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Court : Allahabad

Decided On : Sep-04-2012

Judge : Ritu Raj Awasthi

Appeal No. : Writ Petition No. 4258 (S/S) of 2012

Appellant : Dhir Singh and Others

Respondent : State of U.P. Through Prin. Secy. Home Deptt. Lko. and Others

Advocate for Pet/Ap. : Mr. Ankit Pandey

Judgement :

Ritu Raj Awasthi, J.

Heard Mr. S.K. Kalia, learned Senior Advocate assisted by Mr. Ankit Pandey, learned counsel for petitioners as well as Mr. Abhinav N. Trivedi, learned Additional Chief Standing Counsel for the State and perused the records.

The writ petition has been filed challenging the order dated 31.7.2012 and the order dated 21.6.2012 as well as the consequential relieving order dated 17.7.2012 so far as it relates to petitioners whereby petitioners have been sent back and relieved thereafter to Provincial Arms Constabulary (for short 'PAC') from Security Branch, Intelligence Department, U.P., Lucknow and representation of

petitioners has been rejected.

Learned counsel for petitioners submitted that vide Government Order dated 26.10.2002 issued by the Special Secretary, Department of Home, Government of U.P., Lucknow a special security force under intelligence department having sanctioned strength of 2277 personnel in different categories was created out of which 1629 posts belong to Constable. In 2004, petitioners were initially transferred on temporary basis in the security branch. The said transfer was done on the basis of interviews and after selection they were sent for VIP duty courses like commando course, PSO course, bomb disposal course, security checking course, anti sabotage etc. and were also awarded certificate to that effect by opposite parties.

It is submitted that at the time of transfer of petitioners in the year 2004, in the transfer orders, it was specifically mentioned that their lien will remain with PAC where they were appointed and their salary plus allowances would be paid by Intelligence Headquarter.

It is contended that after assessment of satisfactory service rendered by petitioners, on the request of Superintendent of Police (Training and Security), Security Branch of the Intelligence Department, U.P., Lucknow, service of petitioners were finally transferred against the sanctioned post in the Security Branch of the Intelligence Department. In this regard, orders dated 22.8.2008 and 06.10.2008 were issued.

Submission is that it was the final transfer of petitioners to the Security Branch of the Intelligence Department and, as such, in the said orders it was not mentioned that lien of petitioners would remain in PAC. There was also no mention of words like 'temporary' or 'attachment' as was mentioned in the earlier transfer orders of petitioners.

Contention of learned counsel for petitioners is that, in fact, it was an appointment by way of transfer to the newly created Security Branch of the Intelligence Department on the sanctioned post and transfer of petitioners was a mode of appointment. As such, they cannot be sent back to PAC and the orders impugned

are patently wrong and illegal.

In support of his submission, learned counsel for petitioners relied on the decision of the Apex Court in the case of Ram Prakash Makkar Vs. State of Haryana and Others; (1992) 4 Supreme Court Cases 725, particularly para 10, wherein the Apex Court has considered as to whether it was an appointment by way of transfer or transfer on deputation.

It is further submitted by learned counsel for petitioners that petitioners were imparted special training for serving in the Security Branch of the Intelligence Department which they had successfully completed and were also given certificate to that effect. In imparting training to petitioners huge amount of public money was spent and there is no justification for transferring the petitioners back to PAC as the training imparted to petitioners as well as public money would go waste.

It is also submitted that the service of petitioners was finally transferred to the Security Branch of the Intelligence Department which also fortifies from the fact that service books of petitioners including GPF pass books, etc. were sent to the Intelligence Department and salary plus allowances of petitioners were paid from the Security Branch.

It is further submitted that, in fact, the lien of petitioners was transferred to the Security Branch of the Intelligence Department as they were required to submit their no objection certificate before relieving from PAC and deposit the uniform, kit, etc. in their battalions in PAC. While posted in the Security Branch of the Intelligence Department, income tax of petitioners was deducted showing the employer as 'Security Intelligence Department'. Home loans to some of petitioners were also sanctioned by the Security Branch of the Intelligence Department and, as such, for all practical purposes they were the employees of Security Branch of the Intelligence Department.

