in spite of the respondent no.5 being relieved from his place of posting, he did not give his joining at his transferred place and continued to pursue with the respondent authorities and now vide the impugned order dated 07.09.2020 he has been able to get the earlier order of transfer dated 17.08.2019 modified to the extent that the place of posting of the respondent no.5 would remain at district Korba and in turn the petitioner herein was transferred out of Korba and sent to the office of Engineer-in-Chief, PWD, New Raipur.
4. Contention of the counsel for the petitioner is that the impugned order is one which smacks malafide for the reason that once when the

authorities have taken a conscious decision of rejecting his representation, there was no occasion for the respondent authorities to have further entertained the request of the respondent no.5 and there was also no scope of interference with the order dated 17.08.2019. According to the petitioner, there does not seem to be any administrative exigency established by the respondent no.5 on the basis of which the impugned order could have been passed and the impugned order has been passed only with an intention to accommodate the respondent no.5. Hence, the impugned order deserves to be interfered with.

5. Learned counsel appearing for the respondents State as well as respondent no.5 submitted that from the plain reading of the impugned order would reveal that the same has been passed on the administrative exigency and considering the request made by the respondent no.5 after due compliance with the requirement under the transfer policy.
6. Having heard the contentions put forth on either side and on perusal of the record, the aforesaid factual matrix is not disputed by any of the parties herein. On a query being put to the learned counsel for the petitioner he accepts that the petitioner herein has been posted at the present place of posting since 2017 i.e. he has already put in more than 3 years of service and as such he has completed his normal tenure of posting at the present place.
7. As regards the ground of the impugned order having been passed to accommodate the respondent no.5, the Hon'ble Supreme Court in the case of **State of U.P. and others Vs. Gobardhan Lal, (2004) 11 SCC 402**, has in very categorical terms held that in the event of an employee

not being satisfied with an order of transfer, the recourse available is to approach the authorities by way of a representation and if the State authority/employer accepts the request of the employee and passes an order recalling the order of transfer and granting a different place of posting to the concerned employee, the same would not amount to a malafide action.

8. In the instant case, it appears that the grievance of the respondent no.5 all along is that his spouse is working at Korba. Moreover, the order dated 17.08.2019 has not been executed in spite of the respondent no.5 being relieved from Korba. Since the respondent no.5 has not joined at the transferred place, it cannot be said that the order of transfer stands executed and as long as the order is not executed, it is well within the domain of the authorities to amend/modify/recall the order.
9. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that no strong case has been made out by the petitioner calling for an interference with the impugned order of transfer. The writ petition thus stands rejected. The interim order also stands vacated.
10. However, if the petitioner is not satisfied with the place of posting offered to him, he would be at liberty to approach the authorities by way of a representation seeking for an appropriate change of place of posting by showing cogent and justifiable reasons in the representation that he would file.

**Sd/-
P. Sam Koshy
Judge**