

**Sunil Kumar Pandey and anr. Vs. the State of Bihar and ors.**

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**Court :** Patna

**Decided On :** Aug-03-2001

**Judge :** S.N. Jha, J.

**Appeal No. :** Civil Writ Jurisdiction Case Nos. 8337 and 9168 of 2001

**Appellant :** Sunil Kumar Pandey and anr.

**Respondent :** The State of Bihar and ors.

**Disposition :** Writ Petition Allowed

**Judgement :**

**S.N. Jha, J.**

1. These two cases, heard together, are disposed of by this common order. The petitioner of CWJC No. 8337/2001 has been transferred from Motihari to Bettiah on the same post of Anchal Adhikari in place of petitioner of CWJC No. 9168/2001 who has been transferred to Saraiya in Muzaffarpur district. Being himself aggrieved by the order he naturally supports the petitioner in CWJC No. 8337/2801 wherein he figures as respondent No. 9. Shanker Baitha has been posted in place of petitioner of CWJC No. 8337/2001 as Ancdhal Adhikari, Motihari. He is respondent No. 10 in the case and is the real contestant. The cases being connected were accordingly heard together.

2. The case of the petitioners is that the impugned orders of transfer are violative of the transfer policy contained in Resolution No. 3918 dated 25-10-1980 of the Cabient Secretariat and Co-ordination Department which lays down the procedure of transfer and posting of the Government servants. The resolution provides for an Establishment Committee, amongst other things, to consider the cases of the officers ripe for transfer. According to the petitioners their cases were not considered by the Establishment Committee, they were in fact not in the transfer list but their names were added to the list by the Minister-in-Charge, Revenue.

3. Two counter-affidavits have been filed on behalf of the Department, The substance of the respondents' case is as follows. The impugned transfers were made after following the laid down procedure in a chain of transfer involving 36 persons 'duly passed by the Establishment Committee'. The normal tenure of the Anchal Adhikari as per Resolution No. 310 dated 17-6-1998 of the Revenue and Land Reforms Department is two years as against which petitioner of CWJC No. 8337/2001 had remained on the post for two and half years. It may be mentioned here itself that so far as the petitioner of CWJC No. 9168/2001 is concerned it is not in dispute that he had served at Bettiah nearly for 8 months. He has been transferred from Bettiah as a result of posting of the petitioner of CWJC No. 8337 of 2001. The further case of the respondents is that under Rule 22 of the Rules Executive Business proposals regarding transfer and posting are required to be placed before the Minister-in-Charge who has power to change the proposal or add to the list on administrative ground and in public interest.

4. I have looked into the relevant file of the Revenue and Land Reforms Department (File No. 3/An Astha-Baithak-16/2001) which was produced by the State Counsel for perusal. The following facts emerge from it. The impugned notifications dated 30-6-2001 were sequel to the recommendations of the Establishment Committee dated 27-6-2001. The Committee avowedly took up consideration of such Anchal Adhikaries who had completed tenure of three years or had made representations though in the notes of the Under Secretary of the Department dated 27-6-2001 communicating the gist of the recommendation of the Committee to the Commissioner and Secretary, he mentioned that in making proposals the Committee had also taken into account the recommendations of the

Ministers/MLAs/MLCs. The list of the Officers (Anchal Adhikaries) whose transfer was proposed by the Committee does not contain the names of the petitioners their transfer was proposed straightway by the Minister-in-Charge. It may be mentioned here that State Minister had also suggested some transfers/postings different from what the Establishment Committee had recommended, the Minister-in-Charge apparently ignored them and had his own say.

