

Court No. - 34

Case :- WRIT - A No. - 7158 of 2023

Petitioner :- Inspector Rajeev Kumar Tiwari

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Mahabir Singh, Sanjay Kumar Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. Heard Sri Sanjay Kumar Tiwari, learned counsel for the petitioner and learned Standing Counsel appearing for the contesting State respondents.

2. Petitioner who is working as Inspector came to be posted as Incharge, Cyber Crime Police Station, Prayagraj Range as per the scheme floated by the Director General of Police on 21.03.2020. However he has suddenly been fired from the Cyber Crime Department and has been repatriated to his original post of posting-Pratapgarh by the Inspector General of Police, Prayagraj Range vide order dated 16.04.2023.

3. It is argued on behalf of the petitioner that in view of the Government Order issued on 16.02.2021 it is either a duly constituted Committee by the Police Headquarters or the Director General of Police or any nominated person by him can only transfer a person from one Cyber Crime Police Station or to another Cyber Crime Police Station or to any establishment of the Police Department. He thus submits that the power exercised by the Inspector General, Prayagraj Range in repatriating the petitioner under the order impugned was without any authority of law. He further submits that when the question arose of giving posting to the petitioner on 26.05.2023, the police Headquarter, U.P., Lucknow has shown the petitioner to be posted at Cyber Crime Headquarters at Serial No.5. This letter has been brought on record by means of rejoinder affidavit issued on 26.05.2023. Thus he submits that though he continues to be posted there in the eyes of the police station Headquarters DIG Range Police Prayagraj he is not permitting him to work, nor the petitioner is able to join at its position where he has been repatriated, namely, district Pratapgarh.

4. Learned Standing Counsel sought to justify the order on the basis of the averments made in Paragraph 4 of the counter affidavit, according to which some sought of enquiry was going on in the matter and in this connection a show cause notice was issued to the petitioner under the Uttar Pradesh Subordinate Police Officers (Punishment and Appeal) Rules, 1991 and this has infact resulted in the repatriation of the petitioner by the order impugned.

5. Having heard learned counsel for the respective parties and having perused the record I find that the Inspector General of Prayagraj Division, Prayagraj under the order dated 16.04.2023 held that the petitioner was not taking any interest in the Cyber Crime Police Station and that is why he has been repatriated but neither the order discloses any nomination by the Director General of Police, nor in the counter affidavit any such averment has come that the Inspector General of Police Headquarters is infact entitled to make transfer of the officers posted in the Cyber Crime Department of the Police. The whole scheme under the cyber crime is to book people who are involved in such criminal activities is prescribed under the order dated 21.03.2020 issued by the Director General of Police Headquarters, U.P., Lucknow and as a sequel to that Government Order has been issued on 16.02.2022 governing the transfer and posting of the officers in the Cyber Crime Department of the Police.

6. Clause 2 of the Semi-Government order clearly speaks of selection process and then the transfer procedure. In both the cases there is a duly constituted committee prescribed for consisting of Additional Director General of Police, Cyber Crime, U.P. Lucknow as Chairman with Deputy Inspector General of Police, Cyber Crime U.P. Lucknow and Superintendent of Police (Administration and Establishment) U.P. Lucknow as members. It also provides that in the absence of any such Committee being constituted power is to be exercised by the Director General of Police, Uttar Pradesh or by any nominated person in his behalf. The order impugned is completely silent.

7. Paragraph no.4 of the counter affidavit though refers to some exercise of power in the light of some enquiry going on in connection with which show cause notice was issued to the petitioner but there is no whisper of any such power being delegated to the Inspector General, Prayagraj Range

by the Director General of Police pursuant to the Semi-Government Order dated 16.02.2021.

8. In view of the above, therefore, the order impugned cannot be sustained in law and deserves to be set aside. Writ petition succeeds and is **allowed**. Thus, order dated 16.04.2023 impugned in the writ petition and filed as Annexure no.1 is hereby quashed.

9. Petitioner shall continue to remain posted where he was on the date the impugned order was passed and shall be paid salary. Since the petitioner has not been able to join the place of posting on account of his continuance at his place, he shall also be entitled to entire arrears of salary which has not been paid.

10. It is left open for the Inspector General of Police to take decision in the matter of transfer and posting of the petitioner in accordance with law.

Order Date :- 17.11.2023

Deepika