

(2014) 09 AHC CK 0163
In the Allahabad High Court
Case No : Writ A. No. 37346 of 2014

Ayub Khan

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 09 AHC CK 0163

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : L.M. Singh, Advocate for the Appellant; M.C. Tripathi, A.S.G.I,
Advocate for the Respondent

Final Decision : Dismissed

Judgement

Manoj Kumar Gupta, J.—The petitioner is Assistant Sub Inspector (M) in Central Reserve Police Force (for short C.R.P.F.). He is aggrieved by order dated 14.6.2014, whereby, he has been transferred from 148 Battalion deployed at Chandauli to 117 Battalion deployed in Srinagar and the order dated 20.6.2014 passed by respondent no. 3 rejecting his representation for cancelling the transfer order.

2. According to the petitioner, he was transferred to 148 Battalion Chandauli on 8.10.2011, which is a hard area posting. As per Standing Order No. 2 of 2014 (for short "Standing Order") issued by Ministry of Home Affairs, New Delhi relating to transfer policy of Ministerial/Stenographic/Official Language Cadre, the petitioner having completed the stipulated tenure of two years in hard area, is entitled to be posted in a soft area, but has been illegally transferred to 117 Battalion, which is deployed at Srinagar, a hard area. It is urged that according to paragraph 6 of the Standing Order, he is entitled to be posted in a soft area and consequently, impugned order is illegal as well as the order rejecting his representation.

3. The respondents have filed a short counter affidavit, in which it is stated that in the year 2011, when the petitioner was promoted from the post of Head Constable to ASI (M), he took personal appointment from I.G. (Personnel) Directorate General C.R.P.F. and requested for posting at Chandauli based Unit. His request was accepted and by order dated 6.7.2011, he was transferred from 143 Battalion at Imphal to 148 Battalion at Chandauli, where he joined on 8.10.2011. Thus, his posting at 148 Battalion at Chandauli was a "Choice Posting" being on his request, in his home State. It is submitted that according to Standing Orders, the period spent during choice posting in hard area is not counted as hard area posting in view of definition of "hard area posting" under paragraph 2 (h); as such, there is no breach of any Standing Order. It is further contended that out of 25 Battalions of C.R.P.F., 20 Battalions are deployed in LWE/ J & K. area. Thus, all personnel could not be accommodated at their choice place. It has been further pointed out that while being posted at 148 Battalion, Chandauli, the petitioner was stationed at the Unit Headquarter of the Battalion, which is 13 kilometers from Mughalsarai Railway Station and 14 kilometers from Varanasi Cantt. Station. It is stated that only Companies of 148 Battalion are deployed in L.W.E. area and thus, the petitioner, who was posted at the Headquarter of the Unit, which was his choice posting, was virtually deployed in a soft area, consequently, no interference is called for.

4. I have heard learned counsel for the parties and perused the record.

5. Indisputably, Standing Order issued by the Ministry of Home Affairs, New Delhi regulates transfer and posting of the Ministerial/Stenographic/Official Language Cadre. The petitioner, who is Assistant Sub Inspector (Ministerial) is thus governed by the aforesaid Standing Order. Under paragraph 7 of the Standing Order, transfer of officers/officials are broadly classified in three kinds viz. summer chain transfer, transfer on promotion and other administrative transfers. The summer chain transfers cover cases of officers, who have completed prescribed tenure in soft areas and hard areas. Apart from transfers, on certain grounds mentioned in the transfer policy, though the tenure has not been completed, paragraph 6 of the Standing Order provides that officers will be rotated on transfer in such a way that after every hard area posting, the next posting is in a soft area and vice versa. Paragraph 6, which is relevant for our purpose, is reproduced below:-

"6. ROTATION. All officer/official will be rotated on transfer in such a way that after every hard area positing, he/she should be posted to a soft area and vice versa as per tenure policy except in the case of ASI (ST) and isolated posts."

6. Under paragraph 4, it is provided that in case of Assistant Sub Inspector (Ministerial), soft area posting shall be of three years, after which there will be rotation to hard area posting for two years.

7. Hard area posting and soft area posting are defined as under:-

" 2 (h) Hard area posting:- Continuous posting in the following areas which have

been classified as hard areas (Except when it is given as choice/home posting. Personnel willing for hard areas can be rotated within the hard areas of the zone- but not continuously in home State/District.)

1) New GCs/Ranges/Other static Establishments under raising upto 5 years from the date of initial raising of such New GCs/Ranges/Other static Establishments.

2) Whole North Easter Region,

3) Whole J & K and

4) Static formations located in Operation areas of.....

i) Soft area posting:- means the continuous tenure/posting in the places/areas/ regions other than those classified as hard areas posting as per 2 (h) above."

8. The term tenure is defined as under:-

"2 (e) Tenure-means the period of continuous posting in a particular station/area/ region/NCR (including Govt. duty/attachment etc. beyond 90 days). In case any official is on attachment/temporary duty from hard area to soft area or vice versa for more than 90 days, the period of such attachment/temporary duty will be counted towards tenure of that specific place where he is attached or on temporary duty."

