

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No. 6204 OF 2015

ORDER:

The petitioner herein sought for a writ of mandamus for declaring Signal No. T.IX-30/2015-ADM-2, dated 26.02.2015 issued by the Inspector General, Central Reserve Police Force, Southern Sector, Hyderabad, the 3rd respondent herein, transferring the petitioner, who is working as a General Duty Constable with the Central Reserve police Force, and attaching him to 150 Battalion at Dornapal, Sukuma District, Chattisgarh State, as illegal.

Heard learned counsel for the petitioner Sri K. Jagadishwar Reddy, who would submit that the petitioner was selected to the Central Reserve Police Force (hence forth referred to as 'the Force') as a General Duty Constable in September, 1994 and upon completion successfully of the basic training, he was posted to 49 Batallion and from there to 69 Batallion and thereafter in August 2010, he was posted to the 4th respondent Group Center.

During his tenure at Calcutta in 2008, he has taken ill and when he has been referred to the hospital, he was diagnosed to be HIV positive and was put on treatment. As part of treatment, the petitioner and his spouse were both put on Anti Retroviral Therapy (ART). It is the case of the petitioner that after the ART treatment, his health has been stabilized and in view of the sensitivity of the disease, if the petitioner was to be posted to a place and terrain where he would be exposed to infections, the same can become even life threatening. He therefore, submits that the petitioner should have been considered for being posted and attached to such Battalions, which are located at places where ART treatment can be received by him uninterruptedly. Dornapal in Chattisgarh State is a relatively backward and hilly terrain, where facilities for ART treatment are not available. Sri Jagadishwar Reddy, learned counsel for the petitioner would submit that the Inspector General/Director (Medical) of the Force has circulated certain

detailed instructions on 03.11.2010 with regard to the strategies to be adopted for prevention from HIV/AIDS. It is pointed out therein that all HIV positive personnel, whose CD4 and CD8 count is normal and not on ART, are kept in medical category P1 and are fit for all duties anywhere, but when CD4 count goes below 200 cells/micro liter, they are placed in P2 category as their efficiency gets reduced and they should be posted where ART facilities are available. It is further pointed out that presently, only three ART centers are available; one at New Delhi, the other at Jammu and the 3rd at Hyderabad. Sri Reddy therefore, would submit that in case the Force is very keen that the petitioner should be subjected to an order of transfer only on the premises that he had completed the normal tenure at Hyderabad, the respondents should have considered posting him either at New Delhi or at Jammu or at any other place where ART centers are available but certainly not at Chattisgarh.

Through the Signal Memo dated 26.02.2015, several members of the Force have been transferred upon completion of their normal tenure. It was further set out therein that the transfers have been affected to strengthen the operations and positions of the units deployed in difficult areas. There is no dispute or doubt that the petitioner has completed his normal tenure of stay at Hyderabad and he is otherwise due for a transfer from out of Hyderabad. As it is too well-known, an order of a transfer is pure and simple incidence of public service. The conditions of service of the employee will not get altered or changed. Consequently, an order of transfer will not affect or impact the individual gravely. The supernumerary hardship that might be caused by virtue of transfer is a factor, which has got to be got over by putting the efforts to overcome the hardship that might be encountered in the process. Particularly, while dealing with members of the Armed Forces, such as the Central Reserve Police Force, the Courts are required to adopt a 'hands-off' policy. The requirements of manpower of an Armed Force could be vastly different from that of any

ordinary civilian administration. The very nature of duties liable to be performed by the members of the Armed Force is arduous and calls for lot of sacrifice on the part of its members. The call of the duty is such that the members of the Force are liable to be posted for discharging relatively onerous duties and responsibilities, that too in troubled areas and difficult terrain. By the very efficiency and the efficacy of the Force, situations are normally brought under control. Therefore, as to how best the available human resources are to be utilized is a matter of choice of the Commanders of the Force. The Courts therefore, should normally maintain adequate distance from such matters and leave freedom to the Commanders of the Armed Force to deal with the members of their Force, so as to ensure the efficacy and efficiency of the service of the Force itself. I am therefore, clearly of the opinion that this Court should not entertain any Writ Petition against an order of transfer however grave a hardship an incumbent might encounter by virtue of any such transfer order.

But however, all enlightened managers of human resources are striving hard for striking an appropriate balance between the welfare of the servants and the value components of maintaining such service. It is the personnel, who render the services that count and matter a great deal. Every model employer is putting in place adequate welfare measures and the incidental facilities and benefits to ensure that the life of the personnel of the Armed Force can be carried on and led as smoothly as is possible. In a given situation, appropriate medical facilities have to be created at every station where adequate numbers of members of the Force are deployed. However, if it is not feasible to provide for greater quality of medical facilities at every center, at least, within a reasonable distance, such facilities should be created. These factors depend squarely upon the scarce financial resources made available. I am sure that the Commanders of the Force would keep all these factors in mind while deploying the members of the Force to various destinations. In case the petitioner has any specific or peculiar

difficulty to function at Dornapal in Chattisgarh, it shall be open to him to produce such material, which will ensure an appropriate and a kind-hearted attention to be paid to the same by the Commander of the Force, who has the power to recall or modify any such posting order. This Court cannot assume a role of superintendence over the Central Reserve Police Force. Since the impugned order is a simple and pure order of administrative transfer, for securing the paramount interest of the organization, which I consider as too vital and significant to call for any interference, I reject this Writ petition at the admission stage preserving the liberty noted supra.

Accordingly, this Writ Petition stands dismissed. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

11th March 2015

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