IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 1978 of 2019

Reserved on: 05.03.2020

Date of decision: 18.03.2020

Sunita Devi ..... Petitioner

Vs.

State of H.P. & Ors. ..... Respondents

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

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

Whether approved for reporting?[1].. *Yes.*

For the petitioner : Mr. Ramakant Sharma, Advocate.

For the respondents : Mr. Ashok Sharma, Advocate General with Mr. Vinod Thakur, Addl. A.G., Ms. Svaneel Jaswal and Mr. Bhupinder Thakur, Dy. A.Gs., for respondents No. 1 and 2.

Mr. Surender Kumar Sharma, Advocate, for respondent No. 3.

Justice Tarlok Singh Chauhan, Judge

This Court of late, more especially, after the closure of the H. P. Administrative Tribunal is flooded with the petitions in which the employees challenge the orders of their transfers.

2. Despite the law on the subject being well settled, yet we find the same is being violated with impunity either by the political executive or by the administrative authority, constraining the employees to have initially approached the Administrative

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

Tribunal and on its closure, this Court unnecessarily clogging its docket.

3. It is trite that transfer is an incidence of service and as long as the authority acts keeping in view the administrative exigency and taking into consideration the public interest as the paramount consideration, it has unfettered powers to effect transfer subject of course to certain disciplines. Once it is admitted that the petitioner is State government employee and holds a transferable post then he is liable to be transferred from one place to the other within the District in case it is a District cadre post and throughout the State in case he holds a State cadre post. A government servant holding a transferable post has no vested right to remain posted at one place or the other and courts should not ordinarily interfere with the orders of transfer instead affected party should approach the higher authorities in the department. Who should be transferred where and in what manner is for the appropriate authority to decide. The courts and tribunals are not expected to interdict the working of the administrative system by transferring the officers to “proper place”. It is for the administration to take appropriate decision.

4. Even the administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redressal but cannot have the consequence

of depriving or denying the competent authority to transfer a particular officer/ servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. Even if the order of transfer is made in transgression of administrative guidelines, the same cannot be interfered with as it does not confer any legally enforceable rights unless the same is shown to have been vitiated by mala fides or made in violation of any statutory provision. The government is the best judge to decide how to distribute and utilize the services of its employees.

5. However, this power must be exercised honestly, bonafide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations without any factual background foundation or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, such as on the basis of complaints. It is the basic principle of rule of law and good administration, that even administrative action should be just and fair. An order of transfer

is to satisfy the test of Articles 14 and 16 of the Constitution otherwise the same will be treated as arbitrary.

6. Judicial review of the order of transfer is permissible when the order is made on irrelevant consideration. Even when the order of transfer which otherwise appears to be innocuous on its face is passed on extraneous consideration then the court is competent to go into the matter to find out the real foundation of transfer. The court is competent to ascertain whether the order of transfer passed is bonafide or as a measure of punishment.

7. The law regarding interference by Court in transfer/posting of an employee, as observed above, is well settled and came up before the Hon'ble Supreme Court in *U.O.I and Ors. vs. S.L. Abbas (1993) 4 SCC 357, Mrs. Shilpi Bose and Ors vs. State of Bihar and Ors., AIR 1991 SC 532, State of Uttar Pradesh & Ors. vs. Gobardhan Lal, (2004) 11 SCC 402, State of Madhya Pradesh & Anr. vs. S. S. Kourav & Ors., AIR 1995 SC 1056, M. Sankaranarayanan, IAS vs. State of Karnataka & Ors., AIR 1993 SC 763, N. K. Singh v. Union of India and Ors., AIR 1995 SC 423 and Airports Authority of India v. Rajeev Ratan Pandey 2009 (8) SCC 337,* and the conclusion may be summarised as under:-

1. Transfer is a condition of service.
2. It does not adversely affect the status or emoluments or seniority of the employee.
3. The employee has no vested right to get a posting at a particular place or choose to serve at a particular place for a particular time.

4. It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required.

5. Transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee nor it should be passed under political pressure.

6. There is a very little scope of judicial review by Courts/Tribunals against the transfer order and the same is restricted only if the transfer order is found to be in contravention of the statutory Rules or malafides are established.

