

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2017

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THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.A.No.1259 of 2017
and
CMP.Nos.17473 and 17474 of 2017

D.Rakesh Reddy Appellant

vs.

1. The Director General,
CRPF, CGO Complex,
Lodhi Road,
New Delhi - 110 003.
2. The Inspector General of Police,
Southern Sector CRPF,
Road No.10 C, Jubilee Hills,
Near MLA/MPs Colony,
Gayathri Hills,
Hyderabad - 500 033.
3. The Commandant,
77 Bn, CRPF,
Karaianchavadi,
Poonamallee,
Chennai - 600 056. ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 02.08.2017 passed by the learned Single Judge of this Court in WP.No.38699 of 2016.

Prayer in W.P.No.38699/2016:

Praying to issue a Writ of certiorarified Mandamus, to call for the records pertaining to the Transfer Order dated 15.10.2016 issued by the 3rd respondent in proceeding No.J.II.1/2016-77-EC-2 and quash the same and forbear the respondents from transferring the petitioner from 77 Bn CRPF Poonamallee and retain the petitioner in 77 Bn CRPF or transfer to other establishments of CRPF at Chennai/ Hyderabad/ Bangalore.

For Appellant : M/s.R.Meenakshi
For Respondents : Mr.K.Raju, CGSC

JUDGMENT

(Order of the Court was made by HULUVADI G. RAMESH, J.)

Feeling aggrieved over the order dated 02.08.2017 passed by the learned Single Judge in W.P.No.38699 of 2016, the writ petitioner has come up with the present appeal before this Court.

2.For the sake of convenience, the appellant and the respondents herein are referred to as the petitioner and the respondents respectively.

3.By the impugned order, the learned Single Judge has dismissed the writ petition, which was filed seeking a Writ of Certiorarified Mandamus, to call for the records pertaining to the transfer order dated 15.10.2016 issued by the third respondent in Proceedings No.J.II.1/2016-77-EC-2 and quash the same and forbear the respondents from transferring the petitioner from 77 Bn, CRPF, Poonamallee and retain him in 77 Bn CRPF or transfer to other establishments of CRPF at Chennai/Hyderabad/Bangalore.

4.The backdrop of the case may briefly be stated as follows:

4.1 The petitioner was appointed as Constable in Central Reserve Police Force ('CRPF' for brevity) on 28.12.2005. After completing his training, he had served in various units deployed at various places in the country. Lastly, he served in 77 Battalion, CRPF, Poonamallee, Chennai from 09.06.2013 to 14.07.2016. During the course of his service, on 22.12.2008, he had accidentally sustained a bullet injury, when he was on Assembly Election duty at Sopure, J&K, due to which, he was medically declared as Shape -3(P) by the Medical Board of Composite Hospital, CRPF, Avadi.

4.2 Be that as it may, he was transferred to Srinagar by order dated 14.07.2016, against which, he preferred W.P.No.26491 of 2016, which, by order dated 05.08.2016, was disposed of, directing the petitioner to make a representation and on making such representation, the respondents were directed to consider the same and pass appropriate orders. Pursuant to the said order, the petitioner submitted a representation enclosing medical reports with respect to his health condition. By order dated 15.10.2016, the third respondent considered his representation and passed an order, cancelling the earlier order dated 14.07.2016 and transferring him to Jammu and Kashmir. Aggrieved over the same, he again filed a writ petition in WP.No.38699 of 2017, which was dismissed by the learned Single Judge by the impugned order. Hence, this writ appeal.

5.Learned counsel for the petitioner contended that the order passed by the learned Single Judge is contrary to law and against the principles of natural justice. According to the learned counsel, the learned Judge failed to note that the petitioner became disabled due to risk of job and was placed in medical category Shape-3 (permanent), but the respondents, fully aware of the same, directed him to move to Jammu and Kashmir, which is a sensitive and hard area. Learned counsel further contended that the learned Judge erred in holding that the violation of certain guidelines/instructions given in the form of circular or orders will not confer any legal right on the employees, whereas, the Standing Orders are supplementary to the rules and are having statutory force and binding on the respondents. Therefore, learned counsel prayed that considering the disability of the petitioner, the impugned order has to be set aside and the petitioner may be transferred to any other establishment of CRPF at Chennai/Hyderabad/ Bangalore.

6.The learned Central Government Standing Counsel, who takes notice for the respondents, reiterated the same arguments as were made in the writ petition. According to him, the job of the petitioner is a transferable one and the competent authority may transfer an employee from one place to the other and that, there is no violation of the standing orders as alleged by the petitioner. He further submitted that as per the opinion of the Medical Board, the petitioner is posted at a place, where, adequate medical support is available and he will be given light duty. Therefore, he submitted that no interference is warranted in the order impugned herein.

7.We have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8.The incontrovertible facts are that the petitioner sustained bullet injury, during the course of performance of his duties and hence, he was medically declared as Shape-3(P) by the Medical Board constituted by the respondent Authority. Further, he is holding a transferable post and he served in 77 Battalion, CRPF, Poonamallee, Chennai from 09.06.2013 to 14.07.2016.

9.The learned Single Judge dismissed the writ petition on the grounds that transfer is an exigency of service and is an administrative decision; the Standing Orders referred to by the petitioner, are the subject matters to be considered only by the competent authorities and that, the petitioner is continuing in Avadi, Chennai for about four years and his further continuance is certainly not desirable, since he is working in a disciplined Uniformed Force, i.e., CRPF.

10. We are of the considered opinion that the grounds of challenge made in this writ appeal cannot be countenanced, since transfer is not only an incident inherent in the terms of appointment, but also implicit as an essential condition of service in the absence of any specific indication to the contrary. If the Government servant insists that once he is appointed or posted in a particular place or position, he should continue in such place or position as long as he desires, no Government can function. In this context, the Supreme Court has, time and again, held that transfer should not be interfered unless the same is vitiated by malafides or violation of rules and regulations or lack of competence. One such decision is in the case of Shilpi Bose and others v. State of Bihar, reported in AIR 1991 SC 532 and the same runs thus:

"The courts should not interfere with a transfer order which is 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. If the courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest."

11. In the light of the aforesaid settled legal principle, we are of the view that in the case on hand, there is no question of any mala fides in the issuance of the transfer order nor is the petitioner subjected to any harassment by issuance of such transfer order. As such, the transfer order issued to the petitioner, which was confirmed by the learned Single Judge, cannot be found fault with and the same is hereby confirmed. However, the petitioner is at liberty to approach the higher authority to ventilate his grievances.

12. Accordingly, the petitioner is directed to report/join for work, where he is transferred, on or before 15.11.2017. After joining the transferred place, he is at liberty to make a representation expressing his difficulties to the higher authority. On such representation being made, the higher authority shall consider the same on merits and in accordance with law.

13. With the above observation, the writ appeal stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Director General,
CRPF, CGO Complex,
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Chennai - 600 056.

+1 Cc to M/s.R.Meenakshi, Advocate sr 77829
+1 cc to Mr.K.Raju, CGSC, sr 72957.

W.A.No.1259 of 2017

NRI (CO)
SP(14/11/2017)