

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 1387 of 2021

Reserved on: 24.03.2021

Decided on: 31.03.2021

Praveen Kumar	VersusPetitioner
State of H.P. and others	Respondents

Coram

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

The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

¹ *Whether approved for reporting? No.*

For the petitioner:	Mr. Manik Sethi, Advocate.
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For respondents No. 1 to 3:	Mr. Ashok Sharma, Advocate General, with Mr. Vinod Thakur and Mr. Vikas Rathore, Additional Advocates General, and Mr. Bhupinder Thakur, Deputy Advocate General.
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For respondent No. 4:	Mr. Vishwa Bhushan, Advocate.
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Chander Bhusan Barowalia, Judge.

This is one more of the perennial disputes between two politically heavyweight government employees qua their vice-versa transfers. Resultantly, by medium of the instant petition, the petitioner has laid challenge to transfer/Office Order, dated 18.02.2021 (Annexure P-1), whereby he has been transferred from GSSS Nabahi, Mandi, to GSSS Barang, Mandi.

2. The facts giving birth to the instant petition can tersely be encapsulated as under:

¹ *Whether reporters of Local Papers may be allowed to see the judgment? Yes.*

The petitioner, a Trained Graduate Teacher (TGT) (Arts), has been transferred through Annexure P-1 from GSSS Nabahi, Mandi to GSSS Barang, Mandi, and respondent No. 4, who is also TGT (Arts), replaced him. Purportedly, respondent No. 4 managed a D.O. Note in his favour, whereupon he was transferred and as sequel the petitioner was disturbed. It is further contended that respondent No. 4 has been transferred from his last place of posting by condoning his short stay. Furthermore, the transfer of the petitioner has been effected amidst academic session, in violation of Comprehensive Guiding Principles-2013 of Transfer Policy. The petitioner also took aid of some ancillary grounds for laying challenge against the impugned transfer order (Annexure P-1), viz., his mother is 72 years' old cardiac patient, he is only helping hand to her, his transfer is neither in public interest nor in exigency of service. Lastly, the petitioner has prayed that the impugned transfer order (Annexure P-1), being an aftermath of D.O. Note issued in favour of respondent No. 4, be quashed and set-aside.

3. Conversely, respondents No. 1 to 3/State, by way of filing an extensive reply, resisted and denied the claim of the petitioner. As per respondents No. 1 to 3, the petitioner has been posted at GSSS Nabahi, Mandi, since 04.10.2017 and vide impugned transfer order, dated 18.02.2021 (Annexure P-1) he has

been transferred to GSSS Barang, Mandi, and in his place respondent No. 4 was transferred. As per the official respondents, transfer is an incidence of service and all the employees working under the State Government are liable to be transferred and posted anywhere in the State. Moreover, the petitioner has been transferred after due approval of the competent authority, only when he completed his normal tenure at GSSS, Nabahi, Mandi. It is further averred in the reply that the petitioner got himself transferred from GSSS Khuddi Khahan, Mandi, to GSSS Nabahi, Mandi, by procuring a D.O. Note, so he has no right to assail the impugned transfer order on the ground that present transfer is an upshot of D.O. Note issued in favour of respondent No. 4. Lastly, it is prayed that the extant writ petition, being devoid of merits, be dismissed.

4. The petitioner filed a rejoinder, resisting the stand taken by respondents No. 1 to 3 and reiterating the averments made in the petition. Precisely, it is contended in the rejoinder that the petitioner cannot be transferred only on the basis of D.O. Note issued in favour of respondent No. 4, so his transfer is neither in public interest nor in the exigency of service. It is further contended that mother of the petitioner is widow and an old lady suffering from Hypothyroidism hypertension, atrial Flutter- 2:1 block, sero negative rheumatoid arthritis with osteoporosis and

advised regular treatment both by Army Hospital as well as IGMC, Shimla. It is contended that it is difficult for the petitioner, considering the Covid pandemic, to take his mother for regular checkups to hospitals from his current place of posting. Therefore, in view of the averments made in the petition as well as in the rejoinder, the petitioner is seeking that the impugned transfer order (Annexure P-1) be quashed and set-aside.

