

(2013) 10 P&H CK 0372

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13776 of 2013

Ramesh Kumar and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2014) 173 PLR 739

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Rajiv Narain Raina, J.—The thirty seven petitioners before this Court in the instant writ petition are either Head Constables, Exemptee Head Constables, Assistant Sub-Inspectors or Exemptee Assistant Sub Inspectors of Police who belong to different ranges of the Haryana police and were deputed to HAP or IRB or Commando to undergo six months Career Development Programme (CDP) as per their seniority in different districts/Ranges, parent-wise. The CDP policy is contained in Government letter dated 21.06.2007 which requires every Non-Gazetted Officer or Other Ranks to be deputed under CDP. The petitioners were transferred from their parent unit to 4th IRB, Manesar for six months training. The petitioners completed their six months CDP as certified by the Commandant 4th IRB, Manesar, Gurgaon vide letter dated 01.04.2013. The petitioners complain that despite having successfully undergone the CDP are still being retained in IRB, Manesar and have not been sent back to their parent units. It is their say that the policy dated 21.06.2007 and letter dated 17.08.2012 are not being followed and on the contrary the Director General of Police, Haryana is adopting a pick and choose policy of cancellation of transfer orders of those officials/officers who have political approach are being sent back to their parent districts/ranges and thus the petitioners are being discriminated against for adverse treatment. To redress their grievance, they have served a legal notice dated 01.06.2013 to the respondents which is still pending. On notice of motion

being issued, the respondents have contested the case by filing written statement. It has been stated that the Police Act, 1994 and the Punjab Police Rules, 1934 as applicable to the State of Haryana clearly provide that the entire police establishment under the State Government is one integrated police force, though for the better administration the State is sub-divided in its geographical territory into Districts and Ranges.

2. Rule 1.5 of the Rules outlines the limits of jurisdiction and liability to transfer. The provision lays down that all police officers appointed and enrolled in either of the two general police districts constitute one police force and are liable to and legally empowered for, police duty within the province. No sub-division of the force territorially or by classes, such as mounted and foot police, affects this principle and every police officer is liable to serve at any place, whether within or outside the State of Haryana or any organization under the Central Government on being ordered so to do by the appointing authority. Rule 12.26 of Punjab Police Rules justifies Inter-district transfer. So does Rule 14.15(1) empower postings and transfers-liability. However, the seniority of Constables and Head Constables is maintained at District level and of ASIs and SIs at the Range level. The lien for the purpose of seniority of Constable/Head Constable is reckoned or decided within their own parent cadre. This means that though the police officials may remain posted anywhere in the State but their cadre and lien does not change. The Supreme Court in *State of Haryana and others v. Kashmir Singh and another* has approved transfer liability of police officials/officers anywhere in the State of Haryana. No prejudice has been caused to such transferees since they retain their seniority in the parent District/Range.

3. It is explained that the petitioners were transferred in the 4th IRB at Manesar, Gurgaon on the request of the Inspector General of Police, IRB, Bhondsi for the effective supervision of the force at Manesar.

4. Mr. Sunil Nehra, Sr. D.A.G., Haryana places reliance on Kashmir Singh's case and submits that completion of the CDP may put an end to the training programme but it cannot be mixed with the concept of transfer. The two liabilities are different and for different purposes in running the affairs of the State. The petitioners may belong to different Districts/Ranges but their retention in IRB, Manesar, Gurgaon is by virtue of inherent power to transfer vested in the department. On facts, he justifies that since the Inspector General of Police, IRB, Bhondsi had demanded additional police force for effective supervision at Manesar it is therefore sustainable on principles of administrative exigencies of service. The transfer orders (P-7) relied upon by the petitioners have been explained that they were caused due to administrative exigencies on compassionate grounds which would not confer a right to claim parity in favour of the petitioners. Therefore, Mr. Nehra urges that the transfer of the petitioners or their retention in IRB, Manesar, Gurgaon cannot be seen as a permanent arrangement for all times to come and is a passing phase of police administration. If the Inspector General of Police, IRB, Bhondsi had taken a

conscious decision to supplement his police force it cannot be said that the decision is illegal or arbitrary or that it discriminates against the petitioners viz-a-viz the rest of the police force district-wise or range-wise. The allegation of resorting to pick and choose policy has been denied. The petitioners have an effective departmental remedy to avail under the Haryana State Litigation Policy, 2010 before the police authorities. Para. 5.1.1 of the Policy reads:-

It shall be mandatory for employees to seek redressal through this system first, before going too the Courts.

5. However, since a dispute redressal system is in place under the Litigation Policy, 2010 it is found fair and equitable to direct that the legal notice dated 01.06.2013 (P-10) be treated as a request under Para 5.1.1 (supra) and the same be decided by the competent authority in accordance with law as soon as practicable. If an effective alternative remedy is available then in the first instance it needs to be followed to its logical end and would normally discourage this Court from interfering at the present stage in absence of breach of fundamental rights.

6. Then, Dr. Redhu appearing for the petitioners relies on a statement made by the State counsel in C.W.P. No. 691 of 2008 titled Bhup Singh v. State of Haryana and others, decided by the Division Bench on 11.04.2008. In that case, on completion of the CDP the petitioner had sought transfer back to his cadre claiming that such transfer was out of his cadre without his consent. Mr. Nehra submits that the decision rendered by the Division Bench based on a concession in any case a pre Kashmir Singh decision and he is, therefore, not prepared to make a statement of the kind made before the Court as was made in the prevailing situation in 2008 in Bhup Singh's case. He goes on to submit that the rules of transfer and postings were not placed for consideration of the Court. The decision in Bhup Singh's case turns around a statement then made which does not reflect the correct legal position delineated by the Supreme Court in Kashmir Singh's case. The petition is, therefore, disposed of with the aforesaid directions with respect to decision on legal notice dated 01.06.2013. While making the decision, the competent authority will not treat this order as an expression of opinion on the merits of the claim as projected in the legal notice dated 01.06.2013 and the respondent department would take an independent and conscious decision on it in accordance with rules with respect to redeployment of the petitioners to their parent districts and ranges keeping in view the needs of administration as they may change from time to time.