

(2003) 03 JH CK 0108
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5668 of 2002

Pankaj Prakash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Citation : (2003) 2 JCR 581

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : K.K. Jha "Kamat" and S.K. Murthy, for the Appellant; P. Modi, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—This application has been preferred by the petitioner, Pankaj Prakash against the order dated 19th September, 2002, whereby he has been transferred from Barkakana to Chittaranjan by the Divisional Security Commissioner, Railway Protection Force (RPF), Dhanbad in pursuance of order passed by the Chief Security Commissioner-cum-DIG, RPF, Eastern Railway, Kolkata.

2. According to the petitioner (a member of RPF), the respondents cannot transfer him from one zone to another without obtaining concurrence of the Director General, RPF, as per Section 91.2 of Railway Protection Force Act, 1957, which reads as follows ;

"91.2 Enrolled members of the force : All inter-zonal railway transfers of the enrolled members of the Force shall be ordered by the Chief Security Commissioner concerned after obtaining the concurrence of the Director General."

3. It appears that Barkakana which was under Dhanbad Division, as also Chittaranjan both were under Eastern Railway, Kolkata. In the middle of 2002, it was decided to create East Central Railway with Headquarters at Hajipur. Accordingly, options were called for from the willing members of the RPF posted

in the Eastern Railway to give their choice for being posted in the newly created Headquarters of East Central Railway, Hajipur, vide Circular dated 30th July, 2002 (Annexure 2). In respect to non-gazetted staff of Dhanbad Division who were under the control of the Eastern Railway were allowed to remain either in the Eastern Railway Kolkata or opt to join East Central Railway, Hajipur. It was made clear that in case no option is exercised, the staff will be deemed to have opted transfer to East Central Railway, Hajipur.

4. The respondents have taken plea that the division of zone came into operation w.e.f. 1st October, 2002, but order of transfer was issued prior to the division of the zone on 19th September, 2002, therefore, Section 91.2 of the Railway Protection Force Act, 1957 is not applicable in the case of the petitioner.

5. The counsel for the respondent Eastern Railway wanted to place reliance on a letter No. SO/DHN/Con/8/2002(A), Dhanbad, dated 8th September, 2002, whereby the Divisional Security Commissioner, RPF, Eastern Railway, Dhanbad informed the Chief Security Commissioner, RPF, Eastern Railway, Kolkata relating to undesirable and criminal activities of some SIPF such as the petitioner.

The aforesaid letter dated 8th September, 2002 being not a part of the affidavit, it is not desirable to take into consideration the letter, nor the ground shown therein. If there is any undesirable and criminal activity on the part of any SIPF though it is open to the competent authority to take appropriate action/disciplinary action, no order of transfer can be made if it is beyond jurisdiction,

6. Admittedly, the order was passed by the Chief Security Commissioner, RPF, Eastern Railway, Kolkata on 19th September, 2002 of which reference given in the impugned order of transfer dated 19th September, 2002 (Annexure 4). By this date, the officers came to know that the Dhanbad Division is going to be carved out w.e.f 1st October, 2002 and will be placed under the newly created zone i.e. East Central Railway, Hajipur.

7. Admittedly, the petitioner had not opted to remain in Eastern Railway, Kolkata. No option given by the petitioner is the stand taken by the respondents. In such case as per the guidelines for option dated 30th July, 2002 (Annexure 2), the petitioner will be deemed to have opted for transfer to East Central Railway, Hajipur.

8. If under the deemed provision, the petitioner had opted for transfer to East Central Railway, Hajipur, which option to be considered along with the options given by others, it was not desirable either for the Chief Security Commissioner, RPF, Eastern Railway, Kolkata or the Division Security Commissioner, RPF, Dhanbad to transfer the service of the petitioner to Chittaranjan which was to continue under the old zone of Eastern Railway, Kolkata. The officers were knowing that after about 10-11 days, they will have no such power to place the services of the petitioner or to transfer him from Barkakana to Chittaranjan i.e. from one zone to another, without prior concurrence of the Director General, RPF.

9. The Court generally do not interfere with any order of transfer, if otherwise issued by an officer having jurisdiction and if passed on administrative ground. However, in the present case, as the order of transfer was hurriedly passed with knowledge that after 10-11 days, the officers would have no such jurisdiction and such transfer has affected petitioner's right of consideration for continuance in the newly created East Central Zone, Hajipur, the petitioner is entitled for the relief, as sought for.

10. The order of transfer dated 19th September, 2002 is set aside. The service of the petitioner stands replaced under the control of the Divisional Security Commissioner, RPF, Dhanbad but it will be open to the competent authority to transfer him to any place, in accordance with law, or to take any suitable action if there is any evidence of undesirable activities.

11. The writ petition is allowed with aforesaid liberty.