

(2023) 08 OHC CK 0200
In the Orissa High Court
Case No : Writ Petition (C) No. 22177 Of 2023

Sanjata Kumar Harichandan

APPELLANT

Vs

Director General, Railway Protection Force, Headquarter
Railway Board, New Delhi And Others

RESPONDENT

Date of Decision : 29-08-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Railway Protection Force Act, 1957 — Section 8
Railway Board Act, 1985 — Section 3, 15
Railway Protection Force Rules, 1987 — Rule 19, 28, 90, 92, 92(2), 93, 93(1)

Citation : (2023) 08 OHC CK 0200

Hon'ble Judges : A.K. Mohapatra, J??A.K. Mohapatra, J

Bench : Single Bench

Advocate : Gyana Ranjan Sethi, B.K. Pattanaik, P.K. Parhi, J. Nayak

Final Decision : Allowed

Judgement

A.K. Mohapatra, J

1. The above named Petitioner has approached this Court by filing the present writ petition with a prayer to quash the order dated 12.07.2023 under Annexure-2 to the writ petition, so far as the same relates to the Petitioner, and further for a direction to Opposite Parties to allow the Petitioner to continue at his present place of posting. In essence the Petitioner seeks to challenge the mid academic transfer on the ground that the same is de hors the guidelines prepared under the provisions of the Railway Protection Force Act, 1957.

2. The factual backdrop of the Petitioner's case, in a narrow compass, is that the Petitioner after being duly selected was appointed as a Constable on 15.4.2000 in the Railway Protection Force and was initially posted at Raipur in the district of Chhatisgarh. In the year 2003, the Petitioner was transferred to Sambalpur Division. Thereafter, he was again transferred to Khurda Division in March, 2009. While working as such, the Petitioner was promoted to the rank of Head

Constable in the year 2021 and was posted at RPF post, Puri. As a disciplined member of the RPF, the Petitioner has been discharging his duties to the utmost satisfaction of his higher authorities and, as such, he has a unblemished service career so far.

3. The Railway Protection Force Rules, 1987 which has been framed under the Railway Protection Act, 1957 provides for the contingencies in which the members of the force are to be transferred from one place to the other. Rule-90 of the RPF Rules, 1987 further provides that members of the force can be transferred from one place to the other in India in the exigency of service based on administrative views. Similarly, Rule-92 thereof speaks of the periodical transfer. Rule-92.2 thereof provides that transfers of the enrolled members of the Force may be ordered by the Principal Chief Security Commissioner concerned and other officers specified in Schedule-II. As such, the Principal Chief Security Commissioner is the competent authority to transfer the Petitioner.

4. Rule-93 of the RPF Rules, 1987 lays down the general principle for effecting periodical transfer. Such rule provides that no member of the force shall be transferred from one station to the other unless he has been at that station for the normal prescribed period nor he shall be allowed to remain at that station more than one year thereafter without the specific approval of the competent authority. Further, in view of Rule-93.1 of the RPF Rules, 1987, the tenure of RPF/RPSF personnel has been fixed vide Standing Order No.102 dated 29.03.2010. As per the said Standing Order, the tenure of a Head Constable in a particular station is 5 years. Moreover, as per the said Standing Order, all members of the force shall be transferred on completion of their prescribed tenure. Standing Order No.110 was issued constituting establishment board to recommend transfer of RPF personnel keeping in view the requirement to maintain fairness and transparency in the transfer.

