
(2012) 02 PAT CK 0053
In the Patna High Court
Case No : CWJC No. 1662 of 2012

Tarini Kumar Nandi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-02-2012

Acts Referred:

Citation : (2012) 3 PLJR 704

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Sharda Nand Mishra, Sanjay Kr. Jha, Rananjay Kumar, Vevika Jha, for the Appellant; Ajit Kumar, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioner and the State. The petitioner is aggrieved by the order dated 18/19.10.2011 by which his representation against his transfer to Bhagalpur from Banka has been rejected.

2. The petitioner came to the Court earlier in C.W.J.C. No. 11671 of 2011 contending that Government Circulars provide that in the last year of retirement a person should be given a posting of his choice. He has been transferred on 28.6.2011 and is due for superannuation on 30.4.2012. The Court observed that the Clause was not mandatory. He may represent.

3. The Government Circular provides that to the extent possible any such request is to be sympathetically considered. It is a discretionary power. The purpose is salutary, not to disturb a person months before his superannuation. An order of transfer creates an upheaval in a settled life, though it is an incident of service.

4. An administrative circular may not necessarily create a vested right in a Government servant to demand adherence. But the circular binds the respondents. They cannot at their will and option followed the circular and at other times arbitrarily reject it. If permitted it will give right to favoritism and nepotism. An administrative order is required to be reasoned. This duty becomes

more onerous when it vests discretionary powers. An order without reasons is bad. It is worse when it relates to exercise of discretionary power. Reasons ensure its use and not abuse.

5. The observation in Bharat Petroleum Corpn. Ltd. Vs. Maddula Ratnavalli and Others, at Paragraph-16 are opposite:--

16. An executive action must be informed by reason. An unfair executive action can only survive for a potent reason. An action which is simply unfair or unreasonable would not be sustained. Objective satisfaction must be the basis for an executive action. Even subjective satisfaction on the part of a State is liable to judicial review.....

6. Counsel for the petitioner also relies upon a recent instruction dated 13.7.2011 of the Rural Development Department calling for a report where transfer orders have been passed in the last year of service.

7. The impugned order dated 18.10.2011 is set aside. The respondents are required to pass a reasoned and speaking order considering all aspects of the matter including that the superannuation is barely two months away. The writ application is allowed.