

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

**CWP-5703-2021 (O&M)
Date of Decision:12.03.2021**

Shishpal

... Petitioner

Versus

State of Haryana & others

... Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. S.S. Sahu, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Matter has been taken up through Video Conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Petitioner is serving on the post of Forester under the Department of Forest, State of Haryana.

Instant writ petition is directed against the order dated 02.03.2021 (Annexure P-3) passed by the Principal Chief Conservator of Forest, Haryana and whereby he has been transferred from the office of Divisional Forest Officer, Fatehabad, Ratia Block to Block Ding, Range Sirsa, Sirsa.

Counsel submits that the petitioner had joined at his place of posting in the office of Divisional Forest Range Fatehabad, Block Ratia on 22.10.2020. Now merely after a period of four months, the impugned order has been passed.

The sole contention raised by counsel is that the impugned order of transfer cannot sustain as the same is in violation of the transfer

policy issued by the State of Haryana dated 06.10.2004 (Annexure P-5) and where under as per Clause (i), a normal tenure of posting is envisaged of two years. It is vehemently contended that the respondent/authorities would be bound by the transfer policy issued by the Chief Secretary to Government of Haryana and any transfer directed in violation of such transfer policy would be bad in law. In support of such contention, counsel has placed reliance upon judgments of the Hon'ble Supreme Court of India in **T.S.R. Subramanian & others Vs. Union of India & others, 2013 (15) SCC 732** as also a Division Bench of this Court in **Dr. Dev Parkash Chugh Vs. State of Punjab & others, 2005 (4) S.C.T. 726**.

No other submission was raised.

Having heard counsel at length and having perused the pleadings on record, this Court is of the considered view that no intervention in the matter is warranted.

Undoubtedly, a transfer policy for Class III and IV government employees was issued vide Memo dated 06.10.2004 from the office of the Chief Secretary to Government of Haryana. In such transfer policy, certain guidelines were laid down and to be followed while directing postings/transfers.

Clause (i) of the transfer policy was couched in the following terms:

“An employee may generally not be transferred out of his current place of posting before he has completed two years on that post except for compelling administrative reasons.”

It is by now well settled that terms and conditions contained in a transfer policy do not vest an enforceable right in an employee. It is also

settled that an order of transfer would be open to challenge if the same is made in violation of a statutory provision; is passed by an authority not competent to direct such transfer, or is vitiated by malafides. A reference in this regard may be made to the decision of the Apex Court in **Union of India & others Vs. S.L. Abbas, 1995 (4) SCT 455.**

In the instant case, petitioner is not alleging any malafides insofar as issuance of impugned transfer orders dated 02.03.2021. Neither is it projected on behalf of the petitioner that such transfer has been directed by an authority not competent to do so or is in violation of any statutory provision. Under such circumstances, even if the petitioner has been moved out from his present place of posting after a short span of four months, this Court would proceed on the basis that there must have been some administrative exigency to justify such transfer.

Even the language implied in the relevant clause i.e. Clause (i) of the transfer policy dated 06.10.2004 (Annexure P-5) relied upon by the petitioner does not spell out a complete bar as regards posting before completion of a two years tenure. The Clause merely states that an employee may **“generally not be transferred”** prior to completion of two years tenure. In any case, the transfer policy dated 06.10.2004 (Annexure P-5) cannot be elevated to the pedestal of a statutory provision/rule. These are guidelines at best.

The reliance placed by counsel upon the judgments rendered by the Hon'ble Supreme Court of India in T.S.R. Subramanian's case (supra) and of the Division Bench of this Court in Dr. Dev Parkash Chugh's case (supra) is misplaced.

In the case of **T.S.R. Subramanian (supra)**, few eminent retired civil servants had filed a petition directly in the Supreme Court under Article 32 of the Constitution of India highlighting the necessity of various reforms for preservation of integrity, fearlessness and independence of civil servants at the Centre and State levels in the country. It is against such backdrop that the Supreme Court directed the Centre, State Governments and the Union Territories to constitute Boards with high ranking serving officers to ensure that civil servants enjoy stability of tenure and by observing that at the State level transfers and postings are made frequently at the whims and fancies of the executive head for political and other considerations. The petitioner herein who is serving on the post of Forester cannot gain any mileage from the directions issued in **T.S.R. Subramanian's case (supra)**, where the issue was with regard to stability in tenure of postings in respect of civil servants.

Likewise, in the case of **Dr. Dev Parkash Chugh (supra)**, a Division Bench of this Court had intervened against the factual background where a Veterinary Assistant Surgeon serving under the State of Punjab had suffered as many as seven transfers within a short span of time. The petitioner therein had asserted that he was a victim of frequent transfers. The facts of the present case are clearly distinguishable.

In the instant case, the Court would not be inclined to interfere in an order of transfer merely on the ground that it violates a particular condition contained in a transfer policy.

For the reasons recorded above, this Court does not find any

infirmity in the impugned transfer order.

Writ petition is dismissed.

12.03.2021

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |