
(1997) 07 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : CWP No. 252 and 253 of 1997

Prithi Pal and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 28-07-1997

Acts Referred:

Police Act, 1861 — Section 2, 22

Punjab Police Rules, 1934 — Rule 12.22, 12.26, 13.6, 13.7, 13.8

Citation : (1998) 1 ShimLC 183

Hon'ble Judges : M. Srinivasan, C.J.;A.L. Vaidya, J

Bench : Division Bench

Advocate : Rajiv Sharma and Ranjan Sharma, for the Appellant; Indar Singh, General, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—The Petitioners were transferred by a general transfer order dated 9-6-1997. The same was challenged by these Petitioners before the Administrative Tribunal. By order dated 9- 7-1997 the Tribunal dismissed the Petitioner. The order which contains the reasoning of the Tribunal is the order relating to Chain Singh and Ors. . The Tribunal has opined that Section 22 of the Police Act shows that the entire police force in the State is one which can be employed in any part of the general police district. It is also further found by the Tribunal that in so far as the State of Himachal Pradesh is concerned, there is no separate Railway Police District and there is only one general Police District for the whole State which is the provincial Police District. After referring to para 12.22 of the Punjab Police Rules and para 12.26 read with para 14.15, the Tribunal has opined that the transferred are well within the jurisdiction of the authorities concerned and there is no want of power in the authorities to transfer these Head-constables. It is also found that there is no allegation of any specific mala fides against any of the Respondents and thus the order of transfer does not require interference.

2. In these writ petitions the order of the Tribunal is challenged. It is contended by the learned Counsel for the Petitioner that there are district cadres with regard to constables and Head Constables and in so far as the Head Constables of one District are concerned, they cannot be transferred to Anr. District, either without their consent or without following the procedure prescribed in para 12.26 of the Punjab Police Rules. Secondly, it is argued that the Tribunal is in error in thinking that the entire police force forms part of the one cadre. Thirdly, it is contended that the transfers in these cases are not in public interest as they are not warranted.

3. In so far as the first contention is concerned, there is no merit whatever In the same. Section 2 of the Police Act reads, in so far as it is relevant, as follows:

2. Constitution of the force- The entire police establishment under a State Government shall, for the purposes of this Act, be deemed to be one police force, and shall be formally enrolled, and shall consist of such number of officers and men, and shall be constituted in such manner, as shall from time to time be ordered by the State Government.

4. Paragraph 1.4 of the Punjab Police Rules Provides that all police officers appointed or enrolled in either of the two general police districts constitute one police force and are liable to, and legally empowered for, to police duty anywhere within the province and no sub-division of the force territorially or by classes, such as mounted and foot police, affects this principle. A perusal of Section 2 and paragraph 1.5, referred to above, clearly shows that the entire police force in the State is one and it cannot be said to be a different police force or forming different cadres on the basis of the Districts. No doubt, the cadres exists with respect to hierarchy of the posts and not with respect to the same post in each district.

5. Reliance is placed upon the provision in paragraph 12.1(4) which reads: Head constables and constables in each district shall be borne on district rolls and shall receive district constabulary number. Our attention is also drawn to Para 13.1, which provides for promotion from one rank to Anr. and from one grade to Anr. in the same rank to be made by selection to be tempered by seniority, it is provided in Sub-clause (3) that for the purpose of regulating promotion amongst enrolled police officers six promotion lists A,B,C,D, E and F will be maintained and lists A,B,C & D shall be maintained in each District as prescribed in Rules 13.6,13.7m 13.8 and 13.9. It is also pointed out that in Rule 13.8, list "C" relates to promotions of Head Constables. It is provided that in each District, a list shall be maintained in card index form of all constables who have passed the Lower School Course at Phillaur and are considered eligible for promotion to Head Constable. According to the learned Counsel for the Petitioner, these rules show that with regard to each District, the Head Constables form a separate cadre and if there is transfer from one district to Anr. , it cannot be done without the consent of the said Head Constables.

6. This contention is un-sustainable in view of the provisions contained in Rule 12.26, which read as follows:

12.26 Inter-district transfers.-Exchange of appointment between lower subordinates in districts of the same range, or between such police officers in the railway and district police, may be effected subject to the approval of the Superintendent concerned (or of the Assistant Inspector General in cases affecting the railway police). A lower subordinate may be transferred to fill a vacancy in a District other than that in which he is serving only with the sanction of the Deputy Inspector General of the Range. In cases of transfer from and to districts in different ranges, or from and to the railway police, the sanction of both Deputy Inspector General concerned and the Assistant Inspector General, Government Railway Police, is required.