5. It is true that under Rule 22(3) of the Rules of Executive Business transfer proposals are enquired to be placed before the Minister-in-Charge, object whereof cannot be other than to obtain his approval. This is apparent from the words for orders' occurring in Sub-rule (3) of Rule 22 of the said Rules. It is thus, open to the Minister not to approve any proposal submitted to him. Question is can he add names on his own? In my opinion, he may modify the proposals and change the places of postings suggested by the Establishment Committee but only vis-a-vis those who are proposed to be posted at particular places and whose names find place in the list. I have doubts if he can add names. It is relevant to mention here that in the instant case as many as 16 new names were added by the Minister at his level. This included these two petitioners. The words 'shall be placed before the Minister-in-Charge ... for orders along with the recommendation of the Establishment Committee' in Sub-rule (3) of Rule 22 suggest that the Minister should confine himself the list placed before him by the Establishment Committee. The rule may be quoted as under:

Proposals regarding transfer/posting and deputation of officers other than those mentioned in Rule 32 (ix), (ix)(i) and (ii) whose maximum pay in the pay scale exceeds Rs. 2900, but does not exceed Rs. 4500 shall be placed before the Minister-in-Charge through the departmental Commissioner and Secretary for orders along with the recommendation of the Establishment Committee...

6. The Establishment Committee while considering cases for transfer and posting is normally supposed to take into consideration the particulars of previous postings, the home district of the officers etc. on the basis of records. If the Ministers were permitted to add to the names without records of the Officers available before him he may be committing mistake. The above observations

should not be understood to mean that the Minister has no power to suggest transfer and posting of an Officer on his own in appropriate cases, but then if he desires to transfer any such Officer it is open to him to ask the Establishment Committee to consider the matter at the first instance.

7. I do not find any substance in the case of the respondents that normal tenure on the post of Anchal Adhikari is two years. Para 3 of the Resolution No. 310 dated 16-7-1998 provides for two years tenure in the Divisions, Districts and Sub-Divisions. The post of Anchal Adhikari cannot be said to be a post at the Divisional, district or Sub-divisional level. As a matter of fact para 1 of the said resolution clearly states that ordinarily tenure of an officer at a place shall be three years, though as mentioned in para 2 of the resolution it is open to the Government to transfer officers of the Department i.e. Revenue and Land Reforms Department (as, Indeed, officers of any other department) at any time even before the expiry of three years tenure on administrative grounds or in special circumstances in public interest. There is no material in this case either in the aforesaid file or brought on record of these cases to suggest that the petitioners' transfer was on administrative ground, that at any stage any complaint was made against them which could justify their premature transfer. In the facts and circumstances I am inclined to think that the petitioners have been transferred to accommodate Shanker Baitha. He as originally proposed to be posted at Khalgaon in Bhagalpur District. Though the Minister was not bound by the said proposal and it was open to him to post him at any other place but he could do so only vis-a-vis the officers whose transfer and posting had been proposed by the Committee, not at the cost of the petitioners. Inasmuch as the Establishment Committee was not at all consulted, rather ignored, the transfer of the petitioners cannot said to be in accordance with law.

8. This conclusion of mine is in accord with the Bench decision of this Court in *Man Singh v. The State of Bihar and Ors.* 1982 BBCJ 392. In the context of similar resolution of the State Government providing for transfers/postings on the recommendations of the Establishment Committee, this Court held that the provision was directory but there should be substantial compliance. The Court summed up the legal position in these words (at page 398):

The final position, therefore, that emerges in my opinion, is:

- (a) The executive instructions contained in Annexure-5 are directory.
- (b) Although directory they are nevertheless to be followed.
- (c) Where an order of transfer is made without scrupulously following the procedure laid down therein, and there is substantial compliance of the instructions it cannot be held that the order is invalid or vitiated.
- (d) A total failure to comply with a significant part of the requirement of the instructions cannot be regarded as substantial compliance with the total requirement.

At page 399 of the report the Court explained as to what was meant by substantial compliance as under:

Before closing the discussion on this aspect of this case, I may, by way of an illustration, indicate as to what may not constitute substantial compliance of the instructions.... Similarly where the Establishment Committee is completely ignored in the matter of general transfer and that too would not amount to substantial compliance.

9. The Court noticed the observations of the apex Court in *Pratap Singh v. Shri Krishna Gupta and Ors.* : [1955]2SCR1029 and I am tempted to quote the same as under:

Some rules are vital and go to the root of the matter; they cannot be broken ; others are only directory and breach of them can be overlooked provided there is substantial compliance with the rules read as whole and provided no prejudice causes....

10. In the result, the impugned notifications dated 30-6-2001 which are part of Annexure-1 in both the cases so far as it relates to the petitioners are quashed and these writ petitions are allowed.