
(2004) 12 AHC CK 0120

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 49064 of 2004

Rana Mahendra Pratap Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 5 AWC 3930 : (2005) 1 UPLBEC 758

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Advocate : Vijay Gautam, for the Appellant; C.B. Yadav, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Shishir Kumar, J.—These are three connected writ petitions involving same question and based on same facts, therefore, they are being taken together and the being decided by a common judgment. Civil Misc. Writ Petition No. 49064 of 2004 is being treated as leading case.

2. By means of the present writ petition, the petitioner has approached this Court under Article 226 of the Constitution of India against the order dated 8.11.2004 (Annexure-1 to the writ petition) by which the petitioner has been transferred from Traffic Police, Ghaziabad to Provincial Armed Constabulary (P.A.C.), Headquarters Lucknow.

3. The case of the petitioner is that he is working in the Traffic Police posted at Ghaziabad as such the Inspector General of Police/Director, Traffic, Uttar Pradesh is not the competent authority to transfer the petitioner out of his parent cadre. It has also been submitted that the impugned order of transfer is without jurisdiction, as such, the same is void. From the perusal of the order of transfer, it is clear that the petitioner has been transferred out of his parent cadre without any administrative exigency or public interest as such the order of transfer itself reveals the arbitrariness if passing the order as such the same is liable to be

quashed. It has been submitted by the petitioner that the petitioner was appointed as a Constable in the year 1981 and after completion of his graduation the petitioner was promoted on the post of Head Constable in the year 1988 and after qualifying the necessary examination, the petitioner was promoted on the post of Sub-Inspector in the year 1993 and thereafter the petitioner was posted as Sub-Inspector District Ghazipur in the year 1994. In the year 1999, the Inspector General of Police Traffic published a memorandum for Traffic Inspector in the Traffic Police for Sub-Inspectors who qualify necessary qualifications like less than 40 years of age and have completed three years in armed police as Sub-Inspectors. The petitioner along with others applied for Traffic Sub-Inspector and, after qualifying interview, was selected among 51 selected Sub-Inspectors in 125 candidates. Then the petitioner was sent for Traffic Training at Armed Training Centre and then the petitioner was posted as Traffic Sub-Inspector in the year 1999 at Allahabad and then transferred to various places and in the year 2001, the petitioner was transferred to Ghaziabad as Traffic Sub-Inspector. An order has been passed by the respondent No. 3 by which the petitioner has been transferred from Traffic Police, Ghaziabad to Provincial Armed Constabulary (P.A.C.), Head Quarters Lucknow. The petitioner states that the said order of transfer is illegal and without jurisdiction. The case of the petitioner is that the petitioner was duly appointed Sub-Inspector of District Police Cadre and as such he is entitled to be transferred within the State as per administrative exigencies from one district to another within the parent cadre. But when the respondents wanted to transfer him out of his cadre picked up the petitioner, no option was taken by the respondents prior to passing the impugned order of transfer nor ever took his consent. It has been submitted that the cadre of the petitioner is different than the cadre of P.A.C. hence the petitioner has been transferred to an ex-cadre post, which is impermissible in law. As "Cadre" is defined in Fundamental Rule 9(1) of the Financial Hand Book, Volume-II, Para-6 to meaning "the strength of service of part of service sanctioned as separate unit". In view of the said expression, the District Executive Force and Provincial Armed Constabulary (P.A.C.) are two distinct and separate cadres for units and if at point of time under the cadre of administrative exigency, transfer of persons from District Executive Force to Provincial Armed Constabulary is required the same cannot be done without obtaining the willingness or consent of the person concerned. The impugned order transferring the petitioner from District Police cadre to P.A.C. has passed without asking for the consent of the petitioner and as such the same is bad in law. It has also been submitted by the petitioner that prior to the transfer of the petitioner from District Police Cadre to P.A.C. no sanction of the Director General of Police has been taken and the petitioner has been picked up arbitrarily for transfer to another cadre by the respondent authority. The respondent No. 3, Inspector General of Police, Traffic, U.P., Lucknow is not a competent authority to pass the impugned order and as such the order of respondent No. 3 is without jurisdiction and as such is not sustained in the eye of law. It has also been argued on behalf of the petitioner that the impugned order of transfer has been passed without any administrative exigency

or public interest, which reveals the arbitrariness and irregularity in passing the order, hence the same is liable to be quashed.

