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

CWP-10265-2021

Date of Decision: 26.05.2021

Shiv Ram Meena

Petitioner

Versus

Food Corporation of India through its Managing Director and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. S.K. Verma, Advocate for the petitioner.

Mr. Aman Chaudhary, Advocate for the respondents.

AVNEESH JHINGAN, J.

[1] The matter is taken up for hearing through video conference due to COVID-19 situation.

[2] The petition in the nature of Certiorari is filed for quashing of transfer order dated 5th November, 2020 and relieving orders dated 9th April, 2021 and 4th May, 2021.

[3] The petitioner joined Food Corporation of India (hereinafter 'F.C.I.') as Technical Assistant Grade-III on 7th May, 1997. As of now, he was working as Manager (Quality Control) at Food Storage Depot (F.S.D.) Center Dhuri, District Sangrur on a Category-II post. The petitioner was promoted to the post of Manager (Quality

Control) on 15th June, 2016 and since posted at Sangrur. On 28th August, 2020, the petitioner was transferred from Sangrur to Rajasthan region. The transfer order was modified on 5th November, 2020, transferring the petitioner to Jammu & Kashmir (J&K) region. The order of transfer was kept in abeyance till 31st March, 2021 due to COVID-19 situation. In continuation of office letter dated 31st March, 2021, a letter dated 8th April, 2021 was issued extending the tenure periods upto 15th June, 2021 due to spread of COVID-19. On 9th April, 2021, a representation was made by the petitioner for cancellation of his transfer. Petitioner represented that as per Comprehensive Transfer Policy Guidelines for employees of Food Corporation of India (hereinafter 'Transfer Policy Guidelines'), the tenure of Category-II employee at one region is 10 years whereas the petitioner had only completed 4 years and 5 months. Moreover, there were other Managers in Sangrur who had longer tenure than the petitioner.

[4] On 9th April, 2021, the Executive Director (North), F.C.I. issued relieving orders, the petitioner was relieved on 4th May, 2021 and was directed to report for duty to the concerned General Manager, F.C.I., J&K region. Hence the present petition.

[5] Mr. S.K. Verma, learned counsel for the petitioner relying on clause 2.2 of the Transfer Policy Guidelines dated 22nd March, 2021, submits that transfer is illegal. The contention is that as per clause 2.2 (d), the tenure of Category-II Officer is for 10 years. Similarly, as per clause 2.2 (f), a Category-II Officer can serve upto 10 years in the

Regional / Zonal Office but the petitioner was transferred after a stay of 4 years and 5 months.

[6] The grievance is that while transferring, the petitioner has been discriminated as there are other Managers who are senior to the petitioner and had a longer stay.

[7] It is argued by learned counsel for the petitioner that as per letter dated 8th April, 2021, expired tenure period or tenure to be expired before 15th June, 2021 were extended till 15th June, 2021, hence relieving of petitioner on 4th May, 2021 is illegal.

[8] He relies upon interim order dated 30th April, 2021 passed in CWP-8971-2021 to state that in similar matter this Court has granted interim protection.

[9] Mr. Aman Chaudhary appearing for respondents, contends that the petitioner had not approached this Court with clean hands. There were disciplinary proceedings pending against the petitioner, the proceedings culminated in the punishment order dated 12th January, 2021. Four increments of petitioner have been stopped with cumulative effect, the said facts have not been disclosed.

[10] Learned counsel for the respondents vehemently opposes the reliance of the petitioner on clauses 2.2 (d) and (f) of Transfer Policy Guidelines. It is submitted that petitioner was holding a sensitive post of Manager (Quality Control) and was dealing with the procurement of grains. The relevant clause in case of petitioner is 2.2 (a). The normal tenure on sensitive post is 24 months extendable

upto 36 months. There are exceptions to the period prescribed in clause 2.2 (a) and one of them being where disciplinary action is initiated against officer.

[11] Learned counsel for the respondents argued that in view of approaching procurement season due to the administrative exigency, the transfer and relieving of the petitioner was necessitated. There is no question of petitioner being discriminated.

[12] Learned counsel for the petitioner reiterating the arguments, submits that transfer of the petitioner was not punitive in nature and it had nothing to with the disciplinary proceedings initiated.

