

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.90 of 2024

Sri Karma Bhutia

Son of Gomchen Bhutia, permanent resident of Atisha Road, PO & PS Kalimpong, Sub-Division Kalimpong, District Kalimpong, West Bengal, PIN 734301, aged about 59 years.

..... Appellant(s)

V E R S U S

1. The Union of India,
Represented by the Secretary, Ministry of Home Affairs, Government of India, having his office at NDCC-II Building, Jai Singh Road, Near Jantar Mantar, 110001.
2. The Union of India,
Represented by the Secretary, Ministry of Home Affairs, Government of India, having his office at NDCC-II Building, Jai Singh Road, Near Jantar Mantar, 110001.
3. The Director General of Police,
Central Reserve Police Force, Block-1, Central Government Office Complex, Lodhi Road, New Delhi, 110003.
4. The Inspector General of Police (Pers),
Central Reserve Police Force, Central Government Office Complex, Lodhi Road, New Delhi, 110003.

..... Respondent(s)

For Appellant(s)	:	Mr. Somik Deb, Senior Advocate. Mr. P. Chakraborty, Advocate.
For Respondent(s)	:	Mr. B. Majumder, Dy. S.G.I.
Date of hearing & delivery of judgment	:	29th July, 2024.
Whether fit for reporting	:	YES

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

JUDGMENT & ORDER (ORAL)

Heard Mr. Somik Deb, learned senior counsel for the appellant and Mr. B. Majumder, learned Dy. S.G.I. for the respondents.

[2] Appellant was posted as Commandant, CRPF in Tripura on 09.08.2021. Upon his promotion on 28.03.2024 as DIG (GD), he was transferred under the office of IG, Madhya Pradesh. His representation dated

08.04.2024, not to transfer him on certain grounds, inter alia, (a) need to care for his ailing parents since the writ petitioner is the only male child, (b) his daughter is studying in Class X at Agartala based school and his transfer would cause potential disruption to her studies by a school change, and (c) his impending retirement on 31.07.2025 with a request to provide an opportunity to serve on the basis of terminal posting in Tripura Sector Headquarters itself was declined by the impugned order dated 28.05.2024 issued by the IG (Pers) with approval of the Director General of CRPF (Annexure R/12) on the following grounds:

“10. Upon reviewing the officer’s representation dated 13/05/2024, it is observed that the requests and grounds presented are identical to those in his earlier representation dated 08/04/2024. Moreover, the reasons provided lack merit and do not warrant consideration, as they are general in nature and do not offer any new or compelling arguments. Regarding the officer’s request for cancellation of his transfer to MP Sector Headquarters and retention in Tripura Sector Headquarters as a terminal posting, it is noted that Standing Order No.05/2022 supersedes the earlier guidelines in Standing Order No.07/2014. As per Standing Order No.05/2022, paragraph 3(C), requests for transfer on compassionate grounds, including terminal posting, are considered based on merit, posting particulars, attached documents, available vacancies, and administrative and operational requirements. Shri Karma Bhutia, DIG is posted in Tripura Sector Hqr wef 09/08/2024 and completed over 2 years and 9 months period there. Besides, he had spent over 20 years in the North East Region in various postings throughout his career. Further, no document in support of illness of parents is submitted by the officer alongwith his representation. Shri Dinesh Singh, DIG (IRLA-3999) has reported on his transfer from O/O IG NES, Shillong to O/O IG Tripura Sector on 21/05/2024 (AN), therefore presently no post of DIG is vacant in the O/O IG Tripura Sector or anywhere in Tripura. Hence request of officer for his retention in Tripura Sector until superannuation, could not be accommodated on administrative and operational requirements.

11. The officer’s earlier request for retention in Tripura Sector until superannuation, made on 08/04/2024, was considered sympathetically by the Transfer Representation Standing Committee but could not be accommodated due to existing transfer policies.

12. Therefore, the officer's renewed request for terminal posting in his representation dated 13/05/2024 is not justified and acceptable, as it does not provide any new grounds or compelling reasons for consideration.

13. The officer's transfer to O/O IG, MP Sector, located in Bhopal, the state capital of Madhya Pradesh, provides access to excellent medical facilities including educational facilities. Therefore, the officer can arrange medical treatment for his ailing parents, if needed, in Bhopal including education of his child. Additionally, the officer can apply for leave to address personal issues as required. If needed the officer can be allowed to retain his Government Quarter in Agartala to facilitate continuation of education of his daughter from Agartala. The transfer to O/O IG, MP Sector was made considering operational and administrative requirements, available vacancies, and the officer's suitability for the posting. In light of these circumstances, the officer's request to cancel his transfer to O/O IG, MP Sector and retain him in O/O IG, Tripura Sector lacks merit and is not justified.