4. The Standing Counsel was granted time to file the counter affidavit annexing therewith the relevant document to show whether the order, which has been passed, is according to law or not. A detailed counter affidavit has been filed and the rejoinder affidavit has also been filed on behalf of the petitioner.

5. On behalf of the State, the Chief Standing Counsel submits that order passed by the respondent No. 3 is valid and there is no illegality. It has been averred on behalf of the respondents that the petitioner has challenged the order on two grounds, whether the order dated 8.11.2004 has been passed by an authority having no jurisdiction and since the petitioner has been transferred in Civil Police, therefore, he cannot be repatriated to P.A.C, It has been stated that after the establishment of the Directorate, Traffic all powers of recruitment, transfers and repatriation is now vested with the Director, Traffic/Inspector General of Police. As the petitioner submitted his opinion for his transfer in Traffic the said option was accepted by the Director, Traffic and thereafter the petitioner was sent for training by the Director, Traffic and the order of posting was issued by the Director, Traffic on 30.10.1999. The said orders has been annexed as Annexure 7 to the counter affidavit. All subsequent orders to his transfers have also been issued by the same authority and after completion of period of three years, the petitioner has been repatriated to his parent department i.e. P.A.C. It has also been stated that the Director, Traffic was established on 4/12. 8.1998, as the petitioner has never raised any objection about his selection before Director, Traffic as Traffic Sub-Inspector or sending him for training. Even the petitioner did not raise any objection about his posting by the same Director, Traffic. As far as jurisdiction is concerned, after establishment of Director, Traffic, the Director, Traffic/Inspector General of Police is the competent authority, therefore, the contention of the petitioner to this effect that Director, Traffic has no power is also not correct. Regarding second ground, it has been stated in the counter affidavit that petitioner was recruited in P.A.C. and is regulated under the provisions of U.P. Provincial Constabulary Act, 1948. The respondents have also given the chart regarding the various postings of the petitioner, which is as follows :--

Posting	Period	Place	of
1. IInd Bn. PAC, Sitapur	From 17.8.1981 to 24.9.1988	2. Ghaziabad District in	
A.P.	From 1.10.1988 to 2.10.1993	3. 20th Bn. P.A.C., Azamgarh	
	From 10.10.1993 to 29.10.1997	4. R.T.C., Ghazipur	
	From 5.11.1997 to 5.11.1999	5. Allahabad, T.S.I.	
	From 22.11.1999 to 23.11.1999	6. Faizabad as T.S.I.	
	From 28.12.1999 to 3.8.2000	7. Varanasi as T.S.I.	
	From 10.8.2000 to 7.3.2001	8. District Ghaziabad as T.S.I.	
	From 15.3.2001 to 16.11.2004		

6. From the aforesaid fact, the respondents submit that once the petitioner is

enrolled as Constable in P.A.C. being a different cadre, cadre of the petitioner cannot be changed. The cadre is defined under Fundamental Rule 9(5)(iv), which runs as follows :--

Cadre.--"Cadre means the strength of service of part of service sanctioned as separate until."

7. So far cadre is concerned, cadre cannot be changed for individual option of Government servant. Power of changing of cadre is provided under Fundamental Rule 15-B wherein the Governor has been empowered under the aforesaid Rule in public interest to transfer Government servant to the post in any cadre or to an ex-cadre post. In the present case the cadre of the petitioner has not been changed under the order of the Governor as provided under Fundamental Rule 15-B, therefore, the claim of the petitioner to this effect that his cadre has been Changed from P.A.C. to Civil Police is totally unfounded. It has been submitted on behalf of the State that it is clear that the petitioner was recruited as Constable in P.A.C., and he remained in P.A.C. He was promoted as Platoon Commander in P.A.C. and later on from P.A.C. itself he was selected as Traffic Sub-Inspector and his name was sent for T.S.I. by the Director, Traffic. The Director, Traffic being competent authority, and also in view of the circular dated 19.6.1992 the period of traffic is limited for three years, as such, after expiry of three years period the petitioner has been rightly repatriated to his parent department. The petitioner has not right and jurisdiction to claim his continuation in Traffic or Civil Police. As the petitioner was never posted in Civil Police and incorrect statement has been made by the petitioner in the writ petition, as the same has been denied on affidavit and by producing the relevant record, as the service record of the petitioner clearly indicates that the petitioner was never posted in Civil Police, therefore, the petitioner cannot be transferred in Civil Police, while he has been rightly repatriated to his parent department vide its order dated 8.11.2004. It has also been argued on behalf of the State that Circulars issued by the Director, Traffic dated 14.6.1999 to 29.6.1999 clearly indicate that those persons, who are placed in traffic never wanted to go back to their parent department, therefore, strict instructions have been issued for repatriation of all the Traffic Sub-Inspectors as soon as they complete the limited period of three years. But in the present case, the petitioner has been allowed to continue more than five years as Traffic Sub-Inspector and therefore he has not right to claim his transfer in Civil Police. The respondents further submit that the grounds taken by the petitioner regarding jurisdiction has no legal sanctity and they are not available to the petitioner, therefore, the writ petition is liable to be dismissed.

