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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 17th OF MARCH, 2023

WRIT PETITION No. 4616 of 2023

BETWEEN:-

**PRAMOD SHRIVASTAVA S/O SHRI RAM SWAROOP
SHRIVASTAVA, AGED ABOUT 59 YEARS, OCCUPATION:
FOREST GUARD R/O BERASIYA, TAHSIL BERASIYA,
DISTRICT BHOPAL (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI AMBUJ JAIN - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THR.
PRINCIPAL SECRETARY DEPTT. OF FOREST
VALLABH BHAWAN BHOPAL (M.P.) (MADHYA
PRADESH)**
- 2. ADDITIONAL SECRETARY DEPARTMENT OF
FOREST DISTRICT BHOPAL (MADHYA PRADESH)**
- 3. DIVISIONAL FOREST OFFICER GENERAL FOREST
DIVISION BHOPAL DISTRICT BHOPAL (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI SHIV KUMAR SHRIVASTAVA - GOVERNMENT ADVOCATE)

.....
*This petition coming on for admission this day, the court passed the
following:*

ORDER

OIC Shri Alok Pathak, Conservator of Forest and DFO, Bhopal, is present in person.

- 2. The petitioner has filed this writ petition being aggrieved of transfer order dated 25.01.2023 (Annexure P-4) in which petitioner's name appears at**

S.No.15, whereby the petitioner is transferred from General Forest Division, Bhopal to General Forest Division, Vidisha.

3. It submitted by the learned counsel for the petitioner that petitioner was working as Forest Guard. It is a post of district cadre. A fact which is accepted by OIC Shri Alok Pathak, Conservator of Forest and DFO, Bhopal.

4. It is submitted by Shri Pathak that under extraordinary circumstances, petitioner has been transferred from Bhopal to Vidisha. It is submitted that such transfer is permissible and petitioner's lien will be maintained at Bhopal.

5. In support of his contention, OIC Shri Alok Pathak has produced Forest department circular dated 10/9th August, 1986, which deals with determination of seniority on request transfer from one region to another. Opening lines of the circular reads as under:-

"वन विभाग में पदस्थ कमचारियों के स्वेच्छा से एक क्षेत्र से दूसरे से क्षेत्र में स्थानांतरण के संबंध में"

6. Thus, it is evident that the guidelines which have been issued are in relation to own request transfers and not for the administrative transfers.

7. OIC is trying to mislead the High Court. There is no material to show that transfer of the petitioner was made on own request, therefore, the aforesaid circular will not be applicable.

8. OIC has not brought on record any document to show that there is any provisions under the Rules to maintain the lien in one district and transfer the employee to another district especially when he belongs to the district cadre. OIC Shri Pathak also admits that he had not obtained file in which case of the petitioner was processed for transfer giving reasons for his transfer from one district to another. Thus, it is evident that OIC, who was duty bound to have

obtained file and instructions from the State Government, inasmuch as, transfer order is issued by the Additional Secretary, Government of Madhya Pradesh, Forest Department, has failed to perform his duties as an OIC.

9. At this stage, Shri Pathak submits that he has obtained instructions from the State Government.

10. When he is asked to show the instructions which were obtained by him then he submits that he was given verbal instructions. These instructions were given by Additional PCCF (Administration-2) Shri Mohanta.

11. However, fact of the matter is that transfer order is issued by the Additional Secretary, Government of Madhya Pradesh. Instructions were required to be obtained from the Additional Secretary, Government of Madhya Pradesh or the Principal Secretary, Government of Madhya Pradesh, as the case may be. Additional PCCF is not the State Government. He is an employee of the department. He is not the employee of the Mantralaya. Therefore, instructions were obtained from an inappropriate authority. OIC was required to exert and should have approached Mantralaya to look into the file in which case for transfer of the petitioner was processed.

12. Therefore, oral submission of Shri Alok Pathak that there was some exigency and, therefore, petitioner was transferred, since is not made out from the order and the conduct and working of the State Government is required to be transparent, order being not transparent and having been passed in violation of the rules of maintenance of district cadre, petition is allowed. Impugned order as far as it relates to the petitioner is quashed.

13. At this stage, learned counsel for the petitioner submits that petitioner has not been paid salary for not joining at Vidisha.

14. Since petitioner was granted interim protection by this Court, it is

directed that the department shall release his payment forthwith within seven days from today, failing which petitioner will be free to move appropriate application for non compliance of the orders.

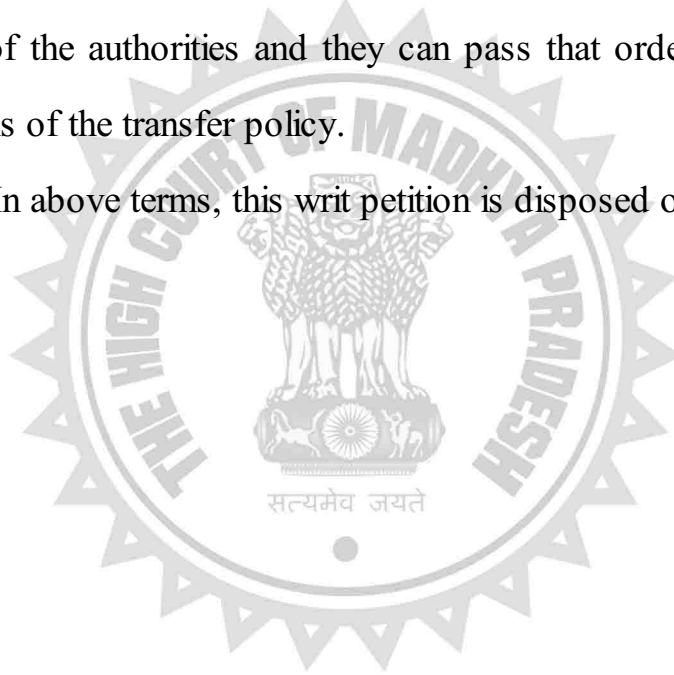
15. At this stage, Shri Shiv Kumar Shrivastava submits that liberty be granted to pass fresh orders.

16. Since order is illegal on face of it, no liberty can be accorded in favour of the respondents to pass fresh orders of transfer, transferring the petitioner outside the district.

17. As far as transfer within the district is concerned, that is within the domain of the authorities and they can pass that order in accordance with the provisions of the transfer policy.

18. In above terms, this writ petition is disposed of.

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**(VIVEK AGARWAL)
JUDGE**