

(2012) 01 SHI CK 0129
In the High Court Of Himachal Pradesh
Case No : CWP No. 550 of 2011-A

Pawan Kumar

APPELLANT

Vs

H.P.S.E.B. Ltd. and Smt. Sangeeta Sharma, Private
Secretary, Retained in the Office of Chief Engineer (OP),
H.P.S.E.B. Ltd.

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Citation : (2012) 01 SHI CK 0129

Hon'ble Judges : Rajiv Sharma, J;Kurian Joseph, J

Bench : Division Bench

Judgement

Rajiv Sharma, J.—Petitioner was promoted to the post of Private Secretary vide office order dated 2.6.2010 (Annexure P-2) and was posted in the office of C.E. (P&M), Shimla. He joined his duties on 11.8.2010. He was again transferred from the Board's Secretariat, Shimla to the office of C.E. (OP), Central Zone, Mandi vice respondent No. 2. He joined his duties on 27.11.2010. Thereafter, he was again transferred on 31.1.2011 from the office of C.E. (OP), Central Zone, Mandi to the office of C.E. (I&P), Sundernagar vice Smt. Damyanti Devi and respondent No.2 has been retained in the office of C.E. (OP) Central Zone, Mandi. The respondent-Board has filed reply. Respondent No. 2 though served, but there is no representation on her behalf.

2. Mr. Hardeep Verma, learned counsel for the petitioner has strenuously argued that the petitioner has been transferred within a short stay of about two months without permitting him to complete the normal tenure of three years in the office of C.E. (OP), Central Zone, Mandi. He then argued that the petitioner has been transferred from Mandi to Sundernagar to accommodate respondent No. 2.

3. Ms. Anjula Khajuria, learned counsel representing respondent No. 1, has argued that the respondent No. 2 has made a representation to the competent authority and the same was accepted. Consequently, respondent No. 2 was retained at Mandi and the petitioner was transferred to Sundernagar.

4. We have heard learned counsel for the parties and gone through the pleadings carefully.

5. The petitioner has joined his duties in the office of C.E. (OP), Central Zone, Mandi on 27.11.2010. Respondent No. 2 was transferred from the office of C.E. (OP) Central Zone, Mandi to Board's Secretariat, Shimla. Respondent No. 2 was relieved by the petitioner at the time of joining his duties in the office of C.E. (OP) Central Zone, Mandi on 27.11.2010. The petitioner has only worked in the office of C.E. (OP) Central Zone, Mandi for a period of about two months. He should have been permitted to discharge his duties for a normal period of three years. Ms. Anjula Khajuria has also argued that the representation was made by respondent No. 2 to the competent authority and the same was allowed, which led to the issuance of impugned order dated 31.1.2011. The power to transfer is coupled with the duty to ensure judiciousness. The power to transfer should not be exercised arbitrarily and capriciously. The entire exercise has been undertaken by respondent No. 1-Board to retain respondent No. 2 at Mandi by transferring the petitioner to Sundernagar. Ms. Anjula Khajuria has also argued that the distance between Mandi to Sundernagar is 20-22 Kms. If that is so, there is no reason why the petitioner should have been disturbed. Rather, respondent No. 2 ought to have been transferred to Sundernagar. She has also argued that since the house of the petitioner falls under the jurisdiction of C.E. (OP) Central Zone, Mandi, he being resident of village Sain, Sub Tehsil Kotli, Tehsil Sadar, District Mandi, it was decided not to retain the petitioner in the office of C.E. (OP) Central Zone, Mandi. This fact was within the knowledge of the respondent-Board at the time of transferring the petitioner to Mandi and permitting him to join his duties in the office of C.E. (OP) Central Zone, Mandi on 27.11.2010.

6. What is "arbitrary" and "capricious?", has been explained by their Lordships of Hon'ble Supreme Court in Sanchit Bansal and Another Vs. The Joint Admission Board (JAB) and Others, as under:-

An action is said to be arbitrary and capricious, where a person, in particular, a person in authority does any action based on individual discretion by ignoring prescribed rules, procedure or law and the action or decision is founded on prejudice or preference rather than reason or fact. To be termed as arbitrary and capricious, the action must be illogical and whimsical, something without any reasonable explanation. When an action or procedure seeks to achieve a specific objective in furtherance of education in a bona fide manner, by adopting a process which is uniform and non-discriminatory, it cannot be described as arbitrary or capricious or mala fide.

7. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Transfer order dated 31.1.2011 (Annexure P-6) is quashed and set aside qua the petitioner. The respondent No. 1-Board is directed to permit the petitioner to discharge his duties in the office of C.E. (OP) Central Zone, Mandi till he completes his normal tenure of three years. The pending application(s), if any, also stands disposed of. No costs.