
(2011) 08 P&H CK 0161
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 225 of 2008

Ajaib Singh

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Punjab Police Rules, 1934 — Rule 13.8

Citation : (2011) 164 PLR 786

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ranjit Singh, J.—The petitioner is aggrieved against his repatriation from District Police, Ambala to Haryana Armed Police, Madhuban, which is ordered by withdrawing the earlier order, permitting his repatriation from Haryana Armed Police (for short, "HAP") to District Police, Ambala.

2. The petitioner was enrolled in the year 1989 and stood first in his basic training course. At that time, enrolment for HAP and for District Police used to be common. On 17.1.1991, the petitioner was deputed to lower school course with Batch No.29 and he successfully completed the course, securing 2nd position in the final examination. Later, the petitioner topped the Public Dealing Course held on 14.6.2002 and was given a cash reward of Rs. 1000/-.

3. On 5.7.1990, the petitioner gave a representation for his transfer to District Police through proper channel. He followed it up by another representation dated 14.7.1992 for sending him to District Police as per the policy framed by the Department. The petitioner submitted yet another representation to Director General of Police for his transfer to District Police. Thereupon, Director General of Police called for comments from Additional Director General of Police, Armed Police Training, Madhuban, on 16.5.2003, who gave no objection. Though, two Constables were transferred from HAP to District Police on 15.1.2004 but the

request of the petitioner was rejected on 24.2.2004, citing transfer policy dated 29.12.1993. Copy of this transfer policy is annexed with the petition as Annexure P-10. The petitioner accordingly filed an appeal against the order, whereby his representation was rejected. Ultimately, his request was accepted and the petitioner was transferred to District Police, Ambala, on 2.7.2004. On 13.8.2004, the petitioner was promoted as ASI with effect from 23.12.2002.

4. The order directing repatriation of the petitioner was finally complied with on 26.10.2004. About one year thereafter, this order was withdrawn on 29.11.2005. The petitioner filed Civil Writ Petition No. 19008 of 2005 and this Court was pleased to quash the said order on the ground of violation of principles of natural justice. The petitioner thereafter was issued a show cause notice on 26.4.2007 for withdrawing the order of repatriation. The petitioner filed reply on 9.5.2007. His plea is that without properly considering the reply, the respondents have again passed an order withdrawing the repatriation order dated 2.7.2004 and the petitioner was transferred to HAP, Madhuban, from District Police Ambala. The petitioner has disclosed that 2464 Constables have been transferred from HAP to District Police. Though the petitioner has not been able to collect the names of all such Constables but has placed on record a list of 48 Constables, who have been transferred from HAP, Madhuban to District Police. The petitioner accordingly has filed the present writ petition to challenge the order withdrawing his earlier order of repatriation from HAP to District Police, Ambala.

5. Respondents have filed reply. It is conceded that the petitioner was deputed to Lower School Course in the year 1990 by virtue of his all around 1st position in the recruit course. After passing of the course, the petitioner was sent on deputation to Police Training College, MAP, Madhuban. The Constables recruited alongwith the petitioner were transferred from HAP to District Kaithal by Inspector General, HAP on 2.7.1990 but the petitioner could not be transferred as he was undergoing a Lower School Course. After passing, the petitioner was promoted to the rank of Head Constable on 17.1.1991. The stand of the respondents is that as per the transfer policy dated 29.12.1993, only Constables could be transferred to District Police and since the petitioner had been promoted as Head Constable, he was wrongly transferred from HAP to District Police Ambala by the then Director General of Police. Upon his joining the Ambala Range, the petitioner was given various benefits like date of confirmation, date of list-D and promotion as ASI. It is, thus, stated that due to his wrong transfer to District Police, Ambala, he got undue service benefits and certain Head Constables similarly placed also submitted their representation for transfer from HAP to District Police. When this irregularity came to the notice, the order dated 2.7.2004 was withdrawn. The service benefits given were also withdrawn after serving a show cause notice on the petitioner and his seniority is now re-fixed in HAP, his parent unit, after following principles of natural justice.

6. It is pointed out that Civil Writ Petition No. 19008 of 2005 filed by the petitioner was allowed and this order was set-aside as the same was passed

without following principles of natural justice. The respondents were permitted to take further action in accordance with law after adhering to the principles of natural justice. A show cause notice was accordingly served upon the petitioner and the order has now been withdrawn. It is stated that the benefit granted to the petitioner has created a lot of complication and so Inspector General, HAP, was directed to re-fix his seniority in HAP. The respondents have highlighted that no Lower School Course qualified Constable was transferred from HAP to District Police keeping in view the existing policy of transfer of Constables and since (he petitioner had already been deputed for Lower School Course, as such he could not be transferred.

