

(2023) 10 SHI CK 0067

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2197 Of 2023

Union Of India And Others

APPELLANT

Vs

Sanjay Sharma And Another

RESPONDENT

Date of Decision : 30-10-2023

Acts Referred:

Citation : (2023) 10 SHI CK 0067

Hon'ble Judges : M.S. Ramachandra Rao, CJ;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Rajiv Jiwan, Prashant Sharma, S.D. Gill

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Learned Central Administrative Tribunal vide impugned judgment, dated 28.11.2022 quashed and set aside the order dated 25.01.2022 whereby the transfer order dated 11.01.2022 was cancelled by the petitioner-employer.

2(i) Respondent No. 1 was working as Telecom Technician in Bharat Sanchar Nigam Limited (BSNL). He was posted in the office of SDO (Area) Solan. He made a request to the competent authority for his transfer to Core Network Transmission. His request was exceeded to by the authorities. Vide order dated 11.01.2022, respondent No. 1 was transferred to SDE CN-Tx (North) BSNL Solan.

2(ii) Pursuant to the transfer order dated 11.01.2022, the employee/respondent No. 1 was relieved from the strength of SDO (Area) Solan on 15.01.2022 with further direction to join under SDE CN-Tx (North) BSNL Solan. Respondent No. 1 joined at the transferred station on 15.01.2022 itself.

2(iii) The transfer order dated 11.01.2022 was cancelled by the writ petitioners on 25.01.2022.

2(iv) The order passed on 25.01.2022 cancelling respondent No.1's transfer

order dated 11.01.2022, was assailed by respondent No.1 before the Administrative Tribunal in O.A. No. 063/251/22. The O.A. was allowed on 28.11.2022. The learned Tribunal held that transfer order cannot be cancelled after its execution. A review application No. 01/2023 filed by the writ petitioners/ employer for review of the order dated 28.11.2022 was dismissed on 10.01.2023.

2(v) Assailing the order dated 28.11.2022, passed in the O.A. and the order dated 10.01.2023 dismissing the review application, the employer has instituted this writ petition.

3. Learned Senior Counsel for the writ petitioners submitted that the transfer order dated 11.01.2022 was not passed by a competent authority-the General Manager. The authority issuing the transfer order, only had the charge of the post of General Manager on account of COVID leave of the regular incumbent. It is for this reason that the same was cancelled on 25.01.2022. That distance between the place where respondent No. 1 was serving prior to passing of the transfer order dated 11.01.2022 and the place he was posted under order dated 11.01.2022 is only 5 Km. Hence, no mileage can be drawn by respondent No. 1 from the fact that he had joined pursuant to the transfer order dated 11.01.2022.

Opposing the writ petition and defending the impugned orders dated 28.11.2022 & 10.01.2023, learned counsel for respondent No. 1 contended that there was no illegality in the order dated 11.01.2022 transferring respondent No. 1 from SDO (Area) Solan to SDE CN-Tx (North) BSNL Solan. It was also highlighted that even though the learned Tribunal had allowed the O.A. on 28.11.2022, yet respondent No. 1 till date has been made to work at SDO (Area) Solan i.e. the place where he was serving prior to the issuance of transfer order dated 11.01.2022. This fact was countered by learned Senior counsel for the writ petitioners by putting forth that the operation of the impugned orders passed by the learned Tribunal was stayed under the interim order dated 27.04.2023 passed in this writ petition.

4. We have heard learned counsel on both sides and gone through the case record.

4(i) We are not impressed with the argument raised for the employer/writ petitioners that the transfer order dated 11.01.2022 was not passed by the competent authority. It is the writ petitioners' own case that the authority that passed the order on 11.01.2022 transferring the petitioner to SDE CN -Tx (North) BSNL Solan had the rightful charge of the post of General Manager i.e. the competent authority. Having the charge of the competent authority, the order passed by the said authority on 11.01.2022 cannot be said to be without competence.

4(ii) It was the writ petitioners (the employer) which relieved respondent No. 1 from the strength of SDO (Area) Solan on 15.01.2022 with further direction to him to join the transferred station at SDE CN-Tx (North) BSNL Solan. Pursuant to the transfer order dated 11.01.2022 and relieving order dated 15.01.2022, respondent No. 1 joined at the transferred station on 15.01.2022. There was

neither any illegality in transfer of the petitioner under the order dated 11.01.2022 nor in his relieving and joining the transferred station on 15.01.2022 pursuant to the aforesaid transfer order.

4(iii) The order dated 25.01.2022 cancelling respondent No.1's transfer ordered on 11.01.2022, only on the alleged ground that the transfer order dated 11.01.2022 was not issued by the competent person, therefore, cannot be justified. The learned Tribunal did not commit any error in allowing the O.A. moved by respondent No. 1.

5. In view of the above, this writ petition fails and is dismissed. The petitioners (employer) are directed to forthwith give effect to the transfer order dated 11.01.2022 qua the petitioner. Pending applications, if any, also stand disposed of.