

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-7292-2021

Date of Decision: 21.09.2023

JAI KISHAN

... Petitioner

VS.

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashok Kumar Sharma, Advocate for the petitioner
Ms. Safia Gupta, AAG Haryana
Mr. Rajesh Gaur, Advocate for the respondents No.2&3

Sandeep Moudgil, J. (Oral)

The petitioner, by way of filing the instant writ petition under Article 226 of the Constitution of India, seeks a writ in the nature of *certiorari* for quashing the impugned order dated 02.03.2021 (Annexure P2) vide which the petitioner has been transferred from XEN/OP Divn. UHBVN, Panchkula under SE (OP) Circle UHBVN Ambala to XEN/OP Divn. UHBVN, Ambala City under SE (OP) Circle UHBVN, Ambala.

Counsel for the petitioner has referred to an order dated 24.02.2021 (Annexure P1) recommended by the office of Chief Engineer UHBVN, Panchkula to Chief Engineer, OP, UHBVN Panchkula based on a complaint against the petitioner and a recommendation of Enquiry Officer vide order dated 04.02.2021 who recommended the case of the petitioner for transfer since he is working in the same Division from 06.08.2007. It is on that account, quiet apparent, as has been asserted by counsel for the petitioner that the order dated 02.03.2021 (Annexure P2) came to be passed ordering the transfer of petitioner from XEN/OP Divn. UHBVN, Panchkula under SE (OP)

Circle UHBVN Ambala to XEN/OP Divn. UHBVN, Ambala City under SE (OP) Circle UHBVN, Ambala.

Thereafter, the petitioner drew attention of this Court to the letter dated 03.03.2021 (Annexure P3) written by XEN 'OP' UHBVN, Panchkula to Superintending Engineer 'OP' Circle, UHBVN, Ambala – respondent No.3 stating that the transfer order of the petitioner be cancelled on the ground that the petitioner is the only regular employee in the Branch and the said Branch of Panchkula Division is being run single-handedly by the petitioner only. An email dated 17.03.2021 (Annexure P4) was also produced along with copies of two subsequent reports vide which further complaints which was received against the petitioner under the Prevention of Corruption Act, by anonymous complaints, were filed having found to be without any evidence of corruption on the basis of enquiry bearing No.241/Amb/2020 dated 23.10.2020 which was investigated by Ajai Aggarwal, AEE, Vigilance PUs, Ambala as well as another enquiry report dated 24.02.2022 submitted by RK Rohilla, AE Vigilance HPUs, Ambala, copies of which have been handed over in Court.

Notice of motion was issued on 31.03.2021 and Mr. Rajesh Gaur, Addl. AG Haryana accepted the same and sought time to have instructions to verify as to whether the seniority of petitioner would be disturbed if transferred out of Panchkula Circle to Ambala under SE 'OP' UHBVN, Ambala.

In this regard, Mr. Gaur submitted that in fact the petitioner was transferred only after the bifurcation of Ambala Circle and carved out of Panchkula Circle and therefore, would have rightful claim of seniority over and above the persons junior to him, if any, promoted.

On a query, as to whether the enquiry, as referred to in the complaint (Annexure P1), was conducted to find out the genuinity of the said complaint before transferring the petitioner, on that account, vide order dated 02.03.2021.

Learned counsel for the respondents, on instructions from Sundar Singh, Deputy Supdt. UHBVN, submits that there is nothing on record to suggest that the petitioner was put to any regular enquiry or even explanation or show cause notice before his impugned transfer.

Having heard learned counsel for the parties, the admitted facts to be culminated from the records is that the petitioner was transferred vide order dated 02.03.2021 (Annexure P2) on the recommendation of SE, Vigilance HPU, Panchkula, on the basis of complaint which was sent to Vigilance Department, without even going into the correctness of the complaint which tantamount to stigmatic order which ultimately has also put the petitioner to the litigation and also dispute over his seniority and rightful claim of promotion as juniors to him are stated to be promoted even prior to his posting at Ambala Circle. It is not only the case where transfer has taken place without conducting enquiry on the allegations which was made the basis for transfer but has also prejudiced petitioner's right for promotion during his tenure and also in the light of the subsequent developments as complaints have been coming against the petitioner and on enquiry, it was found false and as such, the same have been filed, in terms of the enquiry reports, referred to above.

This Court is called upon to interfere and to hold that the order dated 02.03.2021 (Annexure P2) suffers from material illegality and arbitrariness wherein without affording personal hearing and in violation of

principle of natural justice, a stigmatic transfer order has been imposed on the petitioner putting him to multiple disputes and jeopardizing the rightful claim to agitate for which this order needs to be quashed.

Accordingly, this writ petition is allowed and the impugned order dated 02.03.2021 (Annexure P2) is set aside. The petitioner shall be relieved from Ambala Circle, forthwith and shall be allowed to join at his earlier place of posting i.e. at Panchkula, within 3 days from today.

At this stage, Mr. Gaur contends that petitioner's seniority, at his earlier place of posting, i.e. XEN/OP Divn. UHBVN, Panchkula under SE (OP) Circle UHBVN Ambala cannot be maintained intact, if he is taken back.

This Court is of the considered view that the said argument raised by learned counsel for the respondent-Nigam is absolutely ill-founded, baseless, having no strength on the basis of record *inasmuch* as, once the transfer order (Annexure P2) itself has been quashed, all consequential service benefits will flow to the petitioner, automatically, including seniority, lien, promotion, arrears etc. which he was carrying prior to the impugned transfer order. In other words, the petitioner would be granted all the service benefits to which he is entitled to, as if he was never transferred, within a period of 4 months from the date of receipt of certified copy of this order.

Ordered accordingly.

21.09.2023

V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No