
(2010) 05 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10676 of 2010

P.S. Sultan Khan

APPELLANT

Vs

The Inspector General of Police, Guntur Range and Others

RESPONDENT

Date of Decision : 31-05-2010

Acts Referred:

Andhra Pradesh Police Subordinate Service Rules, 1966 — Rule 13

Citation : (2010) 5 ALD 294 : (2010) 5 ALT 283

Hon'ble Judges : Ghulam Mohammed, J;G. Bhavani Prasad, J

Bench : Division Bench

Advocate : P.V. Krishnaiah, for the Appellant; Government Pleader for Services-I, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—This writ petition is filed seeking a writ of mandamus to declare the proceedings, dated 26.08.2009, issued by the second respondent, as illegal and arbitrary and to set aside the order dated 18.01.2010 passed in O.A. No. 10997 of 2009 by the Andhra Pradesh Administrative Tribunal, Hyderabad (for short "the Tribunal").

2. The brief facts of the case are as follows;

The petitioner was initially appointed as Police Constable in Prakasam District on 18.10.1977 and subsequently, promoted as Head Constable and posted at Tangaturu vide order, dated 16.06.2007. He states that without completing one year of service at Tangaturu, he was transferred to Pullalacheruvu, by order, dated 09.05.2008, passed by second respondent, who again transferred him from Pullalacheruvu to Kothapatnam and from Kothapatnam to Komarolu Police Station vide orders, dated 02.01.2009 and 02.05.2009 respectively. When the petitioner was on medical leave, the second respondent deputed him from Komarolu Police Station to Guntakal Government Railway Police vide order, dated 26.08.2009. Assailing the said deputation, the petitioner filed O.A. No. 10997 of

2009 before the Tribunal, which in turn dismissed the same. The petitioner filed Review MA No. 396 of 2010 in O.A. No. 10997 of 2009 before the Tribunal and the same was also dismissed. Aggrieved by the same, the petitioner filed the present writ petition.

3. Heard the learned Counsel for the petitioner and the learned Government Pleader for Services-I.

4. Learned Counsel for the petitioner vehemently contended that the second respondent frequently effecting transfers to the petitioner within a short period and has deputed him to Railway Police contrary to the procedure and that neither the borrowing department made a request to the parent department for his deputation nor his consent was obtained. He further contended that keeping in view of the allegations and pendency of disciplinary proceedings against the petitioner, the second respondent effected transfers as well as deputation as a measure of punishment, which is illegal and arbitrary. To substantiate the plea of consent, the learned Counsel has relied upon the judgment of the Apex Court in Umapati Choudhary Vs. State of Bihar and Another, wherein it was held as under:

Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organization (commonly referred to as the parent department or leading authority) to another department or cadre or organization (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not.

Learned Counsel has drawn the attention of this Court to the judgment of the Apex Court in State of Punjab v. Inder Singh AIR 1998 SC 7 wherein it was held as under:

Concept of "deputation" is well understood in service law and has a recognized meaning. "Deputation" has a different connotation in-service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside is cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation, the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on

deputation and repatriation is quite settled as we have also seen in various judgments, which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head constables as the case may be.

Learned Counsel has further drawn the attention of this Court to the judgment of the Apex Court in *Somesh Tiwari Vs. Union of India (UOI) and Others*, wherein it was held as under:

The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e., on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

Learned Counsel for the petitioner has also drawn the attention of this Court to the judgment of this Court in *P. Anjaneyulu Vs. Chief Manager, A.P. Circle, Bharat Sanchar Nigam Ltd., Govt. of India, Hyd. and another*, wherein it was held as under:

The petitioner was said to have embezzled a sum of Rs. 1,47,000/- and a disciplinary proceeding has been initiated against him. As indicated herein before, for one reason or the other, the said disciplinary proceeding was dropped. In that situation, it was impermissible for the respondents herein to transfer the petitioner so as to avoid purported repetition of such frauds, as also demoralizing effect on the other officials. The statements made in the counter-affidavit clearly show that the impugned order has been passed for unauthorized purpose. The appropriate authority with a pre-determined view that the petitioner herein is guilty of commission of the said misconduct, although, as noticed hereinbefore, the departmental proceedings against the petitioner had been closed as far back as on 20.1.1998, has passed the said order. Although a Court or a Tribunal does not normally interfere with an order of transfer, it is also well settled that no order of transfer can be passed by way of or in lieu of punishment. Such an order of transfer would be vitiated in law, inasmuch as prior thereto, neither any departmental proceeding has been initiated nor the petitioner had been granted an opportunity of being heard.

5. On the other hand, the learned Government Pleader for Services-I contended that the transfer of the petitioner from Pullalacheruvu to Kothapatnam was effected at his request and consent and from Kothapatnam to Komarole Police Station on administrative grounds and thereafter, he was transferred to Government Railway Police, Guntakal on deputation and therefore, there are no mala fides on the part of the respondents. He further contended that the post of Head Constable is a District Cadre post and there is no recruitment method in

the Railway Police Department, which is not a foreign service. FR 110 deals with Foreign Service, which reads as under:

(a) No Government servant may be transferred to foreign service against his will:

Provided that this sub-rule shall not apply to the transfer of a Government servant to the service of body, whether incorporated or not, which is wholly or substantially owned or controlled by the Government.

