

**Mohinder Nath Vs. State and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/42070](http://sooperkanoon.com/42070)

**Court :** Jammu and Kashmir

**Decided On :** Feb-09-2015

**Judge :** Honble Mr. Justice Bansilal Bhat-Judge

**Appellant :** Mohinder Nath

**Respondent :** State and Others

**Judgement :**

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU SWP No. 1602 OF2013  
Mohinder Nath Petitioners State and others Respondent !Mr.S.K.Anand, Advocate  
^Mr. G.S.Thakur, GA for R-1 to 3. Mr. Rahil Raja, Advocate for R-4 Honble Mr.  
Justice Bansilal Bhat-Judge Date:

09. 02.2015 :

## **JUDGMENT**

:

1. Petitioner is aggrieved of order No.85-DCP of 2013 dated 17.07.2013 issued by respondent no.2 by virtue whereof petitioner has been transferred and posted as Senior Assistant of Inspection Division Jammu in place of private respondent no.4 who stands transferred and posted as Senior Assistant of EM and RE Wing (ED) Kathua in place of the petitioner. The impugned order is assailed on the ground that the same violates SRO343of 2004 read with the circular No.48 GAD of 2009

dated 23.11.2009. The impugned order is also assailed on the ground that the same is against the statutory policy, has been passed without jurisdiction and the same does not assign any reason for effecting the transfer.

2. Respondents 1 to 3 have contested the petition pleading that the post of Senior Assistant held by the 2 petitioner on substantive basis was a Divisional Cadre Post and any Senior Assistant could be transferred to any particular Division/Office within the Jammu Division. It is further pleaded that the petitioner was previously posted at Jammu and in terms of order dated 10.03.2011, he was transferred from Jammu and adjusted in EM and RE Circle Kathua which was accepted by him. But when he was transferred in terms of impugned order from Kathua to Jammu, he raked up the issue through the medium of present writ petition on the ground of jurisdiction and cadre. It is pleaded that the petitioner is estopped from questioning the validity of impugned transfer order. It is further pleaded that the impugned order has been issued in the interest of administration and respondent no.2 has the jurisdiction to pass the said order.

3. Private respondent No.4 has filed objections pleading that petitioner being a Senior Assistant of Department of Power Development is liable to be transferred to any wing of Power Development Department and power to effect such transfer vests with the Development Commissioner Power. It is further pleaded that SRO343of 2004 has been repealed by J&K Civil Services (Decentralization of Powers Act), 2010 and the Rules framed thereunder. Thus, it is 3 pleaded that petitioner could not have relied upon the repealed SRO. It is further pleaded that the impugned order has been passed by the Competent Authority and the petitioner has been shifted from one Division to another within the same Divisional Cadre.

4. In view of the objections raised to the maintainability of the petition, the petitioner sought amendment in the writ petition to incorporate the provisions of Rule 23 of Jammu and Kashmir Civil Service Decentralization and Recruitment Act, 2010 instead of SRO343of 2004 which was allowed.

5. Heard the rival sides.

6. It is argued on behalf of petitioner that the petitioner working as Senior Assistant in the Office of EM and RE Division Kathua is a Divisional Cadre employee and as such can be posted only against a Divisional Cadre Post. It is contended that in terms of the impugned transfer order, petitioner has been transferred against the State Cadre post though the seniority of petitioner was maintained by respondent no.3 at the Divisional level whereas the seniority of State Cadre employees was maintained by respondent no.2 at State Level. The argument advanced on behalf of petitioner is refuted by learned counsel for respondents who maintains that the impugned transfer order has been passed by competent authority in the interest of administration and in absence of allegations of malafides, bias or prejudice, petitioner cannot assail the same. It is further contended on behalf of learned counsel for respondents that petitioner had been asked to swap his position with private respondent no.4 within Jammu Division and the petitioner was estopped from assailing the impugned order as he had earlier been transferred from Jammu to Kathua in 2011 in similar circumstances to which he had not at all objected. It is lastly contended on behalf of respondents that the petitioner has completed his tenure at Kathua and he being a resident of Jammu should have no grievance against his transfer back to his place of residence.

