
(2007) 05 CAL CK 0012
In the Calcutta High Court

Case No : M.A.T. No. 863 of 2007 and C.A.N. No's. 2113 and 3724 of 2007

Shyam Behari Pandey and Others

APPELLANT

Vs

Director General, Railway Protection Force and Others

RESPONDENT

Date of Decision : 03-05-2007

Acts Referred:

Constitution of India, 1950 — Article 14
Railway Protection Force Rules, 1987 — Rule 90

Citation : (2007) 3 CALLT 350 : (2008) 116 FLR 948

Hon'ble Judges : Tapas Kumar Giri, J;Pratap Kumar Ray, J

Bench : Division Bench

Advocate : Milan Bhattacharya and Someswar Chakraborty, for the Appellant;Chittaranjan Bag and Binod Kumar Gupta, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—Heard the learned advocates appearing for the parties.

This appeal has been preferred assailing the Judgment and order dated 7th March, 2007 passed by the learned Trial Judge in W.P. No. 22415(W) of 2006 whereby and whereunder the impugned order of the writ application passed by the Director General/RPF on 11th August, 2006 rejecting the representation on issue of transfer, was not interfered with.

2. The learned Trial Judge considered the writ application as advanced by the respective writ petitioners on the point that even if there was any discrimination on issue of passing of a transfer order by allowing the representation of others, the same cannot be the subject matter of the judicial review on the ground that the applicability of Article 14 of the Constitution of India never could be construed in the negative angle but in the positive angle. However, before us on perusal of the records and documents it appears that there is a question of jurisdiction on issue of such transfer order having regard to the Standing Order No. 70 dated 27th September, 2004 as relied upon by the Director General aforesaid vis-a-vis the tenure of posting of any R.P.F. Personnel. It is the

contention of the appellants before us that in the last posting wherefrom the writ petitioners were transferred to the different divisions, the five-years tenure condition was not fulfilled to attract the order of transfer. However, it is submitted that no approval was sought for such pre-mature transfer in terms of the Standing Order. The learned Advocate for the respondents has opposed the appeal and applications both contending, inter alia, that all the writ petitioners are in Kharagpur Division for more than thirty years and, as such, the question of non-completion of tenure of five years has no relevancy as raised by the appellants and the transfer orders were not at all premature transfer order.

3. Having regard to the rival contentions of the parties, the issue now is to be decided.

4. In the Railway Protection Force Act, 1957 read with Rules thereof there is no definition of the word "transfer" by identifying the posting and the relevant issue thereof. But the Standing Order 70 rule 1 aforesaid has defined the words, "transfer" and "posting". From Clause 1(A) of the said Standing Order it appears that any posting either in a company and/or a unit and/or in any office from another post/company/unit or office in the same division, or any other division of the same zonal Railway or to RPSF unit shall be treated as transfer. The Clause 1(A) reads such:

1.A. Transfer-For the purposes of RPF means any regular posting from one RPF Post/Coy/Unit or Office to another Post/Coy/Unit or Office in the same division or any other division of the same zonal railway or to other zonal railway or to RPSF and for the purposes of RPSF means regular posting from one battalion to another Rotation of staff from one Coy to another in the same battalion of RPSF shall not be treated as transfer.

5. The tenure also has been defined under Clause 1(B) which reads as follows:

1.B. Tenure - means the period of posting for various ranks in various places prescribed by Director-General.

6. Under Clause 3 of the said Standing Order tenure of officers/staff in any particular place of posting has been identified wherefrom it appears that the writ petitioners all of them except one who is holding the post of head constable came under Clause 3(D) to identify the tenure of posting namely of five years. Under a note annexed under Clause 3 it appears that the aforesaid tenure of posting would not preclude the administration from transferring the staff under Rule 90 of RPF Rules, 1987. The Clause 3 along with note is set out hereinbelow:

3. Tenure of officers/staff.

A. Superior Officers excluding those officers Four years Posted in the office of the Railway Board.

B. Officers posted in the Railway Board Five years C. Inspectors posted as Post Commanders Four years D. Other enrolled members of RPF/RPSF Five years E.

All enrolled members of RPSF for inter-Battalion transfers five years.

F. Officers and staff in RPF posted to difficult Two years areas.

Note: Tenure of posting indicated above is in the nature of guidelines and does not preclude the administration from transferring staff at any time before completion of the tenure in exigencies of service or for administrative reasons as envisaged in Rule 90 of RPF Rules, 1987.

7. Under Clause 23 for pre-mature transfer and approval of different officers in respect of different employees holding different ranks as prescribed thereto, is a condition precedent. Under Clause 23 in the event a pre-mature transfer in respect of the present writ petitioners/ appellants as they are holding rank below the Sub-Inspector, Chief Security Commissioner is the authority to approve the same. Clause 23 reads such:

23. If a pre-mature transfer is considered necessary due to any reason, prior approval of following officers should be obtained:

a) In case of Sub-Inspectors - Chief Security Commissioner and below b) In case of Inspectors - Director General.

