

(2015) 07 MP CK 0042

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8723 of 2015

Raj Bahadur Singh and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 177, 182, 463, 464, 465

Citation : (2015) 07 MP CK 0042

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Advocate : R.N. Singh, Senior Advocate assisted by A.P. Singh, for the Appellant; N.S. Ruprah, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.K. Gangele, J—Petitioners have filed this petition against the impugned Order dated 15.6.15 (Annexure P/4). By the aforesaid order, petitioners have been attached at different Divisions i.e Kota and Bhopal. They were directed to report at the place of attachment immediately. The impugned order has been passed by Mr. S.K. Parhi IG-cum-CSC/RPF, WCR/ Jabalpur. Petitioners have not given details of their posting at Jabalpur. However, as per reply filed by the respondents, petitioner No. 1 was posted at Jabalpur on 19.5.2008, petitioner No. 2 on 12.8.2013, petitioner No. 3 on 11.4.2013 and petitioner No. 4 on 7.5.2011 and petitioner No. 5 on 25.5.2001.

2. In this petition, petitioners have pleaded that in the garb of attachment, they have been transferred because they being the Office bearers of an association named as All India RPF Association, highlighted certain irregularities committed by the respondent No. 3. Petitioners further submit that Mr. S.K. Tripathi, being the General Secretary of All India RPF Association West Central Railway and President submitted a representation to the General Manager, WCR, in regard to irregularities of postings and transfers of RPF personnel on certain places. A copy of the representation dated 22.5.2015 is filed along with the petition as

(Annexure P/1). It is further pleaded by the petitioners that the Association had also held a Press Conference and highlighted the irregularities. On account of the aforesaid act, the order of attachment-cum-transfer has been issued. Petitioner No. 1 is the Zonal President, petitioner No. 2 is the Divisional Secretary, petitioner No. 3 is the Divisional President and petitioner No. 4 is the Secretary-cum-cashier and petitioner No. 5 is the Secretary-cum-Cashier of the Association. In accordance with the circulars and guidelines issued by the Railway, petitioners could not be transferred. It is further contended by the petitioners that the procedure in regard to transfer of the petitioners, as fixed by the Railway, has not been followed, hence the order of transfer is against the statutory rules and malafide.

3. Respondents, in their return, denied the pleadings of the petitioners. It is pleaded by the respondents that various irregularities have been committed by the petitioners during their posting at Jabalpur. Against petitioner No. 1, one penalty been imposed and in cases of major misconduct, charge-sheets have been issued. He has been facing inquiry in four major penalty cases. Similarly, petitioner No. 2 has also been facing one inquiry in regard to major penalties. Against petitioner No. 3, two penalties were imposed and presently, he has been facing one inquiry in regard to major punishments, petitioner No. 4 was awarded three punishments and he is also facing the inquiry of major punishment and against petitioner No. 5, one penalty has been imposed and is facing one inquiry.

4. Respondents further contended that on 4.6.2015, a person named Rajeev Raikwar was spotted when he had been posting anonymous complaints of five envelopes addressed to different authorities. He was caught-hold and he told that the envelopes were handed-over to him by respondent No. 1 for posting the same at different places. On opening the envelopes, false complaints in fictitious names were found. The FIR was lodged at the police station and a case for commission of offence under section 177, 182 of the IPC vide Crime No. 0028/15 has been registered. The Railway Magistrate also ordered to the GRP to register the offence punishable under sections 177,182,463, 464,465,468,469 and 500 of the IPC against Mr. Santosh Kumar Tripathi.

5. In order to save themselves from these illegalities, the office bearers of the Association, namely, Santosh Kumar Tripathi, Rajendra Singh Baghel, Avinash Tiwari, Raj Bahadur Singh, Ajay Kushwaha, Rajesh Tiwari, Smt. Nirmala Dubey, Rajendra Prasad Tiwari and Sunil Kumar Mishra held a Press Conference and leveled baseless allegations against the superior officers of the Railway. They tried to create indiscipline amongst the police force. Looking to the aforesaid acts of the petitioners and after considering the material on record, the impugned order has been passed and the petitioners have been attached temporarily at different places so that a fair investigation can be conducted against the petitioners.

