
(2008) 04 PAT CK 0056
In the Patna High Court
Case No : CWJC No. 2756 of 2008

Pramod Kumar Ojha

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 21-04-2008

Acts Referred:

Railway Protection Force Act, 1957 — Section 2(ba)

Citation : (2008) 2 PLJR 684

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Navin Sinha, J.—The petitioner, a Constable in the Railway Protection Force, challenges his order of transfer as contained in Memo No. 6 of 2008 dated 25.1.2008 at Annexure-1. The impugned order transfers him from the East Central Railway at Danapur to the Southern Railway at Chennai. Learned Senior Counsel, Mr. V.K. Kanth assailing the order of transfer submitted that the petitioner was posted at Danapur under the East Central Railway, which was a zone different from Southern Railway at Chennai in terms of Rule 2(t) of the Railway Protection Force Rules, 1987 (hereinafter referred to as "the R.P.F. Rules") framed under the Railway Protection Force Act (hereinafter called as "the R.P.F. Act"). Under Rule 16.4 of the R.P.F. Rules, the petitioner who was in the executive branch of the Zonal Railway could not be transferred to another branch in another zone without approval of the Director General. Under Rule 16.3 of the Railway Protection Force Rules enrolled members [which includes persons like the petitioner as defined u/s 2 (ba) of the R.P.F. Act] form a separate cadre under the Chief Security Commissioner, who is the head of the force in a zonal Railway under Rule 2(d) of the R.P.F. Rules. Since the cadre of the petitioner was in the East Central Railway Zone, he could not be transferred to another zone outside his cadre. Under Rule 89.2 the recruits in the Railway Protection Force were to be posted by the Chief Security Commissioner. Under Rule 90 of the R.P.F. Rules a

member of the force could be transferred from one place to any other place in India in the exigencies of service or for administrative reasons but such inter-zonal transfer of enrolled members of the force could be ordered by the Chief Security Commissioner after obtaining concurrence of the Director General. That order of transfer of the petitioner had not been passed by the Chief Security Commissioner but by the Divisional Security Commissioner, East Central Railway Danapur, who was not competent to do so. The order of transfer had originated from the Director General and not the Chief Security Commissioner. In any event, the counter affidavit did not bring on record any order of concurrence of the Director General. The last submission was that if the Court was not inclined to interfere with the order of transfer, the petitioner may be sent to any Hindi speaking State posting and not to Chennai as he would face language problem.

2. Mr. Ahsanuddin Amanullah, learned counsel appearing on behalf of the Respondents submitted from the counter affidavit filed on their behalf that the order of transfer had been passed on administrative grounds by the Director General as communicated to the Chief Security Commissioner on 21.1.2008 which in turn was forwarded to the concerned Divisional Security Commissioner on 25.1.2008. Though the petitioner in his submissions has emphasized that there was no order issued by the Director General of concurrence, there is no pleading to that effect in the writ petition or in the reply to the counter affidavit. The counter affidavit specifically asserts the concurrence of the Director General. He lastly referred to Rule 99.1 to submit that the issue of seniority of the petitioner was adequately protected in inter-zonal transfer also. The rules themselves therefore visualize a transfer from one zone to another, keeping in mind the seniority interest of the employee, even if it be accepted that each zone constituted a separate cadre. That there was no separate zonal cadre but only an all India cadre.

3. In his rejoinder, learned Senior Counsel, Mr. Kanth acknowledged the absence of any pleading of statutory violation in the order of transfer and absence of any denial in the rejoinder notwithstanding the specific assertion of the Respondents in their counter affidavit that statutory provisions stood fully complied. The fact that a memo of charge dated 15.1.2008 had already been served on the petitioner, the very same day, but does not find mention in the writ petition affirmed on 1.2.2008 was sought to be urged as an inadvertent omission.

4. The law stands settled that transfer is a normal incidence of service. The Courts have been loath and reluctant to interfere with orders of transfer except in very limited dimensions. Only if there has been any statutory violation, there be serious allegations of mala fide, the transfer may result in loss of status and pay are some of the examples when the Courts may interfere. Non-compliance of executive instructions, policies and orders cannot found a legal right to assail an order of transfer. This Court shall have no hesitation in holding that even in the former category the grounds which may be trivial may not persuade the Court to interfere. Unless there be any prejudice caused there shall be no occasion for the

writ Court to interfere.

5. In the present case, Rule 90 of the R.P.F. Rules reads as follows:

"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 other consideration."

Rule 91.2 of the R.P.F. Rules also visualizes transfer of enrolled members (persons like the petitioner) of the Force inter-zone. The Rule then only prescribes the modalities for the same after providing for it in principle. The service is divided into zones with divisions under a zone. Rule 16.3 of the R.P.F. Rules does not create separate cadres for each zone. All that it states is that the three branches, executive, prosecution and fire shall form separate cadres within a zone. The Court finds no substance in the submission of the petitioner that there was a zonewise cadre in the service. Even if the argument of a zonal cadre be accepted the Rules itself provide for transfer outside the cadre to another zone taking care of the seniority on" a inter-zonal transfer under Rule 99.1 of the R.P.F. Rules.