[13] Before proceeding further, relevant clause 2.2 of Transfer Policy Guidelines is reproduced below:-

"2.2 Tenure : The tenure at various locations and units of administration in FCI is given below, which is to be adhered to for all employees, for their service in all posts:

Sl. No.	Category and Place of Posting	Tenure
(a)	For Cat-I and Cat-II officer posted in Sensitive Seat.	Cat-I and Cat-II officer will serve for a normal tenure of 24 months and extendable upto 36 months when posted in a sensitive seat/ post. The tenure mentioned above, shall not be applicable in following scenarios:- (a) A disciplinary action initiated against the officer under Regulation 58. (b) Adverse reporting in writing by controlling authority with proper justification. (c) On promotion. (d) Officers/ officials posted in Vigilance Division shall be governed by CVC Circular No. 16/3/06, dated 28.3.2006 which inter-alia states that the normal tenure of officer posted in Vigilance Division shall be 03 years extendable for five years.

(b)	For Cat-I and Cat-II officers serving at a Station except sensitive seat / difficult situation.	Cat-I officer will serve for a normal tenure of 36 months and extendable upto 60 months in a Station at a stretch. Cat-II officer will serve for a normal tenure of 48 months and extendable upto 60 months in a Station at a stretch.
(c)	For Cat-I officer serving at Difficult Station	(a) Category – I officer posted on transfer / promotion: For difficult stations of North East, Union Territories of J&K, Laddakh and Andaman and Nicobar Island, the effective tenure shall be 24 months. (b) Direct recruited Category-I officer (AGMs): For difficult stations of North East, Union Territories of J&K, Laddakh and Andaman and Nicobar Island, the effective tenure shall be 24 months.
(d)	For Cat-I and Cat-II employees serving in FCI Hqrs/ IFS/ ZO (North)	<u>CAT-I OFFICERS:</u> (a) No Cat-I Officer shall be posted in a division/ section in Headquarters/ IFS for more than 3 years. He can serve for a maximum of 5 years at a stretch in FCI Hqrs/ IFS. (b) An employee (GMs and below) shall be posted in Headquarters / IFS for a maximum of 10 years in entire service, except officer of Legal Cadre. <u>CAT-II OFFICERS:</u> Category-II officer can serve for a maximum of 10 years in entire service in FCI Hqrs/ IFS/ ZO (North).
(e)	For Cat-I Officer posted in Region/ Zonal Office/ Zone	Category- I officer can serve upto 5 years at a stretch in the Region/ Zonal Office. Category I officer can serve for a maximum of 10 years in entire service in a Zone except officer of Legal Cadre. However, the period can be extended in case of officer who is willing to serve more than the stipulated period in difficult station.

(f)	For Cat-II officer posted in Region/ Zonal Office	Category-II officer can serve upto 10 years at a stretch in the Region/ Zonal Office. Category-II officer can serve for a maximum of 15 years in entire service in a Region/ Zonal Office.
(g)	For Cat-III official posted in Divisional Office/ Regional Office/ Zonal Office/ Hqrs	Regional Office/ Zonal Office/ Hqrs in entire service. Category-III officials can serve for a maximum of 5 years in a seat/ Section/ Depot/ Division (in Zonal/Regional Office) after which he/she shall be posted to other seat/ Section/ Depot/ Division. In no case, the official shall be posted to same place/ seat where he /she has once served.

[14] The reliance of learned counsel for the petitioner on clauses 2.2 (d) and (f) is of no avail. From the reading of clauses 2.2 (d) and (f), it is clear that only maximum period of posting at Head Quarters or Zonal Office is prescribed. Clause 2.2 (d) provides that Category-II Officer, in his entire service can serve maximum for 10 years in F.C.I. Head Quarters, IFS/ Zonal Office (North).

[15] As per clause 2.2 (f), a Category-II Officer can at a stretch serve upto 10 years in the Regional / Zonal Office. In the second part, it is mentioned that in the entire service, Category-II Officer can serve in Regional/ Zonal Office for maximum 15 years.

[16] The Transfer Policy Guidelines nowhere confers a right upon an employee to remain posted in the Head Quarters / Regional Office or Zonal Office for a maximum period prescribed therein.