6. Shri R.N. Singh, learned Senior Advocate appearing on behalf of the petitioners has contended that the order passed by the authority in regard to the

petitioners is arbitrary and illegal. Petitioners have been transferred in the guise of attachment because they have exposed illegalities of the higher officers of the department, hence the order of transfer is illegal. He further submitted that in pursuance to the guidelines issued by the Railways, which have statutory force of law, the office bearers of the Association cannot be transferred for certain period. He further submitted that the authority who had passed the order has no power because the transfer of the employees of railway force can be made only by a Committee in accordance with the directions issued by the Railway. Hence, the impugned order is contrary to law and is liable to be quashed. In support of his contention, he relied on the decision of the Supreme Court in the matter of Somesh Tiwari Vs. Union of India (UOI) and Others, AIR 2009 SC 1399 : (2009) 1 JT 96 : (2009) 1 SCALE 63 : (2009) 2 SCC 592 : (2009) 1 SCC(L&S) 411 : (2009) 3 SLR 506 : (2009) AIRSCW 854 .

7. Contrary to this, Shri N.S. Ruprah, learned counsel for the respondents has contended that the impugned order is not the transfer. It is an order of attachment which has been passed under special circumstances. Petitioners have created indiscipline amongst the RPF. They have tried to disturb the working of the senior officers. Number of inquiries are pending against them. Looking to the special circumstances, an order of attachment has been passed. It is further contended by the learned counsel that there is a statutory rule in regard to transfer of RPF persons. The guidelines issued by the Railway cannot be treated as statutory rule. He further contended that in accordance with rule 90 of the Railway Protection Force Rules, 1987 (hereinafter referred to as the 'Rules of 1987'), the members of the force can be transferred from one place to another in exigency of service or for administrative reasons. In support of his contention, learned counsel relied on the decision of the Supreme Court in the matter of Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, AIR 2004 SC 1632 : (2004) 2 JT 371 : (2004) 2 LLJ 1057 : (2004) 2 SCALE 430 : (2004) 4 SCC 245 : (2004) SCC(L&S) 631 : (2004) 3 SCR 356 : (2004) 2 SLJ 446 : (2004) AIRSCW 955 .

8. Rule 90 of the Rules of 1987 prescribes transfer. The same reads as under :-

"90. General

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."

There is provision of periodical transfer under Rule 92 and General principles for effecting periodical transfers in rule 93.

9. Petitioners have filed a circular dated 10.7.09 issued by Mr. S.M. Pandey, Director RPF in regard to providing protection against transfer to the Office bearers of AIRPFA. In accordance with the aforesaid circular, the office bearers of the Union have some protection including the petitioners union and if any proposal of transfer is made of the office bearers and no agreement can be

reached out at lower level then the same shall be referred to the General Manager DGRPF and his decision shall be final.

10. Petitioners have also filed the directive No. 32 dated 18.9.14 which is in regard to transfer of RPF/ RPSF personnel. In accordance with the aforesaid circular, the tenure of enrolled members of RPF is five years and the establishment Board has been constituted in order to ensure fairness and transparency in the matter of transfer and posting of RPF personnel. In accordance with the aforesaid directive for non-gazetted rank, a committee consisting Chairman ADG/IG (C&I), Member IG/Admn, Member DD/Sec.(E), is competent to recommend for transfer. This directive further clarifies that the transfer of Constable and Sub Inspector shall be subject to vacancy in the respective category. However, from perusal of the aforesaid document it is clear that these are the orders and policies in regard to transfer. These are not the Rules. Rules have been framed in regard to Railway Protection Force as mentioned earlier, the Rules of 1987 and Rule 90 prescribes transfer of members of the RPF and in accordance with the aforesaid rule a member of the force can be transferred in the exigency of service or for administrative reasons.

11. The Supreme Court in the matter of Union of India and Others Vs. S.L. Abbas, AIR 1993 SC 2444 : (1993) 3 JT 678 : (1993) LabIC 1311 : (1993) 2 LLJ 626 : (1993) 2 SCALE 718 : (1993) 4 SCC 357 has specifically held that judicial review of transfer is permissible if the order is malafide or is made in violation of the statutory provisions. The same principle has been reiterated by the Supreme Court in the matter of Balwant Singh and another Vs. State of Punjab, AIR 1995 SC 1785 : (1995) 2 Crimes 300 : (1995) 2 SCALE 148 : (1995) 3 SCC 214 : (1995) 2 SCR 411 : (1995) 1 UJ 834 and Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, AIR 2004 SC 1632 : (2004) 2 JT 371 : (2004) 2 LLJ 1057 : (2004) 2 SCALE 430 : (2004) 4 SCC 245 : (2004) SCC(L&S) 631 : (2004) 3 SCR 356 : (2004) 2 SLJ 446 : (2004) AIRSCW 955 . The Supreme Court in the matter of Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, AIR 1989 SC 1433 : (1989) 59 FLR 474 : (1989) 3 JT 20 : (1989) 2 LLJ 470 : (1989) 1 SCALE 907 : (1989) 1 SCALE 1483 : (1989) 2 SCC 602 : (1989) 2 SCR 357 : (1989) 3 SLJ 68 : (1989) 2 UJ 222 has also held that the transfer of an employee is an incident of service. The employee has no right to be posted at a particular place.