5. We have heard the learned counsel for the petitioner, learned Additional Advocate General for respondents No. 1 to 3, learned counsel for respondent No. 4 and gone through the records.

6. Learned counsel for the petitioner has argued that transfer of respondent No. 4, in place of the petitioner, was effected only at the instance of local MLA, that too after condoning his short stay at his last station of posting, so the transfer is neither in public interest nor in the exigency of service. He has further argued that amidst academic session the petitioner has been transferred, so there is clear violation of Comprehensive Guiding Principles-2013 of Transfer Policy. Lastly, he has argued that mother of the petitioner is cardiac patient and the petitioner is the only one who looks after her. He has prayed that considering the unmindfully made transfer order (Annexure P-1) and all other facts and circumstances, the petition be allowed and the impugned

transfer order be quashed and set-aside.

7. In contrast to what has been argued by the learned counsel for the petitioner, the learned Additional Advocate General has argued that the petitioner has completed his normal tenure at GSSS, Nabahi, Mandi, as, since, 04.10.2017 he was posted there and impugned transfer order was only made on 18.02.2021 with prior approval of the competent authority. He has further argued that all the government employees are liable to be posted anywhere in the State considering the service exigency and necessity. He has prayed that the petition sans merits and be dismissed.

8. Learned counsel for respondent No. 4 has argued that since the petitioner has completed his normal tenure at the present place of posting, thus the impugned transfer order does not suffer from any illegality and is well within the mandate of Transfer Policy. He has prayed that the petition, being devoid of merits deserves dismissal and be dismissed.

9. Learned counsel for the petitioner in order to fetch lateral support to his arguments has relied upon the following judicial pronouncements:

1. ***Dalip Singh vs. State of H.P. and others***, CWP No. 8034 of 2013, decided on 20.12.2013; &
2. ***Sanjeev Sood vs. State of Himachal Pradesh and others***, CWP No. 4208 of 2020, decided on 22.12.2020.

Whereas, learned Additional Advocate General has placed reliance on a decision rendered by this Court in CWP No. 2229 of 2020, titled ***Sarla Negi Vs. State of Himachal Pradesh and others***, decided on 17.07.2020.

10. Record demonstrates that the petitioner as well as respondent No. 4 have political patronage. The aforesaid judgments conspicuously establish that Courts time and again deprecated the practice of effecting transfers on the basis of D.O. Notes. This unmindful practice of effecting transfers based on D.O. Notes, in legal paradigm, is just administrative doldrums, due to political interference, but political interference, made by a public representative, is mere recommendation. The recommendation made by a public representative needs to pass the stage of application of mind by the transferring authority and in this stage of application of mind by the transferring authority it has to be seen whether the transfer is being effected on administrative exigency and public interest, if any. The above cited judgments, considering the facts of the present case, wherein earlier the petitioner was transferred after having procured a D.O. Note, and now respondent No. 4, has been transferred, replacing the petitioner, on the basis of D.O. Note, are of no help either to the petitioner or to the respondents, as both the petitioner and respondent No. 4 are sailing on the same boat with their

paramount self interests.

11. In the instant case, the petitioner cannot challenge the legality of D.O. Note, whereupon transfer of respondent No. 4 has been effected, as he himself was transferred to GSSS Nabahi, Mandi, on the basis of D.O. Note. Now, when he has been replaced by respondent No. 4, on the basis of D.O. Note, the petitioner has taken a slew and laid challenge to such transfer mainly on the ground that transfer on D.O. Note is illegal. Thus, the petitioner is both beneficiary and victim of what he has pleaded in the instant petition.