9. Thus, transfer policy as per Standing Orders provides for rotation of officials in such a manner that after every hard area posting, he/she would get a soft area posting and vice versa. The petitioner, who is Assistant Sub Inspector (Ministerial) becomes entitled for soft area posting after two years of hard area posting. Thus, the question for consideration is whether the petitioner, after his present posting at Chandauli, is entitled to be posted in a soft area.

10. Indisputably, Chandauli is a posting in a hard area covered under serial no. 8 of paragraph 2 (h) of the Standing Order. However, the contention of the respondents is that the tenure spent by the petitioner at Chandauli is liable to be excluded, as it was on his own request, being a "choice posting". On the other hand, learned counsel for the petitioner contends that during his posting at Chandauli, the petitioner was getting all the perks and allowances attached to a post in a hard area and, therefore, the respondents cannot be permitted to take a stand that his posting at Chandauli was not in a hard area.

11. It is abundantly clear from the definition of "hard area posting" as given in paragraph 2 (h) that the period spent in hard areas as a choice/home posting is to be excluded, while reckoning the tenure for purposes of the transfer policy under the Standing Order. The respondents in their short counter affidavit have specifically come up with the plea that the petitioner after his promotion to the post of ASI (M), sought personal interview of I.G. (Personnel), Directorate General (C.R.P.F.) and requested for his posting at Chandauli based Unit. The request of the petitioner was accepted by order dated 6.7.2011; he was transferred from 143 Battalion at Imphal to 148 Battalion at Chandauli, where he

joined w.e.f. 8.10.2011. Thus, since 8.10.2011, the petitioner remained posted at Chandauli in Uttar Pradesh, which is his home town.

12. Paragraph 2 (o) defines "home posting" as posting to the desired station/place falling within home State or nearby State. "Choice posting" under paragraph 2 (r) means posting to the desired station/place. As already noted above, the posting if given as "choice/home posting", is liable to be excluded while calculating the tenure under hard area posting. Accordingly, the posting of the petitioner at Chandauli, which is both covered by definition of "home posting" and "choice posting", is liable to be excluded while reckoning the period of hard area posting. It may be noted here that drawing of perks of hard area posting at Chandauli, is not material for calculating the tenure of posting in a hard area, for the purposes of the Standing Orders. Consequently, the respondents have rightly not treated the posting of the petitioner at Chandauli as a hard area posting for purposes of transfer policy. In view of the above discussion, I do not find any force in the contention of the petitioner that there is breach of Standing Order, which requires rotation of the officials between hard area and soft area.

13. The other factors are equally important in the instant case. It has also not been disputed that the transfer of the petitioner to 148 Battalion Chandauli was on his own request, in the home State i.e. Uttar Pradesh. It has also not been disputed that out of total 25 Battalions, 20 Battalions of this Sector are deployed in L.W.E./J & K area and thus, it is not possible for the respondents to accommodate all officials at their choice place. It has been held by the Apex Court in Major General J.K. Bansal Vs. Union of India (UOI) and Others, that in the case member of Armed forces, the Court should be extremely loath in interfering with the transfer orders. In the said judgment, after taking notice of the law laid down by the Apex Court in the case of Mrs. Shilpi Bose and others Vs. State of Bihar and others, Union of India and Others Vs. S.L. Abbas, and National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, all of which relates to the scope of interference in case of civilian employees or those working in public sector undertakings, it was held as under:-

"12. It will be noticed that these decisions have been rendered in the case of civilian employees or those who are working in public sector undertakings. The scope of interference by the courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The courts should be extremely slow in interfering with an order of transfer of such category of persons unless an exceptionally strong case is made out, no interference should be made."

14. Learned counsel for the petitioner has placed reliance on the judgment of Apex Court reported in State of Punjab and Others Vs. Jagdish Kaur, connected matter, in which it is held that in absence of statutory rules, Government orders have binding force and judgment of learned Single Judge of this Court in the case

of Akash Sharma Vs. State of U.P., Director General Jail Administration and Requirements Services, Sri Mukesh Kataria Deputy Jailor District Jail and Sri P.K. Singh Deputy Jailor District Jail, in which it is held that the Government, which has framed the transfer policy should normally follow it and an unreported judgment of Madras High Court dated 7.8.2001 in the case of A. Nambirajan Vs. Inspector General of Police and another, wherein, it is held that a transfer order tainted with malafide or made in violation of Standing Order is liable to be set aside. There is no dispute about the proposition of law laid down in the aforesaid judgments but those principles of law are not attracted to the facts of the present case, as it has been found that the transfer of the petitioner is neither in breach of Standing Order nor is tainted with malafide.

15. In view of the foregoing discussion, I am of the firm opinion that there is neither breach of Standing Order, nor even otherwise, is it a fit case for interference under Article 226 of the Constitution of India.

16. Accordingly, writ petition lacks merit and is dismissed.