

HON'BLE MR JUSTICE R. KANTHA RAO

Writ Petition NO.30973 OF 2014

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DATE:01.06.2015

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BETWEEN:

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S. Rajendra Babu

.. Petitioner

And

Union of India rep. by the Director General, Central Industrial Security Force
Unit, New Delhi and five others

.. Respondents

HON'BLE SRI JUSTICE R. KANTHA RAO

Writ Petition NO.30973 OF 2014

ORDER:

This writ petition is filed by the petitioner under Article 226 of the Constitution of India seeking to issue a writ of mandamus declaring the action of the respondents 3 to 5 vide order No.82/14, dated October,2014 by holding the same as having been passed arbitrarily, *mala fide* in law, discriminatory, without application of mind, unwarranted, unjustified, colourable exercise of power being a non speaking order, violative of Articles 14, 16 and 21 of the Constitution of India and contrary to the transfer policy in force and to set aside the same in so far as the petitioner is concerned, being unsustainable and consequently direct the 5th respondent to allow the petitioner to continue in the present place of working without any disturbance.

2. Heard the leaned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. The petitioner is working as Constable in Central Industrial Security Force Unit, Bharat Dynamics Limited, Bhanur, Medak District.

4. Briefly stated, the following are the grounds basing on which the present writ petition is filed. The petitioner was initially appointed as Constable of Central Industrial Security Force in South Zone at Chennai in the month of January, 1984 and thereafter, he was transferred as such to work in Calcutta Port Trust, Calcutta, West Bengal State. He worked there for seven years. He was posted as such in CISF, Bharat Dynamics Limited, Bhanur, Medak District in State of Andhra Pradesh and he joined in the said station on 14.06.1991. While so, the petitioner was placed under suspension in July, 1991 and was discharged from service in the year 1992. Against the said dismissal order, the petitioner filed appeal and writ petition both were rejected. Thereafter, he filed Writ Petition No.8727 of 2004 and this court set aside the dismissal order on the ground that the charges were trivial and directed that the petitioner be reinstated into service by imposing lesser punishment. Thereafter, basing on the representation made by the petitioner pursuant to the order in the writ petition, the petitioner was re-inducted into service without back wages by imposing a punishment of reduction of pay to the lower scale. The petitioner was taken on duty on 27.09.2013 and since

then he has been working in C.I.S.F., BDL, Bhanur.

5. It is submitted that the petitioner has been suffering from diabetes on account of the same, he developed giddiness, he was referred to Remedial Hospital, Kukatpally wherein the Medical Officer advised the petitioner to take house rest from 08.10.2014 to 03.11.2014. The 5th respondent passed order, dated 21.10.2014 relieving and posting him to CISF 4th RB. Sivagangai in the State of Tamilnadu, a memo has been issued vide letter dated 03.10.2014 with a direction to submit clearance certificate so that he may be relieved and posted from CISF Unit, BDL Bhanur, Medak (A.P.) to CISF 4th RB. Sivagangai on 03.10.2014 (AN). The petitioner submitted an application dated 09.10.2014 requesting to cancel the posting order and the same was not acceded to and the same is pending consideration with the respondents.

6. Nextly, it is submitted that as per the transfer policy only employees who completed three years of tenure in a particular station will be transferred but the petitioner who has not completed three years of tenure is not liable to be transferred. In this context, it is submitted that in the unit there are 20 constables who completed more than 3 years but they are not being shifted, whereas the petitioner who has not completed three years, is transferred. It is further submitted that as per the transfer policy in the department, the employee shall be allowed to continue in the same station if he crossed 55 years of age and having only 4 to 5 years service left for retirement, even on that score also the petitioner could have been retained in the present place of working. It is under the aforementioned grounds, the petitioner filed the present writ petition seeking a direction to set aside the transfer order and to continue him in the same station.