5. While this was the position, the Ministry of Railway, Government of India, issued a directive for transfer of members of the RPF on 10.3.2023 which is otherwise known as Directive No.58. The said Directive No.58 was framed and circulated by the D.G., RPF in exercise of his power under Rule-28 of the RPF Rules, 1987. Further, the said Directive No.58 has been issued in supersession of all earlier orders. The said directive contains a set of guidelines to streamline the transfer of the members of the force keeping in view the requirement of Rules 92 and 93 of the RPF Rules, 1987. The aforesaid directive defines the word 'transfer' which means and includes posting of a member of a force from one unit to the other. Mere change of working unit in the same office or at the same place/station shall not be construed as transfer. So far the tenure of a member of the force is concerned, at a particular place of posting, the aforesaid Directive No.58 provides that the same shall mean as has been provided under Rule-93.1. Thus, every member of the force shall be transferred after completion of the prescribed tenure, unless given an extension by the competent authority in writing.

6. The writ petition further reveals that the transfer of the enrolled members of

the force shall be given effect to through an ICT application which has been designed, developed and implemented for the aforesaid purpose. Moreover, there shall be no manual transfer except with the prior approval of D.G., RPF. Under the new Directive No. 58, the RPF personnel shall be asked to submit their option in the event they have completed their tenure at the present place of posting within a time schedule which shall be considered by the authorities. However, such exercise of option shall not confer any right on such personnel to be transferred to a place of his choice. The new place of posting shall be assigned objectively and basing on the administrative requirements, vacancy position, previous postings and the length of service etc. under the guidelines. Such guidelines also lay down the manner in which preference is to be given to eligible staff while transferring their service.

7. Referring to Clause-C(xix) of the Directive No.58, it has been stated in the writ petition that all annual periodical transfer shall be processed in the month of January in every calendar year and shall be completed on or before 15th March, or before end of the local Academic sessions, whichever is earlier. This has been provided in the guidelines keeping in view the fact that the RPF personnel who are likely to be affected by the transfer shall get sufficient time to plan for settlement of their families and prepare for admission of their wards in a new school at the new place of posting. Similarly, Clause-C(xxix) provides that the entire process of periodical transfer including the joining pursuant thereto shall invariably be completed on or before 31st March of every calendar year.

8. Additionally, the aforesaid guideline under Annexure-1 provides that the tenure of Constables/Head Constables at a particular place of posting shall be 5 years. In the context of present case, it has been stated in the writ petition that although the entire process is required to be completed by 31.03.2023, however, options were called for from the Petitioner only on 7.7.2023. The Petitioner anticipating that such options are being called for the next calendar year has exercised his option. However, all of a sudden transfer orders have been issued on 12.07.2023 thereby disbursing the Petitioner and his family members in the mid academic session and in violation of the guidelines under Annexure-1.

9. Although it has been stated that the aforesaid transfer is pursuant to Directive No.58, the same is in fact in violation of Directive No.58 as the said directive prescribes that all transfers are to be processed by 31st March of the calendar year. In addition to the above, it has also been contended in the writ petition that the Petitioner has not completed his tenure of 5 years at the current place of posting before the impugned transfer order was passed. The Petitioner has also challenged the impugned transfer on the ground that the children of the Petitioner are prosecuting their studies at the moment and, as such, the current mid academic session transfer would put them into lot of inconvenience.

10. A counter affidavit has been filed on behalf of the Opposite Party No.3. In the said counter affidavit, it has been stated that in view of Section-3 of RPF Act, 1985, the RPF is an armed force of the Union of India. Moreover, in view of

Section 15 of the said Act, officers and the members of the force are to be considered always on duty and, as such, they are liable to be employed at any place within India.

11. Further, referring to Rule-19 of the Rules, 1987, it has been stated in the counter affidavit that transfer of members of the force may be ordered in the exigencies of service or for administrative reasons or to avoid local entanglements of such members. Similarly, Rule-92 of the Rules, 1987 has been referred in the context of transfer of enrolled members of the force. Similarly, Rule-92.2 of the Rules, 1987 has also been referred to in the context of general principle for effective periodical transfer as laid down in Rule-93 of the Rules, 1987.

12. Referring to the Rule-11 of the Fundamental Rules, it has been stated in the counter affidavit that whole time of a Government servant is at the disposal of the Government and he may be employed in any manner required by the authorities keeping in view the aforesaid principle the members of the RPF are being transferred and posted at different place.

