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2023:PHHC:166554

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-18516-2023

DECIDED ON: 31st OCTOBER, 2023

RAM KUMAR

PETITIONER

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LTD. AND ANOTHER

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Gaurav Gaur, Advocate for
Mr. S.M. Sharma, Advocate
for the petitioner.

Mr. Gaurav Jindal, Advocate
for the respondents.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Article 226 of the Constitution of India has been invoked seeking a writ in the nature of *Certiorari* for quashing the impugned order dated 09.02.2023 (Annexure P-2).

2. While issuing notice of motion on 24.08.2023, following order was passed:-

“ Learned counsel for the petitioner contends that the petitioner is handicapped and 90 % disable, as is evident from Unique Disability ID Card, which is attached to the present petition as Annexure P-1. He submits that the petitioner has been transferred from Naraingarh to Ambala by way of promotion as Assistant/F in the office of SDO “OP” Division

1/Area, UHBVN Ambala Cantt. He further asserts that the petitioner would retire on 31.07.2024.

Notice of motion for 19.09.2023.

Respondents be served through dasti process only.”

3. Upon notice of motion, respondents has filed the written statement seeking dismissal of the present petition stating that the petitioner has challenged his transfer order after six months of this joining i.e. 10.02.2023. Moreover, when the impugned order was passed, it was about one and a half year left for his retirement.

4. Heard.

5. In the transfer matters the scope of judicial review is very limited. It is a trite law that no government servant has any legal right to be posted at a particular place of his choice. Transfer is an incident of Government service. Transfer order can be challenged only on the ground of violation of the statutory rules or malafide. If the transfer order is in violation of the transfer policy, the Supreme Court in the case of **“Union of India vs. S.L. Abbas; (1993) 4 SCC 357;”** has held that guidelines/transfer policy does not confer upon the Government employee a legally enforceable right to challenge it under Article 226 of the Constitution of India. The Supreme Court again dealt with the matter of transfer in the case of **State of U.P. and others v. Gobardhan Lal, (2004) 11 SCC 402,** and in paragraph No. 8 of the judgement, the Supreme Court held as follows:

“8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative

needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

6. An employee has no right to be posted at a particular place for an indefinite period. It is entirely in the wisdom of the employer for better administration, to decide where and at what point of time a public servant required to serve in the State. The Supreme Court has consistently taken the view that an order of transfer is a part of service conditions of an employee which should not be interfered with ordinarily by the Court of law in exercise of its jurisdiction under Article 226 of the Constitution unless the order has been passed in violation of the service rules or it is infected with malice.

8. Be that as it may considering the submissions made hereinabove and the fact that the petitioner is admittedly posted at the place i.e., Naraingarh for a considerable period, one cannot choose his place of posting as a matter of right, having served for a long period and as far as challenge to the impugned order is concerned on account of *mala fide*, the petitioner has failed to establish any such action on the part of the respondents.

9. More so, the present posting is at Ambala which is not a 'rural

area' as alleged by the petitioner and, therefore, the same is also not a violation of the transfer policy dated 13.09.2021, as alleged by the petitioner. From perusal of transfer order, it is evident the petitioner has been promoted to the post of Assistant (Field) and has been transferred against a vacant post at Ambala only.

10. After careful consideration of the matter, this Court is of the view that the present petition lacks merit and is accordingly dismissed.

(SANDEEP MOUDGIL)
JUDGE

31st OCTOBER, 2023
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- 1. Whether speaking/ reasoned : Yes / No
- 2. Whether reportable : Yes / No