14. In conclusion, the representation dated 13/05/2024 submitted by Shri Karma Bhutia, DIG (IRLA:3142), seeking cancellation of his transfer to MP Sector Headquarters and retention in Tripura Sector Headquarters as a terminal posting, has been considered sympathetically but not acceded to by the competent authority as it lacks merit and grounds. The request is deemed unjustified and without sufficient cause.

15. This issues with the approval of Director General.”

[3] In the meantime, one Dinesh Singh, DIG posted in Siliguri has been transferred and posted in Tripura on 21.05.2024. Writ petitioner was relieved w.e.f. 08.05.2024.

[4] Being aggrieved, writ petitioner approached the Writ Court. The learned Writ Court declined to interfere in the matter and dismissed the writ petition holding as under:

“10. I have taken into consideration the decision as referred to by Mr. Deb, learned senior counsel for the petitioner in the case of **Kendriya Vidyalaya Sangathan (supra)**. It is said that though transfer is incidental to service and cannot be interfered ordinarily, however, it can be interfered if it is at the instance of any mala fide or if it is passed in violation of any statutory guidelines or any extraneous reasons. Similar observation has been made in the case of **Registrar General(supra)**. In the case of **Registrar General(supra)**, at para 71, the Hon'ble supreme Court held that “The then Judge on the Transfer Committee, in his deposition

before JIC, had clearly admitted that he had not gone into the annexures, which were attached with the representation of the petitioner.” In that circumstance, the Hon’ble Supreme Court held that “Non consideration of the relevant material and consideration of the extraneous material would come into the realm of irrationality. An action which is arbitrary, irrational and unreasonable would be hit by Article 14 of the Constitution of India. We, therefore, find that the rejection of the representations of the petitioner dated 9-7-2014 and 11-7-2014, would also not stand the scrutiny of law.”

11. From the above observation of the Hon’ble Supreme Court in the case of **Registrar General(supra)** it is clear that while considering the representation of the petitioner of the said case, the Transfer Standing Committee could not consider all the documents enclosed to the representation. Furthermore, it considered some extraneous material which was definitely an arbitrary exercise of the jurisdiction vested upon the Transfer Standing Committee. True it is, when a responsibility is given to a Committee to consider each and every aspect of the representation, then, it is reasonable and legitimately expected that the said Committee would consider all the grievances raised and mentioned by a person in his representation. Moreover, in the case of **Registrar General (supra)**, the Transfer Standing Committee had considered some extraneous materials which formed the decision making process arbitrary, irrational and unreasonable. It is not the case here.

12. In the instant case, what this Court finds that the respondents have considered each and every point raised by the petitioner in his representation. All the points were considered and dealt with by the Transfer Representation Standing Committee. As I have already stated that the second representation which was submitted at the direction of the Court, was considered and decided by the Director General of CRPF himself. He meticulously perused and considered the grievances raised by the petitioner in his representation as regards the education of his daughter as well as illness of his old-aged parents. The Director General also had observed that no supporting documents of illness and treatment of his parents had been enclosed with the representation. The Director General also took into consideration the recommendation made by the Standing Committee. On being analyzed each and every factors and keeping in mind the administrative requirements, the Director General had taken a conscious view to reject the representation of the petitioner directing him to join his new place of posting at MP Sector as DIG. In this circumstance, in my opinion, it will not be proper for this Court to sit as an appellate authority over the decision of the competent authority and interfere with the impugned order of transfer.

13. Though not referred to, there is yet another important aspect to be noticed. Clause 5 of Standing Order No.05/2022 plays a vital role to decide the merits of the present writ petition, which reads as under:

“5. Tenure of Posting:

- (a) *The normal tenure of all officers under this policy will be 03 years subject to the provisions of para 5(b) of this S.O.*
- (b) *As CRPF is Central Armed Police Force of GoI constituted under Special Act and is tasked with important operational duties regarding maintenance of security of the nation, therefore there are certain operational and administrative requirements of the Force. In view of such requirements, any officer may be posted to any Unit or office at any point of time. The above policy does not create any right for any officer for posting to a particular place or for a particular tenure as mentioned in Para-5(a).*

If during the posting of any officer it comes to the notice of the supervisory/senior authorities that officer needs to be transferred out at any time from present place due to administrative or operational reasons, then the concerned authority may transfer such officer at any time to a suitable place.”

