

(2009) 10 RAJ CK 0041

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 13092, 13093, 13094 and 13095 of 2009

Vijendra Kumar

APPELLANT

Vs

Rajasthan Civil Services Appellate Tribunal and Others

RESPONDENT

Date of Decision : 23-10-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 323, 325, 341

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 17

Scheduled Castes and Scheduled Tribes Act, 2009 — Section 3(1)

Citation : (2009) 10 RAJ CK 0041

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—All the four writ petitions involve common question regarding transfer of these petitioners who are working as Assistant Sub-Inspector, Head Constable/Constable in Jaipur Range, were transferred under the order of Director General of Police dated 14.09.2009 to Bikaner Range, was earlier challenged before Tribunal and all the four appeals preferred by petitioners were rejected by common order dated 06.10.2009.

2. Petitioners who are working as Assistant Sub-Inspector, Head Constable/Constable while being posted in the jurisdiction of S.P., Sikar for one alleged incidence of 04.07.2009, a criminal complaint against all the four were registered Under Sections 143, 341, 323 IPC read with Section 3(1)(X)(X1) of SC/ST Act on 04.07.2009. However, after investigation, challan has been filed against them Under Sections 143, 341, 325 & 323 IPC. At the same time, the disciplinary inquiry has also been initiated against all the four petitioners under Rule 17 of CCA Rules vide memorandum dated 10.08.2009. It appears from the record that immediately after the alleged incident, of which reference has been made supra, they were placed under suspension vide order dated 10.08.2009, but after the charge sheet was served upon them, order of their suspension was revoked and

under the orders of the Director General of Police, all the four petitioners were transferred from Jaipur to Bikaner Range vide order dated 14.09.2009 which was assailed by filing separate appeal before Tribunal and all the four appeals were rejected by common order dated 06.10.2009.

3. Counsel for petitioner submits that by passing order of transfer from Jaipur to Bikaner Range, their seniority which is maintained on range-wise basis under Rajasthan Police Subordinate Service Rules, 1989, is seriously affected and that will certainly affect their right of consideration for promotion in the cadre.

4. Counsel further submits that action of the respondents is malafide in law and the fact is that they were members of special team constituted under the orders of S.P. and when complainant Kailash Chand S/o Mala Ram, by Caste Meena, was intercepted by the petitioners and legal action was taken against him, but he being a person closed to senior officer, the petitioners became victim and in such circumstances, passing of order of transfer from Jaipur to Bikaner Range is arbitrary and cannot be said to be in the interest of administration. In support of submission, Counsel placed reliance on the judgment of Apex Court in Arvind Dattatraya Dhande Vs. State of Maharashtra and others,

5. Counsel further submits that after inquiry has been initiated against them, it is otherwise not permissible to transfer the delinquent and it will affect their right of fair opportunity to which they are entitled for under law while holding inquiry under the Rules, 1958.

6. Submissions made by counsel are of no substance for the reason that seniority under Rules, 1989 is always remained protected even one is transferred from one Range to other and his substantive right in regard to seniority will be considered in the range in which they were appointed on regular basis. However, it is made clear that seniority if maintained on range-wise basis that will not be affected on account of petitioners being transferred from Jaipur to Bikaner Range under the order impugned dated 14.09.2009.

7. Second submission made that order is malafide and requires to be interfered with, suffice it to say that order of transfer impugned has been passed under the orders of Director General of Police and no malafide has been alleged against the authority who has taken decision to transfer and merely by saying it to be malafide order, will not be sufficient for this Court to interfere.

8. Last submission made that during pendency of inquiry, one is not supposed to transfer, is also bereft of merit for the reason that there is no bar under the Rules that person who is facing inquiry cannot be transferred. However, in the instant case, as already observed supra, that earlier for the alleged incidence the petitioners were placed under suspension. However, their order of suspension was revoked after a regular charge sheet under-rule 17 of the Rules was served and pending inquiry, if the authority considers to transfer the petitioners from one Range to the other, that could not be said to be arbitrary and this being incidence of service, can always be considered by the authority in the interest of

administration or in exigency of service.

9. As regards judgment [supra] on which counsel for petitioner placed reliance, is of no assistance in the facts of instant case.

10. Learned Tribunal has also considered the submission made in detail, but did not find favour to interfere in the order impugned.

11. This Court after going through the order of the Tribunal, does not find any manifest error being committed which may call for interference.

12. Consequently, all the four writ petitions stand dismissed.