It is contended by learned counsel for petitioners that in case it is necessary to transfer the petitioners from VVIP duties like Chief Minister Security, Raj Bhawan Security, Governor security, etc. they can very well be adjusted in the ministerial wing of the Security Branch as was done earlier. As such there is no justification

for sending the petitioners back to PAC.

Mr. Kalia, learned senior Advocate further submitted that on the one hand on 02.04.2012, opposite party no. 6 had sent 25 police personnel for VVIP duty from reserved pool to security branch and on the other hand petitioners have been sent back from VVIP duties, which amounts to adopting pick and choose method as there was no complaint against the work and conduct of petitioners and they were working to the best of satisfaction of concerning authorities.

Learned counsel for petitioners informed that earlier against the impugned order dated 21.6.2012, petitioners had approached the Court by filing Writ Petition No. 3561 (SS) of 2012 which was disposed of finally without entering into the merit of the case and opposite party no. 2 was directed to consider and decide the representation of petitioners by passing a reasoned and speaking order within a period of one month from the date of production of certified copy of the order. It was in compliance of the said order that vide impugned order dated 31.7.2012, representation of petitioners has been rejected in most arbitrary and illegal manner.

It is submitted that similarly situated several persons including juniors to petitioners are still continuing in the Security Branch of the Intelligence Department and some of them are even untrained hence it amounts to hostile discrimination and violation of Article 14 and 16 of the Constitution of India.

Mr. Kalia, learned senior Advocate also contended that in the case of repatriation of Reserve Inspectors from civil police to PAC, the Division Bench as well as this Court has granted indulgence and has stayed the operation and enforcement of such repatriation orders. In support of his submission, he relied on the order dated 04.02.2010 passed in Special Appeal No. 60 of 2010 as well as order dated 06.08.2010 passed in Writ petition No. 3985 (SS) of 2012. It is also submitted that by order dated 11.4.2002 passed in Writ Petition No. 2115 (SS) of 2002, the Court had directed the opposite parties to follow the principle of last come first go in repatriation from non cadre to the unit of District.

It is also submitted that in the case of Jasveer Singh Vs. State of U.P. and others 2008 (1) UPLBEC 657, the Apex Court has held that under para 525 of U.P. Police Regulations a police constable who has served in civil police force for more than 10 years cannot be transferred to armed police as such petitioners cannot be transferred to PAC which is a branch of armed police.

Mr. Abhinav N. Trivedi, learned Additional Chief Standing Counsel on the basis of instructions on the other hand submitted that there is no separate branch of security force. The earlier Government Order dated 26.10.2002 has been rescinded vide Government Order dated 25.1.2004 as such it cannot be said that transfer of petitioners was done after creation of a separate branch or wing of security force under Intelligence Department.

It is submitted that it is the normal practice since long that police personnel from other branches are transferred on deputation to the Intelligence Department for performing security duties of VVIPs such as Chief Minister and Governor and for that purpose they are imparted training. However, looking to the sensitive nature of work and duties they are not permanently posted for security purpose of VVIPs and are rotated/shifted after certain time. The impugned transfer of petitioners has been done with prior approval of U.P. Police Establishment Board and on the request of Superintendent of Police (Training and Security), Security Branch, Intelligence Department, Lucknow by letter dated 06.06.2012. Petitioners were earlier transferred to the Security Branch of the Intelligence Department in the year 2008 on the request of the Intelligence Department itself after obtaining no objection certificate from PAC for the purpose of security duty to Chief Minister, U.P.

Submission is that it was on the request of the Security Branch of the Intelligence Department that petitioners were transferred and now on the request of Security Branch itself they have been sent back to PAC.

It is further submitted that the transfer of petitioners to Security Branch in the year 2004 as well as in the year 2008 was a pure transfer and by no means it can be read as an appointment by way of transfer .

It was after the review of security of Chief Minister that certain security personnel have been removed and on the recommendation of a committee new persons have been inducted. It is only after the selection of new incumbents in the security for Chief Minister that earlier transferred persons are relieved.

It is further submitted that in order to provide effective security cover to the VVIPs such as Chief Minister and Governor certain trainings are imparted to the persons posted in the security duty. However, the persons posted in the security duty are shifted or transferred back to their parent place looking into the discipline and requirement of work from time to time.