(b) A transfer to foreign service outside India may be sanctioned by the President of India.

(c) Subject to any restrictions which the President of India may by a general order impose, in the case of transfer to the service of a State, a transfer to foreign service in India may be sanctioned by (the State Government) under which the State Government servant transferred is serving.

Learned Government Pleader further contended that at the time of their appointment, the Police Constables and the Head Constables have to give an undertaking that they are willing to work in Railway Police on tenure basis for a period of three years and as such, there is no need to obtain their consent for deputation. He has drawn the attention of this Court to para 3 of Act 9 of 1985 of Andhra Pradesh Members of Police Force (Regulation of Transfers) Act, 1985 (for short "the Act"), which reads as under:

3. Regulation of transfer of members of police force:

(1) Notwithstanding anything in any law for time being in force, a member of the Police force shall be liable to serve in any part of the State of Andhra Pradesh.

(2) The Government may make rules for the regulation of transfer of members of police force from one part of the State to another part within the State of Andhra Pradesh by such authority as may be prescribed.

He has also drawn the attention of this Court to Rule 13(d) of the Andhra Pradesh Police (Civil) Subordinate Service Rules (for short "the Rules"), which reads as under:

Notwithstanding anything contained elsewhere in these rules a member of the service shall be liable to serve in any part of the State of Andhra Pradesh or when so ordered by the State Government, in any part of India outside the said State;

Provided that nothing contained in this sub-rule shall affect the operation of the provisions of Chapter XII in part VII of the Fundamental Rules in regard to the transfer of officers to foreign service;

Provided further that no such member shall be posted or transferred to any post unless he possesses such special qualifications and has passed such special tests as may be prescribed for such post in these rules.

Rule 13(g) of the Rules reads as under:

Transfers of members of the service from the jurisdiction of one Deputy Inspector General of Police to that of another shall be made by the Deputy Inspector General of Police of the former unit after mutual agreement, subject to the approval of the Director General and Inspector General of Police.

He further contended that serious allegations of misconduct and misbehaviour were made against the petitioner and disciplinary proceedings are pending against him and that the Tribunal has rightly dismissed the O.A. by the impugned order, which need not be interfered with by this Court.

6. Now, the point for consideration is whether the order of the Tribunal suffers from any illegality or irregularity warranting interference by this Court.

7. From a perusal of the material on record, it is clear that the transfer of the petitioner earlier was effected at his request vide order dated 02.01.2009 and on administrative grounds vide order dated 02.05.2009 and that in pursuance of the proceedings of the Inspector General of Police, Guntur Range, Guntur, he was transferred to Government Railway Police, Guntakal on deputation. Therefore, no mala fide intentions are attributed to the 2nd respondent for transferring the petitioner vide orders dated 02.01.2009 and 02.05.2009, as rightly observed by the Tribunal.

8. Insofar as deputation of the petitioner vide order, dated 26.08.2009 is concerned, as per Act No. 9 of 1985 of the Act and Rule 13(d) of the Rules, relied upon by the learned Government Pleader, a member of the Police force shall be liable to serve in any part of the State of Andhra Pradesh or when so ordered by the State Government, in any part of India outside the said State. Rule 13(g) of the said Rules clearly postulates that the transfer of an employee in Police Force from the jurisdiction of one Deputy Inspector General of Police to that of another shall be made by the Deputy Inspector General of Police of the former unit after mutual agreement subject to the approval of the Director General and Inspector General of Police.

In the instant case, the counter averments before the Tribunal show that the Additional Director General of Police, Railways, gave his consent to take the petitioner on deputation to Railway Police vide Fax Message dated 21.07.2009 and accordingly, the Inspector General of Police, Guntur Range, Guntur, issued proceedings dated 18.08.2009 deputing the petitioner to Railways and that based on the said proceedings, the second respondent issued proceedings dated 26.08.2009 transferring the petitioner to Railway Police, Guntakal, on deputation. As such, there was a mutual agreement between the Police Officers of one jurisdiction and another. Therefore, the deputation of the petitioner was not effected because of pendency of disciplinary proceedings nor as a measure of punishment, as contended by the learned Counsel for the petitioner.

9. With regard to obtaining consent from the petitioner for his deputation, there

are specific instructions from the higher authorities that the Police Constables and Head Constables have to give an undertaking to work in Railway Police on tenure basis at the time of their recruitment itself. The Tribunal has also observed that the disciplinary proceedings are pending against the petitioner for his various misconducts and that the employer has a right to depute the petitioner to Railway Police in view of the undertaking obtained at the time of his recruitment that he would be liable to work in Railway Police as and when deputed.

10. In view of the aforesaid reasons, we are not inclined to interfere with the order impugned, as there is no illegality or irregularity in it.

11. Accordingly, the Writ Petition is dismissed. However, this order does not preclude the petitioner from making representation before the authorities concerned for appropriate relief. No order as to costs.