
(2003) 05 AHC CK 0007
In the Allahabad High Court
Case No : C.M.W.P. No. 45445 of 2000

Ranbir Singh Malik

APPELLANT

Vs

Inspector General of Police, Intelligence Department

RESPONDENT

Date of Decision : 23-05-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2003) 6 AWC 5544

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Divakar Rai Sharma, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—This petition arises out of order dated 26.8.2000 by which representation of the Petitioner seeking repatriation to civil police in pursuance of Government policy has been rejected.

2. The Petitioner was initially appointed as Sub-Inspector in the Department of Police (Civil Branch) in 1982. He was transferred to Local Intelligence Unit at Muzaffarnagar and he has been working in Local Intelligence Unit for more than 16 years. He made an application for being repatriated back to civil police on the ground that he was transferred to Local Intelligence Unit without his consent for transfer.

3. When no order was passed on his application, the Petitioner moved this Court by means of Civil Misc. Writ Petition No. 13430 of 2000 which was disposed of vide judgment and order dated 16.3.2000 with a direction to the Respondents to decide representation of the Petitioner. Pursuant to the order of the Court dated 16.3.2000, the representation of the Petitioner was considered and was rejected vide order dated 26.8.2000 on the ground that the Petitioner is suitable for services in Local Intelligence Unit.

4. The contention of the Petitioner is that the Respondents have acted arbitrarily

in denying benefit of policy decision and rejecting his representation on the ground that the benefit of transfer policy is to be given only to new comers. It is submitted that the transfer policy (Annexure-1 to the writ petition) does not contain any recital to the effect that the transfer policy is applicable to new comers only and that there is hostile discrimination with the Petitioner and as such impugned order is liable to be set aside. He further submits that the case of the Petitioner is squarely covered by Writ Petition No. 36250 of 1997, In re: Ashok Kumar Singh v. State of U.P. and Ors. and Writ Petition No. 3042 of 2001 Ashok Kumar Singh v. Additional Director General of Police (Intelligence Department) Lucknow and Ors.

5. Aggrieved by the order dated 26.8.2000 by which the representation of the Petitioner was rejected, he filed Writ Petition No. 45445 of 2000 for a writ of mandamus commanding the Respondents to transfer him to civil police forthwith.

6. It is contended on the basis of aforesaid two judgments that pursuant to the direction issued in Writ Petition No. 36250 of 1997 the Government framed policy dated 24.10.1999 in which it was held that a Sub Inspector who is transferred from civil police to Local Intelligence Unit, cannot be retained in Local Intelligence Unit for more than 5 years and he has to be transferred back to civil police. It was further provided in the policy that the Sub-Inspectors can only be retained in Local Intelligence Unit if he gives his consent to continue there.

7. In Writ Petition No. 3042 of 2001, it has been held by the Court that the Petitioner in that petition who was appointed as Sub-Inspector in the Department of Police (Civil Branch) and was transferred to Local Intelligence Unit is entitled for being transferred to Civil Police and the transfer policy should be implemented giving him benefit. It is submitted on behalf of the Petitioner that Sri Ashok Kumar Singh of Writ Petition No. 3042 of 2001 is of the same batch and was selected along with the Petitioner.

8. The various posts in the intelligence department are ex cadre posts and the Petitioner could not be sent to Intelligence department on an ex cadre post without his consent as has been held in *Prakash R. Broker v. Union of India* 1984 (1) AISLJ 61 (Bom), in which reliance was placed on a judgment of Apex Court in *Bhagwati Prasad v. State of Gujarat* 1979 (3) SLR 805, in which it was held that person who is holder of civil post in service of the State is entitled to certain conditions of service prescribed for that post till the date of superannuation. It was observed that this was a guarantee which flows from Article 16 and Part XIV of the Constitution. The transfer of an employee from outside the cadre is not a valid transfer as has been held in *Krishna Kumar Srivastava v. Bihar State Agricultural Marketing Board* 1983 (2) SLR 221 (Pat).

9. The learned standing counsel submits that the Government policy are mere guidelines and has no statutory force and the Petitioner cannot claim repatriation to civil police as a matter of right.

10. The law settled that an employee cannot be transferred from his original post

without his consent and further he cannot be transferred to ex cadre post on permanent basis from one branch of police force to another. The policy decision is not statutory but it is obvious from its perusal that five years period has been specified therein for transfer to ex cadre post. The case of the Petitioner is also covered by the Government Order dated 24.10.1999 as he completed more than 10 years service and is entitled to be considered for transfer in civil police.

11. Considering the arguments of the counsel for the parties, the law and the policy decision of the Government, the retention of employee without his consent in Local Intelligence Unit on ex cadre post is arbitrary as he loses the privileges and avenues of promotion in civil police which are far better than in Local Intelligence Unit department. Since policy decision has been taken by the Government for not retaining a person on deputation beyond 5 years in Local Intelligence Unit, it would not be proper for this Court to interfere in the policy decision. The Petitioner has already put in 16 years of his service in Local Intelligence Unit. He has lost avenues of promotion and the benefits and this is a good ground for passing an order for transferring him back to civil police as transfer to Local Intelligence Unit which was without his consent.

12. The impugned order dated 26.8.2000, rejecting representation of the Petitioner on the ground that the policy decision framed in pursuance of judgment of this Court does not cover the case of the Petitioner after five years of service in intelligence department is arbitrary. The Petitioner under the policy decision of the Government dated 24.10.1999, can opt for transfer to civil police. The criteria laid down in the policy has not been considered in the order dated 26.8.2000 and it is totally silent about transfer of Inspectors who give their option for repatriation to civil police after specified period of five years from Local Intelligence Unit.

13. For the reasons given above, the writ petition is allowed and the impugned order dated 26.8.2000 (Annexure-4 to the writ petition) passed by the Respondent No. 2 is quashed. The Respondents are directed to transfer the Petitioner to civil police forthwith from Local Intelligence Unit preferably within a period of six weeks from the date of production of a certified copy of the order of this Court. No order as to costs.