7. The petitioner has filed a replication, reiterating his rights to seek transfer to District Police, which, as per the petitioner, was in accordance with the policy dated 29.12.1993 (Annexure P-10). By making reference to this policy, the petitioner has highlighted that the Constables enlisted in HAP upto 31.12.1992, were to be transferred to District/Government Railway Police gradually as and when the vacancies arose in the District, while the Constables who were recruited in HAP on or after 1.1.1994, were to remain in HAP and were to get other promotions in the HAP itself. The petitioner was appointed as Constable on 5.1.1989 and so he was rightly transferred on the basis of his representation. The petitioner has referred to the transfer order dated 2.7.2004, which clearly stipulated that the seniority of the petitioner was to fixed as per Rule 13.8 of the Punjab Police Rules instead of his promotion as Head Constable in HAP. The petitioner would, thus, submit that his transfer was perfectly valid. The petitioner pleads that the impugned order dated 5.12.2007 is illegal being clearly in violation of the policy.

8. The short question that arises for determination is whether the transfer of the petitioner from HAP to District Police was as per the policy or in violation thereof, for which the respondents could cancel the same, as has been done. The copy of the policy has been annexed with the reply as Annexure P-10. This policy in fact was in reversal of the policy of inter-transfer between District Police and HAP after the rank of Sub Inspector. HAP Constables could be transferred to District Police after 2 to 3 years of service as minimum length of service required for Constable to be eligible to take the selection test for Lower School Course was 5 years. There were not many Constables in HAP, who were eligible to take aforesaid selection test. There was, thus, acute shortage of Head Constables in HAP. The respondents felt need for strengthening the State Armed Police and it was decided in a meeting chaired by the Chief Secretary that HAP be separated from the District Police so that it ceased to be a feeding for District Police/GRP. This proposal was sent to the State Government, which was approved on 2.11.1993. The decision was that the policy of separation of District Police and HAP shall be made applicable with effect from 1.1.1994 and shall be implemented prospectively. The Constables who were serving in HAP or those who were appointed/enlisted upto 31.12.1993 were to be transferred to District/Government Railway Police gradually as and when the vacancies arose and the

Constables recruited in HAP on or after 1.1.1994 were to remain in HAP only. All the Constables recruited on or after 1.1.1994 were to be apprised that they are being appointed to HAP and shall serve with the HAP till their promotion to the rank of Inspector.

9. Since the petitioner was enrolled in January 1989, he was eligible to be transferred to District Police as per the vacancies. The conceded position is that all the persons recruited with the petitioner indeed were transferred to the District Police but the petitioner could not be so transferred as he was deputed for Lower School Course at the relevant time on the basis of being a meritorious Constable as he had stood 1st in the basic training course. Thus, the petitioner is being made to suffer because of his merit. Had the petitioner not been meritorious enough, he certainly would have been transferred alongwith his batch-mates in terms of the policy noted above.

10. The reasons advanced by the respondents to deny repatriation to the petitioner and to cancel it after having allowed the same, apparently are misplaced. A perusal of the repatriation order dated 2.7.2004 (Annexure P-12) would clearly show that the petitioner could not be transferred alongwith his batch-mates as he was selected for Lower School Course. Even lower passed Constables were transferred from HAP to District Police before issue of transfer policy. Accordingly, the representation of the petitioner was accepted and order was issued transferring him to District Police, Ambala, with immediate effect. It is clearly mentioned in the order that his seniority may be fixed as per Rule 13.8 of the Punjab Police Rules instead of on the basis of his promotion as Head Constable in HAP. The effect of this order, thus, would be that though the petitioner was promoted as Head Constable but indeed he was being transferred only as Constable as his seniority was to be assigned as a Constable and not as Head Constable. The only objection raised by the State to cancel this repatriation, thus, is misplaced. The reason highlighted by the respondents to cancel the repatriation order is that only Constables could be so transferred whereas the petitioner had been promoted as Head Constable. Reference here can also be made to a communication addressed by Inspector General, Haryana, Armed Police, dated 14.7.2004 (Annexure P-13), whereby he had directed the Inspector General, Ambala Range, to take steps to fix the seniority of the petitioner as per Rule 13.8 of the Punjab Police Rules instead of his promotion as Head Constable in HAP. If the petitioner has been granted any benefit in violation of this repatriation order, then it can be corrected but that can not be a valid ground to cancel his repatriation.

11. There is some substance in the submission made by counsel for the petitioner that basically, he is being made to suffer because he was meritorious enough to top the basic training course and other courses, for which he earned the promotion and this has rather led to prejudice his case for transfer to District Police. The petitioner, thus, is being made to suffer prejudice for his meritorious performance. Once the petitioner is ready to forego the advantage and was

transferred with a condition to fix his seniority under Rule 13.8 of the Punjab Police Rules, the objection raised by the respondents to cancel this repatriation would no more remain valid and, thus, can not be accepted.

12. The petitioner, though had been ordered to be sent back to HAP but while issuing notice of motion, operation of this order was stayed on 9.1.2008 and has, thus, continued to serve the District Police, Ambala. The writ petition is allowed and the impugned order dated 5.12.2007 is quashed. There shall, however, be no order as to costs.