

Noushad Vs. State of Kerala

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Court : Kerala

Decided On : Jun-17-2005

Reported in : 2005(4)KLT381

Judge : M. Ramachandran and; K.P. Balachandran, JJ.

Acts : Kerala Police Subordinate Services (Armed Police Battalions) Special Rules - Rules 21, 28A and 33; ;Kerala Police Subordinate Service (Amendment) Rules, 1989 - Rule 3

Appeal No. : O.P. No. 25792 of 2000

Appellant : Noushad

Respondent : State of Kerala

Advocate for Def. : P. Nandakumar, Government Pleader

Advocate for Pet/Ap. : T.P. Kelu Nambiar, Sr. Adv.,; K. Subhash Chandra Bose,;

Disposition : Petition dismissed

Judgement :

M. Ramachandran, J.

1. The legal question that requires a decision in this group of Original Petitions/Writ Petitions is common. They had been heard together and are being

disposed of by a common Judgment.

2. Sri T. P. Kelu Nambiar, Senior Counsel and assisted by M/s K. Subash Chandra Bose, D. Somasundaram, B. Mohanlal, G. Sasidharan Chempazhanthiyil, T.N. Manoj, Shoby K. Francis, N. Nagaresh, V. Chitambaresh, Bobby Joseph, S. Muhammed Haneeff, Sreeprakash K. Nair, M.R. Rajesh, S. Krishnamoorthy, Philip T. Varghese, P.A. Sibu Rahim, Ramakrishnan, C.V. Bindu, I. V. Pramod, V.K. Sunil, PR Venketesh, Noushad Thottathil, Suresh Kumar Kodoth, Grashious Kuriakose, Vijayan Meleth and Smt Klindu represented the cause of the petitioners. We had opportunity to hear Mr. P. Nanda kumar, learned Government Pleader, who represented the respondents.

3. The petitioners had been recruited as Police Constables, and the earliest of them had entered service in 1993. Recruitment of Police Constables, as envisaged by the Kerala Police Subordinate Services (Armed Police Battalions) Special Rules, was initially being made on State basis. Candidates could have opted to go over to Battalions to which they liked to be posted. However, the workability of this system was found to be wanting. Therefore, a change had been brought about, whereby the candidates were to be allowed to opt for one Battalion only, and as a consequence, in case they wished for transfer, that could have been only to the respective District Armed Reserve earmarked for the Battalion.

4. There are seven Battalions in the State. They are the following:

(1) Special Armed Force

(2) Madras Special Force

(3) Kerala Armed Police Battalion I

(4) Kerala Armed Police Battalion II

(5) Kerala Armed Police Battalion III

(6) Kerala Armed Police Battalion IV

(7) Kerala Armed Police Battalion V

Special Armed Police personnel, after Ext. P-I order could have opted only for the District Armed Police, Trivandrum City and Trivandrum Rural. Similarly, as an example, Kerala Armed Police Battalion III personnel could have opted for Quilon, Alleppey and Pathanamthitta. K.A. P. V personnel could have opted for Kottayam and Idukki District Armed Reserve. In view of Government Order No. G.O.Rt. 2014/86, dated 17-7-1986, the position had come to be accepted that the practice of recruitment of Constables to the District Armed Reserve was stopped. Thereafter, vacancies of Police Constables in the District Armed Reserve could have been filled up only by transfer of Constables from the Armed Police Battalion, who had put in minimum seven years of service. Onward transfer to local police was on the basis of seniority. These orders were in force when Ext. P-I had come to be passed.

5. To sum up, the position was that at the time of recruitment of the petitioners in this batch of Original Petitions, the practice of direct recruitment to the District Armed Reserve or Local Police had been totally discontinued. After appointment in the Battalion, it would have been possible for the Police Constables to remain in the Battalion, and aspire for promotions, but as well, there was a provision for option to go over to admissible Districts after they had put in minimum qualifying service and passing prescribed tests. It was purely their option. On reaching the District Armed Reserve, again on principles of seniority, they would have been entitled to go over to the Local Police. This is the accepted pattern that was always followed.

