

HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

JUSTICE SUJOY PAUL.

Writ Petition No. 3239/2015

Nawal Singh

Vs.

Union of India and others

Shri T.C. Singhal, Advocate for the petitioner.

Shri Shashank Indapurkar, Advocate for the respondents.

ORDER

(15 / 10 /2015)

This petition filed under Article 226 of the Constitution challenges the order dated 18.03.2015 (Annexure P/1), whereby the petitioner has been transferred from BSF Tekanpur to Eastern Command.

2. Draped in brevity, the relevant facts are that the petitioner is working as Instructor and was transferred by order dated 07.03.2012 (Annexure R/1) from STC BSF Bangalore to BSF Academy Tekanpur. In obedience of said order, petitioner joined at Gwalior. Petitioner is suffering from some psychological disorder for which his treatment is going on at Gwalior.

3. Shri Singhal raised singular contention. He relied on statutory rules namely "Border Security Force (Tenure of Posting and Deputation Amendment) Rules, 2002" (Rules of 2002), to contend that as per proviso of Rule 3, the petitioner has a right to continue at transferred place for four years. It is submitted that petitioner has not completed four years, therefore his transfer runs contrary to the Rules of 2002.

4. Shri Shashank Indapurkar, learned counsel for the respondents, fairly admits that although the said Rules are applicable, the fact remains that while transferring

the petitioner by order dated 07.03.2012 (Annexure R/1), a condition was mentioned that "his tenure will be reckoned from date of issue of posting order to STC Bangalore". On the strength of this, it is submitted that while working at Gwalior, the services of the petitioner has to be counted from his date of posting at Bangalore. If it is counted from that date petitioner has completed four years' tenure and therefore, he was rightly transferred. Although Shri Indapurkar placed reliance on Rule 19 of Rules of 2002 to contend that Director General may curtail the said period, on a specific query from the Bench, he fairly submits that this stand is not taken by Department that Director General has curtailed the period. The only stand is that the period rendered at Bangalore shall be counted for the purpose of counting the tenure at Tekanpur.

5. No other point is pressed by the parties.

6. I have heard learned counsel for the parties and perused the record.

7. The relevant proviso of Rule 3 of 2002 Rules reads as under:-

"Provided further that in the case of members of the Force appointed as instructor in the training institutions of the Force, there tenure with a static formation shall be four years."

8. It is admitted position that Rules of 2002 are not executive instructions but have statutory force. The same are prepared in exercise of powers conferred by Section 141 of Border Security Force Act, 1968. The Rules are published in the gazette on 04.07.2002.

9. This is trite law that transfer order can be interfered with, if it runs contrary to the statutory provisions, actuated with malafide or passed by incompetent authority. In the present case, the transfer order runs contrary to the said proviso of the Rule.

10. The condition mentioned in Annexure R/1

aforesaid does not help the respondents in any manner. The condition is vague. This condition is totally impermissible. The person who has rendered services in 'A' place and thereafter transferred to 'B' place cannot be treated to be posted in 'A' place any more. In the present case, once the petitioner is transferred to BSF Academy Tekanpur, his posting at STC BSF Bangalore cannot be counted for counting the tenure at BSF Academy Tekanpur. This runs contrary to the scheme of the Rules, 2002 because it talks about "tenure with a static formation shall be four years". Bangalore and Tekanpur are two different places. Posting of two places, by no stretch of imagination, can be clubbed together. It appears that petitioner was transferred by the Department, so that he can take proper treatment at Gwalior. The proviso of aforesaid Rules reproduced hereinabove, makes it clear that it has given a legitimate expectation to the petitioner that if he is transferred, he will remain at the transferred place for four years. Petitioner must have thought that during four years he will be able to get proper treatment.

11. Since the tenure of petitioner has not been curtailed by Director General, action of respondents in transferring the petitioner before completion of four years is bad in law. The condition mentioned in Annexure R/1 is unconscionable. The word "unconscionable" is defined in the *Shorter Oxford English Dictionary*, Third Edition, Volume II, page 2288, which reads as under:-

"showing no regard for conscience; irreconcilable with what is right or reasonable."

12. In my view also, the said condition cannot be enforced being unconscionable (See also (1986) 3 SCC 156 (*Central Inland Water Transport Corporation Ltd. & another Vs. Brojo Nath Ganguly and another*)).

13. Resultantly, Annexure R/1 is of no help to the respondents to support the impugned order of transfer. Since the impugned order of transfer runs contrary to statutory rules, the same is set aside to the extent it relates to the petitioner.

14. Petition is allowed. No cost.

(alok)

(Sujoy Paul)
Judge