

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.3939 of 2019.

Judgment reserved on: 28.05.2020.

Date of decision: 30.05.2020.

Satnam Singh

.....Petitioner.

Versus

The State of Himachal Pradesh and another

.....Respondents.

Coram

**The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.
The Hon'ble Mr. Justice Anoop Chitkara, Judge.**

Whether approved for reporting?¹ No

**For the Petitioner : Ms. Megha Kapur Gautam,
Advocate, through video
conferencing.**

**For the Respondents: Mr. Ashok Sharma, Advocate
General with Mr. Ranjan
Sharma and Mr. Vinod Thakur,
Additional Advocate Generals,
for respondent No.1/State,
through video conferencing.**

**Mr. P.D. Nanda, Advocate, for
respondent No.2, through
video conferencing.**

**COURT PROCEEDINGS CONVENED THROUGH
VIDEO CONFERENCE.**

¹***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

Tarlok Singh Chauhan, Judge

The instant writ petition has been filed for the following relief:

“That the present petition may kindly be allowed with costs and the notification/order dated 30th November, 2019, **Annexure P-3**, may kindly be quashed insofar as the transfer of the petitioner is concerned and respondent No.1-State may kindly be directed to allow to continue the petitioner at his place of posting i.e. Nalagarh, District Solan, H.P. as SDSCO, till he completes his normal tenure.”

2. In a nutshell, the case of petitioner is that he had been working as RPDO, Rajgarh (Sirmaur) and was transferred vide notification dated 03.07.2019 from Rajgarh to Nalagarh as a SDSCO, Nalagarh (Solan) against a vacant post without TTA. Pursuant to such transfer, he joined at Nalagarh on 04.07.2019, but immediately thereafter within a span of just over 3½ months, he has again been transferred to Rajgarh vide notification dated 30.11.2019. It is averred that since transfer is arbitrary and contrary to the policy framed by the respondents themselves, therefore, the same is not sustainable in the eyes of law.

3. Respondent No.1 has opposed the petition by filing reply wherein it is averred that transfer being an incidence of service cannot be assailed by the petitioner, especially, when the same is made in administrative exigency of service. Respondent

No.1 has also given the details of the posting of the petitioner as also respondent No.2 in a tabulated form which are reproduced as under:

Sr. No.	Particulars	Detail
A.	Name	Sh. Satnam Singh (Petitioner)
1.	Date of Birth	14.01.1970
2.	Joining as ADO	08.08.2011
3.	Date of Retirement	31.01.2028.
4.	Home District	Solan
5.	Place of Posting	<p>1. 08.08.2011 to 30.06.2012 as ADO in the O/o H.P. State & Organic Produce Certification Agency, Shimla (On Contract).</p> <p>2. 30.06.2012 to 14.08.2013 in the O/o SDSCO, Nalagarh, Distt. Solan.</p> <p>3. 16.08.2013 to 02.05.2017 Ramsehar Circle, Dev. Block Nalagarh, Distt. Solan.</p> <p>4. 02.05.2017 to 10.12.2018 SC Section Nalagarh, Distt. Solan.</p> <p>5. 11.12.2018 to 04.07.2019 as RPDO, Rajgarh, Distt. Sirmaur.</p> <p>6. 04.07.2019 to 30.11.2019 as SDSCO, Nalagarh, Distt. Solan (but officer has not joined his duties at his new place of posting.</p>
B.	Name	Sh. Rajesh Kumar Dhiman (Respondent No.2)
1.	Date of Birth	20.11.1971
2.	Joining as ADO	29.07.2011

3.	Date of Retirement	30.11.2029
4.	Home District	Bilaspur
5.	Place Posting	<p>1. 4.11.1999 to 28.07.2011 at Kumarhatti Circle under Dev. Block Solan, Distt. Solan.</p> <p>2. 29.07.2011 to 27.05.2012 as ADO at Dev. Block, Shillai, District Sirmaur.</p> <p>3. 28.05.2012 to 05.08.2015 SC Section, Kandaghat, Solan.</p> <p>4. 06.08.2015 to 30.11.2019 at Kumarhatti Circle under Dev. Block Solan, Distt. Solan.</p> <p>5. As SDSCO at Nalagarh, Distt. Solan from 02.12.2019 to till date.</p>

4. Separate reply has been filed by respondent No.2 wherein he has prayed for dismissal of the petition on the ground that the same is not maintainable. The petition is based on misrepresentation of facts. It is averred that the petitioner had procured interim orders on 02.12.2019 from this Court without disclosing that he already stood relieved on 30.11.2019 (Annexure R-2/1) and that the replying respondent had already joined his duties on 02.12.2019 after being relieved from his posting on 30.11.2019. It is further averred that the petitioner is not entitled to the protection of transfer policy as afforded to other employees with regard to stay at a particular station as he is holding a Class-1 post.

5. We have heard the learned counsel for the parties and gone through the records of the case.

6. It is more than settled that transfer is an incidence of service and, if made, in administrative exigency, is immune from judicial review. The Courts have limited jurisdiction in such matters. The Courts should not normally interfere with transfer orders that are made in public interest and for administrative reasons unless the same are made in violation of the mandatory or statutory rules or on the ground of malafide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, rather, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. The Courts have gone to the extent of declaring that even if the transfer order is passed in violation of the executive instructions or orders, the Court ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be a chaos in the department which would not be conducive to public interest. (Refer: ***Shilpi Bose and others vs. State of Bihar and others 1992 (6) SLR 713.***

7. Adverting to the present case, it would be noticed that the petitioner, save and except, having served in District Sirmaur for little over six months from his initial date of posting i.e. 08.08.2011, has remained posted in District Solan. Not only this, even his Home District happens to be Solan. Whereas, on the other hand, respondent No.2 whose Home District is Bilaspur has served outside his home district in District Solan as also in District Sirmaur.

8. Moreover, there is nothing on record to show that the order of transfer is actuated by malice or malafides or is in any way contrary to the transfer policy. Rather, para-10 of the transfer policy of the Government clearly stipulates that the Government can transfer any Officer/Official at any time irrespective of stay in view of administrative exigency in the public interest. It further provides that normally the tenure/stay of an Officer/Official at one station shall be three years which however would not be applicable to the Officers of IAS/HPAS/HPPS/HPFS other allied services and all Class-I and II Officers.

9. Admittedly, the post in question is a Class-I post and, therefore, the petitioner cannot claim any benefit of short stay under the Policy as is otherwise available to the other officials in view of Para-10 of the Policy.

10. The petitioner has no indefeasible right to claim posting at one station or station of his choice and since there is no infringement of his fundamental or other legal rights, the present petition being devoid of merits, is dismissed as such, leaving the parties to bear their own costs. All interim orders stand vacated. All pending applications also stand disposed of.

(Tarlok Singh Chauhan)
Judge

(Anoop Chitkara)
Judge

30th May, 2020.
(krt)