
(2011) 07 UK CK 0104

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 621 of 2011

Chandan Giri Goswami

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Citation : (2011) 07 UK CK 0104

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Judgement

Sudhanshu Dhulia, J.—Heard Mr. Subhash Upadhyay, Advocate for the Petitioner, Mr. Anil Kumar Bisht, Brief Holder for the State of Uttarakhand / Respondent Nos. 1 to 4 and Mr. Manoj Tiwari, Senior Advocate assisted by Mr. Alok Mehra, Advocate for Respondent No. 5.

2. The Petitioner is a Forest Ranger (Incharge) at Forest Range, Almora. He is aggrieved by his transfer order 14.6.2011 which modified his earlier transfer order dated 8.6.2011. The contention of the Petitioner is that in the earlier order of transfer of the Petitioner which was passed on 8th June, 2011, the reason for transfer has been shown to be "in public interest". Against the said order, the Petitioner moved a representation on 9.6.2011 and subsequently, though the transfer was retained yet the this time (in the present impugned order dated 14.6.2011), the reasons which have been assigned by the authority concerned for transferring the Petitioner are "administrative reasons". Now the primary contention of the Petitioner is that an employee though can be transferred even on administrative grounds but in view of the Full Bench decision of this Court in Damyanti Bisht v. State and Ors. 2008 (2) U.D. 517, before transferring an employee on administrative ground, the competent authority must record its satisfaction while doing so. The decision of Full Bench judgment in Damyanti Bisht v. State and Ors. (supra) and the words relied upon by the Petitioner while challenging the present transfer order are as follows:

In the present appeal as well as in the writ petition, the only ground which was

raised against the impugned transfer orders was that they were passed on administrative ground and, therefore, per se were bad in law. The learned Single Judge, in the judgment impugned in the Special Appeal, in our considered opinion, has taken the correct view that the transfer order on administrative ground per se is not bad in law. We agree with him. We accordingly over-rule the view adopted by the Division Bench in the interlocutory order dated 1st July, 2008 in the aforesaid Writ Petition. We, while upholding the aforesaid view, substitute our own opinion by laying down that even though a transfer order on administrative ground per se is not bad in law, No. person can be transferred on an administrative ground unless before issuing the transfer order, the Authority competent to transfer has arrived at and recorded his satisfaction, upon due verification and confirmation, about the existence and truthfulness of anyone of the three factors/grounds/considerations warranting the transfer of the person concerned.

3. In other words, the Full Bench of this Court has held that whereas the transfer order on administrative ground per se is not bad, but it would become bad if the competent authority while transferring a person on administrative ground has not recorded his satisfaction for making such transfer.

4. All the same, in the counter affidavit, the State Government has defended its stand stating that a Committee was constituted for these transfers, which consists of Divisional Forest Officer, Almora, Sub Divisional Magistrate, Sadar, Almora and Sub Divisional Forest Officer, Almora. According to the report of this Committee, which has been filed as Annexure CA-3 to the writ petition, this Committee in its meeting dated 8.6.2011 considered the transfer of the Petitioner and after recording its satisfaction has recommended the transfer of the Petitioner from Almora Range to Jauransi Range for the reasons that the Almora Range is a very sensitive range and in this sensitive range, the Petitioner has shown a lack of interest in his work, which is evident from the letters of the Forest Department, Almora 12.10.2010, 14.10.2010, 25.9.2010, 12.10.2010 and 4.6.2011. It has further been recorded by this Committee that the Petitioner has not complied with the orders of his superior authorities from time to time. There are other reasons assigned as well. All the same, the Petitioner in Paragraph 11 of the writ petition has stated that the competent authority is the Conservator of Forest, a fact which has not been denied in the counter affidavit by the State. Hence presently the Respondents have admitted that in the present case competent authority would be the Conservator of Forest. There is nothing on record to show that the findings recorded by the Committee as referred above, were placed before the Conservator of Forest. Therefore the present transfer on "administrative grounds" is not a valid transfer as the competent authority has not recorded its finding while transferring the Petitioner on administrative grounds.

5. At the same time in the counter affidavit, the State has been able to show this Court that there is enough material with the Forest Department to transfer the

Petitioner on administrative ground. It has also been stated before this Court by the counsel appearing for the private Respondent No. 5 that the present Petitioner is working in Almora Headquarter for the last 15 years and therefore in any case, he is liable to be transferred. The counsel has further stated that in case the transfer of the Petitioner is stayed it would affect the entire chain of transfers and moreover in compliance of the impugned order, Respondent No. 5 was to join at Almora Range.

6. Be that as it may, on these set of facts the concerned Conservator of Forest must take a decision as expeditiously as possible but definitely within a period of three weeks from the date a certified copy of this order is produced before him. The Conservator of Forest being the competent authority must record his satisfaction for transferring the Petitioner from Almora Range to Jauransi Range. Till the decision is reached by the Conservator of Forest, status quo shall be maintained.

7. The writ petition is disposed of accordingly. No. order as to costs.

8. Let a copy of this order be issued within 24 hours.