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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
15 & 4

+ **W.P.(C) 1487/2019**

INSPECTOR PAWAN KUMAR Petitioner
Through: Mr Himanshu Kaushik, Advocate.

versus

UNION OF INDIA AND ORS Respondents
Through: Mr Rajan Sabharwal with Ms Dipti
Jain, Advocates.

+ **CONT.CAS(C) 330/2019 & CMs 18033/2019, 30921/2019**

INSPECTOR PAWAN KUMAR Petitioner
Through: Mr Himanshu Kaushik, Advocate.

versus

ARUN KUMAR & ORS Respondents
Through: Mr Rajan Sabharwal with Ms Dipti
Jain, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
02.09.2019

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1. These two petitions arise out of common set of facts and are being disposed of by this common order.

2. W.P.(C) No.1487/2019 has been filed by Inspector Pawan Kumar, who was originally appointed in the Railway Protection Special Force ('RPSF')

as Sub Inspector ('SI') on 11th November, 1999. The challenge in the petition is to an order dated 4th February 2019, whereby the Petitioner has been transferred to the 7th Battalion of the RPSF/MLY (Hyderabad). One of the main grounds of such challenge is that the Petitioner was working on the Ex-Cadre post in the BCTC (Dog Squad), and that in terms of the Directive No. 18 dated 19th May, 2018 such 'Special Category Staff' are exempted from periodical transfer.

3. On 13th February, 2019, this Court passed the following order in W.P.(C) No. 1487/2019:

"2. Notice. Mr. Jagjit Singh, learned senior standing counsel for the Respondents accepts notice.

3. The Court finds that the Petitioner who is part of the Dog Squad has been ordered to report by the impugned order dated 4th February 2019 to the 7th Battalion RPSF/MLY at Hyderabad. The only reason given is 'administrative ground'.

4. Learned counsel for the Petitioner draws attention to a Railway Board Directive No. 18 dated 19th May 2018 which clarifies that as per para 3 (xi) of Directive 32 (revised), special category staff such as those who belong to the Dog Squad are "exempted from periodical transfer". It adds that they can be transferred "on request or an administrative interest".

5. Considering that that Petitioner came to the Dog Squad only in July 2017, the Court prima facie is of the view that the Respondents owe a better explanation for transferring him rather than mere "administrative interest". Consequently, the impugned order is kept in abeyance till the next date.

6. The Respondents will file their reply within two weeks and rejoinder thereto, if any, be filed before the next date.

7. List on March 2019.

8. This order be given dasti under the signatures of the Court Master.”

4. Subsequently on 27th March, 2019, the said interim order was made absolute.

5. The Railway Board by an order dated 5th March, 2019 directed that the Ex-Cadre post of Inspector at BCTC/Daya Basti would be operated as a ‘cadre post’ and subsequently, by an order dated 2nd April, 2019, attached the Petitioner with the 6th Battalion. Alleging that the above interim order dated 13th February, 2019 had been disobeyed, the Petitioner filed the contempt petition being Cont. (Cas) No.330/2019. In this contempt petition, the Petitioner also drew attention of the Court to an order dated 5th April, 2019, passed by the Commanding Officer (‘CO’) of the 6th Battalion, RPSF, placing the Petitioner under suspension.

6. In the said contempt petition on 16th April, 2019, the following order was passed:

“2. Notice. Mr. Rajan Sabharwal, learned counsel, accepts notice on behalf of the Respondents.

3. Each of the Respondents/Contemnors will remain personally present on the next date. In the meanwhile, they are permitted to each file an affidavit in response to the petition.

4. Till the next date the impugned order dated 5th April 2019 shall remain stayed. Further the status quo as it existed prior to 5th April 2019, and in compliance with the interim orders dated 13 February 2019 and 27 March 2019 in W.P. (C) 1487

of 2019, shall stand restored till further orders.

