

HIGH COURT OF MADHYA PRADESH,

BENCH AT GWALIOR

WP-16532-2021

(Pradeep Kumar Vs. State of M.P. & Ors.)

Gwalior, Dated : 28/09/2021

Shri D.S. Raghuvanshi, learned counsel for the petitioner.

Shri Vijay Sundaram, learned Panel Lawyer for the respondents/State.

Heard on the question of admission.

This petition under Article 226 of the Constitution of India has been filed being aggrieved by the order dated 18/03/2021 (Annexure P/1) whereby the petitioner who is working on the post of Inspector in 13th Battalion of SAF, Gwalior, has been sent on deputation to 17th Battalion of SAF Bhind on the ground that respondents vide order dated 29/12/2020 has formed a new company “H Company” in 2nd Battalion and “G Company” in 14th Battalion as well as “G Company” in 17th Battalion for the purpose of filling up the posts the persons like petitioner have been sent on deputation.

Learned counsel for the petitioner has raised a solitary ground that before sending the petitioner on deputation, no consent has been obtained, therefore, impugned order is *per se* illegal and without jurisdiction and is liable to be set aside.

This Court, on earlier occasions, had directed the petitioner to file relevant rules in relation to prerequisites for sending the employee on deputation.

Learned counsel for the petitioner has filed the Rules and Act namely- The M.P. Vishesh Sashastra Bal Adhiniyam, 1968 (hereinafter

HIGH COURT OF MADHYA PRADESH,**BENCH AT GWALIOR****WP-16532-2021*****(Pradeep Kumar Vs. State of M.P. & Ors.)***

referred to as “the Act, 1968”) but could not point out any provision under which consent is required prior to sending on deputation. On perusal of the impugned order dated 18/03/2021 (Annexure P/1), it can be seen that the petitioner has not been sent on deputation but he has been transferred to a new company under the Police Headquarters of Madhya Pradesh Bhopal.

Learned counsel for the petitioner also could not point out any provision which prohibits the transfer of an employee from one Battalion to another Battalion.

Learned Panel Lawyer for the State appearing on advance notice submitted that transfer of the petitioner to a new Battalion cannot be termed as “Deputation” inasmuch as clause 9 of appointment order of the petitioner dated 21/02/2007 (Annexure P/2) specifically provides as under:-

“आपको पुलिस विभाग की अन्य शाखाओं व मध्य प्रदेश शासन के सभी विभागों के अतर्गत राज्य के अन्दर व राज्य के बाहर पदस्थ किया जा सकेगा। राज्य सरकार के अतर्गत विभिन्न विभागों जैसे राज्य आर्थिक अपराध अन्वेषण ब्यूरो (ई0ओ0डब्ल्यू), लोकायुक्त, फायर बिग्रेड व ऐसी अन्य संस्थाओं में की जाने वाली पदस्थापना में आपकी सहमति आवश्यक नहीं होगी। ”

Heard learned counsel for the parties.

Section 3 of the Act, 1968 provides for the Constitution which is reproduced below:-

“Constitution of the Madhya Pradesh Special Armed Force-

- (1) In addition to the Police Force, constituted under the Police Act, 1861 (V of 186), the State Government

HIGH COURT OF MADHYA PRADESH,**BENCH AT GWALIOR****WP-16532-2021*****(Pradeep Kumar Vs. State of M.P. & Ors.)***

may constitute and maintain a special Armed Police Force known as the Madhya Pradesh Special Armed Force.

- (2) The Special Armed Force shall be constituted of such personnel and maintained in such manner as may be prescribed.
- (3) Subject to the provisions of this Act, the pay, pension and other conditions of service of members of the Special Armed Force shall be such as may be determined by the State Government:

Provided that nothing in this section shall apply to the pay, pension and other conditions of service of the members of the Indian Police or the Indian Police Service who may be transferred to the Special Armed Force.

- (4) The State Government or any officer empowered by Government in this behalf may-
- (a) divide the Special Armed Force in groups;
 - (b) sub-divide each group into battalions, and each battalions into companies, and each company into platoons, and platoons into sections or smaller sub-units;
 - (C) post any group, battalion, company platoon, section or smaller sub-unit at such places as the State Government or such officer may deem fit.

Section 9 of the Act, 1968 provides for transfer which is reproduced below:-

“Transfer.-(1) Notwithstanding anything contained in this Act or the Police Act, 1861 (V of 1861), it shall be competent to the State Government or the

HIGH COURT OF MADHYA PRADESH,**BENCH AT GWALIOR****WP-16532-2021*****(Pradeep Kumar Vs. State of M.P. & Ors.)***

Inspector General if so authorized by the State Government in this behalf, to transfer members of the Police Force appointed under the Police Act, 1861 (V of 1861), to the Special Armed Force and vice versa.”

On perusal of chapter II of Section 3 of the Act, 1968, the State Government can divide the Special Armed Force into groups and further sub divide each group into battalions and each battalion into companies and each company into platoons etc. According to Section 9 of the Act, 1968, State Government or Inspector General has got powers to transfer members of the Police Force to the Special Armed Force and vice versa. The companies which have been newly formed are also the part of the Special Armed Force, therefore, Inspector General has power to transfer the petitioner in accordance with section 9 of the Act, 1968 to any of the companies and platoons etc.

Perusal of the clause 9 of the appointment order dated 21/02/2007 (Annexure P/2) of the petitioner specifically provides that prior consent is not necessary for transfer. No fault can be found in transferring the petitioner to another battalion which cannot be termed as “Deputation”.

Accordingly, petition being bereft of merit and substance, is hereby dismissed *in limine*. No order as to costs.

(S.A. Dharmadhikari)
Judge

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