6. The argument of the petitioner that the order of transfer has emanated from the Director General and not from the Chief Security Commissioner does not impress this Court. The petitioner was posted at Danapur. Whatever may have been the administrative exigencies for the inter-zonal transfer, it took place at Danapur. It stands to reason that the Director General sitting at New Delhi was not aware of what was physically transpiring at Danapur unless a report was submitted to him. The Chief Security Commissioner is the head of the force in a zonal Railway. Obviously it was his report in pursuance of which the orders of the Director General came. This was nothing but the concurrence of the " Director General in terms of Rule 91.2 of the R.P.F. Rules. Once the Director General gave his concurrence, the Chief Security Commissioner directed the Divisional Security Commissioner to issue the order, It was, therefore, not an order passed by the Divisional Security Commissioner, who only communicated the order of the Chief Security Commissioner to the petitioner.

7. The petitioner has very strenuously urged that there is no order of the Director General for his transfer; during suspension. Such an important issue with regard to non-compliance of statutory procedure, in a challenge to an order of transfer, surprisingly finds no mention in the pleadings of the writ application. Despite the assertion of the Respondents in their counter affidavit that the statutory procedures had been complied with, the petitioner in his reply to the counter affidavit nonetheless does not deny it. This Court, therefore, holds that a presumption also arises u/s 114 sub-clause (e) of the Indian Evidence Act that all official actions have been done in a proper manner and as per the procedure prescribed.

8. Even in case of such inter-zonal transfer the seniority of the petitioner has been adequately taken care of under Rule 99.1 of the R.P.F. Rules.

9. This Court finds it difficult to accept the submission of the petitioner that not to mention the services of the memo of charges on him on 15.1.2008 in the writ application affirmed on 1.2.2008 was an inadvertent error. The Court has no hesitation in holding that the petitioner in his wisdom thought it prudent to do so in his interest. The petitioner concealed material information from the Court. Nonetheless confronted with the situation during submissions reliance was sought to be placed on Rule 93.9 of the R.P.F. Rules to submit that during the departmental proceedings he could not be transferred. That is not the purport of the Rule. Such a transfer under the Rule is also permissible in public interest or in the interest of expeditious disposal of the disciplinary proceedings. In any event, the petitioner cannot blow hot and cold on the issue.

10. The last submission of language problem has only to be stated to be rejected.

11. The petitioner is a member of a uniformed force. The pillars of a uniformed force are discipline. From the counter affidavit of the Respondents, it appears that the petitioner has remained in East Central Railway zone since his appointment in 1988 till the present transfer. There have been more than one departmental proceeding against him and punishment imposed. At one stage, he was removed from service but was reinstated with a lesser punishment by his Excellency the President of India. Even presently in the memo of charges dated 15.1.2008 the allegation is that at a time when he claimed to be on leave due to sickness he was collecting money from the staff at Dhanbad, Danapur, Mugalsarai, Samastipur and Sonapur Division and attending the meeting of the R.P.F. Association which were all acts of indiscipline.

12. The Apex Court in the case of R. Radhakrishnan vs. Director General of Police & Ors., reported in (2008)1 S.C.C. 660, while considering the issue of recruitment in a uniformed force in the relevant extract at paragraph 10 observed as follows:

"10. ...The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve in other services."

13. If the argument of the petitioner against an inter-zonal transfer be accepted, a posting which may be rigorous can also be questioned by a member of the disciplined force when he knew very well the rigours of duty and the harshness of the job.

14. This Court can do no better than to quote paragraph 12 of a judgment of the Apex Court in Major General J.K. Bansal Vs. Union of India (UOI) and Others, :

"12. It will be noticed that these decisions have been rendered in the case of civilian employees or those who are working in public sector undertakings. The scope of interference by the courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The courts should be extreme slow in interfering with an order of transfer of such category of persons

and unless an exceptionally strong case is made out, no interference should be made."

15. As a member of the disciplined force the petitioner is expected to comply his order of transfer and then raise a grievance, if any, in accordance with law. This aspect of the matter has been emphasized by the Supreme Court in (2006)9 SCC 583 (S.C. Saxena vs. Union of India & Ors.) When it has been observed in the relevant extract at paragraph 6 of the judgment as follows:-

"6. ...We find that no case for our interference whatsoever has been made out. in the first place, a Government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed...."

16. This Court, therefore, does not find any infirmity in the order of transfer, much less any statutory violation calling for interference by this Court. The writ application is dismissed.