

(2008) 05 J&K CK 0041

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2222 Of 2007

Brij Nandan Singh

APPELLANT

Vs

Sher-i-Kashmir University of Agriculture Sciences &
Technology and others

RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Citation : (2008) 3 SCT 473 : (2008) 6 SLR 215

Hon'ble Judges : Nirmal Singh, J

Bench : Division Bench

Advocate : W.S. Nargal, Abhinav Sharma, Advocates appearing for the Parties

Judgement

Nirmal Singh, J.—Petitioner has impugned his order of transfer in the present petition bearing No. AUJ/Adm/07/08/586671 dt. 24th of

December, 07., passed by respondent No. 3 whereby has been transferred from Jammu to Poonch.

2. The grievance of the petitioner is that he being a Trade Union Leader, presently holding the post of General Secretary, Non Teaching

Employees Association of SheriKashmir University of Agriculture Science & Technology, Jammu, raised some objections regarding illegal

promotion of one Sh. N.K. Raina, to the post of Security Officer. It is stated that in this regard, a representation was moved before respondent

No. 3 for supplying a copy of promotion order of aforementioned NK Raina, so that the same could be challenged before the appropriate forum

as he was not entitled to be promoted against the said post, but the same was not supplied by the said officer. It is thus stated that the respondent

No. 3 annoyed with the said act on the part of the petitioner being a union leader and as he was espousing the cause of the staff as a whole, passed

the order impugned transferring him from Udeywalla station to Maize feeding Research Sub Station, Poonch. It is stated that the order has been

passed mala fide and not in the interest of administration as mentioned in it.

3. The further case of the petitioner is that in terms of Schedule 1 Chapter IX, respondent No. 3 has not been delegated the power to transfer a

Field Cum Laboratory Assistant, which is an auxiliary Staff Cadre post. It is stated that in terms of the said Schedule, respondent No. 3 is only

competent to transfer a staff member borne on the general administration cadre to which cadre the petitioner does not belong. It is further stated

that the petitioner earlier was also transferred to Poonch and remained there from 1986 to 1992 and therefore, he should not have been

transferred to the same place again when he had remained there for about six years.

4. Objections have been filed by respondents stating therein that the order impugned has been passed by respondent No. 3 keeping in view the

interest of administration. It is stated that the petitioner otherwise has completed his normal tenure of three years at his present place of posting,

and therefore, he cannot have any grievance against his transfer order which has been passed as a routine transfer. The further stand taken by

respondents is that so far as aforementioned NK Raina is concerned, his promotion was made as Incharge Security Officer way back in Jan '95

and this promotion in Incharge capacity was thereafter approved by the competent authority vide its order dt. 3rd of Oct '03, and at that point of

time, no grievance was raised by any of the staff member and therefore, the petitioner has no right to agitate that matter at this juncture. So far as

the assertion of the petitioner that it was only due to the fact that the matter regarding promotion of NK Raina was agitated by the petitioner that he

was transferred from Jammu to Poonch is concerned, the same has been denied.

I have heard learned counsel for the parties and perused the record.

Admitted.

5. Transfer is an exigency of service and a Government employee has no vested right to remain posted at a particular place. It is for the employer

to see as to where an employee is to be posted and what work is to be taken from him. The courts are normally not to interfere in such like matters

unless the 6 order passed in this regard is mala fide or is passed by an

incompetent authority. The petitioner, no doubt, has alleged mala fide against the respondent No. 3 who has passed the order impugned but the assertions made in this regard in the present case seem to be doubtful in the absence of any material on record. The petitioner has stated that he agitated the matter of promotion of one NK Raina to the post of Security Officer as the said promotion was made in violation of the rules and it was on this basis that respondent No. 3 got annoyed with the petitioner and passed the impugned order. The respondents, however, taken a specific stand in this regard that the promotion of aforementioned NK Raina was made as Incharge Security Officer in Jan '95 and thereafter on the approval granted by the competent authority, the said promotion was made on substantive basis with effect from April '03. It has been stated that at relevant point of time, no grievance was projected by any of the staff member or the petitioner and agitating the matter at this point of time has no relevance with the passing or order impugned which has been passed in the interest of administration as the petitioner has completed his normal tenure of three years at his present place of posting. In view of this, the assertions made in the writ petition that respondent No. 3 has passed the order impugned mala fide, cannot be accepted.

6. So far as the other contention of the petitioner that respondent No. 3 is not competent to pass the order of transfer so far as the post of

Filed cum Laboratory Assistant which is an auxiliary staff cadre post is concerned, it be seen that the specific stand taken by respondents is that the

order impugned has been passed with the approval of the competent authority i.e. Vice Chancellor. Even a perusal of order impugned shows that

approval has been taken by the respondent No. 3 Registrar from the said competent authority before passing the same. Therefore, the said

contention of the petitioner that the order has been passed by an incompetent authority is also without any force. Thus, on both the grounds on

which interference could have been made by this court, the petitioner has failed to make a positive case.

7. For the reasons mentioned above, this petition is found to be without merit and is dismissed along with connected CMPs. Interim order dt. 27th

of Dec' 07, shall stand vacated.

8. Petition dismissed.