
(2018) 07 UK CK 0113
In the Uttarakhand High Court
Case No : Writ Petition (SB) No. 211 of 2018

Pankaj Kumar

APPELLANT

Vs

State of Uttarakhand & another

RESPONDENT

Date of Decision : 23-07-2018

Acts Referred:

Indian Forest Service Cadre Rules, 1966 — Rule 7(1), 7(3), 7(5)

Citation : (2018) 07 UK CK 0113

Hon'ble Judges : K.M. JOSEPH, C.J.;SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : B.D. Upadhyaya, Naveen Tewari, Pradeep Joshi, Rakesh Thapliyal, Mukesh Kaparwan

Final Decision : Allowed

Judgement

K.M. JOSEPH, C.J. (ORAL)

1. Petitioner challenges Annexure-1 order dated 30.05.2018 insofar as it relates to the petitioner and respondent No. 4. By the impugned order,

petitioner, who was working as a Divisional Forest Officer/Deputy Conservator of Forest, Almora Forest Division, Almora has been

attached/transferred on administrative ground to the office of the Principal Chief Conservator of Forest, Uttarakhand. The only ground, which is

pressed before us by learned senior advocate for the petitioner, is that the impugned order is in violation of the Indian Forest Service (Cadre)

Amendment Rules, 2014. Insofar as the tenure of a cadre officer in a cadre post has been interfered without following the procedure laid down in the

said Rules. Expatiating he would draw our attention to Rule 7(3) of the Indian Forest Cadre Rules, 1966, which after the amendment in the year 2014,

reads as follows:

â??(3) A cadre officer, appointed to any cadre post shall hold office for at least two years unless in the meantime he or she has been promoted, retired or sent on deputation outside the State or training exceeding two months.â??

2. Thereafter, he drew our attention to the Schedule made under Rule 7(1) and (5). Rule 3 is relevant, which reads as follows:

â??3. Procedure.â?"(a) The Civil Services Board shall seek detailed justification from the Administrative Department of the concerned State

Government for the transfer of an officer before the specified tenure.

(b) The Civil Services Board shallâ?

(i)Â consider the report of the Administrative Department along with any other inputs it may have from other reliable sources;

(ii) not make recommendation for premature transfer of Cadre Officers unless it has been satisfied

itself of the reasons for such premature transfer.

(c) The Civil Services Board shall submit a quarterly report in such Form as it thinks fit to the Central Government clearly stating the details of

officers recommended to be transferred before the minimum specified tenure and the reasons therefor:

Provided that the Competent Authority may reject the recommendation of the Civil Services Board for the reasons to be recorded in writing.â??

3. Mr. B.D. Upadhyaya, learned Senior Counsel for the petitioner would submit that impugned order, in other words, has been passed without the Civil

Services Board having acted in the terms of procedure set out by Rules.

4. The case as set up, on the other hand, by the official respondents is that there were number of complaints against the petitioner and he was,

therefore, transferred on administrative ground and he has been attached in the office of the Principal Chief Conservator of Forest, Uttarakhand.

5. Mr. Rakesh Thapliyal, learned counsel for the party respondent would submit that the petitioner had voluntarily gave up the charge and the 4th

respondent in compliance of impugned order has joined at the place of the petitioner at Almora. He would also reiterate that the petitioner was

transferred on the basis of number of complaints against him and, therefore, Court may not interfere, and even if the Court is inclined to interfere on

the ground urged by the petitioner, the 4th respondent may be permitted to

continue at the place, where he has joined and he further stated that the transfer of the 4th respondent was a routine transfer.

6. There is no dispute that the petitioner was posted in November, 2017 at Almora. Rule 7(3) of the Cadre Rules, as set out by us earlier,

contemplates that cadre officer appointed in cadre office shall hold the office for at least for two years. The only exceptional situations, where it can

be interfered, are: if he has been promoted, retired or sent on deputation outside the State or training exceeding two months. None of these situations

are prevailing in the instant case. The further exceptional circumstances, in which the tenure of the cadre officer can be cut short is when a transfer is

necessitated prior to expiry of guaranteed period of two years. For that, the procedure is given in detail in Rule 3 of the Schedule prepared under Rule

7(1) and (5). Therein, the Civil Service Board has to seek detailed justification from the Administrative Department of the concerned State

Government for transfer of an officer. The Board is obliged to consider the report of the Administrative Department along with any other inputs it may

have been provided from other reliable sources. Secondly, and more importantly, it is also obliged to obtain the comments or views of the officer

proposed to be transferred i.e. the petitioner in the instant case, based on the circumstances presented to it in justification of the proposal. Further the

rule contemplates unless the Board is satisfied of the reason for premature transfer, it shall not make any recommendation for premature transfer of

Cadre Officers. The use of the negative language in sub clause 3(b)(iii) of the Schedule makes it abundantly clear that it is mandatory and it is

necessarily required to be followed. No doubt, it is also clear that the competent Authority can reject the recommendation of the Civil Services Board

for the reasons to be recorded in writing.

7. There is no dispute by any of the parties, that the procedure as contemplated under Rules of 1966 read with amendment of 2014, has not been

followed. In fact, Mr. Pradeep Joshi, learned Standing Counsel would submit that already steps are afoot to take action in terms of the Rules in regard

to the petitioner.

8. We are unable to accept the case of the respondents that being an administrative transfer, the petitioner can be transferred before expiry of the

guaranteed period under Rule 7(3). Rule 7(3) appears to be peremptory in

nature since relates to cadre employee. The Rules in itself are comprehensive and it does not admit of any exception, even if the exception is sought to be projected in the form of complaints against the officer, as the basis of existence of administrative ground.

9. To a query posed to the learned Standing Counsel as to whether there is any provision in the Rules, which contemplate departure from the procedure in the Rules in the case of existence of administrative ground, the learned Standing Counsel would submit that there is no provision as such in the Rules, which permits the Authorities to pass an administrative order of transfer in respect of the cadre officer appointed to a cadre post departing from the procedure, which is contemplated in the Schedule.

10. In such circumstances, we are inclined to agree with the learned senior counsel for the petitioner that the order of transfer/attachment is in contravention of the law applicable. The law applicable is contained in the statutory provision. Therefore, one of the two exceptional circumstances, in which a transfer order can be interfered with, namely, violation of statute is present in this case. In such circumstances, we are inclined to allow the writ petition.

11. The argument of Mr.Rakesh Thapliyal, learned counsel that as far as the 4th respondent is concerned, it is only a routine transfer and he may not be disturbed cannot be accepted.

The impugned order shows that as far as the 4th respondent is concerned, his transfer is in the vacant post which was held by the petitioner prior to passing of impugned order. Therefore, the transfer of the respondent, even if it is a routine transfer, it is only in respect of the post created by the illegal transfer of the petitioner. Therefore, the moment illegality is found and it is set aside by courts, the consequence must follow. It may be that the petitioner has been transferred on the basis of complaints, but as we have already noticed that there is a procedure for processing the complaint under the statutory Rules and that cannot be bypassed, we are not inclined to accept it.

12. Consequently, the writ petition is allowed. The impugned order is quashed. We also, however, make it clear that this judgment will not stand in the way of the Authorities, if advised, proceeding in terms of the Rules afresh, which provide for transfer, which we have already detailed in our

judgment. No order as to costs.