

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

SWP no. 1417/2008

CMP no. 2018/2008

Date of Decision:**03.01.2009**

Chowdhary Showkat Ali v. State and anr.

Coram:

MR. JUSTICE J.P.SINGH, JUDGE.

Appearing Counsel:

For Petitioner(s) : Mr. C.S.Azad, Advocate.

For Respondent(s) : M/s D.C.Raina, AG with Vikram
Sharma, Advocate.

i)	Whether to be reported in Press/Journal/Media	:	Yes/No.
ii)	Whether to be reported in Digest/Journal	:	Yes/No.

Petitioner has filed this writ petition questioning Government Order no. 382-FST of 2008 dated 10.10.2008, in so far as it transfers and posts him as Incharge Deputy Director Forest Protection Force, Batote, on the ground that, he had been incorrectly shown as ACF in the Government Order whereas he actually holds the post of Deputy Conservator of Forests, a post higher than that of Assistant Conservator of Forests.

Yet another ground pleaded in the writ petition is that respondents had issued the impugned Government Order in colourable exercise of power by posting the petitioner against a lower post, in that, it had been earlier held by a Range Officer which is a post inferior to that of Assistant Conservator of Forests.

Respondents have indicated in their response to the writ petition that petitioner's grievance of having been reflected as Assistant Conservator of Forest in the Government Order stood redressed the day Government Order no. 382-FST of 2008 dated 10.10.2008 was passed because a corrigendum had been issued on the same day in terms whereof it was provided that expression "Chowdhary Showkat Hussain, ACF, IWDP" in Government Order No. 382-FST of 2008 dated 10.10.2008 would read as "Chowdhary Showkat Hussain, DCF, IWDP".

Dealing with petitioner's plea that he had been posted against an inferior post, it is stated that the post to which the petitioner has been transferred, is not a lower post and carries the same pay-scale as that of Deputy Conservator of Forests. It is further stated that the petitioner does not have any right to stick to one place of posting where he had been working since June, 2006 and even otherwise, the impugned order, does not in any manner either reduce his status or pay-scale and in that view of the matter, the impugned Government Order which had been passed in the interest of administration, may not be justiciable.

I have considered the submissions of learned counsel for the parties.

Paragraph no. 5 of petitioner's writ petition indicates that he was aggrieved of his transfer **only** because he had been shown as Assistant Conservator of Forests in the impugned transfer order whereas he was actually holding a substantive post of Deputy Conservator of Forests.

The grievance of the petitioner having been redressed with issuance of corrigendum by the Government indicating the petitioner to be a Deputy Conservator of Forests, first submission of the petitioner's learned counsel, therefore, fails.

I do not find any merit in the second submission of the petitioner that he had been posted against a lower post in view of the stand which the State-respondents have taken in the objections that the post against which he had been adjusted in terms of the impugned order carries the same pay-scale which the petitioner had been drawing when he was posted as Deputy Conservator of Forests, IWDP.

Petitioner's apprehension that as the post where he had been transferred, had earlier been held by a Range Officer, who had been working as Incharge Assistant Conservator of Forests, so his posting against that post was unjustified, is not tenable, in that, posting of a

Junior Officer against a higher post would not in any way diminish the status of the post.

In any case, as the petitioner has neither been reduced in rank nor has been deprived of the pay-scale which he had been getting earlier, so I do not find any merit in petitioner's plea that petitioner has been severely affected by the impugned transfer order.

The law on the point is well settled that no Government Servant has any legal right to be posted for ever at any one particular place since transfer of a particular employee appointed to the Class or Category of transferable posts from one place to another is not only an incident, but a condition of service which is additionally necessary, in public interest and efficiency in public administration (please see (2001) 8 SCC, 574).

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 are not required to interfere with such orders passed in the interest of administrative exigencies of the service concerned.

A Government Servant cannot disobey transfer order by avoiding reporting at the place of posting and rather approaching the Court to ventilate his grievances. It is his duty to first report for work where he is

transferred and thereafter make representation to his employer regarding any grievance or personal problem that he may have.

Petitioner's counsel's submission that administrative instructions issued by the State Government against pre-mature transfers having not been followed would render impugned order unsustainable, is not tenable as the administrative instructions, referred to by the petitioner's counsel, do not contain any prohibition as such against pre-mature transfers.

That apart, transfer order may be questioned only if there is either any statutory prohibition against transfer or it is otherwise malafide or unconstitutional.

In view of the position emerging from the official records indicating that transfers had been made on the basis of a set out criteria, I do not find any ground for interference in the impugned transfer order.

The impugned order having not been questioned on any permissible ground, petitioner's writ petition merits to be rejected. I order accordingly.

(J.P.Singh)
Judge

JAMMU:
03.01.2009
Pawan Chopra