
(2018) 06 UK CK 0088

In the Uttarakhand High Court

Case No : Writ Petition No. 1662 (S/S) of 2018

Subhash Chandra Bijalwan

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 20-06-2018

Acts Referred:

Transfer Act, 2017 — Section 22, 22(4)

Citation : (2018) 06 UK CK 0088

Hon'ble Judges : SHARAD KUMAR SHARMA, J

Bench : Single Bench

Advocate : Manoj Kumar, M.C. Pant, T.S. Bisht

Final Decision : Disposed Off

Judgement

Sharad Kumar Sharma, J.

Under the Transfer Act of 2017, under Sub Section (4) of Section 22, it contemplates the filing of statutory representation by a person who is

aggrieved by the order of transfer, subject to the condition that the transfer order unless suffers from some vital defect, which has a bearing on the

order itself.

2. Though the period provided under law for filing the representation as contemplated under Section 22 (4) of the Transfer Act is three days but at

times it may be too short a period for a person to represent his cause particularly keeping in mind topography of State, climatic conditions, Limited

Transfer System, literacy etc., as such, the said period has to be rationally considered so that the intention of attracting Sub Section (4) of Section 22

provided in the statute is achieved and the grievance of the applicant to represent may be redressed on the administrative level itself.

3. In the instant writ petition, the petitioner questions the order of transfer dated 09.06.2018, by virtue of which, the respondent no.2 has transferred

the services of the petitioner from Provincial Division, P.W.D., Uttarkashi to Provincial Division PMGSY Division, P.W.D., Kalsi, Dehradun, i.e.

apparently to a Sugam Area.

4. The ground for challenge to the transfer order by the petitioner is contained in paras 6 and 9 of the writ petition, which is quoted hereunder:-

“6. That similarly section 17 provides for considering the proposal for transfer by a committee and section 17 (b) also deals with the similar

provisions in respect of consideration of transfer in respect of the employees comes under the category provided under Section 3 etc. Similarly clause

17 (c) provides for procedure for transfer by preparing a list for purpose of transfer from Durgam Area to Sugam Area by taking into consideration

the entire length of service of the employee and by placing accordingly the same in the descending order by keeping the person at first place who has

having maximum service in Durgam Area and accordingly in the event of vacancy the optional place will be allocated.

9. That apart from this the transfer act which itself provide a mechanism to do a particular act in a prescribed manner but in the instant case the action

of the respondents itself reveals that they have not acted in terms of the provisions of the transfer act, thus the impugned order is not sustainable in the

eyes of law. Moreover, the transfer order of the petitioner does not indicate that who is the person going to join in place of him. Therefore, the

transfer order is itself an act of colorable exercise of powers and is in transparent.”

5. For redressal of his cause, petitioner has already filed a representation on 17.04.2018 and on 10.06.2018 before respondent nos.2 & 3, as such, at

this stage, this Court is refraining to consider the writ petition on merits and to record any finding on merits of the matter, thus this writ petition is

disposed of with a direction to respondent no.3 to take a decision on the representation of the petitioner, which he has invoked for redressal of his

grievance raised in the representation, itself as well as the ground of challenge to the transfer as extended in paras 7 and 9 of the writ petition, the

decision on the representation is positively expected to be taken within a period of one month from the date of service of order. However, it will not be

rejected on ground that the same has been filed after three days of passing of transfer order as provided under Section 22(4) of the Transfer Act. The reason being that petitioner had already preferred representation on 10.06.2018 before Respondent No.3, which was well within time.

6. Though by issuing the direction to decide the representation within one month by extending the period for filing the representation as contemplated under Section 22(4), the rational consequences of the penal action of Sub Section (4) of Section 22 itself would have a bearing based on the decision on the representation taken in compliance of today's order.

7. Subject to the above observations, writ petition stands disposed of.

8. However, there would be no order as to costs.