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

CWP-26512-2023

DECIDED ON: 19.12.2023

SUNIL KUMAR**.....PETITIONER**

VERSUS

INDIAN RED CROSS SOCIETY**.....RESPONDENTS****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Shirresh Gupta, Advocate for the petitioner.

Mr. K.K. Gupta, Advocate for the respondent.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Article 226/227 of the Constitution of India for quashing the order dated 14.11.2023 (Annexure P-5) whereby the petitioner has been transferred from Kurukshetra after a period of eight months.

2. Learned counsel for the petitioner contends that the petitioner joined the office of the respondent as Secretary on 28.07.1999 on regular basis. In the year 2020, the petitioner was transferred from Karnal to Yamunanagar. Thereafter, he became due for transfer in the year 2023 and the petitioner submitted an application seeking his transfer to Kurukshetra as the petitioner is the only child of his parents and the father of the petitioner aged 91 years is suffering from serious health issues. Therefore, the respondents on sympathetic grounds accepted the request of the petitioner and vide order dated 24.02.2023 transferred the petitioner from Yamunanagar to Kurukshetra as the house of the petitioner is situated at Karnal which is only 30 km away from Kurukshetra.

3. He further submits that on 14.11.2023, the father of the petitioner became seriously ill and was admitted in Hospital and to take care of his ailing father, the petitioner submitted an application for leave from 14.11.2023 to 22.11.2023 and the said application was accepted by the respondents. To his utter shock the petitioner was sent an order dated 14.11.2023 informing that he has been transferred from Kurukshetra to Rohtak having a distance of 150 Kms.

4. He furthers strengthens his arguments by referring to the transfer policy formulated by the State of Haryana stipulating that normally an employee would not be transferred before a period of three years and it has only been eight months that the petitioner has again been transferred from Kurukshetra to Rohtak.

5. On the other hand, learned counsel for the respondents vehemently argues that the petitioner has no legally enforceable right to remain posted at place near to his hometown and the petitioner is the senior most amongst the Secretaries of District Red Cross Societies and thus, he has rightly been transferred as there is more workload in the Rohtak Branch.

6. He further relies upon various dictums of the Apex Court titled as '*Gujarat Electricity Board and another vs. Atmaram Sungomal Poshani, 1989 AIR SC 1433, Union of India vs. S.L. Abbas, 1993 AIR SC 2444, State of UP vs. Siya Ram, 2004 AIR SC 4121*' wherein it has been held that transfer of a government servant appointed to a particular cadre of transferable post from one place to another is an incident of service and hence, no government servant has legal right for being posted at any particular place.

7. Heard learned counsel for the respective parties.

8. In view of the above submission made and in light of the fact that according to the transfer policy of State of Haryana, an employee usually cannot be transferred before completion of three years from the date of his posting.

However, in the present case, vide order dated 24.02.2023, the petitioner transferred from Yamunanagar to Kurukshetra and again he received transfer letter dated 14.11.2023 whereby he was transferred to Rohtak having distance of 150 Kms from Kurukshetra within 8 months from his joining. Though this Court cannot lose sight of the fact that the transfer matters are purely an administrative action, however, if the department at their own whims and fancies keep on transferring the employees from one place to another that would not serve the purpose and some where or the other the Court being the guardian of the citizens has to step in to protect their rights. So, merely the plea taken by the respondents that no government servant has legal right for being posted at a particular place would not hold good in the eyes of law as the concern of the employees is also to be taken care of wherein in the present case, the transfer of the petitioner was made on sympathetic grounds as he is the only son of his parents and his father is suffering from serious ailments and in view of that his application for transfer was considered and now, it has only been eight months that vide order dated 14.11.2023, he has again been transferred to Rohtak which is totally unjust and unwarranted. Therefore, order dated 14.11.2023 (Annexure P-5) is liable to be set aside.

9. Thus, the petition stands allowed in the above terms.

19.12.2023
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No