

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.38324 of 2021

Nurdhin Khan

.....

Petitioner

Ms. K. Roy Choudhury, Advocate

Vs.

State of Odisha & Ors.

.....

Opposite Parties

Mr. S.K. Samal, AGA

CORAM: MR. JUSTICE SANJAY KUMAR MISHRA

ORDER
20.09.2022

Order No.
10.

This matter is taken up through hybrid mode.

2. Heard learned Counsel for the Petitioner, so also learned Counsel for the State.

3. The Petitioner has filed this Writ Petition with a prayer to issue Writ in the nature of Mandamus, directing the Opposite Parties to adhere the Police Circular Order No.341/2013, as at Annexure-6, and extend his period of deputation for further period of two years, taking into consideration the critical condition of his daughter, who is suffering from renal failure.

4. The brief facts leading to filing of the present Writ Petition is that the Petitioner was appointed as Constable on 15.12.2011 and posted at 4th Indian Reserve Battalion, Deogarh. As per the provisions under Rule 3 of Method of Recruitment and Conditions of Service of Sepoys/Constables in Battalion Rules, 2011, read with Police Circular Order No.341/2013, the Petitioner was deputed to OSAP 7th Bn., Bhubaneswar, for a period of two years vide Order dated 14.11.2019. In the said deputation Order, it was stipulated that he will be

repatriated back to his parent Battalion after completion of the period of deputation without waiting for further Orders from the Head Quarters, in terms of the said Order dated 14.11.2019, as at Annexure-1.

5. It is further case of the Petitioner that during his incumbency at 7th Battalion OSAP, there was no adverse remark against him. The daughter of the Petitioner is aged about two years, who is under treatment for Impaired Renal Function following three surgeries and her right kidney is not functioning properly and the Doctors have prescribed for transplantation of kidney, which can be done after 12 years i.e. when the baby will be of 14/15 years old. Since the condition of the daughter of the Petitioner is very critical, he approached the Authority concerned stating his problems and prayed to allow him to continue the deputation period for further two years and he also filed a grievance petition on 25.08.2021, so also appeared before the DIG (SAP), but no relief was granted to him.

6. On 27.09.2021, he filed another grievance petition through proper channel to Director General of Police, S.A.P., Bhubaneswar, and was called for personal hearing with I.G. (Personal) on 11.10.2021 but in vain. For the ongoing medical treatment of his daughter at Bhubaneswar, the Petitioner filed application before the Opposite Parties to consider his case sympathetically and extend his deputation period further, but the Petitioner's prayer yielded no fruit.

7. Stating all his grievances, the Petitioner filed W.P.(C). No.35365 of 2021, which was disposed of at the stage of admission on 15.11.2021 directing the Opposite Parties to consider the representation of the Petitioner and pass appropriate Order in accordance with law within a period of 15 days from the date of

communication/production of the certified copy of the said Order dated 15.11.2021.

8. Though the Order dated 15.11.2021 passed in W.P.(C) No.35365 of 2021 was communicated to the Authority concerned on 20.11.2021, no action was taken by the Authority concerned on the said representation of the Petitioner, despite direction of this Court.

9. It is further case of the Petitioner that since he completed ten years of service, as per Clause-3 of the Police Circular Order No.341/2013 W.R.T. Govt. Notification dated 22.03.2011, the period of deployment on deputation can be extended up to 7 years in phases. But, in the present case the Petitioner was not permitted for extension of period of deputation beyond two years on compassionate ground, for which he was being compelled to approach this Court by filing the present Writ Petition.

10. Being noticed, the Opposite Party Nos.3 to 5 appeared and filed their Counter Affidavit basically on the ground that pursuant to Office Order dated 07.11.2019 issued by the Special Armed Police, Head Quarters, Odisha, Bhubaneswar, the Petitioner, who belongs to 4th IR Battalion, Deogarh, joined at OSAP 7th Bn., Bhubaneswar on 16.11.2019 and relieved from 4th IR Bn., Deogarh on 15.11.2019 on deputation for a period of two years.

11. The 4th IR Bn., Deogarh, being the Petitioner's parent Battalion, the Petitioner's pay and allowances are drawn from his parent Battalion although the Petitioner was on deputation to OSAP 7th Battalion, Bhubaneswar.

12. On completion of two years period of deputation, the Petitioner

ought to have returned to his parent Battalion without awaiting for Order as per instruction of the Special Armed Police Headquarters, Odisha, Bhubaneswar, vide Office Order dated 07.11.2019.

13. It is further stand of the Opposite Parties that in obedience to Order dated 12.01.2021 of this Court, passed in W.P.(C). No.908 of 2021, and in pursuance of Office Order dated 07.11.2019, on completion of two years period of deputation at 7th Battalion, Bhubaneswar, the Petitioner has been relieved vide Order dated 18.11.2021 w.e.f. 15.11.2021 enabling him to join his parent Battalion, i.e. 4th Battalion, Deogarh.

14. The Petitioner, after being relieved, without any intimation and permission from the Authority, has remained absent from his duty and since 15.11.2021, neither he has reported joining before his parent Battalion nor has claimed any disbursement of salary component, for which the pay and allowances of the Petitioner has been held up vide Order dated 23.11.2021 of the 4th IR Battalion.

15. It is further stated in the Counter that in view of the amended guidelines as amended on 05.09.2013, as at Annexure C/5, deployment from one Battalion to another Battalion is not permissible as no Sipoy/Constables would be deployed to another Battalion irrespective of any ground of administrative requirement/representation.