6. Petitioners in O. P. No. 25792 of 2000, however, apparently had felt that this would not have been proper or just. As prescribed by the Government Order, they had opted/were entitled to opt, in the present case, to the District Armed Reserve, Quilon, Alleppey and Pathanamthitta. They submit that although they had submitted such options, for want of vacancies in their home district of Quilon, they had not availed of the opportunity to go over either to Alleppey or Pathanamthitta. Perhaps it had its own advantage and disadvantage. By continuing in the K.A.P. III Battalion, they became entitled to promotion as Havildars. Counsel for the petitioners submits that the petitioners had been promoted and their pay had been fixed under Rule 28A of Part I K.S.R. and their probations had been declared. But

a difficulty arose, since they were attempted to be repatriated to the District opted, but on such occasion, they were to forego their promotions, as the Department had been insisting that they should go over only after getting a reversion as Police Constable. According to the petitioners, this is against logic, operates as a restrictive practice and such a service condition worked against principles of service law.

7. It has to be noticed that their juniors in the Battalion had in the meantime opted to go over to Alleppey and Pathanamthitta, while they were in the category of Police Constables and because of the resultant seniority position gained in the District Armed Reserve, a few of the persons, who had so gone and joined the new stations had been got promoted as Havildars/Head Constables. The petitioners submit that on reversion, when they are to proceed to Alleppey or Pathanamthitta, they are to work under their erstwhile juniors and there is also fall in remuneration. Therefore, the submission is that till such time they are given a posting at Quilon, the intermediate transfer to Alleppey, Pathanamthitta etc., should be considered as one on exigencies of administration and their status and emoluments are to be protected. It is submitted that on a posting to Quilon, as it is their home district, such objection will not be raised, and they are prepared to work at assigned position on the basis of their seniority.

8. Ext. P-1 was intended to bring about a restriction in the matter of options on joining the Battalion after selection by the Public Service Commission. There was reluctance on the part of the personnel to go over to difficult and inconvenient stations and the mischief was sought to be countered. Ext. P-2, dated 31-3-1992 brought about an amendment, wherein minimum period of service for transfer from Armed Police B attalion to District Armed Reserve was reduced to three years, but Government had also introduced a condition that persons will be repatriated to any District irrespective of their choice, in public interest. However, the position of the personnel had been safeguarded by providing that when vacancies subsequently arise in the particular district of one's choice, they will be accommodated to such vacancies strictly according to seniority on the basis of options to the district. However, the contention raised by the petitioners was that any transfer from the Battalion should have been only to equivalent rank, and protection of emoluments.

9. Some more details had been supplied in O.P.No. 26117 of 2001. Exts. P-I and P-2 are identical as in the previous O.P., but reference had been made to Circular No. 1/98 issued by the Armed Police Headquarters, as well. Reference had been made to Ext. P-I Government Order. But it came to be noticed by the Headquarters that although the Battalion personnel were to exercise option, either to continue in the Battalion permanently or to go on transfer to District Armed Reserve of their choice, as referred to in Ext. P-I, and nobody were entitled to remain neutral, instances had come across where option as against a single district alone was recorded and therefore they could not have been repatriated to other districts. For example, although KAP-III personnel expected to opt to Quilon, Alleppey and Pathanamthitta, several persons had confined their options to Quilon District alone. Administrative difficulties had apparently arisen. It was therefore directed that options are to be exercised strictly, as directed in Ext. P-I Government Order. It had been clarified that in the event of non-availability of vacancies in the District Armed Reserve of their choice, they will be transferred and posted to the first or second of the opted station and were to be posted back to the home district, when vacancy arose there, without loss of reckonable seniority.

10. Mr. Kelu Nambiar, senior counsel submits that Circular No. 1/98 issued by the Armed Police Headquarters in effect modified the Government Orders (Exts. P-I and P-2), for which they were not competent, and therefore Ext. P-3 was unenforceable, and in so far as reliance was placed by the respondent on Ext. P-3 as authorising them repatriation, the transfer made after reversion was illegal, and an act without jurisdiction. The drop in emoluments therefore could not be supported. The rest of the petitioners, in general adopted the contentions as above, and also argued for the position that the mandatory provision of Rule 21 (a) and Rule 33 (c) of Part I, K.S.R. stood violated, vitiating the whole steps.

