

SUPREME COURT OF INDIA

Sarbdeep Singh Virk

Vs.

State of Punjab

(Tarun Chatterjee and J.M. Panchal JJ.)

16.05.2008

JUDGMENT

J.M. Panchal, J.

1. Leave granted.

2. The instant appeal is directed against interim order dated April 25, 2008, rendered by the Division Bench of the High Court of Punjab and Haryana at Chandigarh in CWP No. 6821-CAT of 2008 staying the order dated April 3, 2008 passed by the Central Administrative Tribunal, Chandigarh Bench in Original Application No. 692-CH of 2007 (1) holding that the repatriation of the appellant to the State of Maharashtra under order of Union of India dated April 10, 2007 as also his joining in his parent cadre under the State of Maharashtra is valid, (2) quashing the order of suspension dated April 4, 2007 as well as holding that final authority to take disciplinary action after termination/expiry of the period of deputation vests with the Central Government and (3) directing the State of Punjab to remit the entire matter relating to the disciplinary proceedings against the appellant to the Central Government for taking a final decision.

3. The appellant is a 1970 batch IPS Officer of Maharashtra cadre. In the year 1984 he was specially sent to Punjab to combat militancy. It is the case of the appellant that the single minded devotion to get the State of Punjab free from militancy bore fruits and today the State has become one of the most peaceful and prosperous States in India. The appellant was promoted as Director General of Police, Punjab, and he took several measures for public good. He issued several instructions to the police force such as (i) not to accept Diwali gifts, (ii) not to heed to any political interference and follow the rule book (iii) not to bow to pressures in cases of land grabbing even if political leaders were involved, (iv) to adopt a professional attitude, etc. According to him because of his commitment to duty he earned wrath of certain sections of politicians and, therefore, false and frivolous allegations were leveled against him by the respondent Nos. 5 and 7. After the formation of new Government the respondent Nos. 5 and 7 requested through proper channel for pre-mature termination of the repatriation of the appellant. The appellant also sought pre-mature termination of repatriation. The Government of Punjab did not object to the request of the appellant for pre-mature termination of his repatriation. On March 23, 2007 a First

Information Report being FIR No. 98 of 2007 was lodged in which one Vijay Pal Singh was named as an accused. It is the case of the respondent that during police interrogation, said Vijay Pal Singh allegedly stated that he had purchased some land for the appellant. On March 23, 2007 the investigating agency had moved an application before the competent court seeking discharge of accused Vijay Pal Singh from FIR No. 98 of 2007. On the basis of the statement made by Vijay Pal Singh during his interrogation, a departmental inquiry was sought to be initiated against the appellant and the appellant was placed under suspension by order dated April 4, 2007. Apprehending arrest in a false case the appellant moved an application seeking anticipatory bail with reference to FIR No. 98 of 2007. On notice being served, the Investigating Officer made a statement before the court that the appellant was not required with reference to the said case. The appellant moved Criminal Miscellaneous case No. 54610-M of 2007 seeking transfer of investigation of the criminal case to CBI. The respondent State again made a statement on January 16, 2008 that the appellant was not required in connection with FIR No. 98 of 2007. The appellant was served with article of charges. Meanwhile, the Government of Maharashtra gave its no objection certificate to the Central Government for pre-mature termination of repatriation of the appellant. The Government of Maharashtra also sent a copy of letter dated March 28, 2007 to the Government of Punjab, but no objection was raised by the Government of Punjab. For the first time on April 12, 2007 the Government of Punjab wrote to the Central Government that by an order dated April 4, 2007, issued by the Principal Secretary to the Government of Punjab, the appellant was put under suspension. The Central Government, by an order dated April 10, 2007, ordered pre-mature termination of the repatriation of the appellant from Punjab to his parent cadre Maharashtra. The order dated April 10, 2007 was neither reviewed nor recalled and is still in force. On April 12, 2007 the Government of Punjab raised an objection to the pre-mature termination of the repatriation of the appellant from Punjab to Maharashtra on the ground of his alleged suspension from service by order dated April 4, 2007. A case of possession of disproportionate assets was registered by the Punjab Vigilance Bureau against the appellant and he was arrested on September 9, 2007. Before effecting arrest of the appellant neither the Delhi Police nor the Maharashtra Government nor was the Central Government informed. Before registration of the said case no explanation or comment was sought for from the appellant. As the appellant was of the opinion that order suspending him as well as registering a case against him for possessing disproportionate assets were illegal, he moved Central Administrative Tribunal, Chandigarh Bench for quashing of those orders. The Tribunal, by order dated April 3, 2008, partly allowed the Original Application moved by the appellant and held that his repatriation to the State of Maharashtra under order of Union of India dated April 10, 2007 as well as his joining parent cadre under the State of Maharashtra was valid. The Tribunal further held that the order of suspension dated April 4, 2007 was bad in law and quashed the same. It was also held by the Tribunal that final authority to take disciplinary action after termination/expiry of the period of deputation was the Central Government and directed the State of Punjab to remit the entire matter relating to the disciplinary proceedings initiated against the appellant to the Central Government for taking a final decision.