Learned Additional Chief Standing Counsel further submitted that it is totally wrong to presume that the transfer of petitioners to Security Branch of the Intelligence Department was an appointment. In fact, unless and until there is any such rule for appointment by way of transfer it cannot be done. In the present case there is no such rule which provides the appointment of petitioners by way of transfer.

In support of his submission, learned Additional Chief Standing Counsel relied on the decision of the Apex Court in the case of Arun Kumar and others Vs. Union of India and others; (2007) 5 Supreme Court Cases 580, particularly para 8 and 11, wherein the Apex Court has held that the direct appointment is different from promotion and it is defined to mean as an appointment made otherwise than by promotion and it would not include the third source of recruitment by transfer/deputation.

Learned Additional Chief Standing Counsel submitted that the service books including GPF pass books, etc. of petitioners were transferred to the Security Branch of the Intelligence Department as the Additional Director General of Security was appointed as Drawing and Disbursing Authority so that the payment of salary, etc. of petitioners are not delayed and this arrangement was made in order to facilitate the security of the Chief Minister and the Governor as it was the prime concern of the opposite parties that the security of the VVIPs is not hampered in any manner.

It is contended that neither there is any order of absorption of petitioners nor there is any order of confirmation in the Security Branch of the Intelligence Department as such petitioners have no right to continue in the Security Branch of the Intelligence Department and they are liable to go back to their parent battalions in the PAC.

It is further submitted that the impugned order is simple transfer of petitioners back to their parent branch in which they were appointed and where their lien exist. It is the discretion of the authorities concern to decide as to who is to be posted where and petitioners cannot claim any discrimination or arbitrariness in this regard. It is also submitted that there is neither reduction in rank nor status of petitioners on being sent back to PAC.

Mr. Abhinav N. Trivedi, learned Additional Chief Standing Counsel in support of his submission relied on the order dated 14.8.2012 passed in Writ Petition No. 4011 (SS) of 2012; Anil Kumar Sharma Vs. State of U.P. and others wherein under similar facts and circumstances the writ petition has been dismissed on merit. He also relied on the order dated 29.10.2010 passed in Special Appeal No. 1690 of 2010; Tej Pratap Singh Vs. State of U.P. and others wherein under similar facts and circumstances the claim of appellants has been rejected.

Mr. Trivedi also relied on the order dated 01.07.2009 passed in Writ Petition No. 3894 (SS) of 2009 wherein persons having special training for security from NSG, Harayana were sent back to their respective battalions as no further requirement was found by the authorities. The Court had observed that it is solely for the authorities to take services of the said persons or not, no interference is called for.

I have considered the submissions made by the parties' counsel.

Petitioners were appointed in the PAC on the post of constables. They were initially transferred in the year 2004 to the Security Branch of the Intelligence Department and again in the year 2008 against the substantive post.

There is no doubt that in their initial transfer orders issued in the year 2004 it was specifically mentioned that their lien would remain in the battalions of PAC where

they were appointed and in the subsequent transfer order there was no such mention. Moreover, they remain posted in Security Branch of the Intelligence Department till the impugned order was passed.

It is also admitted fact that their service books including GPF pass books, etc were transferred to the Security Branch and they were required to submit their PAC Kit, etc on their transfer in the year 2008. However, the said transfer of petitioners was made after obtaining no objection certificate from PAC.

However, the question for consideration in the present case is whether the transfer of petitioners to Security Branch of the Intelligence Department would amount to their appointment and whether they can be treated to be absorbed subsequent to their transfer to the Security Branch of Intelligence Department.

There is no doubt that in certain Government Departments and Corporations, etc. there are instances where a person is initially transferred on deputation and subsequently absorbed there after getting no objection certificate to that effect by his parent department.

In the case of Ram Prakash Makkar (*supra*), the Apex Court while considering one of such cases had come to conclusion that it was a case of an appointment by transfer. The order of appointment provided that the delinquent is appointed on transfer basis as Assistant in the Directorate. It also said that his appointment is purely temporary and he can be reverted to his parent department as and when his service is not required. However, the order further provided that he shall be on probation for one year and that his lien in the Civil Secretariat service will remain until he is confirmed in the Directorate. The Apex Court considering the facts and circumstances of the case had come to conclusion that during the probation period, the condition that he is appointed on purely temporary basis and he can be reverted to his parent department as and when his service is not required remained operative but after the confirmation in the borrowing department he stood absorbed, specially when he was also promoted as Personal Assistant, as such it cannot be said that he was purely on deputation. The correspondence with respect to termination of lien in the parent department also goes to show that he was confirmed in the borrowing department as such it cannot be said that he was

merely on deputation and, therefore, can be reverted back to his original department.

