
(2012) 07 SHI CK 0085
In the High Court Of Himachal Pradesh
Case No : CWP No. 4889 of 2012

J.P. Kaushik

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Citation : (2012) 07 SHI CK 0085

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Ranjana Parmar, for the Appellant; Vivek Singh Thakur, Addl. A.G. for Respondent No. 1 and Mr. Ramakant Sharma, Advocate, for the Respondent

Judgement

Deepak Gupta, J.—This case is another example of the large number of cases coming before us where employees are transferred time and again without taking into consideration the interest of the public or administrative exigencies. This Court has time and again observed that normally we would never interfere in administrative orders especially of transfers except if they are actuated by mala fides or are arbitrary on the face of it.

2. However, time and again we are compelled to interfere in matters when we find that transfers are ordered just to accommodate some employees without going into the entire facts and without considering what will be the impact of such orders.

3. When a request is made by an employee that he may be adjusted at a particular station then while considering his request the State or the competent authority must consider the fact as to who is the person likely to be disturbed and whether such person also has some special requirements and whether such person has been adjusted at that station on a similar request.

4. Coming to the facts of the present case, the petitioner has challenged the order dated 22.6.2012 whereby he has been transferred from Regional Hospital Solan to Shimla Zonal Hospital. It is obvious from a perusal of this order that the

transfer was ordered at the request of respondent No. 2 Dr. Sandeep Jain. On 26.6.2012 while issuing notice we have directed the State to mention in its reply what are the places of posting of the petitioner and the private respondent. The respective stay of the petitioner and private respondent is as follows:

Dr. J.P. Kaushik (Petitioner):

Date of Birth: 18th April, 1956

Date of Appointment: 1st September, 1983

Posting Profile:

i)

C.D. Chadna

1.9.1983 to 14.7.1984

ii)

D.H. Nahan

16.7.1984 to 3.12.1984

iii)

C.H. Junga

5.12.1984 to 9.1.1986

iv)

C.H. Kandaghat

9.1.1986 to 10.6.1989 (F.N.)

v)

R.H. Solan

10.6.1989 to 23.8.1995

vi)

ESI Parwanoo (Solan)

5.9.1995 to 24.2.2001

vii)

ZH Mandi

26.2.2001 to 27.3.2003

viii)

RH Solan

28.3.2003 to 9.6.2010

ix)

DDU, ZH Shimla

10.6.2010 to 30.6.2011

x)

R.H. Solan

1.7.2011 to 28.6.2012

Dr. Sandeep Jain (Respondent No. 2)

Date of Birth: 8th August, 1966

Date of Appointment: 21.1.1993.

Posting Profile:

i)

C.H. Arki (Solan)

21.1.1993 to 30.12.1998

ii)

PG Diploma IGMCM Shimla

1.1.1999 to 29.12.2000

iii)

RH Nahan

1.1.2001 to 14.6.2002

iv)

TBS Dharampur (Solan)

15.6.2002 to 30.9.2005

v)

R.H. Solan

1.10.2005 to 14.7.2011

vi)

DDU, ZH, Shimla

14.7.2011 to 22.6.2012

vii)

RH Solan

23.6.2012 to date?

5. The aforesaid chart shows that the petitioner has also spent most of his service career in District Solan except for brief spells in Sirmaur and Shimla Districts. As far as the private respondent is concerned, his record is also similar and he has also spent most of his time in Solan and Shimla Districts.

6. The petitioner was posted to Shimla on 10.6.2010 and he made a request that he may be adjusted at Solan. His request was accepted by the competent authority and it was ordered that the petitioner be transferred from Shimla to Solan vice the private respondent in condonation of short stay of both the persons. The approval of the Hon''ble Chief Minister was obtained.

7. However, soon after respondent No. 2 joined at Shimla he also started making representations that he be adjusted at Solan and within a year a proposal was put-forth that the petitioner be transferred from Solan to Shimla and respondent from Shimla to Solan.

8. Frequent transfers not only affect the employees but also affect the working of the Hospitals. The case of the petitioner is that his son is studying in plus two class. Other grounds were also raised wherein it was stated that the petitioner is suffering from major depression since the year 2005 and is taking regular treatment from Psychiatrist at GMCH Sector-32, Chandgiarh. Thereafter, he was under treatment at Fortis Hospital Mohali. In fact the petitioner had applied for voluntary retirement but his request was not accepted and a representation was made on behalf of the petitioner that since depression had aggravated at Shimla he be transferred to Solan. This request was accepted barely a year back.

9. On the other hand, the case of the private respondent is that his wife has undergone brain surgery and is visually handicapped to the tune of 60% and therefore he prayed that he be transferred from Shimla back to Solan.

10. In the note which has been put-forward for consideration of the Hon''ble Chief Minister, it is stated as follows:

A request has been received that Dr. Sandeep Jain, Radiologist posted at DDU ZH Shimla may be transferred to TBS Dharampur being a handicapped person.

The Secretary (Health) to the Govt. of HP is requested to kindly put up above proposal on departmental file as desired by the Hon''ble Health & Ayurveda Minister, HP.

Sd/- Private Secretary to Health Minister, H.P.

The Secretary (Health) to the Govt. of HP, Shimla-2.

U.O. No. PS/HM/Health/2011-3093 the dated: 13.04.2012

11. The private Secretary to the Health Minister while putting up the note

supplied incorrect information. It is not Dr. Sandeep Jain who is handicapped but it is his wife who is handicapped. It is also apparent that it was not brought to the notice of the Hon''ble Chief Minister that just a year earlier, on the request of the petitioner, he had directed that the petitioner should go to Solan and the private respondent to Shimla. It was the duty of the official concerned to have brought all these facts to the notice of the Hon''ble Chief Minister.

12. We are of the considered opinion that it is not for this Court but for the administration to decide where an employee should be posted. The administration can also decide keeping in view the hardship of a particular employee to accommodate him at a particular station. But while doing so, the hardship which is going to be caused to the person who is to be disturbed should also be taken into consideration. We are, therefore, of the considered view that this matter should be reconsidered by the competent authority after taking into consideration all the relevant facts. We would request the competent authority to take a decision in this matter after considering the comparative hardship of both sides within two weeks of the receipt of this order. The petition is disposed of in the aforesaid terms. No order as to costs. An authenticated copy of this judgement be supplied to the parties by the Court Master during the course of the day today.