16. Learned Counsel for the Petitioner submitted that the Police Circular Order No.341/2013, as at Annexure-6, is akin to the provisions prescribed under the amended Circular dated 05.09.2013, as at Annexure C/5. In the said pre-amended Circular Order, as at Clause-2, the period of deployment (on deputation) will be for a period up to three years and can be extended up to seven years in phases.

17. He further submits that vide Clause-6 of the said Office Order, though there is a similar provision that no Sipoy/Constable will be deployed (on deputation) to another Battalion, irrespective of any ground/administrative requirement/representation, still the representation of the Petitioner was considered by the concerned Authority and he was deputed to 7th OSAP Battalion, Bhubaneswar, for two years on consideration of his representation in view of the ailment of his baby. The Authority concerned ought to have considered his representation instead of rejecting the same on technical ground in terms of the revised Police Circular Order dated 05.09.2013. though similar restriction was also there in the pre amended Circular, as at Annexure-6.

18. In addition to the said contentions, learned Counsel for the Petitioner also brought to the Notice of this Court vide an Additional Affidavit filed on 07.04.2022, annexing thereto Order dated 25.08.2021 passed by the Odisha Police State Headquarters, Cuttack, vide which 16 Sipoy of different Battalions, who are currently working under the Security Wing, Bhubaneswar, on deputation basis, have been redeployed to Districts vide S.P. Head Quarters Office Order NO.857/Pers-II, dated 30.07.2021 and are relieved in order to join their parent units from where they will be relieved and join their respective Districts on redeployment basis with further observation that on joining in the Districts they are attached to Security Wing, Bhubaneswar, for a period of 2 years, taking into consideration their past experience and expertise in performing PSO duties, handling IEDs and undergoing various training courses required for Security Wing.

19. It is further submitted by the learned Counsel for the Petitioner that though 16 Sipoy belong to various Battalions as indicated vide

Order 25.08.2021, they were permitted to work on deputation basis at Security Wing, Bhubaneswar.

20. Learned Counsel for the State submits that the said Security Wing, Bhubaneswar, is a separate Wing and the same is not a Battalion. Hence, such redeployment of Sipoy/Constables from different Battalions to work as Constable in District Police in the Security Wing, Bhubaneswar, is permissible and the same is not contravening to the amended Circular dated 05.09.2013, as at Annexure-C/5 and rather, the said cases of redeployment/deployment on deputation, comes under Clause-A of the said Circular, which permits for deployment on deputation from one Battalion to another Battalion, which reads as follows:

“A. DEPLOYMENT ON DEPUTATION FROM ONE BATTALION TO ANOTHER DEPUTATIONIST ORGANISATION.

1. Sepoys/Constables of one Battalion will become eligible for deployment (on deputation) to other deputationist Establishment after completion of 7 years of service as on 1st day of January of that year in the parent Battalion.

2. The period of deployment (on deputation) will be for a period upto 3 years and can be extended up to 7 years in phases.

3. A Sepoy/Constable will not be considered for a second or subsequent deputation unless he serves an equivalent period of his first deputation in his parent cadre.

4. The above principles vide Sl.No.1, 2 and 3 will not be applicable for deployment (on deputation) to the Sepoys/Constables for posting to SOG/SIW Organization. Any Police personnel can be deployed on

deputation to SOG/SIW irrespective of his duration of service.

5. After completion of the deployment (on deputation) period, they should be repatriated back to the parent cadre without waiting for further order. The deputationist organisation can also repatriate prematurely under intimation to SP HQRS if the person is involved in criminal case or the performance is found not satisfactory.”

21. In view of such submissions made by the learned Counsel for the Parties, so also provisions prescribed under Clause-A of the Police Circular Order No.341/2013, as quoted above, this Court is of the view that taking into consideration the health condition of the daughter of the Petitioner, the Authority concerned can do well to deploy him on deputation to another deputationist Organization as was being done in case of similarly placed sixteen Sipoy vide Order dated 25.08.2021, issued by the Police (Personnel), Odisha, Cuttack annexed to the Additional Affidavit filed by the Petitioner.

22. Learned Counsel for the Petitioner submits that Petitioner may be permitted to give a representation to the concerned Authority to take a decision afresh in said regard as similarly placed Sipoy/Constables vide Order dated 25.08.2021, have been permitted to work on deputation at Bhubaneswar, in terms of the said provision under Clause-A of the revised Police Circular Order dated 05.09.2013.

23. In view of such submission of learned Counsel for the Petitioner so also learned Counsel for the State, the Petitioner may submit a fresh representation to the Director General of Police and Inspector General of Police Odisha, Cuttack, through proper channel for consideration of his case sympathetically for deputation to another Organization in

terms of Clause-A of the said amended Circular dated 05.09.2013 as at Annexure- C/5, within a period of two weeks from the date of obtaining the certified copy of this Order.

24. This Court is hopeful that the Authority concerned would do well to consider the representation of the Petitioner and take a pragmatic and positive decision in the said regard in terms of Clause-A of the Police Circular Order No.341/2013 with Amendment dated 05.09.2013 within a period of four weeks from the date of receipt of the Representation, keeping in mind the predicament of the Petitioner enabling him to provide proper medical treatment and facilities to his ailing daughter.

25. Accordingly, the Writ Petition stands disposed of. No Order as to cost.

Banita

