

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.17679 of 2015 (O&M)
Date of decision: 12.02.2016**

Rakesh Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Suresh Kumar Kaushik, Advocate,
for the petitioners.

Mr. Rajesh Gaur, Addl. A.G., Haryana,
for the respondents.

Ritu Bahri, J.

The petitioner is seeking a writ of certiorari for quashing the order dated 14.07.2015 (Annexure P-6), vide which his claim has been rejected.

Rakesh Kumar-petitioner was enrolled as Constable in Haryana Armed Police (Technical Branch) on 11.03.2003 and after completing the training, he was allotted HAP Battalion (Madhuban). He passed the Lower School Course when he was in the HAP Battalion and his seniority was maintained there. Thereafter, he was promoted Head Constable in HAP Battalion and was given seniority as per his merit in the Lower School Course.

Vide order dated 27.07.2012 (Annexure P-1), the petitioner was transferred from HAP, Madhuban to District Police, Karnal in a separate range and separate cadre. After his transfer to the District Police, the

petitioner was to go for Intermediate School Course for further promotion from the post of Head Constable. For being sent to the Intermediate School Course, merit in the list of Lower School Course in the respective range is relevant. The grievance of the petitioner is that his transfer from HAP to District Police Cadre is being made as per the Standing Order/Transfer Policy dated 02.08.2004 (Annexure P-2). As per this policy, the Constables who are recruited as Technical Constables would be transferred from HAP to District Police/GRP as per their seniority only after 10 years service or after attaining the age of 35 years, whichever is later. Those Constables, who were unwilling for transfer to District Police/GRP may opt to remain in HAP till they reach the rank of Inspector. Option once exercised in this regard would be final. The petitioner has further referred to the decision of the Hon'ble Supreme Court in **State of Haryana and others Vs. Kashmir Singh and another**, SLP Nos.18686-18697 of 2007, decided on 06.10.2010 (Annexure P-3) to contend that even though the transfers is purely an administrative matter, but seniority is to be maintained in parental district/range/unit. The petitioner, after being transferred to the District Police Cadre would lose his seniority in HAP, Madhuban and his juniors who have been retained there, would be recommended for Intermediate School Course. The petitioner would suffer on this account. The respondent-department has also issued another letter dated 01.01.2014 (Annexure P-4), vide which option has been sought from the Head Constables, if they were willing to get transferred from Districts/GRP to HAP/IRB on permanent basis. Despite the above said letter, vide order dated 14.07.2015 (Annexure P-6), legal notice sent by the petitioner has been rejected on the ground that one writ petition i.e. CWP No.11969 of

101 driver Head Constables/Constables for their transfer from HAP to District Police. This writ petition was allowed granting them exemptions of 9 months tenure in terms of age for drivers. 148 driver Constables, including the petitioner, were transferred from HAP to District Police. The petitioner was neither a party to the aforesaid writ petition nor he gave his consent for transfer. Since the petitioner was not party to the writ petition, he could not be transferred as he had not completed 10 years of service at the time of his transfer. No consent was taken from the petitioner.

In similar circumstances, CWP No. 26726 of 2013, titled as **HC Suresh Kumar and others Vs. State of Haryana and others**, was filed by similarly situated persons, which was disposed of by this Court vide order dated 17.01.2014. Against this order, some of the junior employees filed LPA No.921 of 2014, titled as **HC Virender and others Vs. State of Haryana and others**, which was dismissed by a Division Bench of this Court vide order dated 23.03.2015 (Annexure P-7).