5. List on 22nd May, 2019. Dasti.”

7. In response to the contempt petition, a reply was filed by the Respondents stating, *inter alia*, that the Petitioner had intentionally and deliberately suppressed the fact that there was an enquiry initiated against him consequent upon a preventive check by the Vigilance Department in the Branch of Motor Transport Office where the Petitioner was posted as IPF (MTO), in the year 2015. It is pointed out that the Vigilance Department had by a letter dated 25th July, 2016, recommended that major penalty be imposed on the Petitioner, and that he should be transferred from the 6th Battalion. It is stated that in terms of the recommendations of the Vigilance Department, the Petitioner was issued a major penalty charge-sheet dated 15th November, 2016. In compliance with the further recommendations regarding his transfer, the Petitioner was transferred to the 14th Battalion, New Cooch Behar by the IG/RPSF by a letter dated 10th February, 2017.

8. According to the Respondents, “the Petitioner somehow manipulated to get the posting in BCTC/DBSI by a letter dated 10th May, 2017, under the CO 6th Battalion”. It is pointed out that the BCTC is part of the 6th Battalion, but that in order to be appointed to the BCTC, the minimum technical qualification is completion of a 28-week ‘dog handlers’ course and 5 years of service in the Dog Squad. It is pointed out that the Petitioner had neither the minimum technical qualification/experience nor had he served in the Dog Squad in any rank for five years, prior to his posting as Inspector (Dog Squad). Further, for the post of Inspector (Dog Squad), the incumbent is

required to be screened by a Screening Committee of 3 CSCs and an expert in Dog Squad. It is pointed out that prior to his posting at the Dog Squad, the Petitioner was not screened by the Screening Committee. Therefore, the posting of the Petitioner with the BCTC was against the recommendations of the Vigilance Department. It is pointed out that an enquiry has been ordered as to how the Petitioner was posted at BCTC, Daya Basti against “norms, rules and advice of the Vigilance Department”.

9. It appears that, in the meanwhile, on completion of the disciplinary enquiry, the CO 6th Battalion awarded the Petitioner the punishment of withholding his next annual increment for a period of six months, with cumulative effect, by an order dated 10th November, 2017. A confidential letter dated 22nd February, 2018 was received from the Vigilance, advising that the case may be remitted to the Revisionary Authority. Accordingly, the case was sent to the DIG, RPSF, by a letter dated 16th August, 2018. The said enquiry has resulted in the Petitioner being reverted to the rank of SI with effect from 15th February, 2019.

10. As far as the impugned transfer order is concerned, it was issued on 4th February, 2019, and a consequent movement order, was issued on 9th February, 2019. It is stated that from the evening of 8th February, 2019, the Petitioner stayed away from duty, due to a purported illness and, that therefore, the movement order could not be served upon him. However, after the interim order was passed by this Court on 13th February, 2019, the Petitioner on his own received the movement order dated 9th February, 2019 on 14th February, 2019. The Petitioner then got himself relieved from the

BCTC by making an entry in the daily diary (*roznamcha*) in his own handwriting on 14th February, 2019. Thus, according to the Respondents, the Petitioner has rendered the order dated 13th February, 2019, passed by this Court, infructuous.

11. On 11th February, 2019 a show cause notice ('SCN') was issued by the DIG-cum-CSC, RPSF to the Petitioner, for enhancement of the Petitioner's punishment in the departmental proceedings, in terms of the advice of the Vigilance Department. The Petitioner on 11th February, 2019 itself submitted a reply to the SCN, and thereafter on 15th February, 2019, he was issued an order by which his rank was reverted from Inspector to SI for three months. This was duly received on 15th February, 2019 by the Petitioner himself.

12. The Respondents have stated in reply to the contempt petition that the entire sequence of events suggest a connivance between the Petitioner and DIG-Cum-CSC/RPSF as the Petitioner was awarded the lowest punishment for the minimum period under the major penalty charge sheet whereas, under Rule 148.2 of RPF Rules 1987 the following major punishments are prescribed:

- (a) Dismissal from service (which shall ordinarily be a disqualification for future employment under the government).
- (b) Removal from service (which shall not be a disqualification for future employment under the government).
- (c) Compulsory retirement from service.
- (d) Reduction in rank or grade.

13. It is further pointed out by the Respondents that when the W.P.(C)

No.1487/2019 was listed before this Court on 27th March, 2019, the Petitioner did not raise any grievance about the order dated 15th February, 2019. Even in the contempt petition filed subsequently, no mention was made of this. It is further pointed out that on the one hand the Petitioner continued to remain in the 'sick list' on 11th February 2019, as per medical certificate and on the other, the Petitioner went to the office of the DG, RPF on 11th February, 2019 in uniform.

