
(1997) 12 J&K CK 0025

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1507 of 1997

Ramdev Singh

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 29-12-1997

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (1998) 3 SCT 800

Hon'ble Judges : A.M.Mir, J

Bench : Single Bench

Advocate : Gagan Basotra, Surinder Singh, Advocates appearing for the Parties

Judgement

A.M. Mir, J.—The petitioner is a Range Officer who was transferred from Ramkote Range and has been ordered to hand over his charge

and report in the Office of C.F. East Circle, Jammu, for being available for the matter of completion of an enquiry into the case by the C.F. East

Circle, Jammu. This order seems to have been passed for some administrative reasons.

2. The direct question that falls for determination of this Court is as to whether such an order could be passed. An argument on behalf of the

petitioner has been advanced by the learned counsel for the petitioner, that the order is one of punishment, therefore could not have been passed.

Learned counsel appearing for the other side submits that this is not so. The order has been passed simply to enable the Department to conduct an

enquiry against the Officer and to ensure that the petitioner does not have any occasion to tamper with the record and evidence and exercise undue

influence upon witnesses. At the outset the main features of the order and the judicial verdict of this Court as also the Supreme Court shall have to

be noticed.

3. True that transfer cannot be ordered by way of punishment. If the order impugned was an order of punishment, I would have readily accepted

this version but the order on its own text suggests that the officer has to report in the Office of CF East Circle, Jammu, so that he is readily

available for completion of enquiry which is in pipeline against him. It is not a case of sending the petitioner to a far flung area. The intention of the

order seems to be to remove the petitioner from his present post for the obvious reasons that he stops yielding influence upon his subordinates and

is unable to destroy evidence that possibly can come up against him. Therefore, I do not find the order impugned to be an order of punishment.

This brings us to the direct question as to whether or not, during the pendency of an enquiry an official can be transferred from a particular place in

order to ensure a free and fair enquiry. The answer of this question seems to be in affirmative.

4. Learned counsel for the respondents has taken me through the Government instructions appended to Rule 31 of Classification, Control and

Appeal Rules. Instruction No. 1 finds place at page 50, illustrates the question by an example. For purposes of making things clear, the illustration

is reproduced in original :

For example where continuance in office of a Government servant is considered likely to prejudice investigation, trial or enquiry or his continuance

is considered likely to subvert the discipline in the office in which he works, the purpose can be achieved if he is transferred to some other station

or office as the case may be rather than to place him under suspension. Like wise if such a Government servant would like to proceed on leave that

might be due to him and if the authority concerned thinks that such a step would not be inappropriate, there should be no objection to leave being

granted instead of suspending him. Similarly, in case where a Government servant has unauthorisedly absented from duty, the proper course is to

initiate action against him under article 128 of Jammu and Kashmir Civil Service Regulations and not to place him under suspension.

5. In view of this position, I do not find anything wrong in this transfer order on the ground elaborated above.

6. Learned counsel for the petitioner has also tried to assail this transfer order on

the basis of lack of jurisdiction. According to him Chief

Conservator of Forests is not competent to make transfer and posting of such of the Range Officers Grade I and Grade II who hold independent

charge of Ranges. According to him it is the Forest Department Secreteriat which can do it. He in this behalf relies upon a Government Order No.

408FST of 1997 dated 4.9.1997.

7. I have gone through the order and taken note of this limb of the argument as well.

8. This Government order is an expression of opinion of one Addl. Chief Secretary to the Government. It seems that by virtue of this order the

powers of transfer of such Range Officers who hold independent charges were centralized in the Forest Secreteriat. This is only an executive

direction passed by an individual and cannot have a repealing effect of Sch. II of the Civil Service Regulations wherein the Chief Conservator of

Forest is competent to make such transfers. I am not ready to accept this Government order as against the Schedule it has no binding force, as such

I find the powers of the Chief Conservator of Forests to be intact, therefore, this ground falls.

9. On the foregoing analogy, I find no substance in this petition and dismiss the same; however, I want to make it clear that as soon as the enquiry

is concluded, appropriate orders with regard to posting of the petitioner be passed within shortest possible time. In addition, the pay dues of the

petitioner for the intervening period and up till the date any fresh orders are passed, should regularly be paid to him. I issue these directions for

eliminating a possibility of this order per se smacking of any punishment. As expressed above this is an arrangement made just by way of a

stepinaid towards the completion of the enquiry. This interpretation of the order must be taken note of by the respondents also.