The relevant paragraph 10 of the judgment of Ram Prakas Makkar (supra) is reproduced below:

"10. The main question in this appeal is whether the appellant was appointed by transfer as an Assistant in the Directorate or whether it was a mere case of deputation. We have set out hereinbefore the order of his appointment in the Directorate. The order has to be read as a whole. It says that the appellant is "appointed on transfer basis" as an Assistant in the Directorate. It also says that his appointment is purely temporary and that he can be reverted to his parent department as and when his services are not required. The order further says that the appellant shall be on probation for one year and that his lien in the Civil Secretariat Service will remain until he is confirmed in the Directorate. Now what do these three features read together mean? The Division Bench has laid emphasis upon the second feature, ignoring the first and the third. With respect we are unable to agree with its view. The fact that it is termed as an appointment on transfer basis coupled with the fact that his probation is commenced shows that it was a case of appointment by transfer and not one of deputation. Indeed, the order expressly contemplates his confirmation in Directorate. It is true that the order does recite that his appointment is purely temporary and he is liable to be reverted back to his parent department any any time. But this clause must be read along with other recitals in the order and if so read, it must be understood as operative during the period of his probation only. Once his probation was declared to have been satisfactorily completed and - particularly after he was also promoted as Personal Assistant in the Department, and his probation commenced and declared in such post also - it appears rather odd to say that he was only on deputation in the Directorate. The correspondence between the Directorate and Secretariat referred to hereinbefore further reinforces our opinion. When the appellant expressed his desire to be absorbed as Personal Assistant in the Directorate and requested the Director to approach the Secretariat for terminating his lien, the Director agreed with his request and requested the Secretariat to terminate the appellant's lien therein so as to enable him to absorb the appellant in

his service. In his letter dated 15th February, 1989, the Chief Secretary replied that his lien will be terminated only when he is confirmed in the Directorate. In his letter dated 23rd February, 1989, the Director requested the Chief Secretary again to terminate the appellant's lien in the Secretariat service so as to enable his absorption in the Directorate. All this correspondence goes to show that all that was remaining to be done was a formal order of termination of his lien in the Secretariat Service and a corresponding order of confirmation in the Directorate. It is not without significance that at no stage did any one suggest that the appellant was on deputation - not even in the impugned order. It was put forward as a defence for the first time, in the writ petition. In the face of all this material, we find it difficult to agree with the respondents that the appellant was merely deputed to serve in the Directorate and his reversion back to the Secretariat is unexceptionable."

In the present case the order of transfer of petitioners dated 22.8.2008 and 16.12.2008, on the basis of which they are claiming to be finally transferred to Security Branch of the Intelligence Department, does not indicate that their services stood finally transferred to Security Branch and they will not be treated as employees of PAC Branch. It only shows that on the request of opposite party no. 6, certain persons are being transferred against sanctioned post to perform the work and duties of very important and sensitive nature in the Security Branch of the Intelligence Department. It, in any manner, does not mean that their lien was transferred from PAC to Security Branch of the Intelligence Department or they were appointed by way of transfer.

In the case of *Triveni Shankar Saxena Vs. State of U.P. and others*; 1992 Supp. (1) Supreme Court Cases 524, the Apex Court had the occasion to consider the meaning of lien. It was held that the word 'lien' originally means "binding" from the Latin *ligamen*. Its lexical meaning is "right to retain". The word 'lien' is now variously described and used under different contexts such as 'contractual lien', 'equitable lien', 'specific lien', 'general lien', 'partners lien', etc. "A person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier". The relevant paragraphs 16, 17, 18, 19, 20, 21, 22 and 24 are reproduced below:

"16. There cannot be any controversy that unless the appellant shows to the satisfaction of the Court that he was having a lien on the post of Lekhpal, he cannot make a grievance of any violation having been perpetrated under the above said rules. The word "lien" is defined in Rule 9(13) of the above said rules as follows:

Lien means the title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively.