14. On bare perusal of the above clause, it comes to fore that CRPF Organization is a Central Armed Police Force of Government of India and is vested with solemn duties and responsibilities in regard to maintenance of security of the nation and certainly there would be requirements of posting of any officer to any Unit or office at any point of time to meet the exigencies of the Force. It is clearly stated under Clause 5 that the policy under the aforesaid Standing Order laying down the guidelines for transfer does not create any right for any officer for posting to a particular place or for a particular tenure. In other words, no officer can claim transfer at a place of his choice as a matter of right. That apart, the framers of the guidelines have given specific right or power upon the supervisory or senior authorities of the Force to transfer any officer at any point of time to any place keeping in view the administrative and operational requirements.

15. In my opinion, Clause 5 gives a power to the concerned authority to pass necessary order in regard to all matters incidental or ancillary to the provisions laid down in the Standing Order No.05/2022 to enhance or to bring efficiency in the administration of the CRPF Organization. The doctrine of incidental or ancillary powers is well recognized in the Indian Law. The said doctrine postulates that statutory authority is endowed with ancillary and incidental powers which are necessary to discharge the functions effectively for the purpose of doing justice to the parties.

16. In the considered view of this Court, incidental and ancillary power can be exercised to subvert or abrogate any statutory rules or guidelines. Such power is exercised to enforce a provision effectively, but not to usurp.

17. From the aforesaid discussions, it can easily be said that the competent authority i.e., Director General of CRPF has not exercised his discretionary power arbitrarily. He has considered each and every aspects, the petitioner has agitated in his representation. However, considering the administrative and operational exigencies the competent authority i.e. the Director General has become unable to accede to the request made by the petitioner.

18. In the instant case, the petitioner has not alleged mala fides. In view of the aforesaid discussions and the reasons recorded here-in-above, the challenge to the decision of the respondents, rejecting the prayer of the petitioner not to give effect to the impugned transfer order to the office of the IG, MP Sector is found to be not legally tenable and thus, is bereft of merit.

19. As sequel, the instant writ petition stands dismissed. However, there shall be no order as to costs.

The interim order passed on 07.05.2024 stands vacated.

Pending application(s), if any, also stands dismissed.

The related files containing various notes of the respondents placed before this Court are returned to learned Dy. SGL.”

[5] Mr. Somik Deb, learned senior counsel for the writ petitioner has drawn the attention of this Court to the order of promotion whereby he was also transferred to the office of IG, MP Sector. He has also drawn the attention of this Court to the Standing Order No.07/2014 dated 24.11.2014 (Annexure 8) and Clause 4 thereof which deals with terminal posting. Learned senior counsel for the writ petitioner has also drawn attention to the Standing Order No.05/2022 dated 27.09.2022 (Annexure 11) which provides for transfer policy for Group ‘A’ Gazetted officers under the CRPF. According to this policy the normal tenure of posting is three years subject to the provisions of para 5(b) thereof which provides that CRPF being tasked with important operational duties regarding maintenance of security of the nation and there being certain operational and administrative requirements of the Force, any officer may be posted to any Unit or office at any point of time. The instant transfer policy

does not create any right for any officer for posting to a particular place or for a particular tenure as mentioned in Para-5(a). Learned senior counsel for the writ petitioner submits that his representation was to be routed through a Transfer Representation Standing Committee presided over by the Chairman, ADG Headquarters. Therefore, the rejection of the representation of the writ petitioner vide impugned order dated 28.05.2024 by the Director General, CRPF is contrary to the guidelines and warrants interference under writ jurisdiction of this Court. In support of his submission he has relied upon *Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey and others, (2004) 12 SCC 299*, Para 4 in particular. Learned senior counsel for the writ petitioner has also placed reliance upon the case of *Ms X vs. Registrar General, High Court of Madhya Pradesh and another, (2022) 14 SCC 187*. Based upon these decisions, it is submitted that the genuine grounds urged for cancellation of his transfer has been rejected by the Director General by passing the normal channel of Transfer Representation Standing Committee. The petitioner's plea of being posted anywhere near to Tripura like Shillong has also not been taken into account though writ petitioner was left with only one year of service. Learned senior counsel has also referred to the terminal policy at Clause 8(i) of the Standing Order No.05 of 2022 and submitted that writ petitioner on his own has not availed of 4 years of posting at Tripura as is being treated by the respondents. Writ petitioner's posting for the last 20 years is spread over the entire North-Eastern region and should not have been a factor to decline his representation. It is submitted that therefore, this Court may deem it proper to interfere in the order of transfer and direct the respondents to post him at any other place even in West Bengal or Meghalaya so that he can attend to the needs of his aged ailing parents and his daughter who is studying in Class X in

a school at Agartala. The learned Writ Court has failed to take into consideration these aspects of the matter. Therefore, the writ appeal may be allowed.

