

(2025) 04 RAJ CK 0613

In the Rajasthan High Court, Jaipur Bench

Case No : Spl. Appl. Writ No. 175 Of 2025

DR. SHANKR LAL BAMANIA

APPELLANT

Vs

STATE OF RAJASTHAN

RESPONDENT

Date of Decision : 09-04-2025

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 153(A), 153(B), 153(C), 260(A), 271(AAB)

Citation : (2025) 04 RAJ CK 0613

Hon'ble Judges : Avneesh Jhingan, J; Maneesh Sharma, J

Bench : Division Bench

Advocate : Anuroop Singhi, N.S. Bhati, Aditya Khandelwal, Shankar Lal Poddar, Twinkle Jain

Final Decision : Dismissed

Judgement

Munnuri Laxman, J

1) The present Special Appeal has been filed against the order dated 13.01.2025, passed by the learned Single Judge of this Court in S.B.Civil Writ Petition No. 697/2025, whereby the prayer for the quashment of the transfer order dated 07.01.2025 was rejected.

2) Aggrieved by the aforesaid order, the petitioner in the writ petition has preferred the present Special Appeal.

3) The background of the facts shows that the appellant was appointed as a Medical Officer on 17.03.2005 and subsequently he was promoted to the post of Senior Medical Officer on 11.07.2011 and thereafter on 12.07.2018, he was promoted to the post of Deputy Director, which is equivalent to the post of Chief Medical and Health Officer (CM&HO). The appellant was posted as CM&HO, Udaipur on 03.08.2022 and he had been working as CM&HO, Udaipur till the date of impugned transfer order.

4) The appellant's grievance is that the impugned transfer order suffers from

stigma, and further the transfer was made from the post of CM&HO/Deputy Director to the post of Deputy Controller, which is lower in rank. The petitioner was transferred from the post of CM&HO, Udaipur, to Deputy Controller, District Hospital Pratapgarh. This transfer was challenged on two main grounds: (i) there is no administrative exigency, as claimed in the transfer order, since the complaints had already been adjudicated and the petitioner was exonerated from such complaints. Therefore, the said transfer suffers from stigma; and (ii) the transfer of the petitioner from the post of CM&HO to the post of Deputy Controller, District Hospital Pratapgarh, constitutes a reduction in cadre, which the petitioner was previously holding.

5) The case set up by the respondents is that the transfer was made due to various complaints received against the appellant, and to avoid any influence on the pending inquiries regarding those complaints, he was transferred to the post of Deputy Controller, District Hospital, Pratapgarh. According to them, such a transfer does not suffer from any stigma. The other contention of the respondents is that the posts of Deputy Director, CM&HO, and Deputy Controller are equivalent posts. Therefore, the petitioner's contention that the post of Deputy Controller is lower than the post he was holding, is incorrect.

6) The learned Single Judge, after considering the affidavit and rules submitted by the respondents, found that the post of Deputy Controller is equivalent to the post of Deputy Director/ CM&HO and that there is no reduction in rank as a result of the transfer order. Consequently, the writ petition was dismissed. Hence, this special appeal.

7) Heard the learned counsel appearing for both the parties.

8) The primary contention of the learned counsel appearing for the appellant is that the transfer order suffers from mala fides and there is no administrative exigency. The reasons assigned for the transfer were based on the premise that the complaints were still pending. In fact, the majority of such complaints have already been closed based on the preliminary inquiries. The complaints were lodged by persons working under him and they are motivated, as they were made in retaliation for disciplinary actions taken by the appellant against such individuals for negligence of their duties. Most of these complaints have also been closed. Therefore, the transfer order suffers from stigma and is liable to be interfered with.

9) The further argument of the learned counsel for the appellant is that the learned Single Judge relied upon the unamended service rules produced by the respondents, which indicate that the post of Deputy Controller is equivalent to the post of Deputy Director/CM&HO. However, after the amendment, the post of Deputy Controller of Hospital is no longer an equivalent post and, in fact, such a post is no longer a cadre post governed by the Rajasthan Medical and Health Service Rules, 1963 (hereinafter referred to as 'the Rules of 1963').

10) The learned counsel for the appellant also submitted that the transfer of the

appellant from a cadre post to a non-cadre post would amount to deputation, which requires the appellant's consent, which is not present in the present case. The transfer was made on the premise that the post of Deputy Controller is equivalent to the post of Deputy Director/CM&HO and is a cadre post exists under the provisions of the Rules of 1963. Therefore, he seeks to set aside the order of the learned Single Judge and to allow the writ petition.