17. We shall now examine what the word 'lien' means. The word 'lien' originally means "binding" from the Latin ligamen. Its lexical meaning is "right to retain". The word 'lien' is now variously described and used under different context such as 'contractual lien', 'equitable lien', 'specific lien', 'general lien', 'partners lien', etc. etc. in Halsbury's Laws of England, Fourth Edition, Volume 28 at page 221, para 502 it is stated :

In its primary or legal sense "lien" means a right at common law in one man to retain that which is rightfully and continuously in his possession belonging to another until the present and accrued claims are satisfied.

18. In Stroud's Judicial Dictionary, 5th Edition, Volume 3 at page 1465 the following passage is found :

LIEN. (1) A lien-(without effecting a transference of the property in a thing)-is the right to retain possession of a thing until a claim be satisfied; and it is either particular or general. So, as regards Scotland, "lien" is defined as including "the right of retention" (Sale of Goods Act 1893 (c. 71), Section 62), or it "shall mean and include right of retention" (Factors (Scotland) Act 1890 (c. 40), Section 1); see hereon *Great Eastern Railway v. Lords Trustees* (1909) A.C. 109

19. In words and Phrases, Permanent Edition Vol. 25 the definition of word 'lien' when used to explain the equitable lien, is given thus :

A 'lien' from a legal standpoint, embodies the idea of a deed or bond, and necessarily implies that there is something in existence to which it attaches.

20. At page 393 of the same Volume it is stated :

The word 'lien' has a well-known signification. In law it signifies an obligation, tie, or claim annexed to or attaching upon any property, without satisfying which such property cannot be demanded by its owner, vide *Storm v. Waddell*, N.Y., 2 Sandf. Ch. 494, 507, 508.

21. Again at page 399 of the same Volume it is stated :

Lien" is a term of very large and comprehensive signification, but which never imports more than security, vide *Mobile Building and Loan Ass'n v. Robretson*, 65 Ala. 382, 383.

22. In Black's Law Dictionary, 6th Edition, at page 922 the following passage is found:

The word 'lien' is a generic term and, standing alone, includes liens acquired by contract or by operation of law.

24. A learned single Judge of the Allahabad High Court in *M.P. Tewari v. Union of India* 1974, A.L.J. 427 following the dictum laid down in the above *Paresh Chandra's* case and distinguishing the decision of this Court in *P.L. Dhingra v. Union of India* has observed that "a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier", with which view we are in agreement."

In the present case, there is nothing on record to show that the petitioners were either confirmed or absorbed in the Security Branch of the Intelligence Department and, as such, it can very easily be concluded that they cannot claim themselves to be employees of Security Branch of the Intelligence Department and it cannot be said that they cannot be transferred back to PAC from Security Branch of the Intelligence Department.

It is also to be noted that learned counsel for petitioners has not shown any rule, regulation, or the Government Order under which it can be said that petitioners

were appointed in the Security Branch of the Intelligence Department by way of transfer.

In the case of Arun Kumar and others (supra), the Apex Court while considering the absorption of a police personnel on the post of Deputy Superintendent of Police in Punjab Police from CRPF had come to conclusion that under the Punjab Police Service Rules, there are only two sources of appointment on the post of Deputy Superintendent of Police, namely, direct recruitment and by promotion and, as such, when rules provide for only two aforesaid source of recruitment, it would not include the third source of recruitment i.e. by way of transfer/deputation, meaning thereby unless and until there are specific rules for appointment by way of transfer or deputation, the appointment by way of transfer cannot be done For ready reference, the relevant paragraphs 8 and 11 are reproduced below:

"8. Direct appointment as a source of recruitment is different from Deputation/ Transfer in the method of recruitment. In the present case, the dispute revolves around inter se dispute in the cadre of DSP, in Punjab Police, which is the Feeder Post. If seniority is to be given to Ms. Amrit Brar with effect from 9.6.1989 then she supersedes the appellants, who have also contributed in the elimination of terrorism in the State. It is the next higher post which the appellants and respondent no. 4 aims for. It is the inter se seniority which gives rise to the dispute between the appellants and the State. When inter se seniority is to be fixed the concept of equality has to be kept in mind. Equality before law and equal protection of law are the basic postulates of Article 14 read with Article 16(1) of the Constitution. We have to keep in mind the rights of the appellants, who have been in service and who are also entitled to seniority and promotion in the cadre. We quote hereinbelow Rules 2(b), 6, 7, 8, 10, 13 and 14 of Punjab Police Service Rules, 1959.

