

Court No. - 3

Case :- WRIT - A No. - 4816 of 2024

Petitioner :- Keshav Mandal

Respondent :- Union Of India Thru. Secy. Ministry Of Home Affairs New Delhi And 4 Others

Counsel for Petitioner :- Sanjay Kumar Srivastava, Akshat Kumar

Counsel for Respondent :- A.S.G.I.

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner and Mr. S.B. Pandey, learned Deputy Solicitor General of India assisted by Mr. Anand Dwivedi, learned counsel for opposite parties.

2. Petition has been filed challenging order dated 04.06.2024 whereby he has been transferred to the East and North-East Zone while working on the post of Sub-Inspector in CISF and is currently posted at Lucknow. Also under challenge is the consequential order dated 06.06.2024 as well as order dated 17.06.2024 rejecting petitioner's representation against the aforesaid transfer.

3. It has been submitted that against the aforesaid transfer and consequential orders dated 04.06.2024 and 06.06.2024, petitioner had earlier preferred Writ-A No. 4748 of 2024 which was dismissed vide judgment and order dated 21.06.2024 granting liberty to petitioner to file afresh challenging the order dated 17.06.2024 whereby his representation was in the meantime rejected.

4. Learned counsel for petitioner submits that petitioner is an Ex-serviceman who has subsequently been employed in the CISF. He has placed reliance on the circular dated 25.09.2017, particularly paragraph 21 thereof to submit that Ex-servicemen are required to remain posted in their respective Home Sector during their entire service except for the first tenure of three years which was to be out of the Home Sector. It is submitted that the aforesaid provisions specifically provides that after three years out of Home Sector tenure, the ex-servicemen will be posted to the Home Sector although they may be posted out of their Home Sector on administrative or operational considerations. It is submitted that no such administrative or operational considerations have been indicated in the impugned order whereby petitioner has been posted in the North-East Sector as well although his Home Sector is the Eastern Sector. It is submitted that the order dated 17.06.2024 rejecting petitioner's representation is also completely non-speaking

order inasmuch as it does not refer at all to the grounds taken by petitioner in his representation dated 08.06.2024 nor does it refer to paragraph 21 of the circular. It is also submitted that although the circular is only in the nature of a guideline but cogent reasons should have been indicated for violation thereof.

5. Learned counsel for opposite parties has refuted submissions advanced by learned counsel for petitioner and has specifically adverted to paragraph 39 (xx) of the same guideline dated 25.09.2017 to submit that the aforesaid provision indicates non-obstante clause that any personnel may be posted anywhere at any stage by the competent authority without assigning any reason and the guidelines shall not come in the way of such transfer/posting. It is further submitted that even paragraph 21 of the circular indicates that despite provision for Home Sector posting, the provision for posting outside the Home Sector on administrative or operational reasons has also been indicated. It is therefore submitted that there is no vested right in petitioner to be posted in the Home Sector. It is also submitted that even otherwise the circular is only in the nature of a guideline.

6. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that petitioner who at present is posted at Lucknow is an ex-serviceman and by means of impugned orders dated 04.06.2024 and 06.06.2024 has been transferred/posted in the Eastern and North-Eastern Sector. It is admitted between the parties that petitioner's Home Sector is the Eastern Sector.

7. A conjoint reading of paragraphs 21 and 39 (xx) of the aforesaid circular dated 25.09.2017 makes it evident that a provision has been made for ex-servicemen who are subsequently employed with the CISF to be posted in their Home Sector for their entire tenure except for the first three years of service which is required to be out of Home Sector. The provisions also indicate that there is no vested right of an employee of CISF to be posted in the Home Sector and the authorities may post him out of the Home Sector at any time without assigning any reason.

8. However, at the same time it is also evident that posting out of the Home Sector would be a deviation from the provisions contained in paragraph 21 of the guideline.

9. This Court is of the considered opinion that once the Government itself has indicated certain provisions in the guidelines, it would be bound by the orders issued by itself and deviation from such guidelines or policy can although definitely be effected by the authorities concerned but cogent reasons

should be recorded for deviation thereof unless and until it is essential for such a deviation, which even otherwise should be recorded at least once the representation is being rejected.

10. A perusal of the impugned orders makes it evident that no such cogent reason has been recorded by the authorities concerned for deviation of provisions contained in paragraph 21 of the circular. Although there is provision for representation against the transfer order, which was availed of by petitioner, the same has been rejected merely by indicating 'considered and regretted'.

11. There is absolutely no reasoning indicated in the impugned order dated 17.06.2024 as to why any deviation from the conditions indicated in paragraph 21 of the circular dated 29.09.2017 was required to be made. The order dated 17.06.2024 therefore is a completely non-speaking one.

12. Hon'ble Supreme Court in the case of **Director, Horticulture, Punjab versus Jagjivan Parshad, (2008) 5 SCC 539** has held that reasons are the soul of an order from which only the mind of the authority passing the order can be discernible and therefore it is incumbent upon the authority concerned to record reasons while at least rejecting the representation of persons making the representation.

13. In view of aforesaid facts and circumstances, the impugned order dated 17.06.2024 so far as it relates to petitioner is hereby quashed by issuance of a writ in the nature of certiorari . The dispute is referred to the opposite party no. 3 i.e. Additional Director General/Airport Sector, Central Industrial Security Force (Ministry of Home Affairs), Sector-HQ, CISF Complex, Mahipalpur, New Delhi-37 for decision afresh on petitioner's representation. The authority concerned shall also take into account provisions of paragraph 21 of the circular dated 25.09.2017 and as to why petitioner cannot be posted in terms thereof. Such a decision shall be taken by the authority concerned within a period of ten days from the date a certified copy of of this order is produced before the said authority within a period of three days from today.

14. Learned counsel for opposite parties shall also communicate this order to the authority concerned. It is provided that till final decision on petitioner's representation or till a period of 13 days from today, further operation of the order dated 04.06.2024 and the consequential order dated 06.06.2024 shall not be implemented.

15. With the aforesaid directions, the writ petition stands

allowed at the admission stage itself. Parties to bear their own cost.

Order Date :- 26.6.2024
Satish