

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

WP(C).No. 10035 of 2013 (D)

PETITIONER(S):

KAVITHA KUMARI.K.
(860883832-S.I/ MINISTERIAL(, W/O K. AJI C.H,
“ SUB INSPECTOR/ MINISTERIAL”,
CENTRAL RESERVE POLICE FORCE, GROUP CENTRE, PALLIPURAM
THIRUVANANTHAPURAM, RESIDING AT VATTAVILA HOUSE
S.N PURAM, PAVITHRESWARAM P.O, KOLLAM 691524

BY ADV. SRI.B.HARISH KUMAR

RESPONDENT(S):

- 1. UNION OF INDIA**
REPRESENTED BY THE HOME SECRETARY
MINISTRY OF HOME AFFAIRS, NEW DELHI 110010
 - 2. THE DIRECTOR GENERAL (CRPF),**
MINISTRY OF HOME AFFAIRS, CGO COMPLEX, LODHI ROAD
NEW DELHI 110003
 - 3. INSPECTOR GENERAL(P),**
DIRECTORATE GENERAL, CRPF, CGO COMPLEX
NEW DELHI 110003
 - 4. THE DEPUTY INSPECTOR GENERAL OF POLICE,**
GROUP CENTRE, CENTRAL RESERVE POLICE FORCE
PALLIPPURAM, THIRUVANANTHAPURAM, KERALA 695316
- R1-R4 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: COPY OF THE REPRESENTATION DATED 05-03-2013 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT

EXHIBIT P2: COPY OF THE TRANSFER ORDER/ SIGNAL MESSAGE DATED 25-03-2013 ISSUED BY THE RESPONDENT FORCE

EXHIBIT P3: COPY OF THE TRANSFER POLICY DATED 12.5.11 ISSUED BY THE SECOND RESPONDENT.

EXHIBIT P4: COPY OF THE POSTING DETAILS OF THE PETITIONER ISSUED BY THE RESPONDENT FORCE.

EXHIBIT P5: COPY OF THE SIGNAL MESSAGE DATED 21.6.2013 ISSUED BY THE SECOND RESPONDENT.

EXHIBIT P6: COPY OF THE ORDER DATED 17.6.08 PASSED BY THE HON'BLE HIGH COURT OF ANDRA PRADESH.

EXHIBIT P7: COPY OF THE ORDER DATED 9.4.13 ISSUED BY THE SECOND RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.10035 OF 2013 (D)

Dated this the 5th day of June, 2015

J U D G M E N T

The petitioner, who commenced her service as a Constable under the respondent force on 17.2.1986 was posted to Jharodakalan, New Delhi and continued there till 1.1.1988. She was thereafter posted to Delhi First Signal Battalion as Naik Radio Operator on 1.1.1988 and continued there till 26.9.1992. Thereafter, she was posted to 108 Battalion, Meerut field area on 27.9.1992 and she continued till 16.8.1995. She was then posted to 105 Rapid Action Force, Pallipuram on 28.8.1995 and continued there for six years till 31.7.2001. Between 13.8.2001 and 14.9.2007, she was posted to Group Center, Ranga Reddy, Andhra Pradesh. She was thereafter promoted as Sub Inspector on 26.9.2007 and posted to Group Center, Bangalore, where she continued till 30.4.2012. She then requested for a posting to home station, which request was accepted, and she was posted to Pallipuram on 11.5.2012. When she had completed nine months in Pallipuram, she was served with Ext.P2 transfer order transferring her to Silchar, Assam. In the writ petition, the petitioner

impugns Ext.P2 order of transfer inter alia on the ground that the transfer order had been passed in violation of the norms applicable to the Organization, and further, that the place to which she was transferred did not have basic facilities for women. She was also aggrieved by the fact that Ext.P2 transfer order was passed without considering a representation, that she had already preferred before the respondents while she was working at Pallipuram, on the grounds mentioned above. The writ petition was admitted on 9.4.2013, and by an interim order, this Court had interdicted the transfer of the petitioner to Silchar. Thereafter, the interim order was extended from time to time and continues to be in force even today.

