

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.40584 of 2015

Between:

K.Venkateshwarlu S/o.K.Bhadraiah,
Aged about 38 yrs, Occu : Constable/General Duty,
(Force No.971130616CT/GD),
R/o.Group Centre, Rangareddy, J.Jawahar Nagar,
Hakimpet Post, Shamirpet Mandal,
Rangareddy District.

.. Petitioner

AND

Union of India,
Rep., by its Principal Secretary,
Ministry of Defence,
New Delhi & 4 others.

.. Respondents

The Court made the following:

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ORDER:

Petitioner is a constable (General Duty). He joined in service in the year 1997 at Hyderabad Group Centre and later he was posted at various places. After serving at Jammu & Kashmir, he was posted back to Telangana State and he has been working in Group Centre since 20.08.2008. Ordinarily the constables are liable for transfer on completion of four years tenure at a particular place. Thus, the petitioner was due for transfer in August, 2012. However, on the request made by the petitioner, he was not disturbed in the year 2012 and similarly he was accommodated in the subsequent years also. By the order impugned, he is now transferred to 216 BN-Koraput on the border of Orissa-Chattisgarh. Petitioner challenges the said transfer order in this writ petition.

2. Learned counsel for the petitioner contends that the petitioner and his wife were diagnosed with HIV Positive and have been taking treatment. He further submits that his daughter is also diagnosed with HIV Positive and is aged now 11 years. Rigorous medical check up and treatment is required and the petitioner and his family members have been taking treatment. There is lot of improvement on account of treatment administered to them and at this stage, if the petitioner is transferred, it would cause lot of hardship and suffering to the petitioner as well as his family members. He also submits that the daughter of the petitioner is now pursuing 7th class in the school run by the Central

Reserve Police Force and if she is now disturbed in the middle of the academic year, that would cause lot of hardship to the daughter of the petitioner. Learned counsel therefore, prays for setting aside the order of transfer. In support of his contention learned counsel places reliance on the decision of this Court in W.P.No.31888 of 2010, wherein the petitioner therein was also diagnosed with HIV Positive and he challenged the transfer order to Jammu & Kashmir. This Court recorded the necessity of proper treatment and directed consideration of representation for retention on sympathetic grounds.

3. Learned Assistant Solicitor General, on instructions submits that the place where the petitioner is now transferred is plain area where, no hardship would be caused to him and proper medical facilities, equivalent medical facilities that are available in Hyderabad, are also available in the place of posting and medical facilities are not far off. He also states that the Composite Hospital will take care of the treatment of the petitioner and his family. He also submits that petitioner was accommodated for the last three occasions on the ground of personal health and health problems of his family members and having noticed that the place where now he is posted does not hamper the treatment a decision is taken to transfer him. He also states that the petitioner is given a static posting and therefore there would be no hardship to the petitioner as he would be in the Reserve Force and only in emergencies, his services would be utilized.

4. It is not in dispute that as per the transfer policy of the respondent-Organization a constable once posted to a particular battalion, shall ordinarily be retained in that place for four years and is liable for transfer on completion of four years tenure. Thus, on completion of four years tenure, petitioner was liable for transfer in August, 2012. However, on the request made by the petitioner on medical grounds, the same was conceded and he was retained at the

same place for the next three years also. In other words the petitioner has been working in the present station for more than seven years.

5. The only grievance of the petitioner is that he is taking treatment for HIV Positive and if he is disturbed now from the present place it may cause hardship.

6. As seen from the averments in the affidavit filed in support of the Writ Petition, aggrieved by the order of transfer, petitioner represented to the higher authorities and he also sought for personal hearing. By utilising modern technology, personal hearing was given to him through Skype and his request was considered but not acceded to.

7. As seen from the order passed by this Court in W.P.No.31888 of 2010, the Court took into consideration the peculiar facts of the case and directed to consider the request for retention on sympathetic grounds, as the petitioner therein was also diagnosed with HIV Positive and was taking treatment, where his wife died and he was having three children to take care of. In those circumstances, the relief was granted. The facts of the said case are not similar to the facts of this Case.

8. As fairly stated by learned Assistant Solicitor General, as all medical facilities are available and petitioner would be provided all medical facilities and daughter will be provided education in the school run by the CRPF, and there would not be any interruption in education, no hardship would be caused to the petitioner and family members of the petitioner and as fairly stated by learned Assistant Solicitor General, the petitioner would be kept in Reserve Force and his services will be utilized only in emergencies. Having regard to these facts, I do not see any illegality or irregularity in the transfer affected, warranting interference by this Court.

9. Accordingly, the Writ Petition is dismissed. However, dismissal of this writ petition do not preclude the petitioner from making representation for retention, supported by proper documents and for the respondent-Force to consider the said request. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

P.NAVEEN RAO, J

Date: 17th December, 2015

Note : Issue c.c in three (3) days

B/o
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