13. In the counter affidavit, it has been contended that no member of the force can claim to be posted at a particular place as per his choice and he cannot claim such posting as a matter of right. Accordingly, a guideline was prepared in the form of Directive No.58 under Rule-28 of the Rules, 1987 read with Section-8 of the Act, 1957 and circulated vide letter dated 13.3.2023. Further, referring to such Directive No.58, it has been stated that all transfers of the members of the force shall be governed by the provisions laid down in Rules-90 to 93 of the RPF Rules, 1987.

14. The counter affidavit filed by the Opposite Parties further reveals that in view of Section-3 of the Railway Board Act, 1905, any notice, determination, direction, appointment, expression of opinion, approval or sanction issued by the Railway Board is to be treated as a statutory order and shall be binding on all. Further, referring to a catena of judgments of the Hon'ble Supreme Court, it has been stated in the counter affidavit that transfer is an exigency and incidence of service. Therefore, the executive has unfettered power to transfer his employee from one place to the other place.

15. Moreover, in the counter affidavit, the scope of judicial review of this Court under Article 226 has also been questioned by the Opposite Parties in the matter involving transfer of an employee. However, the Opposite Parties have admitted in their counter affidavit that transfers have been carried out pursuant to the guideline under Directive No.58 through a mechanism of Transfer Management Module (TMM) and, accordingly, 202 members of the East Coast Railway were transferred during annual periodical transfer 2023. Since these transfers were effected through the TMM without any human intervention, therefore, the same cannot be termed as illegal or tainted with mala fide.

16. So far the present Petitioner is concerned, it has been stated in the counter

affidavit that he has completed his tenure of 5 year at the Khurda Road Station and, as such, he has been transferred by following the Directive No.58 and vide order dated 12.07.2023.

17. Heard Ms. B.K. Pattanaik, learned counsel appearing for the Petitioner as well as Mr. P.K. Parhi, learned Deputy Solicitor General of India along with Mr. J. Nayak, learned Central Government Counsel appearing for the Opposite Parties. Perused the pleadings as well as the materials on record.

18. On a careful analysis of the factual background of the present writ petition, this Court found that the Petitioner has approached this Court by challenging the impugned order of transfer dated 12.07.2023 under Annexure-2 to the writ petition. The principal ground of challenge of the Petitioner is that the order dated 12.07.2023 under Annexure-2 transferring the Petitioner from his present place of posting to a new place is not in accordance with the statutory rules as well as the Directive No.58 which provides for guidelines to be followed in case of transfer of the members of the force. Thus, this Court while testing the validity of order dated 12.07.2023 is required to examine the statutory provisions contained in the rules as well as in the Directive No.58 under Annexure-1 to the writ petition.

19. Before proceeding further in the matter, this Court would like to refer to a few judgments to ascertain the scope of interference of this Court in exercise of power of judicial review under Article 226 of the Constitution of India. No doubt, the scope of judicial interference in the matter of transfer of Government employee is very restricted, however, it cannot be said that this Court is completely devoid of power to exercise the power of judicial review in a case where it is found that the order of transfer is arbitrary, mala fide and the same is dehors the rules governing the field.