8. In the rejoinder affidavit, the petitioner has denied the allegations made in the counter affidavit and has reiterated that the order of transfer of the petitioner is without jurisdiction.

9. As the counter and rejoinder affidavits have already been exchanged, and the limited question involved in the writ petition is whether the order passed by the respondent No. 3, transferring the petitioner to P.A.C., is in his jurisdiction or not,

as such, with the consent of the parties, the writ petition is being disposed of finally at the admission stage.

10. After hearing the arguments on behalf of the petitioner as well as the respondents and after careful perusal of the record which has been relied by the petitioner and the respondents, a clear averment has been made in paragraph 7 of the counter affidavit giving the details that the initial appointment of the petitioner was in II Battalion, P.A.C., Sitapur and, subsequently, the petitioner was transferred to various places in armed police. Secondly by the order, has been annexed as Annexure-7 to the counter affidavit, annexing the list of the persons, who have been directed to obtain the training at A.T.C., Sitapur has been passed by the Inspector General of Police, Traffic, Uttar Pradesh dated 24.12.1998. In the said list, the name of the petitioner is at Serial No. 5, which clearly goes to show that the initial order of transferring the petitioner to the Traffic Police was passed by the same authority, who has passed the order of transfer of the petitioner from Traffic Police to P.A.C. Annexure-6 of the counter affidavit clearly goes to show that a letter dated 29th June, 1999 has been issued to the Inspector General of Police/Director, Traffic regarding certain difficulties and informing the fact that the persons, who are being transferred to Traffic Police do not want to go to their parent department. From the perusal of the Annexure-7 which is the order by which the petitioner has been transferred from P.A.C. to Traffic Police, has been passed in the year 1999 by the Inspector General/Director, Traffic, U.P., Lucknow.

11. I have perused the Annexure-3 to the counter affidavit by which in the year 1998, the establishment of Directorate of Traffic has been made and all the powers have been exercised by the Inspector General of Police/Director, Traffic.

12. In view of the aforesaid fact, if the initial order where the petitioner is working and on the basis of the order of the Inspector General, Traffic, Director, the petitioner was transferred to Traffic Police, then after the order dated 8.11.2004 Annexure-1 to the writ petition, which has been passed by the respondent No. 3 cannot be treated to be illegal and without jurisdiction. It is not disputed that the petitioner has not raised any objection against of the initial order by which the respondent No. 3 has passed an order transferring the petitioner from P.A.C. to Traffic and from the perusal of the record it is also clear that the initial cadre of the petitioner is P.A.C. and as such the petitioner cannot say that the orders sending the petitioner to P.A.C. is illegal and without jurisdiction. From the record it is also clear that the petitioner was never posted in Civil Police and the cadre of the petitioner is also not the Civil Police, therefore, the order which has been passed by the respondent No. 3 sending the petitioner to his parent cadre cannot be treated to be illegal and without jurisdiction. Though from the various circulars issued by the Head of the Department, the period in the Traffic is only three years but the petitioner is being permitted to continue in the Traffic for five years, therefore, the petitioner cannot claim that he should be posted in Traffic Police. The other grounds have not been pressed

by the petitioner, as such, from the perusal of record, it is clear that order of the respondent No. 3 dated 8.11.2004 (Annexure-1 to the writ petition) cannot be said to be illegal and without jurisdiction.

13. In view of the aforesaid fact, I find no merit and the present writ petition. It is devoid of merits and is liable to be dismissed. The connected other two writ petitions are also hereby dismissed. No order as to costs.