"2. Definitions.-In these rules, unless there is anything repugnant in the subject or context,-

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(b) 'direct appointment' means an appointment made otherwise than by promotion of an Inspector.

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6. Method of recruitment.-

(1) Recruitment to the Service shall be made -

(i) Eighty per cent by promotion from the rank of Inspector, and twenty per cent by direct appointment: Provided that only those Inspectors will be eligible for promotion who-

(a) in the case of Inspectors (both promoted from subordinate rank and directly recruited) have got six years continuous service (officiating as well as substantive) in the rank of Inspector; and

(b) in case they are Prosecuting Inspectors, have got eight years' continuous service (both officiating and substantive) in the rank of Prosecuting Inspector.

(2) Appointments by promotions shall be made by the Government from Inspectors brought on list 'G' which will be a list of officers considered fit for promotion to the rank of Deputy Superintendent of Police, prepared by Government in consultation with the Commission. The names in this list prepared at one time shall be arranged according to their inter se seniority. This list will be maintained in two parts: Part I (for officers from the Executive line) and Part II (for officers from the Prosecution line).

(3) Direct appointment to the Service shall be made on the result of a competitive examination conducted by the Commission. The syllabus and rules relating to the examination will be framed by the Government in consultation with the Commission. The examination will include a viva voce test. Only those candidates will be interviewed for the viva voce test who obtain not less than the minimum qualifying marks fixed by the Commission in the written examination. The Inspector-General of Police, Punjab will be present at the interview and will be entitled to put questions to the candidate and to express his views to the

Commission. A candidate's position shall be determined by adding the marks obtained by him in the written examination and in viva voce test. Provided that other things being equal, preference will be given to a candidate who has worked for the cause of national independence or has rendered some outstanding social or public service.

7. Qualifications.-

(1) No person shall be recruited to the Service by direct appointment unless-

(i) he is not less than twenty-one years and not more than twenty-five years of age on the first of February of the year in which appointment is to be made;

(ii) he produces a certificate of physical fitness as prescribed by rule 3.1 of the Punjab Civil Services Rules, Volume, Part I;

(iii) he has a minimum height of 5'-7" and normal chest measurement of 33" with expansion of 1-1/2".

(iv) he is a graduate of a recognized university and possesses knowledge of both Hindi and Punjabi upto the Matriculation or its equivalent standard. Provided that the upper age limit prescribed in sub-clause (i) shall be thirty years in the case of Scheduled Castes, Schedules Tribes and Backward Classes;

Provided further that the physical standard prescribed in sub-clause (iii) shall not be relaxed without special sanction of the Government;

(2) No male candidate who has more than one wife living and no female candidate who has married a person having already a wife living shall be eligible for appointment to the service; Provided that this disqualification shall not be applicable in cases where it was incurred before the 8th September, 1954, and the recruitment is to be made by promotion.

(3) (i) The Government shall notify to the Commission the number of vacancies to be filled by direct appointment during the year, and the Commission will proceed to give publicity to the proposed appointments and invite applications. If applications are invited before the results of the University Examinations have been notified,

candidates appearing or who have appeared in the Bachelor of Arts or equivalent examination, will be allowed to submit provisional applications.

(ii) The applications received will be referred for scrutiny to the Inspector-General of Police, Punjab, who may make such enquiries as he may think fit and shall thereafter return all the application with his remarks, if any, to the Commission.

(iii) The Commission will scrutinize all applications received and admit to the examination mentioned in sub-rule(3) of rule 6 all those candidates who are found to be eligible in accordance with these rules.

(iv) Success in the examination will confer no right on any candidate to appointment, unless Government is satisfied, after such enquiry as may be considered necessary, that the candidate is suitable in all respects for appointment to the Service.