20. Mr. P.K. Parhi, learned Deputy Solicitor General of India appearing for the Opposite Parties in course of his argument referred to the judgments of the Hon'ble Supreme Court in *B. Varadha Rao v. State of Karnataka*, reported in (1986) 4 SCC 131; *Shilpi Bose v. State of Bihar*, reported in AIR 1991 SC 532; *Union of India v. S.L. Abbas*, reported in (1993) 4 SCC 357; *State of M.P. v. S.S. Kourav*, reported in (1995) 3 SCC 270; *Arvind Duttatraya Dhande v. State of Maharashtra*, reported in (1997) 6 SCC 1961; *Maysore Paper Mills Limited, Bangalore v. Mysore Paper Mills Officers Association, Bhadravati*, reported in (1999) 6 SLR 77; *National Hydroelectric Power Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey*, reported in (2004) 12 SCC 299; *Airports Authority of India v. Rajeev Ratan Pandey*, reported in JT 2009 (10) SC 472; and *Somesh Tiwari v. Union of India*, reported in (2009) 2 SCC 592. Referring to all the aforesaid judgments, learned Deputy Solicitor General of India appearing for the Opposite Parties tried to impress upon this Court that scope of judicial interference in an order of transfer of an employee is very limited. Moreover, the Hon'ble Supreme Court has observed that the administration cannot function with its hands tied by judiciary behind its back and, therefore, there must be

some free play of the joints provided to the executive authorities. While making the aforesaid submission, the learned Deputy Solicitor General of India did not dispute the applicability of Directive No.58 under Annexure-1 to the writ petition.

21. Learned counsel for the Petitioner, on the other hand, submitted that the judgments relied upon by the learned Deputy Solicitor General of India does not restrict the power of this Court completely. However, in a given case if the transfer order has been passed in an arbitrary and mala fide manner by violating the statutory rules, then this Court has every scope and authority to interfere with such order in exercise of its power of judicial review. He further contended that law in this regard is fairly well settled by a catena of judgments of the Hon'ble Supreme Court.

22. Learned counsel for the Petitioner referring to the Directive No.58 emphatically submitted before this Court that the transfer order under Annexure-2 has been issued dehors the guidelines, i.e., Directive No.58 under Annexure-1 to the writ petition. She also contended that the aforesaid Directive No.58 is very clear with regard to calling for option before transfer and the timeline prescribed for such transfer.

23. Learned counsel for the Petitioner also contended that the Petitioner is well aware of his right and position. She further contended that the transfer is an exigency and incidence of service and, therefore, the Petitioner is bound by such orders in an ordinary course of employment provided the same is issued within the timeline prescribed in the guideline. In the present case, the transfer orders having been passed well beyond the time prescribed in the guidelines under Annexure-1, such transfer order shall cause irreparable injury and inconvenience to the Petitioner as well as to his entire family including his children.

24. Keeping in view the submissions made by the learned counsel for the Petitioner and to examine the main ground of challenge that the order of transfer has been passed in violation of the statutory rules, this Court is required to examine the Directive No.58 under Annexure-1 to the writ petition which was circulated vide letter dated 13.03.2023. On perusal of the said Directive No.58, it appears that such a directive has been issued by the D.G., R.P.F. in exercise of his power under Rule-28 of the R.P.F. Rules, 1987. Moreover, the same also provides that such a directive shall be supplemental in nature to the Rules-90 to 93 of the R.P.F. Rules, 1987. Thus, it cannot be concluded that the Directive under Annexure-1 does not have a statutory flavour and, as such, the same will not be binding on the parties. Thus, the Directive No.58 is equally binding both in the Petitioner as well as the Opposite Parties.

25. On examination of the guidelines under Annexue-1, this Court observes that under Clause-C of the guideline, a procedure has been prescribed for giving effect to periodical transfers. The relevant sub-clauses have been quoted herein below:-

(ii) All transfers of the enrolled members of the force shall be caused & carried

out through an ICT application designed, developed and implemented as per the provisions contained herein. There shall be no manual transfers except with prior approval of the DG/RPF. However, transfer to/from specialized units may be continued to be done manually till a suitable IT module is developed for the purpose.

(iii) Ordinarily, all members of the Force after completion of Two consecutive Tenures in any Division, Smaller Railways (SR) or Production Units (PU) including attachments or deputations, if any, shall be transferred to some other Division, preferably where he has not worked earlier. If he/she has worked in all divisions, smaller Railways and Production Units of the Zone, then he/she shall be posted preferably at a division, smaller Railway or unit where he/she has served the least, subject to availability of vacancies.