12. In the present case, serious allegations against the 12. petitioners have been leveled by the respondents in their return filed in reply to the petition. The petitioners have been facing disciplinary inquiries for major misconduct. They have held a Press Conference against the superior officers and leveled serious allegations against them. The allegations are true or not, is a matter of inquiry. However, at present, it cannot be held that the order of attachment of the petitioner is malafide looking to the allegations leveled against the petitioners by the respondents in the reply. If the allegations leveled by the petitioners against the officers are true then also an inquiry has to be conducted by the superior

officers of the Railway. However, the office bearers of the Association have no right or power to criticize the higher officers in public. If there are complaints against the officers, the proper course is to forward the complaint to the competent authority so that the authority may look into the complaint. Holding a Press Conference and leveling serious allegations against the higher officers in press and media, is not warranted. It would certainly affect the morale of the officers because the complaints may be false.

13. The Supreme Court in the matter of State of Haryana and Others Vs. Kashmir Singh and Another etc. etc., (2010) 127 FLR 728 : (2010) 11 JT 148 : (2010) 13 SCC 306 : (2011) 1 SCC(L&S) 376 has specifically consider the judicial review by court power of the authority in regard to transfer of police personnel and held as under :-

"12. Transfer ordinarily is an incidence of service, and the Courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. In particular, we are of the opinion that transfer and postings of policemen must be left in the discretion of the concerned State authorities which are in the best position to assess the necessities of the administrative requirements of the situation. The concerned administrative authorities may be of the opinion that more policemen are required in any particular district and/or another range than in another, depending upon their assessment of the law and order situation and/or other considerations. These are purely administrative matters, and it is well-settled that Courts must not ordinarily interfere in administrative matters and should maintain judicial restraint vide Tata Cellular Vs. Union of India, AIR 1996 SC 11 : AIR 1994 SC 11 : (1994) 4 JT 532 : (1994) 6 SCC 651 : (1994) 2 SCR 122 Supp .

14. In our opinion, the High Court has taken a totally impractical view of the matter. If the view of the High Court is to prevail, great difficulties will be created for the State administration since it will not be able to transfer/deploy its police force from one place where there may be relative peace to another district or region/range in the State where there may be disturbed law and order situation and hence requirement of more police. Courts should not, in our opinion, interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal right of the citizen. After all, the State administration cannot function with its hands tied by judiciary behind its back. As Justice Holmes of the US Supreme Court pointed out, there must be some free-play of the joints provided to the executive authorities.

15. This Court also held in Divisional Manager, Aravali Golf Club and Another Vs. Chander Hass and Another, (2008) 2 CLT 620 : (2008) 3 JT 221 : (2008) 149 PLR 485 : (2007) 14 SCALE 1 : (2008) 1 SCC 683 : (2008) 1 SCC(L&S) 289 : (2007) 12 SCR 1084 : (2008) 1 UJ 17 and Common Cause (A Regd. Society) Vs. Union of India (UOI) and Others, AIR 2008 SC 2116 : (2008) 4 JT 317 : (2008) 4 SCALE 848 : (2008) 5 SCC 511 : (2008) AIRSCW 3164 : (2008) 2 Supreme 865 that Judges must observe judicial restraint and must not ordinarily encroach into

the domain of the legislature or the executive.

The Supreme Court has specifically held that the court must not ordinarily interfere in administrative matters and maintain judicial restraint.

14. In the present case, there are serious allegations leveled against the petitioners. The administrative officers are the best judges of the circumstances. In this view of the matter, in my opinion, this is not a fit case where this court can interfere in the matter of attachment of the petitioners.

15. Looking to the facts of the case, this court feels that it is obligatory on the part of the railway authorities to conduct proper inquiry in regard to conduct of the petitioners and also allegations leveled by the petitioners against the officers and may take action accordingly. Office is directed to send copy of this order to the Railway Board.

16. With the aforesaid observation, writ petition is disposed of. No order as to costs.