8. Probation of members of Service.

(a) Members of the Service shall be on probation for two years, which shall include the period of training at the Police Training School, Phillaur, and in the districts and in the case of members recruited by promotion the Government may, by a special order in each case, permit periods of officiating appointment, to the Service to count towards the period of probation.

(b) The services of a member recruited by direct appointment may be dispensed with by Government on his failing to pass the final examination at the end of his period of training, or on his being reported on, during or at the end of his period of probation, as unfit for appointment. Provided that the Government may, if it deems fit extend the period of probation by not more than one year.

(c) The Inspector-General of Police, Punjab may require any member of the service on probation appointed by promotion from the rank of an Inspector to undergo a special course of training and to pass the prescribed examination in any subject or subjects, including a compulsory language in which his qualification may be defective. Any such probationer failing to pass the examination prescribed for him or being unfavourably reported on, may be reverted to his substantive rank of

Inspector.

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10. Seniority of members of Service. The seniority of members of the Service shall be determined by the date of confirmation in the service. Provided that if two or more members are confirmed on the same date.

(i) a member who is appointed to the Service by promotion shall be senior to a member appointed otherwise.

(ii) in the case of members who were appointed by direct appointment, the seniority shall be determined in accordance with their position in the competitive examination;

(iii) in the case of members who were appointed to the service by promotion, the seniority shall be determined in accordance with the date of their entry in promotion list

'G'.

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13. Matters not expressly provided in these rules- In respect of all matters not specifically mentioned in these rules, the member of the Service shall be governed by such general rules as may have been or may hereafter be framed by the Government under the provisions of the Constitution of India in this respect.

14. General powers to relax rules.- Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.

11. Before we proceed further, we may make it clear that, in our judgment, we have observed earlier that we do not find any infirmity in the action of the State Government in absorbing respondent no. 4 as Deputy S.P. in Punjab Police Service. However, there is a caveat. According to us, strictly on interpretation of

the said 1959 Rules, there is no scope for opening of a third mode of recruitment. Deputation is not the source of recruitment under the said 1959 Rules. It is only as an exceptional case that respondent no. 4 was given the benefit of absorption in Punjab Police Service as Deputy S.P. and we do not find any fault with that exercise. It is the genuine exercise. However, when her services are regularized by the State not from 16/17.8.1993, when she stood appointed as a deputationist, but from 9.6.1989, when she was appointed as Assistant Commandant in CRPF, then infirmity in the action of the State Government crept in. CRPF functions cannot be compared with Punjab Police Service. Apart from policing, an officer of Punjab Police Service has to do the work of investigation of crime detection, which is not within the purview of CRPF. A Deputy S.P. in CRPF need not have the knowledge of Cr PC, IPC etc., which an officer in Punjab Police Service needs to possess. The Service Rules governing CRPF are different from the Service Rules which governed Punjab Police Service. Therefore, even functionally, the two cadres are different. In fact, respondent no. 4, Ms. Amrit Brar, has not undergone training as contemplated under Punjab Police Service Rules. However, she has put in 5 years experience as Deputy S.P. in Punjab Police Service between 16/17.8.1993 and 11.9.1998. That experience should be given due weightage. In our view, having examined the above Punjab Police Service Rules, 1959, it is clear that deputation is not the source of recruitment. Direct recruitment is the source. Promotion is the source. However, deputation is not the source for recruitment. Moreover, in the present case, we are concerned with the rights of the appellants. We are concerned with the inter se seniority in the said post of Deputy S.P. since that seniority ultimately counts for promotion to the next higher cadre. The post of Deputy S.P. is a feeder post in that sense and when the post is a feeder post, the inter se seniority has the role to play. In the circumstances, if deputation is not the source of recruitment, then even in exceptional cases of this nature, weightage cannot be given, in the absence of the rules, to the services rendered by Ms. Amrit Brar in CRPF. Rule 14 talks of relaxation. However, Rule 14 is not applicable to the rules which do not provide for recruitment through deputation. Rule 14 would have applied if the said 1959 Rules had a third source of recruitment, namely, deputation. There is no such third source of recruitment. Hence, Rule 14 has no application. Rule 14 refers to relaxation of rules. Rule 14