7. In case of malafides, the employee has to make specific averments and should prove the same by adducing impeccable evidence.

8. The person against whom allegations of malafide is made should be impleaded as a party by name.

9. Transfer policy or guidelines issued by the State or employer does not have any statutory force as it merely provides for guidelines for the understanding of the Department personnel.

10. The Court does not have the power to annul the transfer order only on the ground that it will cause personal inconvenience to the employee, his family members and children, as consideration of these views fall within the exclusive domain of the employer.

11. If the transfer order is made in mid-academic session of the children of the employee, the Court/Tribunal cannot interfere. It is for the employer to consider such a personal grievance.

8. However, the moot question poised in the instant petition is the scope of writ petition where the orders of transfer are proposed (generated) thereafter followed with the

administrative department and finally got implemented by the Minister himself, leaving little virtually or no scope for any discretion or decision for the administrative department.

9. Adverting to the facts of the case, it would be noticed that the Minister In-charge not only desired and recommended the transfer of five persons including respondent No. 3 but also specified the stations where they were to be transferred vide note dated 28.06.2019.

10. On 10.07.2019, the petitioner made a written request to respondent No. 2 for cancellation of deputation from Forest Beat Gummer, Jawalamukhi Range Dehra Forest Division to Jawalamukhi Range (Special Duty) and requested permanent posting in Forest Beat Gummer Forest Range Jawalamukhi under Forest Division, Dehra.

11. The respondent department processed the aforesaid note and also the representation made by the petitioner in a tailor made fashion as was recommended and thereafter put up the proposed transfer of the petitioner as also the private respondent No.3 on 16.07.2019 in the following manners:-

> "Therefore, keeping in view the above position, it is submitted that approval may kindly be accorded for transfer of following Forest Guards:-
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> 1. ----
>
> 2. ----
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> 3. Sh. Rajesh Kumar, Forest Guard from Forest Beat Sansarpur, Block Sansarpur Terrace, Range Dada Siba under Forest Division Dehra to forest Beat Gummer, Block

Jawalamukhi, Range Jawalamukhi under Forest Division Dehra vice Smt. Sunita Devi, Forest Guard who is proposed to be transfered to Forest Beat Kotla, Block Kotla, Range Dada Siba under Forest Division Dehra, against vacancy, without TTA/JT and in relaxation of ban on transfer.

OR

Smt. Sunita Devi, Forest Guard, may allow to continue her service at her present place of posting as per request made in her application dated 10.07.2019."

12. It would be noticed that both the proposals were approved by the Minister concerned, making it difficult for the Administrative Department to implement both the proposals and resultantly a fresh proposal was made by the department on 01.08.2019 and the same reads as under:-

"Forest Department, Himachal Pradesh

Will the Senior Private Secretary to the Hon'ble Forest Minister, HP refers to his UO No. SPS/FM/Fts/19/2350 dated 28.06.2019, and U.O. No. SPS/FM/Fts/19/2429, dated 29.06.2019. In compliance to the approved proposal, after gathering facts/service particular of Smt. Sunita Devi, Forest Guard and Sh. Rajesh Kumar, Forest Guard, the following proposal was submitted to D-File dated 17.07.2019 (Copy enclosed) for approval of the Competent Authority:-

Sh. Rajesh Kumar, Forest Guard from Forest Beat Sansarpur, Block Sansarpur Terrace Range Dada Siba under Forest Division Dehra to Forest Beat Gummer, Block Jawalamukhi, Range Jawalamukhi under Forest Division Dehra vice Smt. Sunita Devi, Forest Guard who is proposed to be transfer to Forest Beat Kotla, Block Kotla, Range Dada Siba under Forest Division Dehra, against vacancy, without TTA/JT and in relaxation of ban on transfers.