11. We had good assistance from the learned Government Pleader. He had made available the Government Orders, right from 1962. The thread of continuity of the effort taken by the Government to streamline the position could be gatherable from the orders so made available. So as to suit administrative exigency, modulations had been appropriately brought about taking notice of the suggestions that had

come from various quarters and we see that the prime objective was public interest. The stoppage of direct recruitment to the District Armed Reserve, the reduction in the minimum incumbency for exercising option and opportunity for transfer to desired stations etc., are all introduced with this idea in mind. The larger interest of the personnel also has not been forgotten and although because of temporary postings, persons would have lost in the matter of status or emoluments, the ultimate idea was to see that substantive seniority was given credit, but a set back could not have been avoided, because of an inter-unit transfer.

12. It had been recognised that by option for transfer to District Armed Reserve and thereafter to local police uninterruptedly available in the interest of the Administration, as recruitment to the said posts are not in vogue, the right of a person appointed to the Battalion to remain there has not been hindered. Efforts were always there to see that low average age of personnel in the Battalion were maintained, taking notice of the arduous nature of the duty expected of them and dilution in the minimum incumbency alone had been introduced. Repatriation was not discouraged. There was nothing in the rules or orders which interfered with the right of a person opted to continue in the Battalion and gain promotions from time to time. As a matter of fact, according to the Government Pleader, the statistics would reveal that a person gets opportunity for promotion earlier, if he continues in the Battalion, and it so happened that petitioners in this group of petitions were beneficiaries. Several members, who were similarly situated like them, but had gone to District Armed Reserve, were yet to get promotion as avenues there were not as bright as existing in the Battalion. According to him, seniors of the petitioners are awaiting for getting promoted and if the petitioners are permitted to carry their status at the time of transfer, it definitely will create imbalance. He submits that it was the practice and strictly understood as a condition of service from the very inception that transferees required to be stripped off benefit of promotion, when they were permitted to go to the District Armed Reserve. This was because it was only a concession by the Government in furtherance of their options submitted facilitating to go over to a new unit. There was no injustice, and in fact the governing orders and Rules authorised this procedure. The converse would have been an injustice.

13. It is meaningful to note that there is no challenge about Exts.P-1 and P-2. So long as these orders are acceptable, which on their very face are beneficial, especially of course when viewed in the larger perspective, the contentions of Mr. Kelu Nambiar that instructions contained in Ext.P-3 Circular (in O.P.No. 26117 of 2001) has exceeded in jurisdiction, cannot be countenanced. A reading of Ext.P-3 would disclose that the Circular was necessitated to ensure that Ext.P-1 order was to be given its full force. Notwithstanding the specific provision in Ext.P-1, that two or three stations mandatorily have to be opted, a restrictive practice had come to settle, whereby members of the Battalions were confining their option to one district, and that too, the home district. In practice, this clever method was found as undermining the very purpose of prescribing the procedure to be followed by Ext. P-1. The Directorate had issued strict instructions that options should be made as prescribed by Ext. P-1. There is nothing irregular in suggesting that implicit enforcement of the Government Orders are required, and the suggestion that there is an attempt to overreach the authority of the Government is misconceived.

14. Therefore, the foundation of the contentions raised by the petitioners in this batch of Writ Petitions does not appear to be solid or sound. Much thought has been bestowed by the respondents in the matter of recruitment and repatriation of personnel, so as to ensure that no section of the officers get undue benefit or advantage to the detriment of another group. If we accept the case of the petitioners, it may result in unmerited advantage to them, as it may operate as discriminatory.

15. Although the issue agitated herein is simple and straight forward, routinely the petitioners chose to cite authorities so as to muster support for them. One such decision is that of the Supreme Court in Comptroller and Auditor General of India v. Mohan Lal Mehrotra, : (1992)ILLJ335SC . In view of our finding, it has to be noticed that the principles enunciated there have no application to the facts of the case. Likewise, the principle that only on request posting a person normally would have lost his status and benefits, in the event of an inter-departmental transfer, as laid down in Ganesa Filial v. State of Kerala and Ors., 1986 KLT 242 : 1986 KLJ 248, also is irrelevant, as in the case of the petitioners. Department was only

enforcing steps taking notice of options submitted by them.

