

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 388 OF 2017

- Mukesh Kumar Rai, S/o Shri Charan Lal Rai, aged about 44 years, R/o Q. No.39, Type-3, CRPF, Bharni, P.S. Chakarbhata, District Bilaspur (C.G.)

... Petitioner

Versus

1. Union of India, Ministry of Home Affairs, through Director General, Central Reserve Police Force, Block No.1, C.G.O. Complex, Lodhi Road, New Delhi- 110003.
2. Special Director General, CRPF Campus, HC Block, Sector-III, Salt Lake, Kolkata (West Bengal) 700106
3. Inspector General of Police, Central Reserve Police Force, Chhattisgarh Sector HQR, CRPF Old Hidayatullah National Law University, Near PHQ, Raipur, Chhattisgarh- 492001.
4. Deputy Inspector General of Police, Group Centre, CRPF, Bharni, District Bilaspur (Chhattisgarh)

... Respondents

For Petitioner	:	Mr. Chandresh Shrivastava, Advocate.
For Respondents	:	Mr. R.K. Kesharwani, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/03/2017

1. Challenge in the present writ petition is to the order dated 6.12.2016 whereby the services of the Petitioner have been transferred from Group Centre, Bilaspur to Ops Range, Sukma.
2. The Petitioner prior to his being posted at Bilaspur was posted at Jagdalpur for a period of about 2½ years from May, 2012 to September, 2014. Till September, 2014 to the date of impugned order dated 6.12.2016, the Petitioner has been discharging his duties at Bilaspur. As such, the Petitioner has been at Bilaspur for about 2½ years. So far as the administration of the Respondent is concerned, Bilaspur is considered to be a soft area and Jagdalpur i.e., the earlier place of posting of the Petitioner, is considered as hard area.

3. The Petitioner has primarily challenged the order of transfer, on the ground that (i) it being discriminatory, (ii) it being violative of Article 14 of the Constitution of India, (iii) it also is in violation of the transfer policy applicable in the respondent establishment and (iv) there was no administrative exigency as such for transferring the Petitioner before completion of the tenure in soft area. Apart from the aforesaid reasons, the Petitioner has also challenged the impugned order on the usual routine ground of the family facing hardship if the order of transfer is complied with, with the old age of the parents and the wife undergoing an educational course, of which only six months period is left for its conclusion.

4. So far as the discrimination as well as action on the part of the Respondents being violative of Article 14 of the Constitution of India is concerned, the grounds assigned by the Petitioner is that, there are other persons at Bilaspur posted for a much longer duration/tenure than that of the Petitioner. Similarly, he submits that the Respondents in the case of another person, whose name was there in the order of transfer dated 6.12.2016, on his representation, has been considered and his order of transfer is cancelled, but so far as the case of the Petitioner is concerned his representation has not been decided.

5. So far as the impugned order being violative of the transfer policy, contention of the Petitioner is that the tenure of a person in the CRPF as per the transfer policy after having served at a hard station, is three years tenure in a soft area. In the instant case, the tenure of the Petitioner at soft area has not been completed and therefore the order of transfer dated 6.12.2016 is bad in law and it is liable to be struck down.

6. The Petitioner was stressing hard on the aspect that there is a large number of personnels who are presently posted at Bilaspur and who have completed much more than three years time, i.e., the normal tenure of

posting, and that, if at all, if the Respondents had an administrative exigency of transferring the personnels from Bilaspur, they should have considered the personnels who have completed their tenure for being sent out rather than those who have not completed their tenure. Thus, for the aforesaid reasons, Counsel for the Petitioner sought for quashment of the impugned order of transfer.

7. Per contra, Counsel appearing for the Respondents opposing the petition submits that it is the administrative exigency which has compelled the Respondents for the issuance of the impugned order. The exigency of service was the creation of two new operation ranges at Bijapur and Sukma, which are considered to be two of the most sensitive naxalite affected areas in the State of Chhattisgarh. It was also contended by the Counsel for the Respondents that, a plain perusal of the impugned order itself would reflect that it was not just the Petitioner alone who has been picked up from Bilaspur and is being sent to these ranges rather the order would show that there are more personnels from Bilaspur who are being sent from Bilaspur and the Petitioner happens to be one among them.

8. Counsel for the Respondents also suggested that it is the prerogative of the employer to decide whom to be posted at which place particularly taking into consideration the purpose and object of the posting being made. He also refuted the contention of discrimination with an argument that, there are more number of personnels in the impugned order whose tenure at Bilaspur has been much less than the Petitioner and as such the allegation of discrimination is not established. He further submits that from the pleadings also the Petitioner has not been able to establish any malafide against any particular person who has resulted in the issuance of the transfer order. It was lastly contended by the Counsel for the Respondents that the fact that two new ranges have been opened and that personnels had to be posted at the

said two places, is itself a sufficient administrative exigency for the issuance of the impugned order of transfer. He thus prayed for the rejection of the petition.

9. So far as the scope of interference in transfer is concerned, it is by now well settled position of law for more than two decades where the Hon'ble Supreme Court repeatedly in a plethora of decisions has held that, once if the order of transfer has been made in public interest and that there being no allegation of malafide in the issuance of transfer order. it shall be not opened under the scope of judicial review to scrutinise the decision taken by the employer. It is also a well settled proposition of law that policies and guidelines are not mandatorily to be applied; it is to be applied as far as possible. The Supreme Court has repeatedly held that transfer is an incident of service. Immunity from it cannot be claimed as a matter of right. It is not within the legal right of an employee to claim for being retained at a particular place. It has also been settled by the Supreme Court that the guidelines do not confer upon an employee any legally enforceable right. If an order of transfer is made without following the guidelines the same cannot be interfered with, unless it is vitiated by malafide or is in violation of any of the service rules. Time and again, the Supreme Court had repeatedly held that it is entirely for the employer to decide that where and at what point of time a public servant is to be transferred. It has been reiterated that Courts should not interfere with the order of transfer.

10. In 1995 AIR SC 1056 (State of Madhya Pradesh and Another v. S.S. Kourav and Others), the Supreme Court has held that the Courts cannot act as a appellate forum to decide on transfers made on administrative exigencies. The Courts cannot go into expediency of posting of officers at particular place and normally the order of transfer is not to be interfered with unless there is an allegation of malafide or breach of statutory rules.

11. At this juncture, it would also be relevant to quote a decision of the Supreme Court in the case of Major General J.K. Bansal v. Union of India and Others [2005 (7) SCC 227], where the three Judges Bench of the Supreme Court, after considering the various decisions of the past, in paragraph 12, has held as under:

“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.”

12. The reason for quoting the said judgment was, for the reason that the same also deals with an officer of the armed force and the Supreme Court in very categorical terms, has held that in order of transfer of an armed force personnel the interference by Courts is far more limited and narrow as compared to the employees of other public sector or government establishments.

13. In the light of the aforesaid legal position, as regards the two judgments referred to by the Counsel for the Petitioner i.e. 2001 (5) SCC 508 [State Bank of India v. Anjan Sanyal & Others] and 1993 AIR (SC) 2444 [Union of India v. S.L. Abbas], this Court does not have any hesitation in reaching to the conclusion that much water has flown since those decisions were made by the Supreme Court and that if we consider the submissions made by the Respondents in their reply as also on considering the contentions of the Counsel for the Respondents, it gives sufficient material and of substantial strength to negate the submissions of the Petitioner and for these very reasons, the judgments quoted by the Counsel for the Petitioners become distinguishable.

14. For the foregoing reasons, this Court does not find any good ground made out for interfering with the impugned order of transfer and the present writ petition being devoid of merits the same deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

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