(xviii) All Officers & Staff shall be required to fill up their choices of postings within One month (or less with approval of DG RPF) of freezing & posting of such data for their perusal. After the expiry of such period, no further modifications would be permitted. The Tech Cell/RPF shall make necessary configurations in the TMM application and mobile App in accordance with the provisions mentioned above.

(xix) The process of annual transfers: All annual periodical transfers shall be processed in the month of January every calendar year and completed on or before 15th of March or before end of the local academic sessions, whichever is earlier; so as the Officers & Staff so affected could get sufficient time to plan for setting of their families and admissions of their wards, as the case may be.

(xx) Before commencing of the process in the month of January next year, all the service particulars of all the Officers & Staff, shall be updated by the controlling officer, verified and confirmed by the officer next to him and finally frozen by the PCSC concerned duly certifying the 'Data Integrity' online; latest by 30th November of the preceding calendar year. There shall not be any further change in the Staff data so frozen by the PCSC, till completion of the annual transfers; except with approval of the DG/RPF essentially in administrative interest recorded in writing."

On a careful scrutiny of the Clauses in the guideline which is statutory in nature, this Court found that in sub-clause (xix), it has been specifically provided that all annual periodical transfers shall be processed in the month of January of every calendar year and completed on or before 15th March or before end of the local Academic session, whichever is earlier. Such a provision has been included in the guideline keeping in view the inconvenience likely to be caused to the officers and staff of R.P.F. in course of transfer and to provide them sufficient time to their resettlement with their family along with admission of their wards at the new place of posting. Therefore, the provisions referred to hereinabove have been incorporated through the guideline with a definite purpose. Therefore, such a provision cannot be termed as arbitrary or redundant or having no nexus with

the object sought to be achieved. Moreover, while interpreting a provision which is statutory in nature, an attempt should always be made by this Court to give meaning to each and every word expressed in the rules/guidelines. Not a single letter/word used in the Rules/guidelines would be construed as a dead letter in the Rule Book.

26. The new Directive No.58 was introduced in March, 2023. On a careful scrutiny, it appears that pursuant to the Directive No.58, choices were invited for transfer from RPF personnel like the Petitioner some time in the month of July, 2023. Thereafter the transfer order under Annexure-2 has been passed abruptly on 12.07.2023. The question now arises is as to whether a guideline which was issued in March, 2023 could have been made applicable for the calendar year 2023 itself. On going through the various provisions of the guideline, this Court is of the considered view that the guideline could be effectively implemented from the next calendar year, i.e., 2024 without violating any of the provision contained therein. Therefore, the contention of learned counsel for the Petitioner that the choices which were invited in the month of July, 2023 were considered to be for the year 2024 by the Petitioner cannot simply be brushed aside and taken lightly.

27. This Court on a careful scrutiny of the provisions contained in Rule-90 to 93 of the RPF Rules, 1987 found that there is nothing in the guidelines which is contrary to the aforesaid rules rather the guideline under Annexure-1 in the shape of Directive No.58 which has been framed and circulated is in exercise of power under Rule-28 of the RPF Rules, 1987. Thus, so far periodical transfers are concerned, the guidelines under Annexure-1 is to be read along with Rule-93 of the RPF Rules, 1987. It is also admitted by Mr. P.K. Parhi, learned D.S.G.I. that the impugned order was passed under Directive No.58.

28. Reverting back to the Clause-(xix) in the guideline, this Court is of the considered view that while giving effect to a periodical transfer that too in a chain, the Opposite Parties are bound to follow the guidelines prepared by them. The sub-clause-(xix) in the guideline under Annexue-1 has been incorporated in the guidelines with a definite purpose as has been mentioned hereinabove. Therefore, this Court is of the considered view that the transfer order under Annexure-2 being a transfer simpliciter, i.e., a transfer in a routine manner consisting of several RPF personnel is definitely not on any administrative exigency. Therefore, the Opposite Parties are under legal obligation to follow guideline under Annexue-1 while giving effect to the transfer of the members of RPF force.