Learned Counsel submits that if Rule 12.26 is to be applied, then the sanction of the Deputy Inspector General should have been obtained and in this case, no sanction has been obtained and, therefore, the transfer is vitiated. This contention over-looks the provision in Rule 14.15, which reads:

14.15 Postings and transfers-liability to and authority for:

(1) All enrolled police officers are, u/s 22 of the Police, Act, liable for service in any part of the general police district.

Sub-rule (2) reads: the authorities empowered to post and transfer police officers are shown in the following table." The table provides for the authority for transfer, rank of the officer to be transferred and the restrictions. In so far as the head constables are concerned, they can be transferred by the Superintendent, Assistant Inspector General, who is a higher authority and Deputy Inspector General, who is higher than them as well as the Inspector General who is a further higher authority. In this case, the transfer has been ordered by the Director General of Police. Undoubtedly, the Director General of Police is an authority higher than the Inspector General. Hence, there is no question of the order being vitiated by the absence of the sanction from the Deputy Inspector General of the Police.

7. It is contended that Rule 12.26 must be read alongwith Rule 14.15 and a harmonious construction should be adopted. If this contention is accepted, it goes against the Petitioners. Rule 12.26 must be understood as meaning that whenever a transfer is made by an authority who is lower in rank than the Deputy Inspector General of the range, then he shall get the sanction and the Deputy Inspector General of the range in order to make an inter-district transfer. That does not mean that when an authority higher than the Deputy Inspector General of the range effects the transfer, he should also get the sanction of the Deputy Inspector General of the Range. If such a meaning is given, it will lead to absurdity. Hence we do not accept the contention, but on the other hand, we hold that on a harmonious construction of Rules 12.26 and 14.15, it follows that the transfer having been effected by the highest police authority, namely, the

Director General of Police, it does not require the sanction of the Deputy Inspector General, as provided in Rule 12.26.

8. The second contention is also disposed of by our above reasoning. As regards the third contention, there is nothing on record which would show that the transfers are not in the public interest. On the other hand, the reply filed by the State Government shows that the transfers are in public interest and the Petitioners are, in no way, affected by the said transfers. The following paragraphs in the reply are worth extracting:

2. In reply to this para it is submitted that there is no District Cadre as such for the enrolled Police officers. The constables are recruited under the Punjab Police Rules 12.22 as a member of the Police force under the Police Act 1861. The appointment letters are issued as per proforma 12.22 (1) of the Punjab Police Rules. As per Section 2 of the Police Act the entire Police establishment under the State Govt, shall be deemed one police force and shall be formally enrolled. It is wrong to contend that they were allocated to Distt. Kangra after their enrollment. It is however, submitted that the Petitioners No. 1, 2, 3, 4, 5, 7, 9, 11, 12, 13, 14, 15, 19, 20, 21, 22, 24, 26, 27, 28, 34, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50 were recruited in HPAP Battalion No. 1 whereas the Ors. were recruited in the Districts.

3. In reply to this para it is submitted that the Petitioner took the promotional test and qualified the same. They successfully completed the promotional course at the Police Training School and their names were brought on the select list and when the vacancies of the Head Constables arose they were promoted accordingly as per their order of merit. After serving in the Battalions which is part of general Police Distt. they were again transferred to the Distt. to do the investigation job which is part of their career planning. On their transfer they do not lose their seniority.

The Petitioners who were having a longer stay in the Distt. were transferred to the Battalions in order to give the opportunity to equal number of Head constables to work in the Distt. as a part of their career planning. The Petitioners have wrongly contended that they were deputed to Battalion for gaining experience in the armed Weaponary etc.

The Respondent No. 2 is competent to transfer the enrolled police officer as per the Punjab Police Rules 14.15 (1 and 2) within the State and there are various Rules which empowers for the inter districts transfers etc.

4. That the Police is a disciplined force and a service of exigency, no consent and willingness is required and the Respondents are competent to transfer them in public interest as per Section 22 of the Police Act. However, the Respondents are open to consider and have been considering the cases of an individual if he is having any legitimate problems as a welfare measure.

The service conditions of the enrolled Police officers are different as compared

are given barrack accommodation and messing arrangements like cooks, water carriers, etc. which are not provided to other services.

7(f) No law has been violated by the Respondents. As stated supra, the Respondents can transfer enrolled Police officer throughout the general police district and the transfers are being made on administrative grounds and in public interest.

7(J) In reply to this para it is submitted that by the impugned judgment no Rule has been held nugatory.

7(k) The impugned transfer order are legal and just and as submitted in the foregoing paras there is no violation of any rule or the Police Act.

