
(2016) 07 P&H CK 0071
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12859 of 1996

SI Varinder Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 25-07-2016

Acts Referred:

Punjab Police Rules, 1934 — Rule 13.18, Rule 21.25

Citation : (2017) 1 SCT 421

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Puneet Bali, Senior Advocate with Ms. Monika Thakur, Advocate, for the Petitioner in CWP No. 12859 of 1996 and COCP No. 1722 of 2002; R.S. Hooda, Advocate, Advocate, for the Respondent in CWP No. 7715 of 2000; Ms. Shruti Jain Goyal, AAG, Haryana, for the

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J. (Oral)—This order will dispose of the above cited cases as common questions of law and fact are involved in them which can conveniently be decided by a common order. There is though a minor factual difference between the two and that has been elaborated in the last paragraph of this order. Broad facts are picked up from CWP No.12859 of 1996 for convenience.

2. This writ petition was filed against the repatriation order dated May 31, 1996 praying that it deserves to be set aside as illegal and arbitrary. The petitioner was repatriated from deputation by the CID department. An interim order was passed in the present petition staying its operation. This petition was disposed of on November 5, 2001 on the statement made by the Law Officer of the State that the matter is covered by the decision of the Supreme Court in Kunal Nanda v. Union of India & anr., 2000(4) SLR 609. After the dismissal of the petition, the petitioner was repatriated to his parent department on November 26, 2001. However, when the final order was passed by this Court the petitioner was not

heard. Feeling aggrieved, he moved an application for restoration of the case and the permission to be heard on merits. The petition was restored to its original number. When the matter was restored, a status quo order was passed on November 27, 2001 and thus, he continued in his parent department to which he was repatriated. Since 2001 the petitioner has been serving in his parent District Police. Thereafter, the petitioner was dismissed from service in 2003 but by the subsequent orders of the competent authority the dismissal order was set aside. The petitioner was reinstated to service in his parent District Police.

3. Feeling aggrieved by his return to the parent department he filed a contempt petition complaining that the status quo order had been disobeyed. The contempt petition is tagged with the present petition. This is how challenge remains to the repatriation order in the present proceedings.

4. It is the pleaded case of the petitioner in para. 6 of the petition that he had served in the CID Department for 10 years and at the most his deputation tenure could be extended up to the maximum of 5 years in accordance with Rule 21.25 Punjab Police Rules, 1934 (for short "the PPR") and accordingly the argument advanced is that after expiration of 5 years he is deemed to have been permanently absorbed in the CID for all legal intents and purposes. The other contention raised by the petitioner is based on Rule 13.18 of the PPR which provision deals with probationary period on promotion. The rule reads as follows:-

"13.18. Probationary period of promotion.

All Police Officers promoted in rank shall be on probation for two years; provided that the appointing authority may, by a special order in each case, permit period of officiating service to count towards the period of probation, on the conclusion of the probationary period a report shall be rendered to the authority empowered to confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and the confirming authority must arrive at a definite decision within a reasonable time soon after the expiry of that period whether the officer should confirmed or reverted. While on probation officers may be reverted without departmental proceedings. Such reversion shall not be considered reduction for the purpose of rule 16.4."

5. Ms. Shruti Jain Goyal, appearing for the State of Haryana and the department submits that Rule 13.18 does not apply to the case in hand since there has been no substantive promotion in the CID Department and the case is covered by the PPR 21.25. Promotions, if any, can be afforded on the Next-Below Rule, when junior is promoted in the parent department. This is for the reason that there is no permanent cadre for CID and the Investigating Department is run by borrowing staff from other departments. The argument that there is automatic confirmation or absorption after 5 years of service on deputation is a submission which is wholly misconceived and has been repelled by this Court and the dicta of the Supreme Court many times over. To support her contention, the learned Law Officer relies on the decisions of the Division Bench of this Court in Satbir

Singh v. State of Haryana, 1996(3) SCT 627 and ASI Mohan Singh v. State of Haryana, 1997(3) SCT 432 (DB). Besides, the issue is settled by the Supreme Court in State of Punjab v. Inder Singh, (1997) 8 SCC 372, which deals specifically with PPR Rule 21.25 which is also the extant rule in the State of Haryana. The Supreme Court rejected the argument that Inder Singh had a right to be absorbed in CID as this department has no cadre of its own up to the cadre of Sub- Inspector of Police. However, Inder Singh by that time had served for more than 20 years in CID and therefore, the Court exercised its special jurisdiction under Article 142 of the Constitution of India [which is not available to the High Court] to direct that the petitioner should be deemed to have been in CID in order to seek voluntary retirement. The Supreme Court thought it unfair conduct of the appellant-State to have asked the petitioner to go back to his parent department when he had put in the best years of his life serving in the CID, Haryana. However, the operative part of the judgment and order in Inder Singh is not based on any concession but on an interpretation of Rule 21.25 and the concession part thus would not come in aid of the petitioner in view of his shorter stint in the CID with intervening litigating history as noticed above. On the main question the appeal was dismissed. The main reason for moulding the relief appears to be that this Court in Inder Singh had granted interim stay and the stay continued for sufficiently long time conferring certain actionable rights on the petitioner therein in the background of his request for voluntary retirement.

6. Ms. Goyal then cites the ruling of the Division Bench of this Court delivered in Inspector Om Parkash v. State of Haryana, 2002(1) SCT 1008, wherein the view expressed is that a repatriation order is not penal in nature and a deputationist has no vested right to continue in the borrowing department. No opportunity of hearing is required before passing an order of repatriation as claimant cannot be viewed as a person aggrieved. She also places reliance on the decision of the learned Single Judge rendered in Bant Singh v. State of Punjab, 2011 (2) SCT 55, which is also on the same line of judicial thought and the decision has been rendered in background of Rule 21.25(2) involving Constables in P.A.P. transferred to CID on deputation. In the said case, the repatriation order was passed when the borrowing department found the petitioner indulging in corrupt practices and demanding bribe. Even an enquiry was held where the charge was substantiated. In the exercise of administrative discretion the authority had repatriated Bant Singh to his parent department and this was essentially a matter of transfer which ordinarily is not to be interfered with by the Court.

7. Lastly, reliance is placed on a decision of the Division Bench of this Court in SI Virender Parkash v. The State of Haryana (CWP No.10600 of 1996), decided on July 17, 2004 which also deals with the subject matter and indicates the legal position in favour of the State. This apart, the State has placed reliance on four court decisions (Annex. R-1, R-2, R-4 & R-5) copies of which have been annexed with the written statement, to which no special reference is required in view of the settled legal position adumbrated in the decisions noticed above.

8. For the above reasons, I find no merit in this petition and would dismiss it.

9. Dismissed.

COCN No.1722 of 2002

10. Disposed of in view of dismissal of CWP No.12859 of 1996.

11. Rule is discharged.

CWP No.7715 of 2000

13. The petitioner has retired from CID and therefore, this petition is rendered infructuous and would be covered by the exception carved out due to long tenure in Inder Singh's case (supra). The cause of action has abated.

14. Dismissed as infructuous.