29. Since the aforesaid provision provides that all periodical transfers shall be processed before 15th of March of the calendar year, the Opposite Parties should have taken steps to conclude the same by the timeline prescribed in the guideline. Moreover, this Court also observed that the use of the word "shall be" in clause-(xix) makes it mandatory for the Opposite Parties to act within the time schedule prescribed. Thus, the violation of clause-(xix) while passing the transfer order under Annexure-2 is to be viewed seriously, particularly keeping in view

the inconvenience that is likely to be caused to the Petitioner and his family members by virtue of the aforesaid mid academic session transfer.

30. Additionally, this Court would like to observe that the Railway Protection Force being a disciplined force and the same having been construed to be an armed force in view of Section-3 of the Act, this Court has absolutely no doubt in its mind that the R.P.F. is a disciplined force and, accordingly, the officers as well as the personnel are required to show a certain degree of discipline in their conduct both on filed as well as in administrative matters. Moreover, it is not that the personnel engaged by the force are only to obey and follow the discipline of the force, such discipline is also equally applicable to the higher authorities of the force. When this Court is not interfering in orders passed by the authorities on the ground that they are the member of a disciplined force in a case of violation of any orders by any member of the force, it would be unfair and unjust if this Court comes to a conclusion that such discipline does not apply to the higher authorities while dealing with the personnel of RPF force. In other words, the higher authorities are also required to exhibit certain degree of discipline while dealing with the issues pertaining to the members of the force.

31. In the present case, when the guideline stipulates the procedure of transfer is to be completed by 15th March of every calendar year, then the Opposite Parties should have followed such timeline prescribed in the guideline, which is statutory in nature. The Opposite Parties cannot merely escape by saying that there was a mere technical delay in implementing the guidelines. The authorities on the other hand must understand that they are dealing with human issues while passing orders. Further, they must keep in mind that for them the issue involved in the present case may be a case of a mere technical delay in passing the transfer order, however, the same has a far reaching adverse consequence on the members of the force as well as their entire family members. Therefore, this Court is of the considered view that the officers in high position of the force while expecting discipline from the members of the force are at the same time also expected to follow and maintain discipline while following the guidelines and rule of the law.

32. In view of the aforesaid analysis of law as well as the factual background of the present case and keeping in view the fact that the order under Annexure-2 has been passed while effecting a routine transfer of the officers, this Court is of the considered view that the Opposite Parties are bound by the guidelines under Annexure-1 and, accordingly, they should have concluded the entire process by 15th March, 2023 as has been provided in the guidelines under Annexure-1 to the writ petition. On further analysis of law applicable to transfer, this Court is of the view that this Court has scope and authority to interfere in an order of transfer while exercising the power of a judicial review under Article 226 of the Constitution of India in a case of transfer of an employee when it is found that the transfer has been given effect to de hors the statutory rules prescribed in the guidelines. Accordingly, this Court has no hesitation in quashing the impugned

transfer order dated 12.07.2023 under Annexue-2 and, accordingly, the same is hereby quashed.

33. Further, it is directed that it would be open to the Opposite Parties to apply the guidelines under Annexure-1 as well as the provisions of the rules, i.e., under Rules-90 to 93 of the RPF Rules, 1987 in the next year in the manner as has been prescribed in the guideline and within the time stipulation fixed in Directive No.58 under Annexure-1 to the writ petition. This Court further makes it clear that while delivering this judgment, this Court has not considered the individual ground taken by the Petitioner while assailing the impugned transfer order. Rather, this Court has considered the validity of the transfer order in the light of the guideline under Annexure-1 to the writ petition.

34. With the aforesaid observation and direction the writ petition is allowed. However, there shall be no order as to cost.

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