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**(2000) 07 PAT CK 0116**

**Patna High Court**

**Case No:** C.W.J.C. No. 4321 of 2000

A. Rab Khan and others

APPELLANT

Vs

State of Bihar and others

RESPONDENT

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**Date of Decision:** July 7, 2000

**Citation:** (2000) 4 PLJR 734

**Hon'ble Judges:** S.J. Mukhopadhaya, J

**Bench:** Single Bench

**Advocate:** Shyama Prasad Mukherjee, Birendra Verma, Shanti Pratap and Madhu Sudan Kumar Sinha, for the Appellant; Ajat Shatru for State, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

S.J. Mukhopadhaya, J.

Heard the parties. As the case can be disposed of on short point, it is not necessary to discuss all the facts, except the relevant one.

2. This application has been preferred by the petitioners who are Class-III & IV employees posted under the jurisdiction of Chief Engineer (Mechanical), Water Resources (Irrigation) Department, were posted internally under the Executive Engineer (Mechanical) Irrigation Division, Dehri.

3. While so posted, the Respondent, Deputy Secretary, Water Resources (Irrigation) Department issued impugned order, contained in Memo No. 924 dated 29th April, 2000, whereby and whereunder, they have been transferred under the jurisdiction of other Chief Engineers, namely, Purnia; Motihari; Birpur etc. with their respective posts.

4. The ground for transfer from the jurisdiction of Chief Engineer (Mechanical), Patna to the jurisdiction of other. Chief Engineers, along with the posts, has been shown to be on administrative ground.

5. In the counter affidavit, the Respondents while taken plea that such transfer has been made on administrative ground, alleged certain misconduct on the part of the petitioners.
6. According to the Respondents, the petitioners, planned in the night of 23rd April, 2000 to assault the Executive Engineer and on 24th April, 2000 assembled near the official residence, raised slogan with abusive and filthy language.
7. In spite of request made by the Executive Engineer to take part in talk, the petitioners forcibly entered the residence of Executive Engineer, assaulted him and dragged him out of the residence and compelled to sign an agreement forcibly.
8. It appears that a Dehri P.S. Case No. 154/2000 has been lodged against some of the employees.
9. The counsel for the State relied on "Bihar Water Resources Department Muffasil Cadre Maintenance Act, 1998. It was submitted that the transfer has been made in terms with the provision of the said Act.
10. From the facts pleaded by the parties, enclosures attached thereto, the following fact emerges :
  - (a) the petitioners have been transferred alleging misconduct on their part; (b) the transfer has been made from the jurisdiction of one Chief Engineer to another Chief Engineer, along with the post by an order issued by the Deputy Secretary, Water Resources (Irrigation) Department; and (c) no order issued by the State of Bihar by carving out a cadre and thereby while carving one post of one cadre, (Chief Engineer) adding such post with other cadre of other Chief Engineer
11. It will be evident from 1998 Act aforesaid that the cadre of Class III & IV employees in the Muffasil Offices of irrigation Department has been kept a Chief Engineers level and in place where the Financial Advisor cum Chief Accounts Officer at that level. Power has been vested with the Chief Engineer transfer a Class III employee within cadre (See Section 7) but power of transfer on administrative ground has been vested with the State of Bihar.
12. In the present case the petitioners are being transferred out their cadre but without any appropriate order of the State. There is nothing the record to suggest that the Deputy Secretary was vested with the power transfer one or other petitioner from the respective cadre to another cadre.
13. This apart a cadre having constituted by the State of Chief Engineer level, the Deputy Secretary had no jurisdiction to curtail the strength of the cadre transferring one post from one cadre are adding the same with the other cadre.
14. In the circumstances, the order cannot be held to be legal, having passes by an authority who had no jurisdiction

15. This apart, the authorities had jurisdiction to transfer a person on the ground of misconduct and/or inefficiency, view of Rule 56(a) of the Bihar Service Code

16. For the reasons aforesaid. I set aside the impugned order dated 24 April, 2000, so far as it relates petitioners with direction to the Respondent to allow them to continue in the respective cadre under Chief Engineering (Mechanical), Patna. They are also directed to pay the petitioners the salaries of the intervening period, if not paid because of their transfer made in pursuance of the impugned order dated 29th April, 2000, which is to be paid within three months from the date of receipt/production of a copy of this order.

17. However, this order will not stand in the way of the Chief Engineer (Mechanical), Patna to pass appropriate order in respect of one or other employees in accordance with law. The writ petition is allowed with the aforesaid observations and directions.