

(2010) 09 DEL CK 0116

Delhi High Court

Case No: Writ Petition (C) No. 5474 of 2010 and C.M. No. 10780 of 2010

Insp. (M) S.S. Panwar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Sept. 22, 2010

Hon'ble Judges: J.R. Midha, J; Gita Mittal, J

Bench: Division Bench

Advocate: Ashwani Bhardwaj, for the Appellant; Barkha Babbar, for the Respondent

Final Decision: Dismissed

Judgement

Gita Mittal, J.

This writ petition has been filed assailing a transfer/attachment order dated 2nd August, 2010 and 9th August, 2010.

2. The petitioner is an inspector with the CRPF and was posted with the 103 Battalion of the Rapid Action Force. We find that pursuant to the order No. E-TEN-1/2010-RAF-Admn-03 dated 17th May, 2010 issued by Sh. D.R. Pathak, Inspector General of the Police, Rapid Action Force, a committee of officers had been constituted for conducting the court of inquiry to fix the liability and other facts detailed in Appendix-A thereto. The court of inquiry was directed to conduct its proceedings as per standing order No. 08/2001 and submit a report within 15 days of the passing of the order.

3. It has been submitted by learned Counsel for the petitioner that so far as the present petitioner is concerned, as per annexure-A aforesaid, the court of inquiry has been directed to look into the following aspects:

xxx02. Not taking action in time by Inspector (M) S.S. Panwar on the note/remarks dated 12.12.2008 pertaining to embezzlement submitted by ASI(M) Parveen Kumar and to cause mental tension to the official, to use unparliamentarily language and to misuse his position by abusing. Apart from this the recovery of Rs. 75,672/- to be made from Inspector (M) S.S. Panwar, 106 Bn has booked in 20 installments in

11/2008 but on what basis stopped by 103 Bn from the month of 4/2009 and the Bill of drawing/refund of the recovery amount by 103 Bn, has been sent to the office to Pay and Accounts whereas as per rule the Refund Bill had to be prepared by 106 Bn. Under what authority the recovery of the above amount has been stopped and Bill for refund of the recovered amount has been sent to Pay and Account Office, whether the action was justified.

03. The total amount of pay to be received by Inspector/M S S Panwar under the Sixth Pay Commission, payable amount and the amount to be recovered, the 100 percent arrears of the suspension period from 10.7.2007 to 28.2.2008 has been paid to the Official by EDP Cell by making calculation on the basis of the actual basic pay but not to make the recovery of the excess payment by 103 Bn and how much recovery is required.

4. It is an admitted position that the proceedings of the court of inquiry have not been completed till date.

5. In the meantime, it appears that Assistant Sub-Inspector (M) Parveen Kumar, also a personnel of the Rapid Action Force, filed a WP(C) No. 4515/2010 in this Court praying for a direction to the present respondents to take further action and decision on his complaints dated 12th December, 2008, 24th December, 2008, 10th February, 2010 and 2nd March, 2010 with regard to irregularities relating to financial dealings and transactions of persons pertaining to the accounts branch of 103 Battalion including allegations against the present petitioner. In this writ petition, an order dated 15th July, 2010 was passed directing the respondents to consider and take action on the aforementioned complaints in accordance with prescribed procedure. The respondents were directed to act expeditiously in the matter.

6. The respondents have contended that in view of the ongoing court of inquiry in which the allegations against him were also required to be considered, the Inspector General of Police of the RAF by a signal dated 26th July, 2010 transferred the petitioner from 103 Battalion to 104 Battalion. Such action was taken for administrative reasons and to ensure independent and fair proceedings in the court of inquiry so that no manipulation of records could take place and witnesses could not be influenced.

7. It appears that the petitioner sought a personal interview with the Inspector General of Police on 28th and 29th July, 2010 and projected his problems. Keeping in view the problems put forth by the petitioner, the Inspector General of Police reconsidered the entire matter and has stayed the orders of transfer. A signal dated 2nd August, 2010 has been issued directing that instead of transfer, the petitioner would stand attached for a period of three months with 104 Battalion on administrative grounds.

8. Before us it is an undisputed fact that the said order of attachment stand implemented. Ms. Barkha Babbar, learned Counsel for the respondents has submitted that the petitioner stands relieved from 103 Battalion on 11th August, 2010 and has joined the 104 Battalion.

So far as the court of inquiry is concerned, both parties submit that the same has not concluded.

9. Learned Counsel for the petitioner has contended that the allegations against the petitioner which are under investigation are not supported by the record of the respondents. He has placed reliance on the communication dated 16th June, 2010 issued by the Commandant of 106 Battalion which suggests that certain erroneous recoveries may have been effected against the petitioner. Elaborate reference has been also made by learned Counsel to the details of the recoveries which have been effected from the petitioner and it is submitted that the recovery of amounts is far exceeding the amount recovery whereof could have been effected.

10. Be that as it may, in the present proceedings, this Court is not required to go into the irregularities or validity of the recoveries which have been effected. The court of inquiry which has been constituted is examining this aspect and the petitioner shall be at liberty to place his entire submissions before the board of officers which is conducting the same.

11. The learned Counsel for the respondents places reliance on the special audit which was conducted and had submitted a report on 25th February, 2010. This audit report would obviously be also considered in the court of inquiry which would then take a final view before making its recommendations.

12. So far as the challenge to the order of attachment is concerned, learned Counsel for the petitioner has contended that the same is contrary to the instructions contained in Circular Order No. 01/2008 dated 12th May, 2008.

13. Perusal of this circular shows that the same relates to demand by units for attachment of personnel on the ground of increased needs because of large scale expansion of the posts and sanction of new institutions. The same does not relate to attachments for reasons of completion of a court of inquiry or disciplinary proceedings. The petitioner stands attached because of the ongoing court of inquiry. This circular would have no application to a case such as the one in hand.

14. We are informed that after his attachment, the petitioner has substantially been on leave from the unit to which he has been attached and even presently is on leave with effect from 13th September, 2010 to 1st October, 2010 with liberty to avail both 12th September, 2010 and 2nd October, 2010 as gazette holidays.

15. Learned Counsel for the petitioner submits that the petitioner has no intention to delay the proceedings in the court of inquiry and shall ensure that he does not take any unreasonable leave and facilitates expeditious completion of the inquiry.

16. The petitioner shall ensure that he facilitates expeditious completion of the court of inquiry. The respondents shall also ensure that the same is conducted and completed at the earliest, preferably within the period of attachment of the petitioner. In case, the same is not possible, the respondents shall proceed in the matter in accordance with applicable law and procedure.

The present writ petition is hopelessly misconceived and unwarranted.

17. In view of the above discussion, we find no merit in the present writ petition and application which are hereby dismissed.