7. Rule 23 of the Jammu and Kashmir Civil Services Decentralization and Recruitment Rules, 2010 lays down that a member of the State, Divisional or District Cadre can be transferred only within his own cadre and shall in no case be transferable from one divisional cadre to another divisional cadre or from district cadre to another district cadre. Divisional Cadre post is defined in Section 2 (c) of the Jammu and Kashmir Services Decentralization and Recruitment Act, 2010 which reads as under:

2. c). Divisional Cadre means the cadre of a department in a Division comprising the following posts:- 5 (i) All non-gazetted posts the basic pay of which exceeds the basic pay for the post of Senior Assistant but does not exceed the basic pay for the post of Sectional Officer and does not include the posts falling under the State Cadre; (ii) Such gazette posts or services as the Government may from time to time notify in this behalf. 8. However, Section 4 of the aforesaid Act providing for constitution of District, Divisional and State Cadres of the services provides that

while the District, Divisional and State Cadres of the services shall be organized on Department Basis, the State Government may by notification exclude a post or a category of posts ordinarily falling within District or Divisional Cadre and include it in the Divisional or State Cadre. Admittedly, petitioner as well as private respondent no.4 are Senior Assistants which is included in the Divisional Cadre. It is not disputed that previously in the year 2011, petitioner was transferred from P&D Wing Jammu in terms of Order No.95-DCP of 2010 dated 10th March, 2011 passed by respondent no.2 to EM and RE Wing Kathua and some promotees borne on the State Cadre were adjusted in EM and RE Wing Jammu. Subsequently, in terms of order No. CEJ/Adm. 69 of 2011 dated 11.03.2011, petitioner was adjusted in EM and RE Division Kathua. It is also not in controversy that the petitioner had accepted the said order of adjustment in EM and RE Circle Kathua. It is, therefore, absurd on the part of 6 petitioner to assail the impugned order on the ground that the order has been passed by an incompetent authority without jurisdiction and the transfer being intra cadre is prohibited by the statute. Admittedly the petitioner has completed his tenure of posting at Kathua and in terms of impugned order he is sought to be transferred back to Jammu Wing. It is rightly pointed out by respondents that the petitioner, hailing from Jammu, should have no cause for grievance when he is being transferred back to his home town. Moreover, petitioner is estopped from agitating the ground raised in the petition in the face of having accepted his transfer and adjustment in terms of orders dated 10th March, 2011 and 11th March, 2011 forming Annexures B and C to the petition. Petitioner and private respondent no.4, by virtue of the impugned order, have been directed to swap their places of posting in the interest of Administration and the impugned order has been passed by respondent no.2 having jurisdiction to pass such order. The Jammu and Kashmir Civil Service Decentralization and Recruitment Act, 2010 providing for constitution of District, Divisional and State cadres does not prohibit streamlining of such cadres and power vests with the Government to include a member of the District or Divisional Cadre in Divisional Cadre or 7 State Cadre. The transfer in the instant case is within the same cadre, though from one wing to another. The post of Senior Assistant held by the petitioner is a Divisional Cadre post and he could verily be transferred to any particular Wing/Office within Jammu Division. That being the position of law, there

is no cause for grievance to petitioner whose pay scale, position or status is not being affected.

9. The impugned order has not been assailed on the ground that the same was actuated by any malafide intention on the part of competent authority or that his transfer was premature. It is well settled that transfer is an exigency of service and no employee has got a vested right to a particular office. In absence of allegations of malafide intention, no prejudice can be claimed by the petitioner. The impugned order is legally sustainable and does not suffer from any infirmity or want of jurisdiction.

10. The petition being devoid of merit is dismissed. Interim direction, if any, shall stand vacated. (Bansi Lal Bhat) Judge Jammu Varun Bedi\* February 09, 2015

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