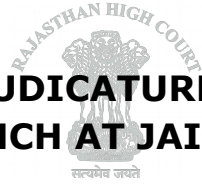




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 15598/2022

Sunil Kumar S/o Shri Hoshiyar Singh, Aged About 38 Years, R/o
Kankreu Kala, Thana Malsisar, District Jhunjhunu, Rajasthan.

----Petitioner

Versus

1. Senior Divisional Security Commissioner, Railway Protection Force, Jaipur.
2. Divisional Security Commissioner, Railway Protection Force (R.p.f.), North-Western Railway, Jaipur.
3. Chief Security Commissioner, NWR RPF, Jaipur.
4. Union of India through Ministry of Railways, New Delhi - 110001.
5. The Director General, Railway Protection Force, Railway Bhawan, Raisina Road, New Delhi - 1.

----Respondents

For Petitioner(s) : Mr. Govind Purohit
For Respondent(s) : Mr. Anand Sharma

HON'BLE MR. JUSTICE SAMEER JAIN
Order

Reserved on: 10/12/2024

Pronounced on: 6/01/2025

1. The present petition is filed with the following prayers:

"a) Order bearing no.36/2022 dated 13.10.2022 (Annexure - 4) transferring the petitioner from North Western Railway Zone posted at Kanakpura outpost, Jaipur Post, Jaipur Division to Southern Railway may kindly be quashed and set aside;

b) Any other order or direction in connection with or consequent to the impugned order dated 13.10.2022 (Annexure - 4) issued by respondents during pendency of this writ petition may also be quashed and set aside."

2. The factual matrix of the instant case is as follows:



2.1. The petitioner was appointed on the post of Sub-Inspector in Railway Protection Force (RPF) in the year 2010 and is presently holding the said post as a substantive employee.

2.2. The petitioner vide order dated 24.11.2017 was transferred from Northern-Eastern Zone (Original Cadre) to Northern-Western Zone on account of his personal reasons. Due to said inter-zonal transfer the petitioner had to compromise with his seniority.

2.3. On 12.01.2022 an FIR bearing No.08/2022 was registered against the petitioner qua Anti Corruption Bureau (ACB), Jaipur under the provisions of Section 7 of the Prevention of Corruption Act, 1988 (for short 'the Act of 1988').

2.4. On 04.03.2022, charge-sheet bearing No.63/2022 was filed in the aforesaid criminal matter qua which trial is pending. Moreover, departmental proceedings on the same set of charges were also started. Subsequently, on 23.03.2022, the aforesaid departmental proceedings were stayed by the Court.

2.5. Consequently, vide order dated 13.10.2022 the suspension order of the petitioner was revoked and petitioner was directed to report back on duty. Thereafter, vide transfer order dated 13.10.2022 numbering 36/2022 the petitioner was transferred from the North Western Railway Zone (Kanakpura Outpost Jaipur) to Southern Railway.

3. In this backdrop, learned counsel for the petitioner had submitted that the said transfer order suffers from malafides as the same is against the transfer policy *sans* jurisdiction.



4. It was further submitted that Divisional Security Commissioner had no jurisdiction and authority to pass such orders. Moreover, copy of the said transfer order was not supplied to the petitioner.

5. Furthermore, it was submitted that the said transfer order resulted in the loss of seniority qua the said post.

6. Additionally, it was submitted that the said transfer order was not the outcome of administrative exigencies. It was further submitted that the petitioners' wife is working in the Government School and their two daughters are studying in a primary school. Therefore, the said transfer which is sought on personal grounds is against the transfer policy of the Railway Protection Force Rules, 1987 (for short 'the Rules of 1987'), more particularly, Rules 90, 93.9, 99 and 153.4, and against the direction dated 18.09.2014 as well as office memo dated 02.02.2010, which categorically provides that on account of personal family reasons the working couple (spouse policy) should be posted at the same/nearest station(Annexure-7).

7. Further, it was submitted that to ensure petitioners' presence for trial in ongoing criminal proceedings, their posting should remain unchanged. To substantiate the above said contentions, reliance was placed upon the dictum encapsulated in **Somesh Tiwari Vs. Union of India & Ors.** reported in **AIR 2009 SC 1399** and **S. Suresh Vs. Union of India & Ors.** registered as **Writ Petition (C) No.29239/2016**.

