



2025:CGHC:11255



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5097 of 2024

1 - Dr. Paritosh Kudesia S/o Late B.B. Kudesia Aged About 64 Years, In Charge Chief Medical and Health Officer, Mahasamund

... Petitioner

versus

1 - State of Chhattisgarh Through Secretary, Department of Health and Family Welfare, Mahanadi Bhavan, Nawa Raipur, Atal Nagar C.G

2 - Collector Cum District Magistrate, District Mahasamund C.G

3 - Dr. Kulwant Singh, Medicine Specialist, Community Health Centre, Tumgaon, District Mahasamund C.G

... Respondents

(Cause title is taken from Case Information System)

For Petitioner	:	Shri Raja Sharma, Advocate
For State/Respondents No.1 and 2	:	Shri Sabyasachi Choubey, Panel Lawyer

Hon'ble Shri Justice Amitendra Kishore Prasad

Order on Board

06/03/2025

- The instant petition has been preferred against the transfer order dated 16/08/2024 passed by the Special Secretary, Government of Chhattisgarh, Public Health and Family Welfare Department (Annexure P1). The grievance of the petitioner is against his transfer from the post of Incharge Chief Medical



and Health Officer, Mahasamund to the post of Surgical Specialist in District Hospital affiliated to the Medical College to accommodate respondent No. 3 as Incharge Chief Medical and Health Officer, Mahasamund despite the fact that the petitioner who has less than a year left for his retirement was appointed to the present place of his posting just a year before on his own request and that the respondent No. 3 is not only much junior to the petitioner but also the petitioner being a personnel from administrative/non-clinical wing is not qualified to hold the post of Surgical Specialist to which he is being transferred. The petitioner who is an MBBS was appointed in service on 23.11.1985, he joined service on 14.12.1985 and was regularised on 6.10.1989. The petitioner was born on 20.08.1960 and has less than a year left for his retirement. As per rules, he will retire from service on 31.8.2025. The respondent No. 3 who was appointed on 09.10.2009 is much junior to the petitioner.

2. By this petition, the petitioner seeks the following reliefs:

“a) Allow the instant petition with consequential relief

b) Quash the impugned Order bearing number F - - 66 / 2024 / 17 / 1 Dated 16/08/2024 Nawa Raipur, Atal Nagar passed by State of Chhattisgarh under signature of Special Secretary, Department of Health & Family Welfare, Mahanadi Bhavan, Nawa Raipur, Atal Nagar CG QUA PETITIONER (Annex. P/1);

c) Grant such further and/or other order or orders be passed and/or direction or directions, as to this Hon'ble Court may deem fit and proper.”

3. Learned counsel appearing for the petitioner submits that the order impugned is arbitrary and against all canons of administrative law. The impugned transfer is in gross violation of the general policy of the State Government



which regulates transfers during ban period by requiring coordination and prohibiting frequent transfers, prohibiting transfer of employees at the fag end of their service and prohibiting transfer which would result in giving charge of the post to a junior. The policy of the State Government prohibits giving charge of the post to a junior. The petitioner is not qualified to hold the post to which he is transferred. The transfer is bad because it is ordered to accommodate respondent No. 3. The transfer is against the policy of the State Government because the petitioner has less than a year left for his retirement. The impugned transfer is bad because the petitioner was appointed to the present place of his posting just a year before on his own request. Hence, it is prayed that the impugned transfer order may be quashed.

4. Learned counsel appearing for the State/respondents No.1 and 2 submits that challenge of the petitioner is on the ground that the respondent No.3 is much junior to the petitioner and the same is in violation of the general policy of the State Government which regulates transfers during ban period by requiring coordination and prohibiting frequent transfers and prohibiting transfer of employees at the fag end of their service. It is further submitted that by the impugned order the petitioner has been posted in view of the administrative exigencies. It is submitted that the respondents authorities are the administrative department of the petitioner and, therefore, they have the authority to post the employees in view of the administrative exigency at appropriate places looking to the efficiency of the employees. It is further submitted that the transfer is an exigency of service and the petitioner being a government servant cannot escape from being transferred by the department in view of the requirement and administrative exigency arising from time to time. The State Government has framed transfer policy and as per the transfer



policy if any person is aggrieved by the transfer order he may approach the Transfer Redressal Committee of the State, as constituted, in compliance of the directions of the Hon'ble Court. But, the petitioner has directly rushed to this Court without exhausting the said remedy and, therefore, the present petition deserves to be dismissed. The transfer is an incident of service and no employee can claim to remain posted at a particular post forever. The transfer order can be challenged only on the following grounds, namely,—

- i. In violation of any statutory rules.
- ii. Transfer order is made with *mala fide* intention.
- iii. Not passed by any competent authority.

So far as the ground taken by the petitioner that the petitioner is senior to the respondent No.3 and respondent No.3 is much junior to the petitioner and further as per the circulars of the State Government the charge should not be given to junior employees bypassing the senior employees, in this regard, it is submitted that the services of the petitioner and respondent No.3 are governed by the Chhattisgarh Public Health and Family Welfare (Gazetted) Service Recruitment Rules, 1988 and in the said Rules there is 2 different cadres one is of Specialist and another is of Medical Officer. The petitioner and the respondent No.3 are employees of the cadre of Specialist. It is further submitted that owing to the administrative exigency initially vide order dated 26/04/2023 the petitioner was posted as Incharge Chief Medical and Health Officer, District Mahasamund temporarily till further orders and owing to the administrative exigencies the present respondent No.3 has been posted as Incharge Chief Medical and Health Officer, District Mahasamund. It is further submitted that the post of Chief Medical and Health Officer is a promotional post amongst the Specialist and Medical Officer at the ratio of 25% and 75%



of District Health Officer as per the provisions of the Chhattisgarh Public Health and Family Welfare (Gazetted) Service Recruitment Rules, 1988 and the posting of the respondent No.3 is purely owing to the administrative exigencies. Hence, the instant petition on this ground is not required to be interfered with.

5. True it is that the transfer is an exigency of service and the petitioner being a government servant cannot escape from being transferred by the department in view of the requirement and administrative exigency arising from time to time, but, the fact is that when the employee/petitioner has less than a year left for his retirement and he is going to retire from service within about 6 months from today, i.e., on 31.8.2025, the impugned transfer order cannot be held to be proper as per the policy of the State Government. The transfer order cannot be considered to be in the interest of justice and accordingly the same is interfered with on this ground alone.
6. Thus, the writ petition is **allowed**. The impugned transfer order dated 16.8.2024 (Annexure P1), so far as it relates to the petitioner, is hereby quashed. The order of stay granted by this Court on 27.8.2024 with regard to posting of the petitioner stands modified.
7. No order as to costs.

Sd/-

(Amitendra Kishore Prasad)

JUDGE