9. It is made clear in the reply that the seniority of the Petitioners is, in no way, affected by the transfers. None of the service conditions of the Petitioners is affected. Hence the Petitioners cannot make any grievance against the order of transfer. It is also pointed out by the Tribunal that no allegation of *maia fide* has been made against any of the Respondents and hence the transfer order does not warrant interference.

10. Learned Counsel for the Petitioners draws our attention to the judgment of Delhi High Court in *S.N. Rai and Ors. v. Union of India and Ors.* 1979 DLT 203. In that case, the Petitioners were initially working in the Post and Telegraph Wing of the Central Public Works Department. Their services were eventually transferred to the newly constituted civil engineering wing of the Post & Telegraph Department and were absorbed in the said Department. The question was whether they could be repatriated back to the Central Public Works Department. The Delhi High Court held that as the Petitioners have not consented to their repatriation to the department to which they were originally working, the order of repatriation was bad. While holding so, the Court made the following observations in paragraph 10:

10. The fourth question that requires consideration is whether assuming that these officers had been duly absorbed, but there was power to review the decision, could they nevertheless be repatriated to their parent department, without their consent, merely because certain formalities with regard to absorption had still to be gone through. This question must be answered in the negative. Once the second question is answered the way it has been done above, the absorption was complete notwithstanding the formalities that may have to be gone . through. Once the officers were duly absorbed in the P&T Department, any repatriation to the parent department would amount to dis-integration of the cadre, and, what is worse, be tantamount to their transfer outside the cadre in which they got absorbed, government has undoubted powers to classify the civil services or even bifurcate a cadre but there is no power to transfer a civil servant outside the service or the cadre, without the occurrence of the public servant concerned. An existing cadre may be split up into two cadres, but to send a public servant outside the cadre is a different matter and must be treated

differently. In view, therefore, of the incidence of absorption and inability of Government to transfer these officers out of the cadre in which they got absorbed, there was no power in Government to declare that these officers had got de-absorbed, as it were, or that they would be repatriated to their erstwhile parent department. That being so, the subsequent Ministerial decision, referred to above, by which the Petitioners were required to be repatriated, was in excess of power, even though Government cannot always be bound down to a particular decision and may be free, in certain circumstances, to resile from a position that it takes and to review its earlier decision.

11. The decision has no application in the present case, as it was a case of repatriation to the parent department after the employees were absorbed in the new Department to which they were taken in service.

12. Reliance is also placed on the judgment of the Bombay High Court in *Parkash R. Borkar v. Union of India and Ors.* 1984 LAB IC 739. The Petitioner therein was appointed as a Lower Division Clerk in the Directorate of Transport in the Union Territory of Goa, Daman and Diu. After six years, he was appointed as a Lower Division Clerk in the Directorate of Civil Supplies and Price Control. It was that order which was challenged by the Petitioner therein. The Court held that when the Petitioner is in a cadre or post, he continues to be in that cadre or in post unless promoted or any penalty of dismissal or removal from service is imposed upon him and in the absence of such a contingency, he could not be transferred to Anr. cadre without his consent. That ruling cannot apply in the present case, as this is not a case of two different cadres or two different departments.

13. Our attention is also drawn to the judgment of the Supreme Court in *State of West Bengal and Ors. v. Amrita Lai Singha Roy* 1991(2) S C T 43. The Sub-Inspector of Police who was working in Hugli District, Enforcement Branch, was transferred out of the District. He challenged the order of transfer. The writ petition was dismissed by a Single Judge. On appeal, the Division Bench accepted his contention that the transfer having been made within 7 years from 3-5-1982, the date on which he was posted at Arambagh in the District Enforcement Branch, it was not justified by compelling or un-avoidable administrative exigencies of service. The Division Bench also held that the transfer having come about at the instance of the Deputy Inspector General of Police (Headquarters) and not on the initiative of the Deputy Inspector General of Police, Burdwan Range, was rendered infirm. The Supreme Court did not decide either of the questions in view of the long lapse of time. The Supreme Court said that having regard to the passage of time, the controversy did not survive, inasmuch as, even the possible inhibition of 7 years period referred to by the High Court ceased to operate. The Court said it was unnecessary to go into the other questions. Thus, the ruling of the Supreme Court does not help the Petitioners in this case. On the other hand, it could be used as against them also.

14. We are convinced in this case that the order of transfer which is attacked in this writ petition is not vitiated either by any invalidity in law or by mala fides.

Hence these writ Petitioners fail and these are dismissed. No costs.

15. We have already extracted Paragraph 4 of the reply filed by the State Government. It is open to the Petitioners to approach the State Government with an appropriate representation and invoke the contents of paragraph 4 of the reply.