
(2008) 12 OHC CK 0056
In the Orissa High Court

Madhusudan Sethi

APPELLANT

Vs

Director General, C.R.P.F. and Others

RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Citation : (2009) 107 CLT 359

Hon'ble Judges : R.N. Biswal, J;B.P. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.P. Das, J.—The Petitioner, who is working as Head Constable in Group Centre, Central Reserve Police Force (CRPF), Bhubaneswar, has filed this Writ Petition assailing the Order Dated 14.6.2008 purported to have been passed by the Deputy Inspector General of Police, CRPF, O.P.3, transferring him to 199 Battalion (Annexure-1) and the Order Dated 26.7.2008 passed by the Additional Deputy Inspector General of Police, CRPF, O.P.4, rejecting his representation filed in pursuance of the order of this Court dated 20.6.2008 passed in W.P.(C) No. 8529/2008 (Annexure-2).

2. The brief facts leading to this Writ Petition tend to reveal as follows:

The Petitioner while working as Head Constable in, Group Centre, CRPF, Bhubaneswar, was visited with the order of transfer dated 14.6.2008 passed by the Deputy Inspector General of Police, CRPF, O.P.3. Against the aforesaid order, the Petitioner along with some others, who were also under order of transfer, approached this Court in W.P.(C) No. 8529/2008, which was disposed of on 20.6.2008 giving liberty to the Petitioner along with others to approach the authority by way of representation for consideration of their respective grievances and directing O.P.4 to consider their grievances and take a decision on the same within a period of one week, if such representations were filed within one week thereafter. It was further directed that for a period of two weeks, the Petitioner would not be forced to join at 199 Battalion. Thereafter, it was alleged

by the Petitioner that keeping the representations pending, the O.Ps. started coercive action against him and others for which, vide order passed in Misc. Case No. 12338/2008 arising out of W.P.(C) No. 8529/2008, this Court as an interim measure directed the O.Ps. not to take any coercive action against them. On 26.7.2008, the Petitioner received the order of rejection of his representation. Hence, the Writ Petition.

According to the Petitioner, even before completion of normal tenure of three years in the Group Centre, Bhubaneswar, his transfer to 199 Battalion is against the Standing Order governing the filed, which indicates that as far as possible transfer from one battalion to another battalion should be avoided.

The further case of the Petitioner is that he worked in Southern Sector from 1981 to 1996, in Eastern Sector from 1996 to 1999, in North-Eastern Sector from 1999 to 14.2.2006 and on 14.2.2006, he was transferred to Bhubaneswar Group Centre under Eastern Sector, where from he has been transferred to 199 Battalion under the impugned notification.

It is further stated that the Petitioner has no objection to join in any of the battalions in Eastern Sector, in which he is working and is prepared to be deployed to any place where five battalions of Bhubaneswar Group Centre have been deployed.

3. A counter affidavit has been filed by the O.Ps. taking a stand in paragraph-12 that the transfer of the Petitioner from Group Centre, Bhubaneswar, to 199 Battalion is only to facilitate the Petitioner to complete his tenure at Bhubaneswar as per the Standing Order No. 2. According to the O.Ps., the 199 Battalion was raised in GC CRPF, Bhubaneswar campus under the administrative arrangement of Eastern Sector, CRPF, by providing required training and administrative staff from Eastern Sector Group Centres. Accordingly, required strength of all ranks of NGOs (executive) Staff was again provided to 199 Bn. CRPF from the GCs and Bns under Eastern Sector by bifurcating training staff.

A further stand has been taken in the counter affidavit that the impugned order of transfer to the personnel to 199 Battalion, CRPF, from Eastern Sector cannot be termed as one Sector to another.

4. In the aforesaid background, the argument of Mr. Ashok Mohanty, Learned senior Counsel for the Petitioner, is that it is admitted by the O.Ps. that the Petitioner has to complete his tenure of three years in the Group Centre, Bhubaneswar, but he has been transferred to 199 Battalion, which is now stationed at Bhubaneswar. Mr. Mohanty further submits that 199 Battalion of the CRPF is attached to the Group Centre, Amethi/Raibareli but the place of raising the personnel thereof is at Bhubaneswar. According to Mr. Mohanty, in the guise of allowing the Petitioner to continue at Bhubaneswar for the remaining period, the O.Ps. have changed his place of posting to 199 Battalion, CRPF, which is attached to the Group Centre Amethi/ Raibareli. According to him, this is prejudicial to the interest of the Petitioner and the Additional Director General of

Police, O.P.4 has no jurisdiction to pass such an order, i.e., change of Group Centre.

