
(2021) 03 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 2504 Of 2019, CM No. 5021, 9588 Of 2019

Neeraj Dhar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 10-03-2021

Acts Referred:

Railway Protection Force Act, 1957 — Section 8, 15
Railway Protection Force Rules, 1987 — Rule 28, 90

Citation : (2021) 03 J&K CK 0022

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Vinod Kotwal, P.S.Chandel

Final Decision : Dismissed

Judgement

1. The petitioner is an Assistant Sub Inspector in the Railway Protection Special Force (RPSF) and is aggrieved of order dated 08.06.2019 issued by the Railway Board vide its No.2019/PCSC/RPSF/ Conf.(IVG), whereby the petitioner has been transferred from 15th Bn stationed at Udhampur to 5th Bn located in Trichy, Tamil Nadu and seeks a direction to the respondents to allow him to perform his duties in the 15th Bn.

2. The short grievance of the petitioner, as projected in this petition, is that in terms of Clause 2(viii) of the Directive No.32 (Revised) dated 28.12.2017, inter-Battalion transfer is permissible only after completion of tenure of ten years in a particular Battalion. It is the case of the petitioner that he came to be transferred and posted in 15th Bn on 26.04.2017 after he had rendered 15 years service in the 6th Battalion and, therefore, his transfer from 15th Bn to 5th Bn located in Trichy Tamil Nadu within a span of two years is violative of the statutory guidelines issued by the respondents.

3. The respondents have filed their objections and have assailed the maintainability of the petition on the ground that, as held by Hon'ble the

Supreme Court in the case of Union of India and others v. S.L.Abbas, (1993) 4 SCC 357, the transfer is an exigency of service and not a condition of service. Therefore, an employee is obliged to serve anywhere in the cadre wherever he is required in the interest of administration. It is submitted that the petitioner, after completion of initial training was appointed as Constable on 31.03.1995 and was posted in 7th Bn at Secunderabad (A.P.) now Telangana. It is stated that the petitioner while his posting in 7th Bn was attached in the 6th Bn situated at Dayabasti in New Delhi for a period of six months and thereafter he was granted extensions from time to time. He remained performing his duties at Delhi upto 04.09.2001. Thereafter the petitioner was transferred from 7h Bn and was posted in 6th Bn of RPSF New Delhi vide Railway Board order dated 31.08.2001. It is where the petitioner came to be promoted to the rank of Head Constable on 31.12.2004 and Assistant Sub Inspector on 01.04.2017. On promotion, the petitioner vide Railway Board order dated 19.04.2017 was transferred to 15th Bn at Udhampur on administrative grounds. It is the further case of the respondents that as per the guidelines issued by respondent No.2 vide Directive No.32 (Revised) dated 28.01.2017, a member of the Force has been allowed posting for a maximum period of ten years at a stretch and 15 years broken spells subject to availability of vacancy.

4. While reviewing the transfer cases, it came to light that the petitioner had completed more than 21 years at Delhi including his attachment period while he was posted in 7th Bn situated at Secunderabad and accordingly, the petitioner was transferred from Northern region to Southern region i.e. to 5th Bn located at Trichy, Tamil Nadu vide order impugned and the transfer was in the interest of administration.

5. Heard learned counsel for the parties and perused the record.

6. The recruitment and service conditions of the petitioner are governed by the Railway Protection Force Act, 1957 ["the Act"] and the Rules framed thereunder. The Director General, RPF in the exercise of powers conferred by Rule 28 of the RPF Rules, 1987 read with section 8 of the Railway Protection Force Act, 1957 and in supersession of all earlier instructions, has issued guidelines in the form of Directive No.32 (Revised) to regulate the transfer of members of the Force. As per clause 2(viii) of the guidelines, all enrolled male members of the Railway Protection Special Force are transferable from one Battalion to another after completion of ten years. It is this stipulation in the guidelines, the petitioner is strongly banking upon. It is submitted that the petitioner has yet not completed the tenure in the 15th Bn stationed at Udhampur and, therefore, cannot be transferred to another Bn.

7. Before appreciating the contentions of learned counsel for the parties, it is necessary to take note of few provisions governing the transfer of members of the Force. Section 15 of the RPFC Act provides thus:-

"15. Officers and members of the Force to be considered always on duty and

liable to be employed in any part of the railways.

(1) Every member of the Force shall, for the purposes of this Act, be considered to be always on duty, and shall, at any time, be liable to be employed at any place within India.

(2) No member of the Force shall engage himself in any employment or office other than his duties under this Act."

8. The aforesaid provision in the Act is wide in its amplitude and quite drastic. It clearly proclaims that every member of the Force shall be considered to be always on duty for the purposes of the Act and shall be liable to be employed at any place within India. To the similar effect is Rule 90 of the Railway Protection Force Rules, 1987, which for facility of reference is reproduced hereunder:-

"90. General: Transfer of members of the Force may be ordered from one place to any other place in India in the exigencies of service or for administrative reasons or to avoid local entanglements of such members or for any such other consideration."

9. Rule 90, therefore, only reiterates the position as proclaimed in Section 15 of the Act. Rule 28, however, cloths the Director General of the Force with power to issue directions in the form of Directives relating to the enforcement and furtherance of the provisions of the Act and the Rules, as he may think necessary and the superior officers and the enrolled members of the Force shall be governed by such Directives in the performance and discharge of their duties. It is in the exercise of this power vested in the Director General of the Force, Directive No.32 (Revised) dated 28.12.2017 has been issued.

10. When we interpret para 2(viii) in the context of the provisions of the Act and the Rules, taken note of herein above, it becomes evident that an enrolled male members of the Force is not entitled to claim his transfer from one Battalion to another unless he has completed a tenure of five years but he will not be retained in the Battalion after he completes a tenure of ten years. This, however, does not mean that the competent authority cannot effect his premature transfer, if exigency of service so requires. The provision of ten years' tenure for inter-Battalion transfer, provided by the Director General of the Force in terms of the Directives issued under Rule 28, would mean that a person shall not be retained in one Battalion for a period of more than ten years and would be liable to be transferred to another Battalion on completion of the tenure of ten years. He may, however, claim his transfer from one Battalion to another on request but such request shall be entertained only once he completes five years tenure in the Battalion concerned.

11. Viewed thus, I am of the view that this prescription in the Directive No.32 (Revised) does not have and cannot have overriding effect on the statutory provisions of Section 15 and Rule 90, therefore, must be understood to mean and convey that the directives issued by the Director General of the Force may

be binding on the Director General of the Force and the subordinate officers but shall not override the powers of the Railway Board.

12. In the instant case, the Railway Board shall be deemed to have acted under the general powers of transfer vested by virtue of Section 15 of the Act and Rule 90 of the Rules framed thereunder.

13. Viewed thus, I do not find any illegality or lack of jurisdiction in issuing the order impugned by the Railway Board. It is interesting to note that the petitioner has not even arrayed the Railway Board as party respondent, though the order impugned has been issued by the Railway Board. This petition is, therefore, found to be without merit, hence dismissed. No order as to costs.