16. Counsel for the petitioners also concede that Rule 33(c) of Part I, K.S.R. ultimately may not have relevance on the facts of the case. The ground raised is palpably on a misconception of law.

17. In all the cases, the petitioners have gone on repatriation first to the District Armed Reserve and in most of the cases have later on get transferred to the local police. It is therefore submitted that even if the status is not protected, the emoluments are to be ordered to be maintained without a drop. In view of the promotions that had been conferred on them as Havildars while attached to the Armed Battalion they were drawing pay in the higher scale and submission is that they are entitled to pay protection. By interim orders, in some of the cases, such protection seems to have been granted, but in a few other cases, the Court had directed that their claims will depend upon the final outcome of the Writ Petitions.

18. As referred to earlier, an argument was attempted to be built upon with reference to Rule 21(a) of Part I, K.S.R. The principle highlighted is that the Government is not empowered to transfer an officer from one post to another, carrying lesser pay than the permanent post occupied by him on which he holds a lien. But this rule is not absolute. The said rule has an exception that transfers could be made on written request and the rigor does not apply there. Having been appointed to the Battalion, in spite of the opportunity to continue there, the petitioners had submitted their options to go over to a different unit. This option has its toll to be paid. Submission of option was mandatory, and in every one of the case here, willingness had been given to go to a new unit. The argument that this had been given on coercion and undue influence, is only to be rejected.

19. Petitioners in W.P.(C).No. 37937 of 2003 pointed out that one of their colleagues had joined as Lower Division Clerk in the Animal Husbandry Department on a selection while working as Havildar, and he had been able to get a fixation of pay equal to that he was drawing at the higher post. However, this may not help the cause of the petitioners, since their service conditions as authorised by the Rules provide that interdepartmental transfer will entail a reversion and in view of the circumstance that they have opted for such transfer,

they have no legal right to insist that the Government is obliged to go on paying them the higher emoluments in spite of their reversion and accommodation as Police Constables.

20. By Rule 3 of the Recruitment Rules, to the post of Police Constables in the Kerala Police Subordinate Service (Amendment) Rules, 1989, as introduced by G.O.(P) No. 33/89/Home (S .R.O.No. 402/89), dated 10-3-1989, it has unambiguously been laid down that the District Armed Reserve and Armed Reserve Battalions should be separate units for appointment and the posts in the District Armed Reserve should be filled up by transfer of Constables from the Armed Police Battalion, as per the guidelines to be fixed by the State Government from time to time. District Armed Battalion and District Armed Reserve are therefore separate units and the norms for interdepartmental transfers would be applicable in so far as such transfers are concerned. The Government has the reserve powers to prescribe parameters, as the circumstances may justify, and we find that this alone has been done, followed and practised for long. The power as above is seen to be specifically conferred by the Rules themselves. This is sufficient to give a quietus to the issue, and we uphold the position.

21. O.P.No. 13383 of 1999 has been filed by the petitioner agitating a slightly different circumstance. Petitioner had on an earlier occasion come to this Court and his claims were directed to be looked into, but the disposal of the representation has been adverse to him. He had been recruited as a Police Constable in the Special Armed Police Battalion and had gained a promotion there as Havildar, but later on had been reverted for repatriation to the District Armed Reserve. He was working as a Police Constable and during the period it seems he had obtained an appointment as Clerk/Typist in the Department of Technical Education. He appears to be working there. He submits that the reversion should not have entailed a drop in emoluments and therefore on appointment in the new Department he should have been permitted to carry his pay and given appropriate fixation.

22. In the view that has been taken by us, the request as above may not be sustainable. In case, if it is possible for the said petitioner to present his claims, on

any other score, we make it clear that the dismissal of the said Writ Petition will not affect any one of his rights for benefits authorised by any other Rules.

There is no merit in the contentions raised in the Writ Petitions. They are dismissed.

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