[17] Learned counsel for the petitioner has not disputed the fact that petitioner was holding a sensitive seat and that the stay of the petitioner was of 4 years and 5 months.

[18] Clause 2.2 (a) deals with posting at the sensitive seat. The normal tenure of Category I and II Officers when posted at sensitive post/seat is 24 months extendable upto 36 months. There are exceptions to the period of tenure specified, one of them being where disciplinary action is initiated against the officer.

[19] In the present case, disciplinary action was initiated against the petitioner, the proceedings culminated into major punishment vide order dated 12th January, 2021. It would be apposite to mention that the facts that petitioner was holding sensitive post, disciplinary proceedings were initiated and the punishment order passed were withheld from this Court.

[20] There is a specific provision for tenure on sensitive post in the Transfer Policy Guidelines. There can be no quibble on the proposition that specific clause would prevail over general clause.

[21] The argument that petitioner has been discriminated is noted to be rejected. Merely as there are some Officers who are senior and having a longer stay, in itself confers no right to the petitioner for staying at Sangrur.

[22] It is not case set up by respondent that the transfer order was punitive or outcome of the disciplinary proceedings. The transfers are done by the Department for better administration. This Court as matter of routine is not required to interfere in the administrative decision. It is for the official respondents to run the administration in a manner that there is smooth procurement of the food grains. No

extraordinary circumstances have been pointed out for interference in the writ jurisdiction.

[23] There is another aspect of the matter, even as per case put forth by the petitioner, he over stayed at the post of Manager (Quality Control) as per tenure specified in clause 2.2(a).

[24] The Supreme Court in ***National Hydroelectric Power Corp. Ltd. Versus Shri Bhagwan, (2001) AIR (SC) 3309*** held:-

“5. On a careful consideration of the submissions of the learned counsel on either side and the relevant rules to which our attention has been invited to, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer. It is by now well-settled and often reiterated by this Court that no Government servant or employee of public Undertaking has any legal right to be posted forever at any one particular place 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 malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine, as though they are the Appellate Authorities substituting their own decision for that of the Management, as against such orders passed in the interest of administrative exigencies of the service concerned. On the facts and circumstances of the cases before us, we

are also unable to agree with the learned counsel for the respondents that Rule 4.1.1 of the Seniority Rules interdicts any transfer of the employees from one Office or Project or Unit to any one of the other as long as the seniority of such an employee is protected based on the length of service with reference to the date of promotion or appointment to the grade concerned irrespective of the date of transfer. We also consider it to be a mere submission in vain, the one urged on the basis of alleged adverse consequences detrimental to their seniority resulting from such transfer. In the facts of the present cases, at any rate, no such result is bound to occur since the project undertaken to which the respondents have been transferred is itself a new one and, therefore, we see no rhyme or reason in the alleged grievance.

[25] The reliance on the interim order dated 30th April, 2021 in CWP-8971-2021 does not enhance the case of the petitioner. The case is distinguishable on facts. The petitioner therein was seeking benefit of his spouse being a Government Teacher posted in Haryana. One of the consideration before the Court while granting interim order was that entire family of the petitioner, including 80 years old father had tested corona positive.

[26] In the present case, transfer of the petitioner date back to November, 2020. In the last almost 7 months, in spite of transfer order, the petitioner continued at Sangrur.

[27] Learned counsel for the petitioner argued that as per letter dated 8th April, 2021, the tenure period in all cases was extended upto

15th June, 2021 whereas the petitioner has been relieved on 4th May, 2021. The circumstances for relieving petitioner in spite of extension on tenure period vide letter dated 8th April, 2021 has duly been explained by learned counsel for the respondents. The impugned relieving order was passed in view of approaching procurement season to ensure that there are no glitches in procurement.

[28] However, considering that there is a letter extending tenure upto 15th June, 2021, in case the petitioner approaches the respondents for seeking time for joining upto 15th June, 2021, there is no doubt that the request would be considered sympathetically.

[29] No case is made out for quashing of the transfer and relieving orders.

[30] The petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

26th May, 2021
pankaj baweja

1. Whether speaking/ reasoned	:	Yes
2. Whether reportable	:	Yes