14. It is then stated in the said counter affidavit to the contempt petition as under:

“Neither the Petitioner revealed before the DG that he has been declared sick nor he went through proper channel as such the DG could not be informed in advance about the status of Petitioner. Since wearing a uniform during off duty or during sickness is in violation of Rule 122.2 & 123.1 of RPF Rules and the Petitioner instead of approaching the Railway doctor got the medical certificate issued from a private practitioner in violation of the procedure provided under Rule 272 of RPF Rules 1987, the Petitioner was put on suspension and a charge sheet dated 12.04.2019 (Annexure R-21) was served upon the Petitioner.”

15. It is submitted by the Respondents that since by an order dated 15th February, 2019, the Petitioner had been reverted to the rank of SI for three months, and the said order was never challenged, the letter dated 5th March, 2019, declaring the post of Inspector to be a 'cadre post', does not affect the Petitioner at all. It is also pointed out that the withdrawal of Ex-Cadre post from BCTC was necessitated as the Dog squad is being used by open line field formations and there is no Dog Squad functional in RPSF. The trained and eligible staff who can be posted in Dog Squad are not available in the

RPSF to be posted at BCTC. The Northern Railway has a separate wing of Dog Squad which is manned by the staff trained for the said job. By transferring the Ex-Cadre post of IPF BCTC to the cadre post of Northern Railway it facilitated the better trained officers eligible for the post of IPF/BCTC to be placed where their services could be better utilized. Moreover, since the rank of the Petitioner was reverted and the Ex-Cadre post was converted into the Cadre Post, by a letter dated 4th April, 2019 the Petitioner was to hand over the charge of the said post

16. The Respondents state that consistent with the order dated 13th February, 2019, the Petitioner was attached to the 6th Battalion itself, and that therefore, there was no disobedience of the order of this Court. On the same lines, a reply has been filed in W.P.(C) No.1487/2019. An additional affidavit was filed on 26th August, 2019.

17. This Court has heard the submissions of Mr Himanshu Kaushik, learned counsel for the Petitioner and Mr Rajan Sabharwal, learned counsel appearing for the Respondents.

18. From the documents placed on record, as well as the affidavits filed by the Respondents, it is plain to this Court that the writ petition has been filed by suppressing the crucial material facts. In particular, the Petitioner suppressed the fact that he had faced disciplinary enquiry and that his transfer order dated 11th July, 2017 was in fact passed pursuant to the recommendations of the Vigilance Department. The Petitioner has also been totally silent on how he managed to get posted in the Dog Squad, without complying with the mandatory requirements, as pointed out in the counter

affidavit of the Respondents.

19. The Railway Board's Directive No. 32 does not constitute a complete embargo on transfer of personnel belonging to the Dog Squad and such a transfer can take place in 'administrative interests'. It is indeed a mystery as to how the Petitioner, without having the minimum technical qualification and experience and without serving in a Dog Squad prior to his posting as Inspector, could have managed to get such a posting.

20. The Petitioner also did not draw the attention of the Court to the fact that the Petitioner was posted in Delhi for more than 16 years, in continuous spells, which exceeds the permissible time limit, as specified in Para 13 of the Directive-32 (Revised). Importantly, as pointed out by the Respondents, the Petitioner did not draw this Court's attention to the order dated 15th February 2019, whereby he was reverted to the rank of SI for a period of three months. He did not even challenge that order.

21. It is, therefore, not clear as to how the letter dated 5th March, 2019 converting the post of the Inspector to be a 'cadre post', can be said to adversely prejudice the Petitioner.

22. The Court is satisfied that the Petitioner has not come to the Court with clean hands and has failed to place the entire facts on record.

23. The Court, therefore, sees no merit in the writ petition. The interim order dated 13th February 2019, which was confirmed on 27th March, 2019 is hereby vacated.

24.The writ petition and the contempt petition are accordingly dismissed. Consequently, the order dated 16th April, 2019, passed in Cont. (Cas) No.330/2019 is also vacated. The contempt proceedings against the Respondents are hereby dropped. CM Nos. 18033/2019 and 30921/2019 are accordingly disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 02, 2019

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