OR

Smt. Sunita Devi, Forest Guard, may kindly be allowed to continue her service at present place of posting as per request made in her application dated 11.07.2019.
In this contest, it is submitted that as per draft proposal, either of the two proposals was to be approved but both proposal have been approved by the competent authority in this proposal signed on dated 22.07.2019. Therefore approval of the competent authority is against solicited as under:-

PROPOSAL-I:- Approval may kindly be accorded for transfer of Sh. Rajesh Kumar, Forest Guard from Forest Beat Sansarpur, Block Sansarpur Terrace, Range Dada Siba under Forest Division Dehra to Forest Beat Gummer, Block Jawalamukhi, Range Jawalamukhi under Forest Division Dehra vice Smt. Sunita Devi, Forest Guard who is proposed to be transferred to Forest Beat Kotla, Block Kotla, Range Dada Siba under Forest Division Dehra, against vacancy, without TTA/JT and in relaxation of ban on transfers.

OR

PROPOSAL-II:- Smt. Sunita Devi, Forest Guard, may kindly be allowed to continue her services at present place of posting as per request made in her application dated 11.07.2019.

13. It was then the Minister In-charge approved the first proposal consequent whereupon the transfer order dated 22.08.2019 has been issued, which reads as under:-

Forest Department Himachal Pradesh
Hamirpur Forest Circle, Hamirpur

OFFICE ORDER

No. 115/2019-20 Dated: Hamirpur, the 22.08.2019

In compliance of Pr. CCF (HoFF) H.P. letter No. Ft. 437-23/85 (E-II) dated 19.08.2019, the following transfers of the Forest Guard are hereby ordered:-

Sr. No.	Name of Forest Guard (Sh./Smt.)	From	To	Remarks
1.	Sh. Rajesh Kumar (Regular)	Sansarpur Beat/Sansarpur Terrace Block of Dada Siba Range under Dehra Forest Division	Gummer Beat/Jawala mukhi Block of Jawalamukhi Range under Dehra Forest Division	Vice Smt. Sunita Devi, without TTA/JT and in relaxation of ban on transfers.
2.	Smt. Sunita Devi (Regular)	Gummer Beat/Jawalamukhi Block of Jawalamukhi Range under Dehra Forest Division.	Kotla Beat/Kotla Block of Dada Siba Range under Forest Division Dehra	Against vacancy with TTA/JT and in relaxation of ban on transfers.

This has the approval of the competent authority."

(Anil Joshi) IFA
Conservator of Forests,
Hamirpur Forest Circle,
Hamirpur HP

Endst. No. 3925-27 Dated: Hamipur, the 22.082019

Copy is forwarded to:-
1. Pr. CCF (HoFF) HP Shimla for information and necessary action with reference to his office memo. No. Ft. 437-23/85 (E-II) dated 19.08.2019.
2. D.F.O. Dehra for information and necessary action. He is directed to intimate the date of relief and joining of the above Forest Guards.
3. Office Order file.

Conservator of Forests,
Hamirpur Forest Circle,
Hamirpur HP"

14. It would be evident from the record that the transfer was proposed, processed and thereafter approved by the Minister

concerned leaving no room for the administrative head to take an independent decision in the matter.

15. About four decades back, a learned Division Bench of this Court in *Ram Krishan versus District Education Officer ILR HP 1979 8 HIM 481* observed as under:-

> "8. We hereby record our strong disapproval of such type of interference from outsiders in day today administration of the State. If such interference is to be allowed, it would only mean that the government servants should run after those who are taking part in public life and in politics for getting better terms of service and a better place for their postings, and should do everything to please them and not to please the department by their ability, honesty and integrity. It need not be emphasized that such interference of outsiders in day-to-day administration of the State is highly detrimental to the public interest as it would result in nepotism and corruption wherein only those who can wield influence and purse, can succeed. Therefore, we want by this judgment to bring it to the notice of all concerned that sooner this type of interference is discouraged and stopped, the better for the administration and the people of this State."