4. Feeling aggrieved by the above mentioned findings and directions given by the Tribunal, the State of Punjab has invoked extraordinary jurisdiction of the High Court under Article

226 of the Constitution of India by filing CWP No. 6821-CAT of 2008. The High Court of Punjab and Haryana, by order dated April 25, 2008, has stayed the operation of the order dated April 3, 2007 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, in Original Application No. 692-CH of 2007, giving rise to the instant appeal.

5. This Court has heard the learned counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the appeal.

6. As noticed earlier the Union Government, by order dated April 10, 2007, has repatriated the appellant to the State of Maharashtra whereas the order of suspension dated April 4, 2007 is quashed by the Tribunal. Prima facie this Court is of the opinion that after termination/ expiry of the period of deputation the final authority to take disciplinary action against the appellant would be the Central Government. The respondent No. 3 herein, i.e., the State of Maharashtra had filed written statement before the Central Administrative Tribunal. In the said written statement it was mentioned that the appellant had reported for duty in the State of Maharashtra on April 27, 2007 and was allowed to join the duties in his parent cadre after his repatriation to Maharashtra by the Central Government. It was further mentioned in the reply that the appellant had joined the Government of Maharashtra on April 27, 2007 and as no post in the rank of Director General of Police was vacant he made to wait compulsorily. The statements made by the State of Maharashtra in its written statement filed before the Central Administrative Tribunal are reiterated before this Court by the learned counsel for the State of Maharashtra. As the appellant has already joined duties in parent cadre pursuant to the order issued by the Central Government, this Court is of the opinion that the High Court was not justified in staying the declaration made by the Tribunal that repatriation of the appellant from the State of Punjab to the State of Maharashtra was valid. The order dated April 10, 2007 repatriating the appellant to the State of Maharashtra will have to be given effect notwithstanding the order of suspension dated April 4, 2007. The declaration made by the Tribunal that the Central Government is competent to take disciplinary action against the appellant and directing the State of Punjab to remit the entire matter relating to the disciplinary proceedings initiated against the appellant to the Central Government should not have been stayed by the High Court.

7. On the facts and in the circumstances of the case this Court is of the opinion that the interim order dated April 25, 2008, passed by the High Court of Punjab and Haryana in CWP No. 6821-CAT of 2008, deserves to be modified by clarifying that it would be open to the State of Maharashtra to give posting to the appellant on his repatriation to the State of Maharashtra from the State of Punjab.

8. For the foregoing reasons the appeal partly succeeds. It is clarified that in view of repatriation of the appellant to the State of Maharashtra under order dated April 10, 2007 of the Union of India it would be open to the State of Maharashtra to give posting to the appellant as Director General of Police. This Court is informed by the learned counsel for the parties that CWP No. 6821-CAT of 2008, filed by the State of Punjab, is listed for final disposal before the High Court of Punjab and Haryana at Chandigarh on May 21, 2008. Having regard to the facts of the case the High Court of Punjab and Haryana is requested to

dispose of CWP No. 6821-CAT of 2008 finally on or before May 31, 2008. The appeal is allowed to the extent indicated hereinabove.

9. There shall be no order as to costs.