

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.No.12402 of 2015

MP.No.2 and 3 of 2015 and WMP.No.597 of 2016

Lt.Col.S.Raju (IC 51397A)

Petitioner

Vs

1.The Military Secretary,
Military Secretary's Branch
Integrated Headquarters of Army
Ministry of Defence, Sena Bhavan,
New Delhi 110 001

2.The Station Commander,
Station Headquarters
Ministry of Defence,
Fort St.George,
Chennai-9
Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in No.391367/PO/MS-13, dated 17.4.2015 in so far it relates to the Petitioner's posting and in No.A60008/IC-51397/MS/13 dated 5.5.2015 and to quash the same and to direct the Respondents to reconsider the request of the Petitioner for posting at Chennai in a sheltered appointment on extreme compassionate grounds.(Prayer amended as per the order of this court dated 28.07.2016)

For Petitioner : Mr.M.Ravi

For Respondents : Mr.S.Rajagopal, ASG for
Mr.V.Balasubramanian, SC

ORDER

This Writ Petition is filed to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in No.391367/PO/MS-13, dated 17.4.2015 in so far it relates to the Petitioner's posting and in No.A60008/IC-51397/MS/13, dated 5.5.2015 and to quash the same and to direct the Respondents to reconsider the request of the Petitioner for posting at Chennai in a sheltered appointment on extreme compassionate grounds.

2. This court heard the learned counsel on either side and also perused the materials placed on record.

3. Originally, the prayer in this Writ Petition was to quash the impugned order of transfer and to consider his representation. During the pendency of the Writ Petition, his representation was rejected by order dated 05.05.2015 and hence, he sought for amending the prayer in WMP.No.596 of 2016 to challenge the said order also and also sought to raise additional grounds in WMP.No.598 of 2016, which were allowed by order dated 28.7.2016 and accordingly, the prayer in this Writ Petition has been amended as stated above.

4. According to the Petitioner, in his 32 years of service, he has been transferred 16 times and he had obeyed all the transfer orders. Now, at the verge of his retirement, due to his ill-health, since he could not obey the present order of transfer, he has made a representation, praying for sheltered appointment at Chennai, so that he could get help from the family members. Further, his father aged about 80 years old and mother aged about 72 years old are with him and they are also having health problems. He had undergone nasal operations three times and since then, he is having partial head ache due to allergy prone condition of his health.. Since the Chennai city is well known for high quality medical treatments, he wants to be retained in the Chennai City.

5. It is contended on the side of the Respondents that as per the service rules, if a person avails study leave, after completion of such leave, he will not be posted in the same place and he has to be necessarily posted in some other location and it is a consequential transfer and accordingly, he was posted to some other place other than the place where he last served by the impugned order, but he did not join the place of transfer because of the stay granted by this court and further all other things are also affected. In any event, the transfer is a service condition and this court and the Honourable Supreme Court in number of cases, have held that in a case of transfer, the power of the court is very much limited and normally, the courts will not interfere with the transfer matters and therefore, it is contended that this Writ Petition is not maintainable.

6. No Government servant can claim to remain in a particular place, or in a particular post. Transfer is an incident of service and is made in administrative exigencies. Normally, it is not to be interfered with by the Courts. This Court and the Honourable Supreme Court consistently have taken a view that orders of transfer should not be interfered with except in rarest of rare cases where the transfer has been made in a vindictive manner. At this juncture, it is relevant to refer to the decision of the Honourable Supreme Court reported in 2005 7 SCC 227 (Major General J.K.Bansal Vs. Union

of India), wherein it has been held as under:-

"8. Before we advert to the submissions made by the learned counsel for the appellant, it will be useful to take notice of the law regarding the scope of interference in a writ petition filed under Article 226 of the Constitution assailing an order of transfer.

9. In *Mrs. Shilpi Bose and others vs. State of Bihar and others* AIR 1991 SC 532, the appellants, who were lady teachers in primary schools, were transferred on their requests to places where their husbands were posted. The contesting respondents, who were displaced by the appellants, challenged the validity of the transfer orders before the High Court by filing a writ petition under Article 226 of the Constitution, which was allowed and the transfer orders were quashed. This Court allowed the appeal and set aside the judgment of the High Court by observing as under:

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department....."