11) Per contra, the learned Additional Advocate General appearing for the respondents submitted that there are multiple complaints against the appellant, and inquiries were contemplated in relation to such complaints. To avoid any influence on such inquiries, the appellant was transferred from his present post to the post of Deputy Controller, Hospital at Pratapgarh. It is submitted that such a transfer is not stigmatic, and the reasons behind the transfer are based on legitimate administrative grounds; therefore, no interference with the transfer is warranted.

12) The learned AAG also submitted that the post of Deputy Controller is equivalent to the post of Deputy Director/CM&HO, as is clear from the position existing prior to the amended rules, i.e., before 03.01.2012. The learned AAG further submitted that the learned Single Judge has rightly considered the equivalency of such a post and rightly dismissed the writ petition, which requires no interference.

13) We have considered the rival submissions of both the parties and carefully perused the impugned order passed by the learned Single Judge as well as the material available on record.

14) Dealing with the first contention, the material placed on record shows that there are multiple complaints against the appellant, and the majority of the complainants were preliminarily enquired into and found motivated complaints, and they were not genuine complaints. Some of the persons whose complaints were preliminarily enquired into and closed, have also lodged complaints with the Anti-Corruption Bureau, and such complaints are still pending. In one case, directions were issued to initiate disciplinary proceedings against the appellant and one other officer. In view of the facts and circumstances of the case, we are of the opinion that it cannot be said that no administrative exigency exist for transfer. In fact, the transfer order only refers to the reasons that necessitated the transfer. No doubt, the majority of the complaints were closed, and there are certain complaints that are still under enquiry. Therefore, the transfer order cannot be said to be punitive or stigmatic in nature, in the facts and circumstances of the case.

15) Dealing with the second contention, the service conditions of the petitioner is governed by the Rules of 1963. These rules underwent to several amendments. The last amendment was done on 03.01.2012. The rules, which are in existence as on today relating to the post of Deputy Director/CM&HO and equivalent post is referred at Serial No.5 of the Schedule I, which is hereunder:-

SCHEDULE-I

Designation of

Method of

Post from

Qualification &

Qualification

Remarks

post

Recruitment

which

Experience for

& Experience

with

Promotion

promotion

for Direct

percentage

is to be

Recruitment

made

5.Dy.Director/

100% by

Senior

Must have 6 years'

CM&HO &

Promotion

Medical

service in the grade

equivalent

(80% from

Officer/Dy.

pay Rs.6600/- or in

post

SMO & 20%

CM&HO

the corresponding

-

-

from Dy.

existing pay scale/

CM&HO)

post mentioned in

column 3

16) The rule dealing with the similar kind of position existed prior to the Amendment dated 03.01.2012 is referred at Serial No.16 with regard to Deputy Director/CM&HO and the other posts, which reads hereunder:-

SCHEDULE-I

Designation of

Method of

If by promotion

Qualification

Qualifi-

Remarks

post

Recruit-

a post from

& Experience

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which will be

for promotion

Experi-

percentage

made

ence for

Direct

Recruit-

ment

6. Deputy Director/

100% by

Senior Medical

Must have 5

Service rendered

Chief Medical

&

Promotion

Officer/ Deputy

years' service

as Chief Medical

Health

Officer/

Chief Medical

on the post

& Health Officer/

Assistant Director

Additional

Chief

& Health

mentioned in

-

Health Services/
Medical &
Health
Officer
column No.3
Assistant Director
Officer/Deputy
(Family Welfare
Health Services
Controller
of
/Health/Malaria)
(Plan)/Assistant
Hospitals
Director Health
Services (medical)
(District/Mobile
/Deputy Chief
Surgical
Medical & Health
Unit/Employees
Officer (Family
State Insurance)
Welfare)
Principal,
Regional Family
Planning Training
Center or
equivalent posts.
Civil Assistant

Surgeon
(Selection Grade)
prior to this
amendment will
be treated as
service rendered
on the post
mentioned in
column No.3

17) A comparative reading of the amended and unamended rules pertaining to the post held by the appellant reveals that prior to the amendment, there was a cadre post of Deputy Controller of Hospitals, and the posts of Deputy Director, CM&HO, Additional CM&HO, Deputy Controller of Hospitals, Deputy Superintendent, and Principal Health and Family Welfare Training Center were treated as equivalent posts. After the amendment, the post of Deputy Controller of Hospitals is no longer found in the cadre list enumerated in Schedule-I. The posts of Deputy Director/CM&HO and equivalent posts were mentioned and there is no equivalency with regard to the posts of Deputy Controller of Hospital/ Deputy Superintendent/Principal Health and Family Welfare Training Center. In addition to such amendment, the post of Joint Director has been re designated as Additional Director. It appears that the respondents filed an affidavit along with the unamended rules, which led the learned Single Judge to treat the post of Deputy Controller of Hospitals to which the appellant was transferred from the post of CM&HO, Udaipur as an equivalent post.