[6] Mr. B. Majumder, learned Dy. S.G.I. for the respondent, Union of India has, however, strongly opposed the prayer. He has straightaway referred to the reasons recorded in the order dated 28.05.2024. He submits that each and every contention of the writ petitioner has been dealt with. The competent authority has also observed that if needed the officer can be allowed to retain his Government Quarter in Agartala to facilitate continuation of education of his daughter from Agartala. He also submitted that the policy of terminal posting has to be considered on case to case basis and on the existence of a vacancy. Since an officer has already been posted in place of the writ petitioner on 21.05.2024, there are no posts available to accommodate the writ petitioner. Moreover, writ petitioner has served in the entire North-Eastern region for the last 20 years and in Tripura also since last about 3 years. The transfer policy of the Central Armed Police Force makes it clear that for operational and administrative requirements of the force, an officer can be posted to any Unit or office at any point of time which will supersede the normal tenure of posting of 3 years under Clause 5(a) and (b) read together. As such, the learned Writ Court rightly refused to interfere in the matter. Learned Dy. S.G.I. has also relied upon a decision of the Apex Court in the case of *State of Madhya Pradesh and another vs. S.S. Kourav and others*, AIR 1995 SC 1056, Para 6 and submitted that hardship cannot be a ground for interference in transfer matters since transfer is an incidence of service.

[7] We have accorded due consideration to the submission of learned counsel for the parties and taken note of the relevant pleadings placed on record. We have also gone through the impugned judgment and decisions cited by the rival parties.

[8] It is trite to say that transfer is an incidence of service and need not be interfered unless the decision is shown to be arbitrary or vitiated by malafide or infraction of any prescribed norms or principles governing the transfer [See *Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey and others, (2004) 12 SCC 299*, relied on behalf of the writ petitioner also]. We are of the considered view that merely because the Director General of CRPF has decided the representation of the writ petitioner on this occasion instead through the channel of Transfer Representation Standing Committee as per addendum to Standing Order No.05/2022 could not vitiate the decision of the competent authority. The said provision only provides the procedure for examining the representation of the aggrieved officer through a standing committee with a recommendation for approval of the competent authority. On perusal of the grounds of rejection in the order dated 28.05.2024 extracted above, it appears that his earlier representation made on 08.04.2024 was considered by the Transfer Representation Standing Committee sympathetically but could not be accommodated due to existing transfer policy. In his renewed representation for terminal policy on 08.05.2024, every ground raised by the writ petitioner has been dealt with cogent reasons by the Director General of CRPF in the impugned order dated 28.05.2024. Therefore, mere non-forwarding of his renewed representation of the writ petitioner on this occasion through this Transfer Representation Standing Committee would not amount to an illegality

which affects the decision itself. Moreover, the impugned order has dealt with each and every grounds raised by the writ petitioner for cancellation of his transfer. It is not in dispute that writ petitioner has been posted for the last 20 years in the North-Eastern region and since 09.08.2021 in the State of Tripura. This transfer has been occasioned on his promotion from the post of Commandant, CRPF to DIG, CRPF which necessitated movement for administrative reasons. Moreover, on relief of the writ petitioner w.e.f. 08.05.2024, another officer has been posted as DIG, Tripura region on 21.05.2024 and as such no post is vacant. Para 8(i) of the Standing Order No.05/2022 which provides for terminal policy also stipulates that such a request can be considered on case to case basis and only if vacancy exists. For the above reasons therefore, writ petitioner cannot claim to be entitled to take the benefit of the terminal policy in the absence of a vacancy and his continued posting for last 20 years in the North-Eastern region and about 2 years and 8 months in the State of Tripura as Commandant, CRPF. The learned Writ Court has duly considered all aspects of the matter. We, therefore, do not find that the order of transfer of the writ petitioner and rejection of his representation vide Annexure R/12 dated 28.05.2024 suffers from any malafide or arbitrariness or contravention of any guidelines calling for interference by this Court. Accordingly, the instant appeal is dismissed.

Pending application(s), if any, shall stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