16. In *A.K.Vasudeva vs. State of H.P. and others ILR (Himachal Series) (1981) 10 HIM 359*, this court while dealing with a case in which the transfer of a teacher had been made at the behest of a Member of the Legislative Assembly held as follows:-

> 21. The practice of effecting transfers of teachers at the behest of every M.L.A. and other influential persons seems to be rampant in the department of Education in the State. The record is full of it. Indeed when the transfer proposals are prepared there is a column No. 8 which is to show

"recommended / proposed by". I find that a transfer as been made even at the instance of the President Youth Congress (I) Subathu of a teacher Alaxender from Kanda to Subathu. It appears that no transfer is made except at the instance of somebody. Why was Shri Chaman Lal reluctant to admit his role, and why did he depose that he had nothing to do with the posting and transfer of any teacher? I had expected him to come out openly and frankly. He is not only a member of the Legislative Assembly but at the moment owns a responsible position as Chairman of a public corporation."

17. Thereafter referring to the judgment in Ram Krishan's case (supra), this court went on to hold as follows:

"28. It is unfortunate indeed that despite the aforementioned pronouncement by this Court the malady of the politicians interfering in the administration of the Education Department is as rampant as before, if not worse. Apparently no one is bothered about any discipline in this department and the teachers and others are perhaps encouraged by this method to be beholden to the political persons instead of relying on the honesty and the integrity of the Director of Education and other officers for administering the department and ordering transfers."

18. In Sant Ram Pant vs. State of H.P. and others 2009 (3) Shim. L.C. 206, a Division Bench of this court held as follows:-

" 8. When transfers are made, an employee may be aggrieved by his transfer. An employee has a right to make a representation against such transfer. It is also the right of the employer, including the State, to look into the grievances of the employees and if the grievance made by the employee is found to be genuine, the State is well within its right to redress the grievance of the employee

and cancel the order of transfer. However, the grounds for passing an order of cancellation within two weeks of the original order must be borne out from some material on the record. In the present case, despite two opportunities being given the State has not produced any representation made by the respondent No. 3 or any other communication addressed to the office of the Hon'ble Chief Minister on behalf of the respondent No. 3 which would justify the issuance of the note dated 1.1.2009."

19. In CWP No. 1105 of 2006, titled Sushila Sharma vs. State of H.P and others, this court has held as follows:-

"We, however, direct that a copy of this judgment be sent to the Chief Secretary to the Govt. of H.P., who shall ensure that a proper transfer policy is formulated to ensure that the transfers are made only on administrative grounds and not on any others grounds. In the policy to be framed, it shall be ensured that all the employees are treated fairly and equally and every employee during his tenure of service serves in tribal/ hard areas and also in remote /rural areas. When transfers are made, the administrative department shall ensure that the employees who have already served in tribal/ hard areas as well as remote/ rural areas are not again sent to these areas and there is a continuous process of change whereby all the employees have a chance to serve in tribal/hard areas as well as remote/ rural areas. In the policy so framed, It should also be ensured that the transfer orders are not cancelled without making reference to the administrative department to put forth its views. In the policy, measures shall be provided to ensure that employees (obviously influential) who have managed to remain posted in the urban areas/cities are posted to rural/remote areas and hard/tribal areas in the transfer season when the transfers are made. The transfer policy should also ensure that

people, who are posted in remote/rural areas, join their place of postings and do not manage to get their transfers cancelled on frivolous grounds as has happened in the present case. The policy be framed and filed in Court within two months from today." Consequent to these directions, a policy was framed, but has been observed more in breach."

20. In CWP No. 2844 of 2010 titled Pratap Singh Chauhan vs. State of H.P. & others decided on 18.6.2011, a learned single Judge of this court after considering various judgments of Hon'ble Supreme Court held as follows:-

"10. We are governed by the Constitution of India. As per the constitutional scheme there are three pillars of democracy; the Legislature; the Judiciary and the Executive. Each has to work in its own sphere. This is a system of checks and balances where each can check the other, but it must be clearly understood that none of the three organs can encroach upon the jurisdiction of the other. The jurisdiction vested in this Court under Article 226 of the Constitution of India is indeed very wide. Wider the jurisdiction, more care should be taken to exercise it with greater discretion, so that questions are not raised about the functioning of the Judiciary. The Apex Court has in no uncertain terms laid down a note of caution that Courts should not interfere in transfer matters except on very strong grounds.