8. Admittedly, the present transfer of all the writ petitioners are inter-division transfer. It is an admitted position that the respective places of posting wherefrom the writ petitioners have been transferred, they could not complete five years tenure in terms of Clause 3(D) of the Standing Order. Hence, the argument of the learned Advocate for the respondents that the total period of service in a particular division should be considered to identify the tenure has no legal basis in view of the definition of the word "transfer" in the Standing Order in terms of Clause 1(A), which speaks that respective postings in a company/unit/office from another company/unit/office in the same division should be considered as transfer, Even if all the petitioners served more than thirty years in Kharagpur Division, but they served in different postings and, as such, even if there was a posting of intra-divisional, but each posting became a fresh transfer order in terms of Clause 1(A) aforesaid. Hence, as a resultant effect, the present posting of the writ petitioners wherefrom petitioners have been posted to another place would be considered as a posting for the purpose of identifying its tenure to judge the issue as to whether it is a pre-mature transfer or not. From Clause 3(D) it appears that in each and every place of posting read with Clause 1(A) the definition of the transfer, the period must be for five years. So, admittedly in the respective places of posting wherefrom the writ petitioners have been transferred there is no completion of total five years tenure. As such, we have no hesitation to hold that it is a pre-mature transfer under Clause 23. Under Clause 23 of the Standing Order it provides for pre-mature transfer prior approval of Chief Security Commissioner would be necessary in terms of Clause 23(A), which is applicable in respect of the petitioners' case. But from the impugned transfer order it appears that it was issued" by the Chief Security Commissioner himself. Here lies the legal question. Can the approving authority

be the original authority? The answer is clearly "no". Once any Standing Order and/or Regulation identifies one approving authority for the purpose of pre-mature transfer it will always be deemed and it should be construed that the pre-mature transfer order should be issued by any officer sub-ordinate to the approving officer namely, the Chief Security Commissioner. Now, we have to answer another question whether under the statute any other sub-ordinate authority of Chief Security Commissioner was vested with the power to transfer the writ petitioners who are holding respective ranks of constable/head constable. From Schedule II of Railway Protection Force Rules, 1987 as framed in terms of Clause 25 of the said Rules, it appears from the chart as specified thereof that intra-divisional transfer should be made following serial No. 5.3 of the said list. Under serial No. 5.3 of the said list of Schedule II, it appears that three officers are empowered to issue the transfer order in respect of the "writ petitioners" postings namely, the Director General, Chief Security Commissioner and Additional/Deputy Chief Security Commissioner/Principal, R.P.F. Academy. Hence, it appears from the said chart that Additional/Deputy Chief Security Commissioner is the lowest ranking officer who got the jurisdiction to transfer the head constable/constable when the transfer order is inter-divisional transfer order. In the instant case, the impugned order is inter divisional transfer order and there is no dispute in it. Hence, under Clause 5.3. read with Clause 23(A) of the Standing Order wherein it provides that pre-mature transfer order should be with the approval of the Chief Security Commissioner, we are of the positive view that in the instant case the transfer orders were required to be issued by the lowest ranking officer, who is entitled to issue such transfer order under serial No. 5.3. of Schedule II namely, the Additional/Deputy Chief Security Commissioner so that such transfer order being a pre-mature transfer order and also inter-divisional transfer order could have been approved by the Chief Security Commissioner under Clause 23(A) of the Standing Order 70aforesaid. But it has not been done in the instant case.

9. Having regard to the present fact of the case, we are of the view that the pre-mature transfer issued by the Chief Security Commissioner, who was approving authority, was contrary to the statutory provision as once there is identification of any approving authority by a statute, naturally the law suggests that another original authority should issue such transfer order and who must be the holder of the rank lower than the Chief Security Commissioner. Hence, in the instant case, when the transfer orders were required to be passed by the Additional/Deputy Chief Security Commissioner being the Competent Authority in view of such pre-mature and inter-divisional transfer having regard to the approval issue by the Chief Security Commissioner under Clause 23(A) of the Standing Order, we are of the view that the transfer order is not legally sustainable.

Hence, the impugned transfer orders are set aside and quashed.

The appeal accordingly is allowed.

The impugned Judgment under appeal is quashed.

The writ application is also allowed.

All connected applications also accordingly stand disposed of.

After the Judgment was delivered, the learned Advocate for the respondents has submitted before us that this legal question which has been considered by this Court was not at all thrashed in the writ application as well as in the appeal and, as such, this Court will not consider this aspect. We are afraid to accept such submission. If the submission is accepted, it will be contrary to the settled legal position that any question of law on the admitted fact and the admitted document could be raised in the appeal even if such question is not taken before the learned Trial Court, reliance may be placed to the Judgment passed, in the case V.K. Majotra Vs. Union of India (UOI) and Another, .

Let xerox certified copy of this order, if applied for, be given to the learned Advocates appearing for the parties expeditiously.

Tapas Kumar Giri, J.

10. I agree.