
(2013) 09 JH CK 0009
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3495 of 2013

Mahabir Oraon

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Citation : (2014) 1 JLJR 115

Hon'ble Judges : Aparesh Kr. Singh, J

Bench : Single Bench

Advocate : Afaq Ahmad and Shadab Bin Haque, for the Appellant; Mokhtar Khan, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kr. Singh, J.—Heard counsel for the parties. The petitioner who is a constable in Border Security Force, has been transferred by the impugned order dated 24th April, 2013 from the office of Deputy Inspector General, Training Centre and School, Border Security Force, Meru, Hazaribagh, Jharkhand to 4th Battalion of Border Security Force, Maldah. This is the reason for the petitioner to move this Court.

2. According to the petitioner, he suffered disability to the extent of 55% and further disability to the extent of 89.5%, as per the assessment of the specialist doctors of Training Centre and School, Border Security Force, Hazaribagh on account of injuries sustained on duty in Punjab in the year 1991. Keeping into regard the disability of the petitioner, respondents posted him in sedentary job in the Subsidiary Training Centre at Hazaribagh in the year 1997. Thereafter, in the year 2006, the Subsidiary Training Centre of BSF at Meru, Hazaribagh was shifted to Latur, Maharashtra and services of the petitioner was given to Training Centre and School, BSF, Hazaribagh. The petitioner admittedly has remained at the same place for the fast 16 years and now, he has been transferred from the present place of posting to 4th Battalion situate at Maldah.

3. It is the contention of the petitioner that he is entitled to permanent posting at one place on account of his disability which has also been recognized by the respondent themselves, as per Annexure-8 to the I.A. However, the same has not been followed by the respondent themselves and the petitioner has been transferred.

4. Learned counsel for the petitioner submits that under the Border Security Force (Tenure of Posting and Deputation) Rules, 2000 and provisions contained in Rule 5 read with Rule 11, tenure of posting in normal area is to be relaxed in favour of the person who are placed at low medical category due to injury suffered in operation or on duty. Therefore, the petitioner should not have been transferred from his present place of posting. It is contended that the respondents have been discriminating in the matter of transfer of such personnel posted at Training Centre and School of Border Security Force at Meru, Hazaribagh, as such disabled personnel who are having more number of years at such place, are not yet been moved out, while the petitioner has been picked up. These are the reasons for assailing the impugned.

5. Counsel appearing on behalf of Union of India, on the other hand, submits that after the petitioner sustained injuries on 25th August, 1991 while posted at 26th Battalion of BSF at Punjab, he underwent treatment and thereafter, he has been awarded low medical category of CEE(T) (Temporary) for one year with 40% disability. On 1st February, 2002, another Medical Board was constituted and the petitioner was placed in category S1H1A1P3(P-96)E1 category. The petitioner has been given disability compensation of Rs. 32,526/- on 15th November, 1997 and further enhanced compensation of Rs. 2,36,356/- on 24th November, 2006. He was posted at the Training Centre of BSF at Hazaribagh since 4th April 1997 and now after completion of more than 16 years of service at Hazaribagh Station, he has been transferred to join at 4th Battalion of BSF at Baishnav Nagar, Murshidabad, West Bengal. The said Unit has however been deployed in Jammu & Kashmir, while the petitioner has been posted at Baishnav Nagar in 4th Battalion which is a soft place of posting within the BSF having adequate medical facilities where petitioner can perform the sedentary duties comfortably. According to the counsel for the respondents, the petitioner has also been relieved on 24th August, 2013 as some elements of its Unit have already been deployed at Baishnav Nagar, Murshidabad on 2nd June, 2013.

6. Counsel for the respondents submits further that issue relating to permanent posting of a disabled employee was under consideration before the Single Bench of this Court in WPS No. 1794/2005. It is submitted that this Court in the said judgment, after taking into account the aforesaid Rules of 2000, has comprehensively decided the matter by holding that no legal right can be made out on the basis of Rules of 2000 by such a person for permanent posting at particular place. The judgment is also annexed as Annexure-R/1 to the counter affidavit. Respondents have also relied upon other judgments rendered by the Hon'ble Supreme Court on the question of transfer which are held to be

incidences of service. In such circumstances, learned counsel for the respondents submits that no interference is required in the instant writ application.

7. Heard counsel for the parties and gone through the relevant materials on record. Challenge to the impugned order of transfer by the petitioner is based upon his contention that the petitioner being a disabled personnel in the Force suffering more than 55% disability and later on assessed at 89.5%, cannot be transferred from one place to another under the respondent BSF. The petitioner admittedly had sustained injuries during operation in internal security at Punjab in the year 1991. Thereafter, on being medically treated, he has been awarded 55% disability and according to the opinion of the Medical Board, the same has reached up to 89.5%. However, by the impugned order, the petitioner has not been transferred to the field posting involving regular and serious movement. As a matter of fact, 4th Battalion Unit of BSF is deployed in Jammu & Kashmir, but the petitioner has been posted at the base station of the Unit at Baishnav Nagar, Murshidabad which is a peace time posting. Such posting otherwise is also said to be soft posting.

8. The rules in question has been interpreted by this Court in its judgment dated 17th December 2012 rendered in the case of Upendra Kumar vs. Union of India & Others in WPS No. 1794/2005. The said petitioner who was also suffering from 75% disability, had challenged his order of transfer to another place at Bareilly (Uttar Pradesh) under 43rd Battalion of Border Security Force which was also a soft posting and had sought further direction to the authorities to give him sedentary job. In such circumstances, after consideration of the relevant rules, which have also been referred to by the counsel for the petitioner, this Court came to a finding that even a person placed in low medical category, cannot legally claim to be posted permanently at a particular place under the BSF. The aforesaid rules indicate that such member of the Force placed in low medical category may be considered for posting from battalion deployed in extreme hard or hard area to battalion deployed in normal area or static formation keeping in view the recommendation of the Medical Board whose tenure may exceed three years on account of the injuries suffered in operations or on duty. In such circumstances therefore, it was held that the said petitioner cannot claim a legal right to continue at a particular place permanently even on the basis of medical disability on the recommendation of the Medical Board. In the said case, it was also observed on the allegations of discrimination made, that if other personnel having disability have been allowed to continue at a particular place, they obviously do not have the legal right to do so and the organization may be entitled to review each individual cases in the individual facts and circumstances of the case keeping into account the Rules of the Force. The petitioner has also been relieved on 24th August, 2013 for joining in the said Unit of 4th Battalion of BSF at Baishnav Nagar, Murshidabad which is a peace time posting. In view of the legal position as laid down in the case of Upendra Kumar (supra), reference to Annexure-8 by the petitioner being in the nature of a no dues certificate issued to him by earlier Battalion also does not cut much ice. Therefore, in the

totality of the facts and circumstances, no case for interference in the impugned order of transfer is made out and that too in an uniformed Force like the Border Security Force. This writ application is accordingly dismissed. I.A. No. 5951/2013 also stands dismissed.