12. The only moot question, which has to be answered by this Court, is that respondent No. 4, who is recipient of D.O. Note, like the petitioner, can be allowed to remain posted at GSSS Nabahi, Mandi, station from where he replaced the petitioner. As held hereinabove, both the petitioner and respondents are recipients of D.O. Notes, as they have political patronage and they are managing their transfers and postings by exerting political pressure, so both of them have to be transferred from their current places of postings to places others than GSSS Nabahi and Barang, Mandi. However, taking note of the facts that the petitioner has completed his normal tenure at GSSS Nabahi, Mandi, earlier he managed his transfer to Nabahi, through a D.O. Note and now he has laid challenge to the transfer of respondent No. 4, on the

ground that transfer cannot be effected on the basis of D.O. Note, especially when he is beneficiary of D.O. Note, we feel that the petitioner is standing on a slippery pedestal with crutches of D.O. Note and chopping his own crutches.

13. Indeed, transfer is an incidence of service and government employees are supposed to be transferred and posted anywhere in the State. The transfers of the petitioner and that of respondent No. 4 are effected after the approval of the competent authority. The petitioner, earlier managed his posting at GSSS Nabahi, Mandi, and now he has been transferred from Nabahi, after completion of his normal tenure, so he has no right to say that transfer of respondent No. 4, effected on the basis of D.O. Note, is illegal and bad in the eyes of law. In fact, transfer of the petitioner has no tinge of *malafides*, neither without public interest nor vitiated, being against the settled Transfer Policy, as transfer is an incidence of service. Moreover in ***Sanjeev Sood vs. State of Himachal Pradesh and others***, CWP No. 4208 of 2020, decided on 22.12.2020, this Court has held as under:

“9. This Court in CWP No. 4063 of 2019, titled *Smt. Anita Rana and Anr vs. State of Himachal Pradesh and others*, decided on 31.12.2019, has specifically held that a recipient/beneficiary of DO note cannot approach this Court ventilating the grievance that he /she has been transferred on the basis of DO Note. It would be apposite to refer to the relevant observations made by a Coordinate Bench in order dated 31.12.2019, which reads as under:-

“We have heard this matter for some time and also perused the record produced by the office of respondent No. 2. It is seen from the record that on the D.O. Note, the transfer of petitioner No. 1 has been proposed to be cancelled. Meaning thereby that she is also recipient of D.O. Note, hence not justified in ventilating the grievances that she has been transferred on the basis of D.O. note. Therefore, the writ petition qua her deserves to be dismissed and is accordingly dismissed leaving it open to her to make a representation either for cancellation of her transfer or adjustment at some suitable place, if so advised.”

- 10. Since it is apparent that the petitioner, on earlier occasions, got himself posted at stations of choice on the basis of UO Notes, petition praying therein for quashment of impugned order is not maintainable at all. However, having taken note of the fact that both, petitioner and respondent No.3, have been repeatedly exerting political pressure to get themselves posted at stations of their choice, we dispose of this petition by directing respondents to transfer both, petitioner and respondent No.3, to some other places in the State, especially where both of them have not served till date, within two weeks.
... .”***

14. The net result of the above discussion is that the petitioner has completed his normal tenure of three years at GSSS Nabahi, Mandi, and he got himself transferred to Nabahi on the basis of a D.O. Note. Now, when the petitioner, after completion of his normal tenure at Nabahi, has been transferred, he cannot be allowed to lay challenge against his transfer, be it effected by an incumbent, procuring a D.O. Note. The petitioner, who himself is a beneficiary of D.O. Note, now, cannot portray himself to be victim of the D.O. Note. In fact, the petitioner has no right to challenge

his transfer, as he has completed his normal tenure at GSSS Nabahi, Mandi. The impugned transfer order (Annexure P-1) is neither an outcome of *malafides*, nor illegal/bad in the eyes of law, as the petitioner cannot claim to remain posted throughout his service at one place only.

15. The petition, which sans merits, deserves dismissal and is accordingly dismissed.

(Tarlok Singh Chauhan)
Judge

(Chander Bhusan Barowalia)
Judge

31.3.2021
(virender)