11.Having held so, this Court is also not oblivious to the factual position which exists on the spot and the situation is that day in and day out this Court is flooded with writ petitions in which employees challenge the order of their transfer on various grounds. On more than one occasion this Court has found that there are notes sent by public representatives such as Members of the Legislative

> Assembly recommending the transfers. No doubt, public representatives have a right to make recommendations, but these can only be recommendations and cannot be taken to be the final word."

21. In CWP No. 3530 of 2011 titled Babita Thakur vs. State of H.P. and others, a learned single Judge of this court held as follows:-

> "9. It is true that it is for the employer to see where the Government servant is to be posted. However, it is equally true that there is no arbitrariness in the action. The transfer cannot be used as an instrument to accommodate/ adjust the persons without there being any administrative exigency. The underline principle for transfer is public interest or administrative exigency. In the instant case, neither there was any public interest nor any administrative exigency necessitating the transfer of the petitioner from government Primary School, Chadyara (Sadar) to Government Primary School, Khanyari (Chachoit1)."

22. The treatise on the subject is the judgment rendered by learned Division Bench of this Court in *Amir Chand versus State of Himachal Pradesh 2013(2) HLR (DB) 648*, wherein the learned Division Bench of this Court commenced the judgment with the following observations:-

> 1.This Court is flooded with litigation filed by employees aggrieved by their transfer and sometimes, even by their non-transfer when they are not shifted out of tribal areas. The time has come when we must lay down the law with regard to the powers of the legislators to influence transfers. Should political pressure and political

influence be necessary to run the administration? Should transfers be ordered on the asking of the legislators, members of a particular ruling party, persons belonging to certain groups without even making a reference to the administrative department concerned? Is the policy of transfer always binding upon the Government and its employees or can the Government flout with impunity the policy framed by it? No doubt, the employer is the master and can decide which employee is to be posted at which particular place, but we must remember that we are governed by the Constitution of India. Does not each and every employee have a right to claim that he should be treated fairly? Why is it that favoured employees, who are either well connected or can exercise political or bureaucratic clout are never transferred out of the main cities and those employees who do not enjoy such political or bureaucratic patronage have to stay in remote/tribal areas for years on end.

2. Another disturbing feature which we have found is that in the State of Himachal Pradesh after the period earmarked for normal transfers is over, the transfers have to be ordered only after approval of the competent authority which normally is the Hon'ble Chief Minister. We have found that people directly approach the Hon'ble Chief Minister using political influence and patronage without first making a representation to the department concerned. This is a total violation of the Conduct Rules. Despite this violation of the Conduct Rules, these requests of the employees who are backed by political patronage are accepted without even considering what will be the effect of such transfers on the people who are to be served by these employees, or on those employees who may be affected by such transfers.

3. Does anybody care about the students who are studying in the schools? If no teacher is willing to go to the rural/remote areas, where will the students of these rural and remote areas study? Does anybody care in some remote areas, dispensaries are without Doctors or paramedical staff whereas there is more than the sanctioned number of doctors in the State and District headquarters. It was only after the intervention of the Court that the Female Health Workers, who were to serve in the rural areas, were actually transferred there. Almost all the Female Health Workers had been adjusted in Shimla town itself. This shows that neither the interest of the public at large nor that of the administration was kept in view while adjusting these Female Health Workers at Shimla. When the employees want a job then they are willing to join at any place. However, soon thereafter, political patronage is employed to get themselves transferred to a particular place. There is more than sufficient material before the Courts to prove that transfers are made for extraneous reasons without considering the administrative exigencies and the interests of the students.

4. This does not speak well of the system of the administration. We are clearly of the view that normally we would not like to interfere in transfer orders passed in administrative interests. We are also of the considered view that all the employees, such as teachers, doctors, nurses etc., will necessarily have to be posted in rural/remote area at some stage in their careers. The administration has to be stern and strict in matters of transfers. At the same time, it also has to be fair and just and should treat all the employees equally. It is only because the administration itself is lax and transfer orders are passed on extraneous considerations and the administration reverses its decisions day in and day out, that the courts are forced to intervene. These types of

cases clearly highlight the fact that transfers are being made not on the basis of administrative exigencies but on other extraneous considerations.