5. In order to substantiate his argument, Mr. Mohanty, Learned Counsel for the Petitioner, draws our attention to the document filed by the O.Ps. in their counter affidavit annexed as Annexure-C/3, which is a signal dated 15.11.2006 Issuing instructions with regard to raising, equipping etc. of the battalions, relevant portion of which are as follows:

ALFA(.) THE FOSTER GCS WILL BE RESPONSIBLE FOR PROVIDING AND EQUIPPING THE NEW BNS AND FOR DRAWAL OF PAY AND ALLOWANCES, TA/DA, FVC ETC IN R/O ALL PERSONNEL INCLUDING RECRUITS OF THE UNIT AND MAINTENANCE OF RELEVANT RECORDS INCLUDING SERVICE RECORDS TILL MOVING OUT OF THE UNIT FROM PRESENT LOCATION AFTER BASIC TRAINING (.) THEY WILL ALSO BE RESPONSIBLE FOR PREPARING BUDGET ESTIMATES OF THE NEW UNIT AND MONITORING EXPENDITURE ON PAY AND ALLOWANCES. TA/DA. FVC ETC (.)

BRAVO (.) SECTOR/RANGE UNDER WHOSE JURISDICTION / AREA THE BNS ARE BEING RAISED WILL BE THEIR FORSTER ADM SECTOR/RANGE FOR ALL PURPOSES TILL BNS ARE RAISED, TRAINING COMPLETED AND MOVED OUT TO PUCE OF DEPLOYMENT SO AS TO ENSURE BETTER ADMINISTRATION, MANAGEMENT AND CONTROL AND TO AVOID DUPLICITY IN COMMAND AND CONTROL (.)

CHARLIE (.) THE FOSTER ADM SECTOR WOULD PROVIDE MINISTERIAL STAFF ON MINIMUM REQUIRED BASIS TO FORSTER GCS FROM WITHIN OWN SOURCES TO UNDERTAKE THE ADDITIONAL WORK AND ORIGINAL ADM SECTOR WILL PROVIDE MINISTERIAL STAFF TO THE NEW BNS (.)

According to Mr. Mohanty, Learned Counsel for the Petitioner, the aforesaid instruction does not in any manner empower the Additional Director General of Police to pass the order in Annexure-1. Drawing our attention to Annexure-B-3, he further submits that the order rejecting the representation of the Petitioner in Annxure-2 is contrary to the transfer policy under Annexure-B/3, the addendum dated 2.7.2008 to Standing Order No. 2/2008.

In view of the observations made above only because 199 Bn. Group Centre attached to Amethi/Raibareli, is now stationed at Group Centre, Bhubaneswar, it cannot be said that it situates at Bhubaneswar. Clause-4 of the principles of transfer in the Standing Order No. 2/2008. provides that the cases of Inter-Sector transfers will be sent to the Directorate General along with:

4. a) Name with Force No. and Rank.
- b) Date of enlistment.
- c) Distt/State to which belong
- d) Unit(s) in which he/she served with place and period of deployment.

Bare perusal of the aforesaid addendum to the Standing Order and the order impugned would show that the aforesaid provisions have not been followed by the transferring authority.

6. Mr. Mohanty, Learned Counsel for the Petitioner, further submits that the contention made in paragraph-11 of the counter affidavit is not correct. According to him, as the Petitioner does not belong to the rank of NGOs (executive) Staff, the same is not applicable to him.

7. After hearing Learned Counsel for the parties, the question that falls for consideration, whether passing of the impugned order is within the jurisdiction of the Additional Director General of Police, CRPF ?

In view of the provisions shown in the foregoing paragraphs regarding transfer policy and the addendum to the Standing Order Dated 2.7.2008, the answer to the same would be No. Secondly, the order rejecting the representation of the Petitioner in Annexure-2 on the ground that he has been transferred to 199 Bn, CRPF, which is located in the same campus of the Group Centre, Bhubaneswar, is also illegal in view of the aforesaid addendum because transferring the Petitioner from one Group Centre to another Group Centre comes within the scope and ambit of Clause-2(xvi) & (xviii) of the addendum. So, the order of transfer dated 14.6.2008 purported to have been passed by the Deputy Inspector General of Police, "CRPF, O.P.3, is not sustainable and accordingly, the same is set aside.

The Writ Petition is allowed accordingly.

R.N. Biswal, J.

I agree.