
(2010) 10 AHC CK 0301

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22159 of 2010

Tara Chandra Dubey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 1 AWC 803 : (2011) 128 FLR 536 : (2011) 1 UPLBEC 692

Hon'ble Judges : Pradeep Kant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pradeep Kant, J.—Heard learned Counsel for the respective parties. Instant writ petition is preferred against the order dated 20.1.2010 passed by the Police Establishment Board rejecting the representation of the Petitioner against his transfer. The Petitioner while posted at Auraiya in the Intelligence Unit has been transferred to Civil Police, Jhansi. This order of transfer was challenged by Writ Petition No. 576 of 2010 at Lucknow Bench of this Court. The writ petition was dismissed by learned Single Judge after observing that the impugned order was passed by the Police Establishment Board and the plea of the Petitioner that the order was punitive in nature was not acceptable. The learned Single Judge observed that it was on the recommendation of the Superintendent of Police that the order was passed which showed no infirmity. Though dismissing the writ petition, learned Single Judge gave an opportunity to the Petitioner to make a fresh representation.

2. The first question, therefore, is whether the present writ petition being the second writ petition, challenging the same very transfer order dated 20.1.2010, is at all maintainable and what is the effect of the opportunity given to the Petitioner for making representation against the said transfer order, even after dismissing the first writ petition.

3. The order of transfer dated 20.1.2010 having been challenged in the first writ petition which stands dismissed, the second writ petition for the same relief against the same order of transfer is not maintainable.

4. In regard to the plea of the Petitioner that since the representation preferred by him in pursuance to the opportunity given under the first order having been rejected the instant writ petition would lie, suffice it would be to mention that the rejection of the representation so made will also not give a fresh cause of action for filing second writ petition for the reasons hereinafter stated.

5. Once the writ petition challenging the transfer order has been dismissed, there remains no ambiguity that the Court was of the view that no case for interference under Article 226 of the Constitution of India is made out.

6. The opportunity to make representation against the same very transfer order will only mean that if the concerned authority of the department at his own discretion finds that there are reasons may be compassionate or any other reason in the exigency of service, such transfer order need be modified or revoked, he can pass such an order.

7. Transfer orders are passed by the competent authority considering public interest in the exigency of service and/or, of course on administrative grounds as the case may be. The authority is also competent to modify or revoke the order as per the requirement.

8. This discretion of the departmental authority unless suffers from vice of arbitrariness or is exercised in violation of statutory rules or suffers from mala fide, is not likely to be interfered by this Court.

9. Making of a representation gives an opportunity to the incumbent to place his case before the authority concerned, who is also legally obliged to consider the same and pass appropriate order. This opportunity to the transferred employee can be given by the Court, even after dismissal of the writ petition but only for the limited purpose, where the authority may consider his case in the light of the representation made, but that would not mean that the High Court has given liberty to come to the Court under Article 226 of the Constitution of India, again, against the transfer order.

10. Thus the rejection of the representation of the Petitioner will not make the present writ petition maintainable which in substance challenges the same very transfer order.

11. Having said so, I find that even on merit the transfer order does not suffer from any illegality. The reasons given in the order deciding the representation only justify the transfer order, so that it may not be termed as arbitrary or mala fide. The order impugned reveals relevant and cogent reasons for the transfer of the Petitioner, not only from Auraiya to Jhansi but also from Intelligence Unit to Civil Police.

12. I, therefore, do not find any illegality in the order impugned. Hence, instant writ petition is dismissed.