5. Rule 20 of the Central Civil Services (Conduct) Rules, 1964 lays down that it will be misconduct for an employee to bring in political pressure or get recommendations from others in matters relating to his service. It seems that both, the administration as well as the employees, have forgotten that such a rule exits. Our experience is that unless an employee gets a “suitable recommendation” or brings in political pressure, he can never get posted to a station of his choice. If action is taken against the employee for breach of the Conduct Rules, the employee could very well say that he is damned if he does not use political pressure and damned if he does.

6. It would be apposite to quote a humorous poem from Shri A.S Bhatnagar's Commentary on Conduct Rules. ‘Ban on recommendation’, a humorous poem -Who am I? A victim to the jealousies of those Who, to me have been quite close, Suspended from work And, for no fault of mine. Oh Justice, what a heavy fine ! I am expected not to seek Help from one mighty or weak. They name it pressure or canvassing, A fruit from the Forbidden Tree. Which to touch none is free. Is this bar justified, When there are cases multiplied, Where in favours have been done, And ends foul have been badly won?

23. It was further observed that there can be no manner of doubt that a legislator, who is the elected representative of the people, has a right to place his difficulties before the Hon’ble Chief Minister or the Minister concerned. It would be well within his rights to complain to the authorities concerned in case he

finds that a particular employee is not doing his job properly. The Court further went to observe that transfer is never meant to be a punishment but nobody can deny the fact that many times incompetent and inconvenient officials are transferred.

24. The Court then discussed the judgments of the various High Courts including the one referred to above and observed as under:-

> "33. From the files which this Court has seen including the files of these cases, it is apparent that transfers are being made day in and day out at the behest of public representatives. It is true that public representatives have a right to complain against the working of government officials. However, these complaints must be verified by the administrative department and final action has to be taken by the administrative department. Transfer is not a punishment and if transfer is inflicted as a means of punishment, then the whole purpose of making transfers in the public interest is set at naught. An employee who is rude or inefficient at one station will not become polite or efficient at another station. Transfer does not serve any purpose. If the allegations of the public representatives made in the complaints against the government servants are found to be correct, then disciplinary action should be taken against such government employees. We live in a democracy and our elected representatives under the constitution are to work in the legislature and not as administrators. They cannot start interfering in the administration or the working of the Executive. This has already resulted in government servants rushing to please the political masters at the cost of doing their duties. This also demoralizes the officers who are in charge of the

administration of the department. It is they who are the best judges to decide how the department has to be administered and which employee should be transferred to which place. The politicians cannot don the role of administrators. The earlier such inherently illegal and improper practices are put to an end, the better it would be for the smooth functioning of the administration of the State.

34. As far as the concept of judicial review is concerned, the Apex Court again observed that the Court should be reluctant in interfering in transfer orders. The scope of judicial review in the matter of transfer of a Government employee is limited and the Court should not interfere in the transfer. The Court cannot substitute its own opinion for the opinion of the employee.

35. After reviewing the entire law on the subject, we can without any hesitation come to the conclusion that the scope of judicial review in transfer matters is very limited. This court cannot interfere in the day to day functioning of the Government departments and it is for the administrative heads to decide which employee should be posted at which place. Even earlier, we had clearly given a number of judgments on these lines.

36. At the same time, this Court cannot shut its eyes to the increasing number of transfers being made not for administrative reasons but only with a view to accommodate favoured employees. As indicated by us earlier, an employee of the department is also a citizen of the country and is entitled to the equal protection of laws. Therefore, the State should always be fair to its employees. They must all be treated equally."

25. It is then that the following directions came to be passed:-

"1. The State must amend its transfer policy and categorize all the stations in the State under different categories. At present, there are only two categories, i.e. tribal/ hard areas and other areas. We have increasingly found that people who are sent to the hard/ tribal areas find it very difficult to come back because whenever a person is posted there, he first manages to get orders staying his transfer by approaching the political bosses and sometimes even from the Courts. Why should the poor people of such areas suffer on this count. We are, therefore, of the view that the Government should categorize all the stations in the State in at least four or five categories, i.e. A, B, C, D and E also, if the State so requires. The most easy stations, i.e. urban areas like Shimla, Dharamshala, Mandi etc. may fall in category A and the lowest category will be of the must difficult stations in the remote corners of the State such as Pangi, Dodra Kawar, Kaza etc. At the same time, the home town or area adjoining to home town of the employee, regardless of its category, otherwise can be treated as category A or at least in a category higher than its actual category in which the employee would normally fall. For example, if an employee belongs to Ghumarwin, which is categorized in category B, then if the employee is serving in and around Ghumarwin, he will be deemed to be in Category A.