8. *Per contra*, learned counsel for the respondents had stoutly opposed the contentions made by the learned counsel for



the petitioners and had prayed for dismissal of the present petition on the following grounds:-

8.1. That the Divisional Security Commissioner acted under the directions of Principal Chief Division Security Commissioner, who is competent authority to transfer any employee from one Railway Zone to another Zone in R.P.F, therefore in light of the said delegated duties, the Divisional Security Commissioner was a competent authority to make the said transfer.

8.2. Reliance was placed upon the order dated 13.10.2022 (Annexure – R/1) and letter/order No.3/66 dated 13.10.2022 (Annexure – R/2).

8.3. Furthermore, it was submitted that track record of the petitioner was under scrutiny and there were allegation of accepting illicit payments to the tune of Rs.5000/- against the petitioner.

8.4. It was further submitted that on account of the above said allegations the petitioner was arrested on 10.01.2022, therefore if the petitioner resides at Jaipur or any other place, the petitioner might tamper with the evidences and influence the witnesses.

9. Further, it was submitted that according to the policy of Railways and the Rules of 1987, public interest is supreme, therefore considering the administrative exigencies the said transfer of the petitioner was made effective by the competent authority.

10. Lastly, whilst placing reliance upon the dictum encapsulated in the judgments titled as **State of U.P. & Ors. Vs.**



Gordhan Lal reported in **2004(11) SCC 42** and **Union of India Vs. S.L. Abbas** reported in **1993(4) SCC 357**, it was submitted that the transfer of an employee is an incidence of service and Court cannot interfere in the transfer order unless the same is vitiated by malafide.

11. Heard and considered.

12. Considering the arguments advanced by the learned counsel for the parties, upon assiduously scanning the records this Court has made the following observations:-

12.1 That the petitioner was appointed on the post of Sub-Inspector in the year 2010 at Northern-Eastern Zone and on account of personal reasons, the petitioner made a request for the transfer, thereafter petitioner was transferred on Inter-Zone basis on 24.11.2017.

12.2 That on 12.01.2022 allegations qua corruption were levelled against the petitioner and for the same an FIR No.08/2022 was registered qua A.C.B under the provisions of Section 7 of the Act of 1988 qua which charge sheet was filed and departmental proceedings were initiated, however the same were stayed by the Court vide order dated 23.03.2022.

12.3. It is noted that the suspension order of the petitioner was also revoked vide order dated 13.10.2022 and petitioner was directed to report on duty.

12.4. It is further noted that the petitioner was transferred from North Western Railway Zone to Southern Railway, by the impugned transfer order dated 13.10.2022 (Annexure – 4).



12.5. Upon perusal of the Rules of 1987, more particularly, Rule 93, it is analyzed that to effect transfer of the employee, specific approval of competent authority i.e., Principal Chief Security Commissioner is required, and the said requirement is fulfilled by the respondents in the present case.

12.6 That as per Rule 93.9 of the Rules of 1987, which states that if any members of Force are facing departmental proceedings and transfer qua the same is due, then in the public interest and qua expeditious finalization of disciplinary proceedings transfer can be made.

12.7 That according to the settled position of law, as referred by learned counsel for the respondents in the case of **Gordhan Lal (supra)** and **S.L. Abbas (supra)**, wherein it is opined that the Court cannot interfere with the transfer orders unless the same is made malafidely, illegally and is *dehors* the policy or law. Therefore, relying upon the said judgments and the ratio spelled out therein, it is analyzed that considering the public interest, administrative exigency and in the facts and circumstances of the case, the said transfer was carried out after revoking the suspension order and after analyzing the case and allegations levelled under the provisions of Prevention of Corruption Act. Moreover, it is analysed that petitioner was permitted inter-zonal transfer earlier in the year 2017 on account of personal reasons.

12.8. It is further analyzed that disciplinary proceedings are stayed by the Court and the said order may remain in effect for an extended period. Therefore, administrative exigencies cannot be overlooked for such a prolonged duration.



12.9 That the judgments cited by learned counsel for the petitioner are based on distinct factual matrix and circumstances as that of present case i.e. when the case under the Act of 1988 is ongoing against the litigant, therefore the same are distinguishable.

12.10. It is further noted that the petitioner had availed the interim relief passed by the Court vide order dated 14.12.2022 wherein, transfer order and relieving order of the petitioner were stayed till 25.01.2023 and thereafter significant amount of time has elapsed.

13. In light of the aforesaid facts and circumstances this Court is not inclined to interfere in the impugned order dated 13.10.2022 and deems it apposite to dismiss the present petition.

14. Accordingly, the present petition is dismissed. Pending applications, if any, stands disposed of.

(SAMEER JAIN),J

Preeti Asopa