10. In *Union of India and others vs. S.L. Abbas* AIR 1993 SC 2444, the respondent was working at Shillong in the office of Botanical Survey of India and his wife was also working there in a Central Government office. He was transferred from Shillong to Pauri in the hills of U.P. (now in Uttaranchal). He challenged the transfer order before the Central Administrative Tribunal on medical ground and also on the ground of violation of guidelines contained in the Government of India OM dated 3.4.1986. The Tribunal allowed the petition and quashed the transfer order. In appeal this Court set aside the order of the Tribunal and observed as under: -

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the

order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right."

11. Similar view has been taken in National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan and another (2001) 8 SCC 574, wherein it has been held that no Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders, as though they were the appellate authorities substituting their own decision for that of the management.

12. It will be noticed that these decisions have been rendered in the case of civilian employees or those who are working in Public Sector Undertakings. The scope of interference by courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The Courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made.

13. The detailed counter affidavit filed by the respondents clearly shows that it was the Vigilance Branch of the Army Head Quarters, which had taken the decision to proceed against the appellant. He was attached with an Army unit vide Head Quarters Western Command order dated 29.8.2003. The decision

to initiate General Court Martial proceedings was also taken by the Army authorities. The impugned transfer order dated 7.4.2005 has been passed by the Defence Research and Development Organization, Ministry of Defence. The Selection Board for the post of Director INMAS consisted of persons of international repute as external experts including those, who do not belong to the cadre of DRDO. The appellant was considered for the post of Director, INMAS, but was not selected and Brigadier R.P. Tripathi was selected for the said post. Thus, the appellant could not have functioned in INMAS. A post of Major General has been given to DRDE, Gwalior and it was considered in public interest to post the appellant on the said post. The contention raised by the appellant that the transfer order has been passed on account of malafide reasons has, therefore, absolutely no substance and is wholly devoid of merit.

14. The learned counsel for the appellant has also urged that the appellant moved an application for leave on 16.8.2005 before the Director, DRDE, Gwalior and in the said application he had described himself as 'Associate Director'. However, while sanctioning the leave, the Director scored out the words 'Associate Director'. The contention of the appellant is that in the additional affidavit, which was filed on behalf of the respondents before the Delhi High Court, it was stated that the appellant would be designated as Associate Director. The learned counsel produced a photocopy of the leave application in order to substantiate his submission. Since this document has been produced during the course of the hearing of the appeal, the learned counsel for the respondent was not in a position to give any reply. We do not consider it necessary to make any observation regarding the status of the appellant in DRDE, Gwalior. The appellant has already been promoted to the rank of Major General and we have no reason to doubt that he would be given the status to which he is entitled by virtue of the rank currently being held by him.

15. The appeal lacks merit and is dismissed with costs."

7. Who should be transferred where is a matter for the appropriate authority to decide and it is for the authorities to decide as to when and where an employee should be posted, as has been held in 2005 7 SCC 227 (Major General J.K.Bansal Vs. Union of India) and the order of this court dated 22.12.2015 made in WP.No.38936 of 2015. The same view can be applied to the case on hand also.

8. At this stage, the learned counsel for the Petitioner in the presence of the Petitioner has submitted that the Petitioner will obey the order of transfer and after obeying the order, he may be permitted to make a representation, asking for a post in Bangalore where good medical facilities are available. As being an army personnel, it is his bounden duty to obey the order first and after obeying the order, it is always open for him to make such a representation before the concerned authority, who in turn shall dispose of the same sympathetically, as expeditiously as possible.

9. With the above directions, this Writ Petition is dismissed. No costs. Consequently, the connected MP are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Srcm

To:

- 1.The Military Secretary, Military Secretary's Branch
Integrated Headquarters of Army
Ministry of Defence, Sena Bhavan,
New Delhi 110 001
- 2.The Station Commander, Station Headquarters
Ministry of Defence, Fort St.George,
Chennai-9

+1cc to Mr.M.Ravi, Advocate, S.R.No.43160
+1cc to Mr.V.Balasubramanian, Advocate, S.R.No.42977

KSJ(CO)
EU(02/09/2016)

WP.No.12402 of 2015