

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

SWP no. 1416/2008

CMP no. 2017/2008

Date of Decision:**03.01.2009**

Sameer Bharti 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 Deputy Conservator of Forest (Projects), on the ground that being a selection grade Deputy Conservator of Forests and having held a superintending, ex-cadre post of Project Coordinator, he could not be shifted therefrom for being posted as Deputy Conservator of Forest (Projects), which was not commensurate with his status.

Posting of respondent no.2, another Deputy Conservator of Forests, against the post which the petitioner had held as Project Coordinator, too has been questioned on the ground that being an officer junior to the petitioner, though in the cadre of Deputy Conservator

of Forests, respondent no.2 could not be adjusted against a superintending and controlling posts.

Yet making another submission in support of his challenge to the impugned transfer order, petitioner says that he has been pre-maturely transferred in violation of administrative instructions issued from time to time in this behalf.

Opposing the maintainability of writ petition, State-respondents urge that a Government Servant does not possess any vested right, as such, to remain posted at a particular place. Placement of a Deputy Conservator of Forests in the selection grade, does not, as such, entitle him, to man only superintending and controlling posts available in the cadre of Deputy Conservator of Forests. Being a Deputy Conservator of Forests, petitioner, cannot claim any selective posting of his choice, in that, it is the prerogative of the employer to consider as to which of its officers was best suited for superintending and controlling posts.

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

I do not find any merit in petitioner's counsel's submission that being second senior most, selection grade Deputy Conservator of Forests, petitioner, as of right, is entitled to remain posted only against

superintending and controlling posts. This is so because neither any provision of law or rule governing the service conditions of the members of the State Forest Service, to which the petitioner belongs, has been cited in support of the submission nor would the Service jurisprudence, in my opinion, contemplate such situation, additionally because placement of an officer in the selection grade may not entitle him to any right as such of holding only selective, superintending and controlling posts. Despite being placed in the selection grade, the petitioner continues to remain in the same class and category of posts to which other Deputy Conservators of Forest belong to, and in that view of the matter, he is liable to be transferred and posted at the discretion of the employer.

Even a junior officer, who is found best suited to man a superintending and controlling posts may be adjusted by the employer to run the administration. There cannot be any rider or embargo on the power of the employer to select any such officer who may be considered best suited therefor.

Having remained posted against an ex-cadre post of Project Coordinator Chenab Basin, petitioner cannot seek perpetuation of his stay against the ex-cadre post, posting whereto lies within the province of the employer,

who may consider posting of any such officer against the post who may be best suited for the job.

That apart, law on the point is well settled that no Government Servant has any legal right to remain posted at one place forever, 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, 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, too is untenable 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 such transfer or it is otherwise malafide or unconstitutional.

Petitioner's counsel's last contention that petitioner transfer was invalid because the post against which he was required to work had not been so created by the Government, though not taken in the writ petition and urged only at the time of consideration of this petition, too lacks substance as no material has been placed on records to justify the submission.

Even otherwise, as the post against which the petitioner has to work pursuant to the impugned transfer order is not a newly created post, which had been earlier held by a member of Indian Forest Service so the petitioner's contention, does not need consideration in view of the presumption that the post which is in existence since long and had been manned earlier by a member of the Indian Forest Service, stood validly created.



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