

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-4-2016

CORAM:

THE HONOURABLE MR.JUSTICE NOOTY. RAMAMOHANA RAO

W.P.No.30147 of 2015
M.P.Nos.1, 2 & 3 of 2015

Dr.S.Jeyabalan

... Petitioner

Vs

1. The Director General of Police,
Directorate General, CRPF,
CGO Complex, Lodhi Road,
New Delhi - 110 003
2. The Additional Director General of Police,
South Zone, CRPF, Chandrankutta,
Hyderabad - 500 005.
3. The Inspector General of Police,
Southern Sector, CRPF,
Road No.10C, Jubilee Hills,
Near MLA/MPs Colony,
Gayathri Hills,
Hyderabad - 500 033.
4. The Deputy Inspector General
of Police/Principal,
Central Training College (CTC), CRPF,
Thopampatti,
Coimbatore 641 017.

... Respondents

PRAYER : This writ petition is filed under Article 226 of the Constitution of India with a prayer to issue a writ of certiorarified mandamus calling for the records pertaining to the order of 1st respondent dated 20.7.2015 in proceedings No.T.IX-1/2015-PERS(MOs) and consequential order dated 21.9.2015 of 4th respondent in proceeding No.T.IX-1/2015-PA and quash the same insofar as petitioner is concerned and forbear the respondents from transferring the petitioner.

For Petitioner : Dr.R.Gouri

For Respondents : Mr.V.T.Balaji

O R D E R

This writ petition is instituted by the Chief Medical Officer (Selection Grade), attached to the Central Reserve Police Force and Armed Force of the Union, questioning his transfer and attachment to the hospital of the CRPF at Bilaspur, Chattishgarh State.

2. Dr.R.Gouri, learned Counsel has very passionately pleaded that out of 22 years of service rendered by the writ petitioner, he had spent most time away from his home town, Coimbatore, and he was posted at Coimbatore only on 28.9.2012, and by the impugned order passed on 20.7.2015, he has been shifted out of Coimbatore. Great emphasis has been placed on the Standing Order No.7/2014 formed by the CRPF itself on 24.11.2014, regulating the Transfer Policy for the Gazetted Officers (Executives and Medical Officers). Paragraph 2 of the Standing Order delineated the main features of the policy. It opens up setting forth that Transfer Policy should be followed strictly in letter and spirit in a transparent manner, without any bias. Clause (iii) would further set out that the normal tenure from Assistant Commandant to DIG, would be three years, and that, no officer should be allowed to continue for more than a period of three years at a stretch, except Training Institution/Intelligence Set-up/Parliament Duty Group/Special Duty Group/Signals/Legal Cells, etc. The tenure of the Officer posted in the Training Institution/Intelligence Set-up/Parliament Duty Group, etc., is spelt out as four years. Therefore, it is urged that the petitioner, who has now been attached to the Central Training College, CRPF at Coimbatore, should be allowed to spend full four years of time, which would only expire in January, 2017, and hence the writ petitioner ought to have been continued in service till such time.

3. Per contra, the learned Standing Counsel for CRPF would contend that there are no many Doctors available with post graduate qualification, and the writ petitioner possesses post graduate qualification in MS (Orthopaedics), and the situation in Chattishgarh State requires the services of specialized Doctors to attend to the casualties suffered by the members of the Force, and hence to sub-serve the larger public interest, the writ petitioner has been transferred and posted to Bilaspur in Chattishgarh.

4. Transfer of a Government Servant from place to place is an incidence of service. The conditions of service remain the same and unaltered, wherever one is transferred and posted. So long as transferability is one of the conditions of service, no exception can be drawn to any such order of transfer. The known exceptions to an order of administrative transfer, recognized by the Courts are: (i) The Officer, who issues the order of

transfer lacks competence to do so; and (ii) Any such attempt is tainted by malice, either in fact or law. In the instant case, the writ petitioner has been shifted out of the Central Training College of CRPF at Coimbatore by the impugned order on 20.7.2015, prior to institution of this writ petition, however, the Standing Order may have prescribed the tenure as four years, in case of Officers attached to the Training Institution.

5. While a standing order undoubtedly brings forth the much needed transparency in exercise of powers by the competent authorities, but at the same time, it would be apt to remember that larger public interest, and interest of the organization are far more paramount than the rights of the individual. The Standing Orders have attempted at a rational approach to the vexed question of transferability of the employer, particularly when the members of the Armed Forces are increasingly feeling uncared for, and left to fend for themselves and always kept at the mercy of the unkind superiors. It is increasingly noticed that such factors are contributing generously to the stress of the employees. However, model employers would have attempted to relieve all such stressful factors, and hence transparent and purposeful guidelines are formulated in the shape and form of Standing Orders, etc.

6. At the same time, the exigencies of the service, when require the services of a particular officer like that of an Orthopaedic surgeon, the rigor of the standing order has to be kept aside for a while. There is no gainsaying that the members of the CRPF are increasingly getting injured while performing one of the most hardest tasks assigned to them, in the State of Chattishgarh. It is the responsibility of the organization viz., CRPF to ensure that the injured members of the Force are provided adequate and immediate medical facilities. Doctors, who are specialized surgeons and Orthopaedicians are in great demand generally. When the counter affidavit informs me that their numbers are not many, if the impugned order of transfer sought to dislocate the writ petitioner from out of his comfort zone in Coimbatore and posts him to attend to the injured at the hospital of the organization at Bilaspur in Chattishgarh State, it is not difficult for me to realize as to how essentially the services of the writ petitioner are needed there at Bilaspur, much more than at Coimbatore. The call of duty, particularly on the part of those who are members of the Armed Forces, requires greater amount of sacrifices to be made. If the situation requires them to move out of their comfort zone, depending upon the necessities and requirements of the organization, such attempts cannot be resisted. I am therefore of the opinion that the impugned order of transfer of the writ petitioner cannot be faulted in principle.

7. However, if an officer makes a representation, it is essential that it should be attended to promptly and faithfully. Every Government servant, including the members of the Armed Forces, also have certain compelling social obligations to be discharged essentially towards their parents, spouse and children. Therefore, when normal circumstances return to Chattishgarh State, and when immediate requirement of the services of Orthopaedic surgeon are overcome at Bilaspur, the representation of the writ petitioner may be taken up for consideration with necessary compassion, and a decision as objectively as possible be taken, and the same be communicated to the writ petitioner.

8. With this, the writ petition stands disposed of. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Director General of Police,
Directorate General, CRPF,
CGO Complex, Lodhi Road,
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4. The Deputy Inspector General of Police/Principal,
Central Training College (CTC),
CRPF, Thopampatti,
Coimbatore - 641 017.

+1cc to M/s.R. Gowri, Advocate, S.R.No.27009
+1cc to Mr.V.T. Balaji, Advocate, S.R.No.26770

MP(CO)
EU(12/05/2016)

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