Learned counsel for the respondents has argued that as per Standing Order No.108/2004 dated 02.08.2004 (Annexure P-2) issued by the Director General of Police, Haryana, Constables who have been recruited as Technical Constables would be transferred from HAP to District Police/GRP as per their seniority only after 10 years service or after attaining the age of 35 years, whichever is latter. Their seniority and promotions would be maintained in HAP till they are transferred from HAP to District Police/GRP. Thereafter, their seniority will be re-fixed according to their ranks in Lower School Course. As per policy, those who are unwilling for transfer to District Police/GRP, may opt to remain in HAP till they reach to the rank of Inspector. Pursuant to the Standing Order

HAP. He further referred to office memo dated 06.07.2012 (Annexure R-2), whereby the Director General of Police, Haryana, had granted relaxation of nine months to transfer 148 Constable Drivers from HAP to District Police with immediate effect. The relaxation was given keeping in view acute shortage of drivers in District Police. Vide order dated 13.07.2012 (Annexure R-3), all 148 Driver Constables, including the petitioner, were transferred from HAP to District Police and the writ petition was disposed of as having become infructuous on 31.10.2012. Only 25 officials out of technical batch submitted option to remain in HAP permanently and this approval was granted by the Director General of Police, Haryana. The petitioner never gave his option to stay in HAP, therefore, he was transferred to the District Police. At the time of his transfer, the petitioner neither raised any objection nor filed any representation before the competent authority. The petitioner was deputed for Lower School Course by Commandant, Ist Battalion vide his order dated 14.01.2012 (Annexure R-4) and during his course, he was transferred to District Police, Karnal and relieved on 14.07.2012. Neither he was promoted as Head Constable in HAP nor was brought on promotion list "C" as per instructions dated 22.09.2006 (Annexure R-5) issued by the Director General of Police, Haryana. As per his seniority and vacancy, he was to be confirmed as Head Constable by his parent unit/range i.e. District Police, Karnal and not by Haryan Armed Police (HAP). Upon transfer, the seniority is to be fixed as per Standing Order No.108/2004 (Annexure P-2).

Learned counsel for the respondent has referred to office memo dated 19.06.2012 (Annexure R-1) to contend that in March 2003, 148 Driver Constables (Technical) were recruited. These drivers were recruited to form a nucleus of technical staff for disaster management duties. In the

the vacancies of drivers in the districts. These drivers, inadvertently were given constabulary numbers of HAP. After training, they were allotted to different districts. However, keeping in view acute shortage of drivers in districts, relaxation of 9 months was granted in respect of 148 Constable drivers vide letter dated 06.07.2012 (Annexure R-2).

Heard, counsel for the parties.

The question for consideration in this petition would be, “whether vide order dated 06.07.2012 (Annexure R-2) when relaxation of 9 months was given as per Standing Order 108/2004 (Annexure P-2), the department was not required to take any consent from the petitioner to remain in HAP when he was not party to CWP No.11969 of 2012.”

This question has been considered by a Division Bench of this Court in LPA No.921 of 2014 (Annexure P-7), which had arisen out of CWP No.26726 of 2013. It was a case of those Constables, who had never made request for transfer to District Police Cadre. In CWP No. 26726 of 2013, there were 199 drivers, who were party and the appellants before the LPA Bench had never made their requests for transfer to the District Police Cadre. Circular dated 01.01.2014 (Annexure P-4) issued by the Director General of Police enabling the Head Constables to seek their re-transfer to the present cadre, is the reflection of fact that the Director General of Police was rectifying an error which the authorities had committed earlier. In their written statement, while replying to para No.12 (iii) of the petition, the respondents have admitted that option/consent of the petitioner was not taken. However, since the petitioner did not raise any objection at the time of transfer and did not make any representation, there was no question of fixing his seniority in HAP. However, as per affidavit (Annexure R-10), an

was approved by the Director General of Police Haryana. The above fact shows that once the petitioner had not given his consent to be transferred or to be retained, he has a right to be transferred as per the Standing Order No.108/2004 (Annexure P-2).

The respondents do not dispute that the petitioner was not party in CWP No.11969 of 2012 and had not given his option for transfer from HAP to District Police Cadre. Hence, he was required to be transferred only as per the Standing Order No.108/2004 (Annexure P-2). The case of the petitioner is squarely covered by the judgment passed by the Division Bench of this Court in LPA No.921 of 2014 (Annexure P-7).

In view of the above discussion, this petition is allowed and the impugned order dated 14.07.2015 (Annexure P-6) is set aside.

12.02.2016
ajp

(RITU BAHRI)
JUDGE