contemplates existence of a rule of recruitment. If there is no such rule providing for third source of recruitment, the Government cannot relax a non-existent rule. Therefore, the High Court had erred in treating deputation as a third source of recruitment. There is a difference between direct appointment as a source of recruitment and deputation/transfer as a source of recruitment. In certain cases, cited before us, weightage has been given to the service put in by the transferee. However, in all those cases, the third source of recruitment was transfer/deputation. In the present case, there is no such rule to that extent. There is an error in the impugned judgment of the High Court. As stated above, Ms. Amrit Brar has put in 5 years service as a deputationist in Punjab Police Service between 16/17.8.1993 and 11.9.1998. She is certainly entitled to the weightage for the services rendered by her during these 5 years. However, she is not entitled to weightage of service between 9.6.1989 and 16/17.8.1993, as held by the High Court, for the fixation of inter se seniority."

From perusal of the impugned order dated 31.7.2012, by which representation of petitioners has been rejected, it is evident that it is the practice prevalent in the Security Branch of the Intelligence Department that for the purpose of providing effective and efficient security to the VVIPs like Governor and Chief Minister, persons from other branches of police force are transferred to security branch after being selected and obtaining required training for the post. It is also the practice that looking to the sensitive nature of work and duties after periodical review the security personnel are shifted from time to time.

It is the discretion of the authorities concerned to post the persons on such sensitive duty as per discipline and requirement of the post. It cannot be said that since certain persons juniors to petitioners have been retained or they are posted in the security branch for the period longer than the posting of petitioners, it amounts to discrimination or arbitrariness.

So far as the judgment of the Apex Court in the case of Jasveer Singh (supra) is concerned, in the said case the Apex Court considering the provisions of para 525 of U.P. Police Regulations has held that a police constable who has put in more than 10 years of service cannot be transferred from civil police to armed police.

Law laid by the Apex in the aforesaid judgment is not applicable to the facts and circumstances of the present case as in the present case petitioners belong to armed police i.e. PAC and they were on deputation to the Security Branch of the Intelligence Department and by the impugned order they have been sent back to their parent department.

So far as the contention of learned counsel for petitioners that service books of petitioners including GPF pass books, etc were transferred to security branch on their transfer in the year 2008 and they have surrendered their PAC Kit, etc, it appears that as per requirement of the post on which they were transferred in the security branch they were required to get no objection certificate from PAC branch before joining in the security branch and submit their PAC kit, etc in their battalions. It was in order to facilitate the effective security of the VVIPs that the Additional Director General of Security was made Drawing and Disbursing Authority with respect to petitioners and service books, etc of petitioners were transferred to security branch so that the payment of salary, etc. of petitioners are not hampered in any manner.

It is to be noted that under the similar facts and circumstances, this Court vide order dated 14.8.2012 (supra) has dismissed Writ Petition No. 4011 (SS) of 2012. It is also to be noted that in Special Appeal No. 1690 of 2010 the Court had noted the fact that the appellants were posted in PAC and they were sent to special security training for VVIP duties and thereafter posted for VVIP duties and thereafter they have been sent back to PAC. The Division Bench vide order dated 29.10.2010 (supra) had dismissed the appeal after recording that there is no illegality in the repatriation of such persons to their parent department. The orders dated 26.10.2010 and 29.10.2010 passed in Special Appeal No. 1690 of 2010 for ready reference are reproduced below:

Order dated 26.10.2010

"The appellants were posted in the P.A.C. Thereafter they were sent to Special Security Training for VIP duties and posted for VIP duties from where they have been returned back to the P.A.C. That is the subject matter of challenge. It is no doubt true that the learned Single Judge has placed reliance on a judgment which

may not be applicable to the facts of the present case, but the learned counsel has been unable to show any breach of any rule or regulation so as to infer otherwise. Learned counsel seeks time to further assist the Court.

Place the matter for orders on 29.10.2010.

Order dated 29.10.2010

We have heard learned counsel and perused the impugned order.

The appellants were sent for undergoing specialized training with regard to security of V.V.I.P's. Having been trained, they were posted and have now been repatriated back to the parent department. In the circumstances, the issue of transfer does not arise. Consequently, no case is made out for interference. Hence the appeal is dismissed."

Considering the entire material on record and submissions made by the parties' counsel, I do not find any infirmity or illegality in the impugned orders.

The writ petition having no merit is dismissed.

No order as to costs.

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