2. After the stations have been categorized, a database must be maintained of all the employees in different departments as to in which category of station(s) a particular employee has served throughout his career. An effort should be made to ensure that every employee serves in every category of stations. Supposing the State decides to have four categories, i.e. A, B, C, D, then an employee should be posted from category A to any of the other three categories, but should not be again transferred

to category A station. If after category A he is transferred to category D station, then his next posting must be in category B or C. In case such a policy is followed, there will be no scope for adjusting the favourites and all employees will be treated equally and there will be no heart burning between the employees.

3. We make it clear that in certain hard cases, keeping in view the problems of a particular employee, an exception can be made but whenever such exception is made, a reasoned order must be passed why policy is not being followed.

4. Coming to the issue of political patronage. On the basis of the judgments cited hereinabove, there can be no manner of doubt that the elected representative do have a right to complain about the working of an official, but once such a complaint is made, then it must be sent to the head of the administrative department, who should verify the complaint and if the complaint is found to be true, then alone can the employee be transferred.

5. We are, however, of the view that the elected representative cannot have a right to claim that a particular employee should be posted at a particular station. This choice has to be made by the administrative head, i.e. the Executive and not by the legislators. Where an employee is to be posted must be decided by the administration. It is for the officers to show their independence by ensuring that they do not order transfers merely on the asking of an MLA or Minister. They can always send back a proposal showing why the same cannot be accepted.

6. We, therefore, direct that whenever any transfer is ordered not by the departments, but on the recommendations of a Minster or MLA, then before ordering the transfer, views of the administrative department must be ascertained. Only after ascertaining

> the views of the administrative department, the transfer may be ordered if approved by the administrative department.
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> 7. No transfer should be ordered at the behest of party workers or others who have no connection either with the legislature or the executive. These persons have no right to recommend that an employee should be posted at a particular place. In case they want to complain about the functioning of the employees then the complaint must be made to the Minister In charge and/ or the Head of the Department. Only after the complaint is verified should action be taken. We, however, reiterate that no transfer should be made at the behest of party workers."

26. Yet again the issue of transfer at the instance of elected representatives came for consideration before the learned Division Bench of this Court in *Sanjay Kumar vs. State of H.P. and Ors. Latest HLJ 2013 (HP) 1051* wherein it was observed that it is the head of Administrative Department who alone has jurisdiction to transfer the employee that too on the basis of subjective satisfaction. The authority making the transfer is to be guided by transfer policy in vogue.

27. It shall be apposite to refer para-23 of the judgment, which reads as under:-

> 23. Indeed, the Head of Administrative Department has jurisdiction to transfer employees on the basis of his subjective satisfaction. The authority making the transfer is to be guided by transfer policy in vogue.

28. Similar issue thereafter came up before the learned Division Bench of this Court in *Raj Kumar vs. State of H.P. and*

Ors. 2015 (1) Him. L.R. (DB) 567 and after placing reliance on the judgment Sanjay Kumar's case (supra), this Court observed as under:-

> "21. Tested on the touchstone of aforesaid exposition of law, it can safely be concluded that the transfer of the petitioner cannot withstand judicial scrutiny as the basis and foundation of the transfer happens to be the various complaints made by the public representatives against the petitioner. The transfer has been made on the basis of the U.O. note issued by the office of Hon'ble Chief Minister and whereas, no proposal for transfer has been originated from the concerned administrative department. The impugned transfer order, therefore, is not sustainable being arbitrary and vitiated because the same has been issued under dictation.

