

Ashok Kumar Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Dec-01-1997

Reported in : 1998(2)AWC960

Judge : O.P. Garg, J.

Acts : [Constitution of India](#) - Article 16

Appeal No. : C.M.W.P. No. 36250 of 1997

Appellant : Ashok Kumar Singh

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Umesh Narain Sharma and ;Hamendra Kumar, Advs.

Judgement :

O. P. Garg, J.

1. Heard Sri Umesh Narain Sharma, learned counsel for the petitioner. By means of this writ petition, the petitioner. Ashok Kumar Singh has sought his repatriation from Intelligence Department to Civil Police with all the benefits which would have accrued to him in Civil Police had he not been sent to Intelligence Department.

2. The petitioner was selected, trained and appointed as Sub-Inspector in the Civil Police in district Agra in November, 1982. The petitioner remained posted at police stations, Khairagarh. New Agra and Satya. By order dated 21.7.1985, which is contained in Annexure-8 to the writ petition, the petitioner was transferred from Civil Police to Intelligence Department. It is alleged that the various posts in the Intelligence Department are ex-cadre posts and the petitioner could not have been sent to Intelligence Department on an ex-cadre post without his consent as has been held in *Prakash R. Broker v. Union of India*, 1984 (1) AISLJ 61 (Bom), in which reliance was placed on a decision of the Supreme Court in *Bhagwati Prasad v. State of Gujarat*, 1979 (3) SLR 805, in which it was observed thus :

'The person holding a civil post or being in civil service of the State is entitled to certain conditions of service prescribed for that post. If he is in a cadre or post he continues to be in that cadre or post unless promoted or any penalty of dismissal or removal from service is imposed upon him. In the absence of Imposition of such a penalty, such holder of a civil post is entitled to serve Government till the date of superannuation, or till the date when he can be compulsorily retired under the relevant rules. That is too obvious to be mentioned and it is a guarantee which flows from Article 16 and Part XIV of the Constitution.'

Learned counsel for the petitioner further urged that transfer of an employee outside the cadre is not a valid transfer as has been held in *Krishna Kumar Srivastava v. Bihar State Agricultural Marketing Board*, 1983 (2) SLR 221 (Pal). and that the mere circumstance that the two posts are carrying the same scale of pay is not the only factor in judging that they are equivalent posts as was laid down by Supreme Court in *Vice-Chancellor, Lalit Narain Mithila University v. Daya Nand Jha* 1986 (2) AISLJ 142. There can be no dispute about the fact that an employee cannot be transferred to a post, which is outside the cadre without his consent.

3. Sri Sharma, learned counsel for the petitioner further pointed out that under the various orders issued by U. P. Police Headquarters, it has been mentioned that the local Intelligence Unit is separate from the District Executive Force, i.e., Civil Police. In support of his contention, the learned counsel placed reliance on the

Circular Letter No. V-845-57, dated 15.7.1960 issued by U. P. Police Headquarters, Allahabad in which the subject of reorganization of the Intelligence staff in the Intelligence Department and district L. I. Us--promotion, appointment in the L.I.U. was considered. In Para 2 of the said circular letter. it was mentioned as follows :

'.....The correct revised position, however, is that the newly formed L.I.U. Is a separate cadre to that of D.E.F. with one combined nominal roll for the L.I.U./S.B. personnel. For all practical purposes, e.g., administrative control, promotions etc., the L.I.U. .therefore, forms part of the Intelligence Department. At the same time, the L.LU. staff remains under the Immediate administrative control (operational, disciplinary etc..) of the District Superintendent of Police, subject, however to the ultimate control of D.I.R. Intelligence Department.....'

The grievance of the petitioner is that in spite of the fact that he was transferred to Intelligence Department in the year 1985, he has not been called back to Civil Police with the result he has considerably suffered in his career in view of the fact that the Sub-Inspectors who were selected, trained and appointed with him are presently occupying the senior posts of Station Officers and are enjoying certain privileges, which have been denied to the petitioner in the Intelligence Department. A reference was made to the fact that under circular dated 30.10.1984, which is contained in Annexure-6 to the writ petition, a Sub-Inspector, who was recruited directly is considered within a period of three years' service excluding the period of practical training for posting as Station Officer, out of turn, in case of outstanding achievement or exceptional work during the posting period. It also provides that the Sub-Inspectors of six year's service with the good record of service are posted as Station Officers. The petitioner asserts that he has achieved excellence in training and on account of distinction in training and having acquired 'Z' category, he was sent to Intelligence Department. The petitioner, prior to his selection in Police service, was a Junior Engineer in the Irrigation Department. He had obtained the degree of Bachelor of Science, Diploma in Engineering, and he is also possessed of LL.B. Degree. His ambition was to put on uniform in Civil Police but on account of his shifting to Intelligence Department, he failed to realise the ambition, which he had entertained in life.

4. The petitioner has made representations on at least two occasions for his reversion to Civil Police. The first representation was made in 1988 followed by another representation in 1993. No orders appear to have been passed on both these representations.

5. The learned standing counsel pointed out that the Intelligence unit at the district level is manned by the staff posted from the combined list and in view of the Government Order, dated 6.1.1956, which is contained in Annexure-12 to the writ petition, a Sub-Inspector of Civil Police could be shifted to Intelligence unit in the district. By the aforesaid Government Order, reorganization of Intelligence staff of the Criminal Investigation Department in district was effected. Even though the work in the two fields, i.e. Civil Police and Intelligence unit is of different nature and requires different considerations and privileges, the posting has been done from the combined list. Learned counsel for the petitioner pointed out that in the changed circumstances, the Government Order, dated 6.1.1956 has lost its relevance and, therefore, it needs to be quashed. It was also pointed out that in a recent decision in *Satya Bhan Singh v. Superintendent of Police, Pilibhit and others*. 1997 (76) FLR 592, it was held that there cannot be a transfer on permanent basis from one branch of the Police Force to another. The period has to be specified.

6. After having taken into consideration the various submissions made by learned counsel for the parties, departmental orders and the decision of this Court in *Satya Bhan Singh* (supra), I find that a policy decision is required to be taken at the level of the Government. A Court of writ would be slow enough to tinker or interfere with the policy matters. The policy matters are better left to be decided by the Governmental agencies, who are responsible for implementing the same. Therefore, without going into the merits of the various assertions made in this writ petition, it is found proper to direct the Home Secretary, State of U. P., Lucknow--respondent No. 1 and the Director General of Police, U. P., Lucknow to sit together by convening a meeting to discuss the point whether a person shifted to Intelligence Department from Civil Police has to stay in the Intelligence Department forever or he can be recalled after some specified time to Civil Police, particularly when the privileges and the avenues of promotion are far less in the

Intelligence Department than the Civil Police. Appropriate orders on the representations of the petitioner shall be passed and a policy decision taken in the matter within three months from the date a certified copy of this judgment and order is produced by the petitioner before the respondent Nos. 1 and 2. It is expected that the respondents, above, shall take a firm policy decision after due deliberations as the matter is of wide importance, particularly to the frustrated employees who are deployed to work in the Intelligence units. Specific decision taken by the respondent Nos. 1 and 2 shall be communicated to the petitioner also within a period of one month from the date a final decision is taken.

7. The petition is accordingly disposed of.

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