

(2013) 11 DEL CK 0018

In the Delhi High Court

Case No : Writ Petition (C) No. 3654 of 2013

Girish K.B.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2013) 11 DEL CK 0018

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : Suresh Chand, for the Appellant; A.S. Dateer and Ms. Rekha, for the Respondent

Final Decision : Disposed Off

Judgement

Gita Mittal, J.—The petitioner in the instant case, is working as a Constable/ Driver with the Railway Protection Security Force (hereinafter referred to as "RPSF") and is currently posted with the 6th Battalion, RPSF, Daya Basti, Delhi - 110 035. It is undisputed that the petitioner's wife is also a railway employee who is posted as Constable with the Railway Protection Force (hereinafter referred to as "RPF"), currently at Trissur in the state of Kerala. The petitioner submits that he and his wife have been blessed with a baby girl who is at present only about 18 months old. The petitioner's mother is stated to be a cancer patient with nobody else to look after her. The petitioner's father has undergone surgery. The petitioner has submitted that they are also living in Kerala and there is none to look after them. It is further submitted that his wife is the only daughter of her parents and has no brother. As such, she has the responsibility to look after her own parents in addition to looking after the petitioners' parents as well. The writ petition is premised on the petitioner's request to the respondents seeking his transfer to the Southern Railway, Kerala based on the transfer policy of the Government of India dated 2nd February, 2010 to enable working spouses to be kept together. The petitioner has submitted that to facilitate his transfer, the respondents deserve to be directed to transfer the

petitioner from the Railway Protection Security Force to Railway Protection Force as per the settled policy of the respondents.

2. In the writ petition, the petitioner has pointed out that the respondents are working the transfer policy selectively. Instances of ninety eight transfers which have been effected by the respondents after posting RPSF Constables to the RPF on the ground that they involve couples, have been placed before this court along with the writ petition. This position is undisputed in the counter affidavit which has been filed. The respondents have pointed out that intra railway transfer in the rank of Constable is in terms of the Standing Order 102 and that such transfers are considered keeping in view the availability of sufficient strength of personnel in the RPSF and the undisputed recruitment of Constables in the RPF and RPSF in future.

3. So far as the respondents' contention that only constables are transferred, the petitioner has also pointed out several instances in the writ petition wherein persons employed as drivers with the RPSF have been transferred by the respondents to the RPF; again on the ground of effectuating the "working spouses being kept together" policy. The respondents have admitted that the power to do so is conferred upon the Director General, RPF under Standing Order no. 70. In the counter affidavit, admissions have been made of exercise of such power in the case of several drivers mentioned by the petitioner.

4. Mr. Suresh Chand, learned counsel for the petitioner has drawn our attention to the policy dated 2nd February, 2010 placed before us wherein the relevant extract of the policy on the subject of "posting of husband and wife at the same station", reads as follows:-

In view of the utmost importance attached to the enhancement of women's status in all walks of life and to enable them to lead a normal family life as also to ensure the education and welfare of the children, the instructions regarding posting of husband and wife at the same station were issued vide Ministry of Railway's letter No. E(NG) II/71/TR/14 dated 01.10.71, as reiterated in letter No. E(NG)1-86/TR 14 dated 06.01.88. Pursuant to a recommendation of the 5th CPC, the scope of these instructions was further widened and detailed guidelines were issued vide this Ministry's letter No. E(NG)1-97/TR/28 dated 05.11.97 in a consolidated form.

2. In the context of the need to make concerted efforts to increase representation of women in Central Government jobs, these guidelines have been reviewed to see whether the instructions could be made mandatory. It has been decided vide Deptt. Of Personnel & Training's O.M. No. 28034/9/2009-Estt. (A) dated 30.09.2009 that when both spouses are in the same Central Service or working in same Deptt. and if posts are available, they may mandatorily be posted at the same station.

3. The guidelines, as framed by DOP & T in view of the 6th CPC, have been examined in this Ministry and it has been decided to adopt these with certain

modifications. Accordingly provisions of guidelines issued under Board's letter dated 5.11.97 ibid have been modified as under:-

a. WHERE BOTH THE SPOUSES ARE RAILWAY EMPLOYEES AND BELONG TO THE SAME SENIORITY UNITS:

The husband & wife, if working in the same Department and if the required level of post is available, should invariably be posted together in order to enable them to lead a normal family life and look after the welfare of their children especially till the children attain 18 years of age. This will not apply on appointment under the Central Staffing Scheme. Where only wife is a Government servant, the above concessions shall be applicable to the Govt. Servant. Hence both the railway servants may be posted at the same station/place ensuring that one of them does not work as subordinate to the other.

(Emphasis supplied)

5. The spirit, intendment and purpose of the policy are evident from the above and even if strictly interpreted, reflects the mandate thereof that husband and wife working with the railways "invariably be posted together". In case accommodations are required to be made so as to facilitate favourable consideration of the petitioner's request, the same would require to be considered and made by the respondents keeping in view the exigency of service as well as the deployment position which may exist. The fact that the respondents have been doing so, as is manifested from the instances cited by the petitioner lends support to the petitioner's cause. It cannot be disputed that the factual narration of the petitioner's plight noticed above, certainly merits a favourable consideration by the respondents.

6. Learned counsel for the respondents has submitted that even if the petitioner was to be posted in the state of Kerala, there would be tremendous distance between the station where he would be posted and that of his wife. We have noted above the several instances where the respondents have effected transfers of drivers even between the RPSF and RPF so as to accommodate working spouses. We see no reason why the respondents should not consider such a course of action where the petitioner is concerned. Certainly, a policy intended for the benefit of the employees cannot be worked out arbitrarily and the respondents cannot pick and choose implementation of the policy unless there is some special reason which would permit them to do so.

7. The petitioner has submitted that he had made several representations to the respondents including those dated 5th April, 2011, 21st January, 2012 and also got issued a legal notice dated 23rd April, 2013. It is complained that let alone a favourable consideration thereof, the respondents have not even deemed it appropriate to acknowledge the same. To say the least, this is most unfortunate.

8. While examining a claim as in the instant case, we are confined by the permissible parameters of judicial review. So far as the matters of transfers are

concerned, the same rest squarely in the realm of administrative consideration. We, accordingly, dispose of this writ petition with the following directions:-

(i) The respondents shall take a considered view in the matter on the representations and the legal notice served by the petitioner, keeping in view the policy dated 2nd February, 2010; the several instances where persons including constable/drivers have been transferred from the RPSF to RPF to facilitate the same place posting of spouses.

(ii) A reasoned and speaking order shall be passed and communicated to the petitioner within a period of six weeks from today.

(iii) If the order is passed in favour of the petitioner, the same shall be implemented at the earliest. In case the petitioner is still aggrieved by the order which is passed, it shall be open for him to assail the same by way of appropriate legal remedy.

This writ petition is disposed of in the above terms.

Dasti to counsel for the parties.