2. A counter affidavit has been filed on behalf of the respondents, wherein, after narrating the details of the postings which were given to the petitioner, it is pointed out that the petitioner is a person who has had the advantage of being posted in the Southern sector for almost 11 years before now being considered for transfer to the North East sector. It is also pointed out that the petitioner was earlier posted at Pallipuram for a period of almost six years between 1995 and 2001. The present posting at Pallipuram was with effect from 11.5.2012 and, on account of the fact that the

petitioner had not rendered any service in the North East sector, it was found to be in the exigencies of service that the petitioner be posted to Silchar. In a reply affidavit filed to the counter affidavit filed on behalf of the respondents, the petitioner lays emphasis on Ext.P3 transfer policy that is prevailing in the respondent Organization. In particular, it is pointed out that as per clause 3(b) of the transfer policy, the normal tenure of posting in all static offices and duty battalions located in the areas other than North East region, J&K and LWE (Left Wing Extremism) affected field areas, will be four years (including the period of attachment with such offices). It is the case of the petitioner that insofar as she has not completed four years at Pallipuram, there was no justification in transferring her to Silchar. The respondents, on the other hand, would point out that in Ext.P3 transfer norms, clauses 3(c) and (e) would indicate that the norms also contemplate a fixed tenure of posting for three years in the North East region for those having ten years of service or less and two years for those with more than ten years of service. Going by that yardstick, the petitioner would now have to render service for at least two years in the North East region. That apart, it is contended, with reference to clause 3(e) of the transfer norms, that the competent transferring authority has the right to transfer a person at any time,

irrespective of tenure, on administrative grounds/in public interest. The contention of the respondents, in other words, is that the petitioner cannot rely solely on the norms of transfer inasmuch as the said norms also contemplate a situation where the petitioner can be transferred out even before the expiry of four years, if the transferring authority chooses to do so on administrative grounds or in public interest. It is also pointed out by the respondents, through an additional statement filed by them in the writ petition, that the construction of the Government family quarters in the Campus at Silchar is under process and due to non-availability of Government family accommodation in the Campus, permission is granted liberally to all personnel including lady staff to live outside the Campus. The averments of the petitioner that the Silchar Campus lacks basic facilities for ladies is vehemently denied by the respondents, who would point out that, at present, two lady staff are accommodated inside the Campus at Silchar in a Girl's Hostel in a semi permanent hut. It is also contended by the respondents that the petitioner has already continued in the present station on the strength of the interim orders passed by this Court, and has now completed over three years at Pallipuram consequent to the stay granted by this Court in the present writ petition. Rebutting the contentions of the respondents,

counsel for the petitioner would submit that it is also relevant to note that in similar circumstances, involving transfer of other female personnel to Silchar, transfers have been interdicted by various High Courts inter alia on the ground that the said transfers deserve compassionate consideration, and hence, it is prayed that the petitioner also be given a similar accommodation at Pallipuram. According to the learned counsel for the petitioner, the petitioner also suffers from rheumatic arthritis and diabetics.

4. I have heard the learned counsel for the petitioner as also the learned Standing counsel for the respondents.

5. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I am of the view that the challenge in the writ petition, against the transfer of the petitioner to Silchar, must necessarily fail. It is trite that in matters of transfer, this Court would not ordinarily interfere in proceedings under Article 226 of the Constitution of India, save in cases where there is a clear demonstration of factual or legal mala fides, or where it is shown that there is patent non-compliance with the norms governing transfer prevailing in the Organization. In the case of allegation of factual

mala fides, there has to be necessary pleadings in the writ petition to support such allegations, and further, the person against whom mala fides is alleged, has to be impleaded in his personal capacity. Inasmuch as in the writ petition, there is no allegation of such factual mala fides, I do not see any scope for interference with the transfer order on that ground. The contention of the petitioner, however, is premised mainly on the alleged violation of the norms relating transfer. While it is the case of the petitioner that as per the norms governing transfer, a person cannot be transferred out of the station to which he/she was posted within the minimum period of four years that is assured to them as per the transfer norms, it is evident from a perusal of the norms, in their entirety, that there is a power vested in the employer to curtail the said period of four years at any station in the exigencies of service, on administrative grounds or in public interest. The counter affidavit filed by the respondents would indicate that the transfer of the petitioner was for administrative reasons and in the exigencies of service. It is not for this Court to embark upon an assessment of the inter se claims of various transferees in the matter of transfer to a place of their choice. That exercise must be left to the discretion of the employer. The role of this Court is only to ensure that in that process of inter se assessment of the grievances of the

transferees, there is no arbitrariness or discriminatory treatment meted out to the employee, by the employer. On a consideration of the facts of this case, I am not persuaded to infer that there has been any arbitrariness or discrimination meted out to the petitioner. Resultantly, the challenge in the writ petition, against the said order of transfer, is rejected. As already noted, the petitioner has already continued in the present station for over three years, and it would be in the best interests of the petitioner to join the station at Silchar pursuant to Ext.P2 order of transfer. Considering the request of counsel for the petitioner for some time to enable the petitioner to join the Camp at Silchar, I permit the petitioner to join the Camp at Silchar pursuant to Ext.P2 order, within a period of one month from today.

Subject to the above, the writ petition, in its challenge against Ext.P2 transfer order, is dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp