

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13763 of 2018

1. Jay Prakash Pandey, Son of Sri Niwas Pandey, Resident of Village-Kothuan, P.O.- Khanthi, P.S.- Kargahar, District- Rohtas.
2. Manoj Pandey, Son of Sri Gopal Pandey, Resident of Village-Damodarpur, P.O.- Mohan Darwan, P.S.- Karamchak, District-Kaimur, Bhabhua.
3. Jitendra Kumar, Son of Sri Ram Narayan Prasad, Resident of Village +P.O. + P.S.- Simari (Bazar), District- Buxar.
4. Tripurari Kumar, Son of Late Bhagwan Pandey, Resident of Village- Jogeyan, P.O.- Kajhai, P.S.- Bikramganj, District-Rohtas.
5. Saroj Kumar Singh, Son of Suryabali Singh, Resident of Village + P.O.- Nagwan, P.S.- Simari, District- Buxar.
6. Rajesh Kumar Singh, Son of Ram Kripal Singh, Resident of Village + P .O.- Allipur Hatta, P.S. Mahnar, District- Vaishali.
7. Dinbandhu Prasad, Son of Late Ramawtar Prasad, Resident of Village + P.O.- Mainpura, P.S.- Muffasil, Ara, District- Bhojpur.
8. Ayodhya Kumar Singh Yadav, Son of Yamuna Singh Yadav, Resident of Village- Najrignaj, P.O.- Mathila, P.S.- Koransarai, District- Buxar.
9. Manoj Kumar, Son of Kapildeo Ram, Resident of Village- Kali Asthan, Thakurbari Road, New Gangoli, P.O.- Dalmiyanagar, P.S.- Dehri, District- Rahtas.
10. Nirbhay Kumar Singh, Son of Late Nandjee Singh, Resident of Village + P.O.- Kant, P.S.- Brahmpur, District- Buxar.
11. Bhanu Prakash, Son of Devendra Narayan Mandal, Resident of Village- Sindhiya, P.S.- K. Nagar, District- Purnia.
12. Om Prakash Sharma, Son of Kailash Sharma, Resident of Village- Balha, P.O.- Haridaspur, P.S.- Kanti, District-Muzaffarpur.
13. Amod Kumar Kunwar, Son of Sri Dinesh Kunwar, Resident of Village + P.O.- Dumari, P.S.- Patori, District- Samastipur.



14. Nir Bahaduar Gurung, Son of Sri Indra Bahadur Gurung, residence of 206, Patliputra Colony, P.S.- Patliputra, District- Patna.

15. Anurodh Kumar Singh, Son of Janardan Singh, resident of Village- Khuthan, P.O.- Chawni, P.S.-Nasriganj, District- Rohtas.

16. Ramjanam Paswan, Son of Nakul Paswan, resident of Village- Dhanar, P.S.- Chandradip, District- Jamui.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police (Welfare), Bihar, Patna.
4. The Inspector General of Police (Operation), Bihar, Patna.
5. The Inspector General of Police (Inspection), Bihar, Patna.
6. The Inspector General of Police (Headquarter), Bihar, Patna.
7. The Additional General of Police (Headquarter), Bihar, Patna.
8. The Superintendent of Police Special Task Force, Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Sharda Nand Mishra
For the Respondent/s	:	Mr. Sheo Shankar Prasad, SC-8
		Mr. Anil Kumar, A.C. to S.C.-8
		Mr. Sanjay Kumar, A.C. to S.C.-8

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 14-09-2018

Heard learned counsel for the petitioners and
learned counsel for the State.

2. In this case, the petitioners are challenging the
order containing memo no.1186/2018 dated 04.07.2018



(Annexure-8) and also the order containing memo no.1187/2018 dated 04.07.2018 (Annexure-9), by which the petitioners have been repatriated to the parent department on the post of constable.

3. The petitioners were appointed as constable in the Bihar Military Force (B.M.P.), is a common cadre for the entire State and were discharging the duties accordingly. For the containment of the menace of Naxalism and to control the action of the private army created by some fringe groups, the State of Bihar has taken a decision to form the Special Task Force (S.T.F.) for necessary action against those elements. Accordingly, the suitable constables were inducted from different sources, such as B.M.P., District Police and other groups operating in the State of Bihar, thereby a homogeneous group was created in the name of Special Task Force (S.T.F.). As there was a dearth of drivers for running the vehicle of the S.T.F. it was identified that 81 drivers will be needed for the smooth running the vehicles of the S.T.F. and accordingly those persons who were knowing the driving were invited for selection as driver in the S.T.F. and for that a Selection Committee was constituted on and amongst the Officers of the S.T.F. The said Selection Committee comprising four members, namely,



Superintendent of Police, S.T.F., Bihar, Patna (ii) Deputy Superintendent of Police, Bihar, Patna (iii) Sargent Major, S.T.F., Bihar, Patna and (iv) Inspector of Motor Vehicle, Patna, they properly tested the skill of driving of the vehicle, whereafter the petitioners and others were selected and appointed as driver.

4. Learned counsel for the petitioners submits that the petitioners were selected as driver for all purposes, cannot be treated to be only for the purposes of S.T.F. as their category has already changed from the cadre of constable to the cadre of driver. Even on return to parent department on repatriation they will not loss their status as driver merely because their transportation from S.T.F. to parent department. Further submitted that it was a final absorption to the post of the driver and placing reliance on the provision of Rule-1185 (C) and Rule-1186 of the Bihar Police Manual, which prescribes that the person who has been appointed as driver cannot be made general constable and as such, the impugned order, thereby the petitioners have been made General constable suffers from illegality on two counts viz. they will not loss their status from drivers to constables and further they were reverted to the parent department in 2013 and as such, the authority of the S.T.F. will not have jurisdiction to convert the driver to general constable.



5. In support of his submission, learned counsel for the petitioners has placed reliance on the order dated 12.02.2014 passed in C.W.J.C. No. 11327 of 2013 (Dwarika Das Pandey vs. the State of Bihar and Ors.), in that case also the petitioner, was working as constable, later on, selected as driver and accordingly, he has joined the post of driver, he wanted to return to the main cadre i.e. constable and for that he approached this Court by filing the writ petition. However, the Court has refused to accede the plea taking into consideration the provision of Rule-1185 (C) and Rule- 1186 of the Bihar Police Manual and it has been held that once the person has been selected as driver it will be treated to be the final and later on, he cannot be reverted to the post of constable.

6. Whereas, learned counsel for the State has submitted that the petitioners were the members of the B.M.P., on selection they were sent on deputation in S.T.F. and while discharging the duty in the S.T.F. they did not lose the lien with the parent post and parent department, so, after repatriation they will come in same cadre from where they have been sent for discharging the special class of service in the S.T.F.. So, there was no need to give any show-cause or any hearing to the petitioners as merely it was a simple administrative action and



the competent authority has not been deprived of the power either to repatriate or to call the deputed person sent on deputation and returned to main cadre, will be treated to be the member of the same cadre just before deputation.

7. He further submits that the judgment which has been relied upon by learned counsel for the petitioners does not apply to the facts of the present case as that case relates to the person who was working as constable in the District Police were selected as driver, later on, he wanted to revert back to the post of constable, it has been held that it is not possible to revert him back to the main cadre i.e. constable in view of prohibition of Rule-1185 (C) Rule- 1186 of the Bihar Police Manual and he will be treated to be member of the driver and cannot be allowed to migrate to the stock of constable.

8. Having considered the rival contentions of the parties, it is an undisputed fact that the petitioners were the members of the B.M.P., on selection they have joined the S.T.F., the question in the present case which it is required to be looked into whether it was deputation or it was a final separation from the parent department. For that, it will be relevant to consider the purpose for creation of the S.T.F. which is apparently clear from the aims and objects of the S.T.F. which has been attached



in Annexure-B, wherein it has been stipulated that as the nexalism is on rise and the land holders have created their own private army and anti-social elements have formed syndicate, the State has created Special Task Force for achieving goal to control the unlawful activities.

9. Basically, the emphasis has been given by learned counsel for the petitioners on the letter dated 07.12.2009 which shows that petitioners were finally selected as driver and as such, the provisions of Rule- 1185 (C) and Rule- 1186 of the Bihar Police Manual does apply. But, certain letters makes it very clear that it was a case of deputation, is clear from letter dated 15.07.2016 issued by the Inspector General of Police (Welfare), Bihar, Patna, wherein it has been mentioned that on deputation, the original cadre of the deputationist will not be treated to have been changed and they will be treated to be the part of original cadre and further impugned order also shows that they were on deputation, only they have been reverted back to the original cadre.

10. The question, in the present case, would arise as to whether the provisions of Rule-1185 (C) and Rule- 1186 of the Bihar Police Manual would be applicable to the case of the present petitioner. This proposition of the petitioners is



completely misconceived in view of the fact that if a person has been sent on deputation and while he was on deputation his lien remain with the original post as well as the department. The lien snaps only when a person is finally absorbed on the deputed post and after reversion or repatriation again he will regain same status.

11. This Court had called the records of C.W.J.C. No. 1708 of 2010, that has been disposed of vide order dated 03.08.2010. That was a case where the person was a general constable but later on, he was absorbed as driver constable category in his parent cadre and he wanted to revert back to the original post of constable. The State has taken plea that there was no provision for conversion of service from a driver constable to general constable and the Court has refused to issue a *mandamus* in favour of the petitioner, but only direction was given for reconsideration of the case of that petitioner. Again the issue came for consideration in C.W.J.C. No.11327 of 2013 (Dwarika Das Pandey vs. State of Bihar and Ors.). In that case, the petitioner was the member of the District Police were absorbed in the cadre of driver and he wanted to return back to the main stock of the constable, it has been held that when he has been appointed as a driver there is no such provision for reversion to the post of constable, that too has been accepted by



the Division Bench in L.P.A. No.362 of 2014 (Dwarika Das Pandey vs. State of Bihar and Ors.). In the present case, the facts are quite different, it is not so that while working as constable he has been selected for the post of driver, but he was sent on deputation as there was need of 81 drivers, the skill test was taken and it was found that the petitioners had/were skill to ply the vehicle and accordingly, they were selected as driver to ply the vehicle of the S.T.F. and it is also a fact that the petitioners have not finally been absorbed in the S.T.F. but have been repatriated to their parent department.

12. In such view of the matter, either the provision of Rule -1185 (C) or Rule-1186 of the Bihar Police Manual does not apply to the present case as it was a simple matter of repatriation. The law on the repatriation is very much clear that they will go to their own parent cadre as well as to the post. This Court does not find any substance to interfere with the action of the department to ask them not to send the petitioners to the post of general constable.

13. Before parting this order, it has taken into consideration the submission of the petitioners that while they were in the S.T.F., plying the vehicles of the S.T.F. their juniors and colleagues have promoted on the post of S.I. and the



petitioners will go there as constable it will be demeaning to the petitioners. Let the petitioners join the post and the authority will see that they should also be sent for the training and on acquisition of training, it goes without saying that their case will also be considered for the post which their juniors or colleagues were holding.

14. With the aforesaid observations and directions, this writ petition is dismissed.

(Shivaji Pandey, J)

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