7. The writ petition is opposed by the respondents contending in the counter affidavit *inter alia* as follows:

The CISF Headquarters, New Delhi issued Circular No.33/2014 dated 04.08.2014 regarding posting of CISF personnel to a new unit on re-instatement in to service. As per the circular, the CISF personnel who have

been terminated/pre-maturely retired, dismissed/removed/compulsorily retired from service and later re-instated in to service on the direction of the Courts and on consideration of appeal/revision by the higher authority shall be posted in new station on reinstatement. The object underlying in issuing the said circular is that posting the reinstated employee in the same station not only affects the working environment of the unit but also the individual is unable to adjust there even though he might have been exonerated the charges levelled against him and the employee faces difficulties in making a fresh start. Accordingly, the CISF Headquarters, New Delhi by circular, dated 19.08.2014 sought the list of personnel who have been reinstated and have been continuing in the same station. In compliance of the said circular, it is submitted by the respondents that the respondent unit furnished the list in which the name of the petitioner also found place. It is further submitted that the petitioner on medical rest movement order dated 21.10.2014 issued relieving him and posting to CISF 4th Res. Bn. Sivagangai has been cancelled vide letter dated 29.10.2014. Thus, the version of the respondents is that as per the application submitted by the petitioner, he has been advised medical rest by the doctor, he will be relieved on posting to 4th Bn. Sivagangai by the Unit Commander of CISF Unit BDL, Bhanur on reporting back to duty from medical rest. As per the records held at Unit Control Room Medical Situation Report Register the petitioner informed about his one day sickness only on 03.10.2014. Therefore, the 5th respondent need not take into consideration the recommendation of the medical officer at BDL based on the diagnosis made by him.

8. Nextly, it is submitted that the application dated 09.10.2014 submitted by the petitioner to IG/SS HQrs. Chennai requesting to cancel his posting order which has been examined and not acceded to and was rejected, in view of the instructions issued by CISF HQrs. New Delhi vide circular No.33/2014 dated 04.08.2014. It is contended by the respondents that the diabetes is a complaint and can be controlled by regular medication and diet prescribed by the doctor and as such the transfer order of the petitioner

cannot be cancelled on the ground that he has been suffering from diabetes.

9. It is further submitted by the respondents that the petitioner is due for superannuation on 30.06.2020 afternoon. As per the posting policy in vogue, the petitioner cannot remain at the same place of posting for the remaining period of service. He can very well approach the concerned authorities to transfer him to his desired place of posting near to his native place on the verge of his retirement for the last tenure of 2/3 years. It is further submitted that as per the existing posting policy, the petitioner is due for posting in Southern Zone Units located in Tamil Nadu, Andhra Pradesh, Telangana, Kerala and Karnataka. Neither the earlier unit in which the petitioner served i.e. Calcutta Port Trust nor CISF 4th Res. Bn. are categorized as hard area for the sake of posting and therefore, the contention of the petitioner has no merit. Contending as above, the respondents sought to dismiss the writ petition.

10. Transfer is an incidence of service and normally this Court will not interfere with the transfer of an employee unless the transfer is prompted by *mala fides* or made in violation of statutory rules. The petitioner being constable in CISF is liable to be transferred to any place during his service and the petitioner has to work at the place wherever he is posted by the employer. Even in the instant case, the alleged transfer is resisted on the ground of illness, the illness even according to the petitioner is diabetes for which he was treated and was advised house rest for a short period, no medical record has been placed to show that the petitioner has been suffering from any serious ailment. Even if the petitioner is suffering from any serious ailment, that itself is no ground to resist the transfer order passed by the employer.

11. In the instant case, according to the respondents, the transfer of the petitioner is made pursuant to the circular dated 04.08.2014 as he was reinstated into service by the order of this Court after he was dismissed from service by the employer. As per the aforementioned circular, any employee who is reinstated into service after imposition of punishment of dismissal from

service shall be posted in a new station but not in the same station. Therefore, it is not open for the petitioner to contend that since he had not completed three years tenure at the present station, he shall not be transferred to a new station. I absolutely see no grounds to interfere with the transfer order passed by the 5th respondent.

12. The writ petition therefore fails and the same is accordingly dismissed without any order as to costs.

Miscellaneous petitions if any filed in this writ petition shall stand closed.

R.KANTHA RAO, J

Date:01.06.2015
ccm

THE HON'BLE SRI JUSTICE R.KANTHA RAO

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