

Date of Order: 28 .12.2015

VS

State of J&K and ors.

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

For the petitioner(s) : Mr. Shafiq Ahmed Wani, Advocate.
For the Respondent(s): : Mrs. Deepika Mahajan, Adv for R-1
to 3.
Mr. Pranav Kohli, Advocate for R-4.

(i)	Whether to be reported in Press/Media :	--
(ii)	Whether to be reported in Law Journal/Digest :	Yes

1. Amongst others, petitioner (Forester) has been transferred from Panjgrian Block to Nagrota Check Post vice Shri Kulbir Singh, Forester vide Forest Order No.37 of 2015 dated 28.07.2015. Petitioner challenged this order by medium of SWP No.2186/2015 projecting therein that his transfer is in violation to Transfer Policy which prescribes a minimum tenure of two years. In addition thereto he had projected that his wife is undergoing psychiatric treatment. There is no male member in the family to look after her. On 11.08.2015, at the request of the counsel for the petitioner, writ petition was disposed of, directing Respondent No.2 Conservator of Forests, East Circle, Jammu to decide the representation of the petitioner

on humanitarian grounds and till the decision is taken on the representation, petitioner be allowed to continue at his present place of posting.

2. Respondent No.2 has considered the representation of the petitioner which has culminated in issuing the Order dated 21.08.2015 in terms whereof the representation of the petitioner has been rejected. It is this order of rejection alongwith earlier order providing transfer i.e. Forest Order No.37 of 2015 dated 28.07.2015 which are sought to be quashed.
3. Respondent No.2 while considering the representation has observed in the order impugned dated 21.08.2015 that it was brought to his notice that the petitioner Forester as Block Officer Panjgrian had misused his capacity as Block Forest Officer by issuing transportation permit i.e. Form No.25 wrongly in certain cases based on which the power of the petitioner to issue Form No.25 was also withdrawn by the competent authority. He is also in receipt of report from the DFO, Jammu that DFO Jammu has also sought explanation for his failure to remit the government revenue in government treasury and for keeping the government funds unlawfully with him without justification. Furthermore, there were certain

financial irregularities and embezzlements. It is in view of that he was transferred. Then after considering the grounds taken in representation i.e. (i) premature transfer and (ii) ailment of the wife, it has been observed as under:

“Whereas, the transfer has been made on the basis of his incompetency as forester in handling the territorial working of the Forest Block as well as indulging in financial irregularity and indiscipline, strictly as warranted under rules for such cases, giving due consideration to his family circumstances due to his ailing wife.; He has been posted at Nagrota Forest Check Post which is at lesser distance from his home town as compared to previous place of posting i.e. Panjgrian Forest Block.”

4. It is trite that transfer is an incident of service. It is the domain of the authorities responsible to ensure proper utilization of the services of the employee. No employee can claim posting of his choice. Transfer unless actuated by mala fides is not open to interference. Equally true if allegations are leveled against the officer and on the basis of allegations, he is

transferred, that may give rise to stigmatized position and transfer can be termed as a measure of punishment. In case of financial irregularity or indiscipline, disciplinary action is an appropriate measure.

5. In the transfer order dated 28.07.2015, the wording employed is “In the interest of administration and Government works.” which forms base for transfer. Nothing has been said about any financial irregularity or indiscipline. It means when the authorities noticed certain situations vis-à-vis the employee not in keeping with the better administration, they have ordered the transfer. Such transfer cannot be termed to be actuated with mala fides.
6. The humanitarian consideration as projected by the petitioner to the effect that his wife is a psychiatric patient also appears to have been taken care of as the Respondent No.2 while according consideration to the representation as was filed by the petitioner on such grounds has observed that the petitioner was not handling the territorial working of the Forest Block due to incompetency that is why he has been posted at a lesser distance than that of his earlier posting. In short, Respondent No.2 has justified the transfer of

the petitioner in the interest of administration. Such transfer by no means can be termed as a measure of punishment. The observations as made by Respondent No.2 in the order shall not in any manner be treated as final as those are open to be defended by the petitioner in separate proceedings if any initiated against him. Non interference with the order of transfer of the petitioner for the reasons and facts stated above shall by no means be treated as an expression of opinion about the observations as made by Respondent No.2 in the order impugned dated 21.08.2015.

7. Petition accordingly disposed of along with connected MP(s).
8. Interim direction dated 06.11.2015 shall cease to be in operation.

(Mohammad Yaqoob Mir)
Judge

Jammu
28.12.2015
Raj Kumar

