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

**CWP-9392-2023 (O&M)
Date of Decision: 25.05.2023**

Vipan Kumar

.. Petitioner

Vs.

Union of India and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Maneesh Kumar Bali, Advocate for the petitioner.

Ms. Anita Balyan, Advocate
for the respondent-UI.

...

Manoj Bajaj, J. (Oral)

CM-9011-2023

Application is allowed, as prayed for. Written statement along with Annexures R-1 to R-9 is taken on record.

CWP-9392-2023 (O&M)

Petitioner has filed this writ petition under Article 226 Constitution of India for issuance of a writ in the nature of Certiorari for quashing the orders dated 24.03.2023 (Annexure P-7) and 29.03.2023 (Annexure P-11) passed by respondent No.3 transferring him from Nangal to NCR and posting him at Delhi Metro Rail Corporation (DMRC), as well as for setting aside the order dated 25.04.2023 (Annexure P-13) passed by respondent No.2, whereby his representation seeking cancellation of his transfer orders has been declined.

Learned counsel for the petitioner has argued that in the year

1985, the petitioner joined the Central Industrial Security Force (CISF) as

Constable, who later became Assistant Sub Inspector w.e.f. 20.10.1998 and ever since his appointment, he has been performing his duties diligently. He further submits that the petitioner was transferred from Group Headquarter, Chandigarh to National Fertilizers Limited Unit, Nangal vide order dated 18.10.2021 (Annexure P-4), where he worked only for a period of 1½ years and now he has been again transferred through impugned order dated 24.03.2023 (Annexure P-7) to NCR, and vide subsequent order dated 29.09.2023 has been posted at Delhi Metro Rail Corporation. Learned counsel has drawn the attention of the Court to the Guidelines for posting/transfer of CISF personnel dated 25.09.2017 (Annexure P-2) and submitted that as per these guidelines, the unit/station tenure has been prescribed for three years, but before completion of the said period, the petitioner has been again transferred to National Capital Region. Learned counsel has further pointed out that as per the guidelines, a personnel, who is left with a service period of 12 months, is exempted from transfer, but as the petitioner is due to retire in October, 2024, and is left with a service period of 16 months, which is slightly above the exemption slab, therefore, despite his being on the verge of retirement, he has been transferred.

Learned counsel argued that against the transfer order, the petitioner had given representations and even his case for cancellation of transfer was recommended favourably by the Unit Commander considering various grounds including his ailment requiring knee surgery, but the said request was also declined on 25.04.2023 (Annexure P-13). The above apart, it is pointed out that the daughter of the petitioner is to get married in next few months and if, his transfer from Nangal to NCR is maintained, it would result in great inconvenience to him. In support of his case, learned counsel

has drawn the attention of the Court to the medical report appended with the petition (Annexure P-9). He submits that respondent No.2 has erroneously declined the request of the petitioner, therefore, interference is warranted by this Court.

The prayer is opposed by Ms. Anita Balyan, learned counsel for respondents, who argued that the guidelines lay down the broad criteria for transfers, but due to exigency of duties, the Director General is empowered to order transfer of any personnel at any place in the country on administrative/operational grounds. She while referring to communication dated 12.12.2018 (Annexure R-4) submits that since the petitioner has completed more than six years collectively at Chandigarh and Nangal, therefore, for this third inter-changing of personnel in between North Sector/NCR, the petitioner has been rightly transferred. She has further argued that it is not a case of inter state transfer, because the North Sector and NCR is one sector for the purpose of this policy. According to her, as per the communication (Annexure P-4), the designated software programme was prepared, however, it did not bring the petitioner in exempted category, as his work period is more than 12 months i.e. 16 months. Besides, learned counsel has submitted that adequate medical facilities are available at the petitioner's new place of posting, where he can undertake his medical treatment and prayed for dismissal of the writ petition.

Learned counsel for the parties have been heard and with their assistance, the case file has been perused carefully.

At the very outset, this Court deems it appropriate to observe that transfer of an employee being an incidence as well as essential condition of service, therefore, such an order of transfer ordinarily cannot be

interfered with, unless the order of transfer of an employee is result of a *mala fide* action or against the statutory rules. The guidelines regulating posting/transfer cannot be equated with the service rules, therefore, the strict implementation of such guidelines cannot be pressed, as these instructions/guidelines are meant for limited purpose and may allow the employees to raise their grievance against transfer before the higher authorities. By now, it is a settled law that power of transfer falls within the domain of employer-department and the utilisation of the services of the employees being an administrative decision cannot be easily questioned.

Now, while analyzing the facts and circumstances of this case, this Court finds that the petitioner was previously transferred vide order dated 18.10.2021 to CISF Unit NFL Nangal, where he joined on 19.11.2021 and presently, the personnel is left with approximately 16 months service period, as he is due to retire on 24.10.2024. During the course of hearing, it has not been disputed by Ms. Anita Balyan, learned counsel for the respondent that the personnel, who are retiring in next 12 months have not been transferred, however, she has explained that since the petitioner has a service period of more than a year, therefore, he has been transferred from Nangal to NCR. In this regard, she referred to the contents of para 4 of the written statement. Further, considering the argument of learned counsel for respondent that the transfer of the petitioner from Nangal to NCR is not an inter-sector transfer, as both these stations form part of one sector, this Court finds that as per the conditions contained in communication dated 12.12.2018 (Annexure R-4), a personnel must have completed 6 years sector tenure, as well as three years unit tenure, but in the present case at the present station, the petitioner has served only for a period

of 1½ years. Even, as per the averments contained in the written statement, the ailment of the petitioner is not disputed by the respondents and on the other hand, it has been pleaded that at the new transferred place, the petitioner would be in a position to take best medical facilities of the country. Concededly, the Unit Commandar, who forwarded the case of the petitioner, made the recommendation that the petitioner has been advised knee replacement, but respondent No.2 expressed his regrets to the said recommendation by maintaining his transfer to NCR, i.e. Delhi Metro Rail Corporation and in the considered opinion of this Court, it being overcrowded place may result in aggravation of petitioner's heath issues.

Thus, considering the short service tenure of petitioner, his health condition as well as other attending circumstances, this Court finds it to be a fit case for exercise of writ jurisdiction under Article 226 Constitution of India.

Resultantly, the petition is allowed and the impugned order dated 24.03.2023 (Annexure P-7) as well as orders dated 29.03.2023 (Annexure P-11) and 25.04.2023 (Annexure P-13) are set aside qua the petitioner.

25.05.2023
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No