29. Lastly, it was observed in para – 28 of the judgment, which reads as under:-

> "28.This case reflects a dismal state of affairs where despite repeated directions passed by this court from time to time over the last three and half decades, the respondents have shown scant regard to such directions and have not cared to follow the mandate of law in matters of transfer. This court has repeatedly held that any person has a right to make a complaint against an employee regarding his conduct to his superiors including the Hon'ble Chief Minister and even request for his transfer. It is, however, only for the competent authority i.e. administrative department to consider the request and take appropriate action in accordance with law. But when the administrative authorities do not perform their duties and resultantly fair play is denied by the administrative authorities, people turn up to the courts complaining of

> such blatant case of administrative excess compelling the courts to intervene in such matter. Once the State government has framed a transfer policy, then it is its duty to implement the same because the very purpose of framing a policy is to strike a balance between the rights of the employees and the State in matters relating to transfer so that the same is not misused.

Despite the aforesaid directions, the things have really not improved.

30. As already observed above, the Chief Minister and Ministers/elected representatives may recommend the transfer of an employee has already been held by this Court in *Sanjay Kumar and Amir Chand's cases (supra)*, however, the transfer orders are ultimately to be issued by the Administrative head after independent application of mind that too after subjective satisfaction without being influenced by the recommendations so made by the elected representatives.

31. In the instant case, there was no independent decision taken by the Administrative Head rather there was no scope left for the said purpose and, therefore, the decision has been rendered vulnerable as being influenced by the proposal and recommendations made by the Minister concerned.

32. As observed by this Court, the Members of the Legislative Assembly or the Minister concerned have right to make a recommendations but these recommendations cannot be taken to be the final word. The underline principle for transfer is

public interest or administrative exigency, which is conspicuously absent the present case.

33. As held by this Court in *Amir Chand's case (supra)*, we live in a democracy and our elected representatives under the Constitution are to work in the legislature and not as administrators. They cannot start interfering in the administration or the working of the Executive. It is they (Administrative Heads) who are the best judges to decide how the department has to be administered and which employee should be transferred to which place. The politicians cannot don the role of administration.

34. It was further held that the elected representatives cannot have a right to claim that a particular employee should be posted at a particular station. The choice has to be made by administrative head i.e. Executive and not by the legislators. Where an employee is to be posted must be decided by the administration . It is for the officers to show their independence by ensuring that they do not order transfers merely on the asking of an MLA or Minister. They can always send back a proposal showing why the same cannot be accepted.

35. Lastly, it is held that whenever any transfer is ordered not by the departments but on the recommendations of a Minister or MLA, then before ordering the transfer, the views of the administrative department must be ascertained and only after ascertaining the views of the administrative department, the

transfer may be ordered if approved by the administrative department, meaning thereby the views of the administrative department have essentially to be sought in the matters of transfer. What follows is that the views of the administrative department must reflect subjective satisfaction and conscious application of mind that the transfer is essential on account of administrative exigency and / or public interest or that the transfer of employee is necessary for the effective utilization of his/her services.

36. Adverting to the present case the order of transfer cannot withstand judicial scrutiny as the same does not show that the petitioner has been transferred on account of administrative exigency and/or public interest. The record further does not reveal that the transfer has been effected for the effective utilization of the services of the petitioner and she has been transferred merely on the basis of the recommendations made by the political executive.

37. In the given facts and circumstances of the case, the action of the respondents cannot be countenanced and sustained. Accordingly, the order dated 19.08.2019 whereby the petitioner has been ordered to be transferred from Forest Beat Gummer, Block Jawalamukhi Range Jawalamukhi under Forest Division Dehra to Forest Beat Kotla, Block Kotla, Range Dadasiba under

Forest Division Dehra is quashed and set aside, leaving the parties to bear their own costs.

38. However, before parting, it needs to be observed that since the docket of this Court is full of cases relating to transfers of employees, the Government would be well advised to implement online transfer in its Departments, Boards, Corporations etc. having over 500 employees by framing an online transfer policy on similar line as that of the adjoining State of Haryana.

(Tarlok Singh Chauhan),
Judge

(Chander Bhusan Barowalia)
Judge

Dated: 18.03.2020
(Sanjeev)