18) The learned AAG appearing for the respondents failed to bring to the notice of this Court that the post to which the appellant was transferred is still a cadre post under the Rules of 1963 and such a post is equivalent to the post which the petitioner was holding. This implies that the transfer of the appellant from the post of CM&HO to the post of Deputy Controller amounts to a reduction in rank and also amounts to deputation.

19) The principle governing the 'deputation' is clearly decided by the Hon'ble Supreme Court in the case of Umapati Choudhary v. State of Bihar, reported in (1999) 4 SCC 659, which reads hereunder:

"8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of

deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled....”

20) The Hon’ble Supreme Court also had occasion to distinguish between ‘transfer’ and ‘deputation’ in the case of *Prasar Bharti v. Amarjeet Singh*, reported in (2007) 9 SCC 539, which reads as hereunder:

“13. There exists a distinction between "transfer" and "deputation". "Deputation" connotes service outside the cadre or outside the parent department in which an employee is serving. "Transfer", however, is limited to equivalent post in the same cadre and in the same department. Whereas deputation would be a temporary phenomenon, transfer being antithesis must exhibit the opposite indications....”

21) A close scrutiny of the above decisions makes abundantly clear that ‘transfer’ is limited to equivalent posts within the same cadre and the same department, whereas ‘deputation’ refers to service outside the cadre or outside the parent department in which an employee is serving, and it is a temporary phenomenon. The concept of deputation involves a consensual and voluntary decision by the employer to lend the services of its employee, along with a corresponding acceptance of such services by the borrowing employer. It also requires the consent of the employee to go on deputation.

22) In the present case, the respondents have failed to establish that the post of Deputy Controller is a cadre post under the Rules of 1963. It was a cadre post prior to the amendment of the existing rules, which took place in the year 2012. The rules clearly removed the existing cadre post of Deputy Controller of Hospitals, and it is no longer a cadre post governed under the Service Rules of 1963. Thus, the transfer of the petitioner from the existing post of CM&HO to the post of Deputy Controller of Hospitals clearly amounts to deputation. For sending an employee on deputation, the consent of the employee is a sine qua non, which is absent in the present case. Therefore, the transfer order is liable to be set aside on this ground alone.

23) The learned AAG appearing for the respondents failed to bring to our notice that the post of Deputy Controller is still an equivalent post to that of Deputy Director/CM&HO, so as to hold that the transfer does not affect the service conditions of the appellant. The scope of this Court in the transfer matter is clearly laid down by the Hon’ble Supreme Court in the case of *Shilpi Bose (Mrs.) & Ors. v. State of Bihar & Ors.*, reported in AIR 1991 SC 532, which reads hereunder:

“4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala

fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, 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. Even if a transfer order is passed in violation of executive instructions or orders, the courts 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 complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

24) The Hon'ble Supreme Court, in the case of N.K. Singh v. Union of India and Ors., reported in (1994) 6 SCC 1998, reiterated that the scope of judicial review in matters of the transfer of a government servant to an equivalent post without adverse consequences on their career prospects is very limited, being confined only to grounds of mala fides or violation of any specific provision. In the present case, the transfer order of the appellant from the post of CM&HO to the post of Deputy Controller clearly amounts to an adverse effect on the service conditions or career prospects of the appellant since such a transfer amounts to transfer from higher post to lower post.

25) Furthermore, the concept of deputation under the Service Rules requires the consent of the employee. In the present case, the transfer of the petitioner from the post of CM&HO to the post of Deputy Controller, which is a non-cadre post, amounts to deputation, and such a transfer was made without the petitioner's consent. Therefore, the appellant has established grounds for interference with the transfer order. The learned Single Judge was misled by the respondents by producing unamended rules. Had the amended rules been brought to the attention of the learned Single Judge, the present impugned order would not have been passed. Thus, the appeal and the writ petition are required to be allowed.

26) In the result, the present appeal is allowed. The impugned order of the learned Single Judge dated 13.01.2025 passed in S.B.Civil Writ Petition No.697/2025 is set aside. The writ petition of the appellant is allowed accordingly. Consequently, the respondents are directed to take the petitioner to the post of CM&HO, Udaipur and to pay all the pecuniary benefits treating as if the petitioner was still holding the post of CM&HO, Udaipur.

27) In the circumstances, no order as to costs.

28) Pending interlocutory applications, if any, shall stand disposed of.