

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2017

CORAM

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

W.A.No.1271 of 2017
and
CMP.No.17649 of 2017

G.Saravanan Appellant/Petitioner

vs.

- 1.The Deputy Inspector General of Police,
Recruit Training Centre
Central Reserve Police Force
Avadi, Chennai - 600 065.
- 2.The Inspector General of Police
Central Reserve Police Force
Southern Sector,
Gayathri Hills, Hyderabad - 500 003.
- 3.The Director General of Police,
Central Reserve Police Force,
CGO Complex, Lodhi Road,
New Delhi - 110 003. Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 08.08.2017 passed by the learned Single Judge of this Court in W.P.No.38159 of 2015.

WP.No.38159 of 2015:To be pleased to issue a Writ of Certiorarified Mandamus or any other appropriate Writ, Order or direction in the nature of a Writ, calling for the records in respect of the Office Order No.T.IX-12/2015-SS-Adm-II dated 08.11.2015 passed by the 2nd Respondent and quash the same in so far as it relates to the petitioner herein and consequently direct the Respondents not to transfer the Petitioner herein in the light of Clause 5 (iii) and (Viii) of Standing Order No.01/2014 and Office Memorandum issued by Ministry of Personnel Public Grievances and Pensions Government of India under Ref. No. AB.14017/41/90-Estt. (RR) dated 15.02.1991 under Ref. No.AB.14017/41/90-Estt. (RR) (Vol.II) dated 05.01.1993 and under Ref.No.42011/3/2014-Estt.(Res) dated 06.06.2014

For Appellant : Mr.J.Lakshmi Narayanan

For Respondents : Mr.Su.Srinivasan

JUDGMENT

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

The unsuccessful writ petitioner is the appellant herein. This Writ Appeal has been directed against the order dated 08.08.2017 passed in W.P.No.38159 of 2015, whereby, the learned Single Judge upheld the order passed by the second respondent transferring the petitioner from Avadi, Chennai to Manipur and dismissed the writ petition.

2.For the sake of convenience, the parties are referred to as per their rank in the writ petition.

3.According to the petitioner, he joined the Central Reserve Police Force as Constable (GD) on 07.12.1992. After completion of his training, he served in various field and was posted at Avadi, Chennai, on 22.01.2012. Thereafter, he was transferred to Manipur by order dated 08.11.2015, against which, he filed a writ petition in W.P.No.38159 of 2015 stating that his son is availing psychological treatment in a hospital at Chennai and he has to take care of him. He also placed reliance on the official memorandums issued by the Government of India for retention in the present station itself. Considering the same, this Court has stayed the order of transfer. Based on the same, he continued in the present station. While so, the petitioner has developed throat related problems, due to which, he was subjected to medical examination on 08.06.2017 and was categorized as Shape P2 and was advised to avoid exposure to cold/dust and avoid PT, Parade and heavy exertion. In the mean time, the writ petition was taken up for final hearing and the same was dismissed by the impugned order.

4.The learned Single Judge has dismissed the writ petition on the ground that the order of transfer is a summer chain transfer issued in the year, 2015 and the office order, transferring the uniformed personnel is issued for Rationalization of Surplus Strength of NGOs (Exe/Tech/Tradesmen) and hence, it is an administrative transfer issued by the respondents. Questioning the justifiability of the dismissal of the writ petition, the petitioner has preferred the instant intra court appeal.

5.Mr.J.Lakshmi Narayanan, learned counsel for the petitioner contended that the petitioner is having a differently abled child and he has to take care of him. He further contended that

as the petitioner was medically categorized as Shape P2, he is entitled for light duty as per the Standing Orders. However, without considering the same in a proper perspective, the learned Single Judge has dismissed the writ petition and upheld the order of transfer. Therefore, learned counsel seeks to set aside the order of the learned Single Judge as well as the order of transfer passed by the respondent authority.

6. On the other hand, Mr. Su. Srinivasan, learned counsel taking notice for the respondents, contended that the transfer order has been passed in public interest and for administrative exigencies and there is no malice for effecting transfer on the part of the respondents. He further contended that the hardship pleaded by the petitioner is no ground for not transferring him, which is an ingredient part of the service and that, the policy of posting the employees outside the District at a distance place, is not statutorily enforceable in the court of law. Therefore, no interference is warranted in the impugned order herein.

7. We have given due consideration to the rival submissions made by the learned counsel on either side and perused the records.

8. The legal position with regard to transfer has been crystallized in number of judgments. One such judgment is in the case of State of U.P and others v. Gobardhan Lal reported in AIR 2004 SC 2165, wherein, the Apex Court, in paras 7 and 8, held as follows:

"7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee 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 contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to

transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8.A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

9.From a perusal of the aforesaid judgment, the principle, which emerges, is that a Government servant has no vested right to ask to continue at a place of his choice. Government is the sole authority to take a decision regarding posting/transfer of an officer/employee in administrative exigency and in public interest. Transfer, which is an incident of service, is not to be interfered with by the courts, unless it is shown to be clearly arbitrary or vitiate by mala fides or infraction of any professed norm or principle governing the transfer. The Court cannot act as an appellate authority and substitute its finding for that of the Government. There would be a chaos in the administration, if Courts start interfering in the transfer matter in a routine manner.

10.In the present case, the petitioner, admittedly, holds a transferable post and unless specifically provided in his service conditions, he has no choice in the matter of posting.

Further, there is no violation of the statutory rules as alleged by the petitioner. As such, the plea of learned Counsel for the petitioner that the petitioner is facing hardship one way or the other, because of his differently abled child or suffering from ailment, cannot be countenanced by this Court. Since the petitioner has no legal or statutory right to claim his posting at Chennai, there is no justification to set aside the petitioner's transfer to Manipur. Accordingly, the order of the learned Single Judge is hereby confirmed. However, it is open to the petitioner to approach the higher authority to ventilate his grievances.

11. In such view of the matter, the petitioner is directed to report/join for work, where he is transferred, on or before 01.01.2018. 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.

12. With the above observation, the writ appeal stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Deputy Inspector General of Police,
Recruit Training Centre
Central Reserve Police Force
Avadi, Chennai - 600 065.

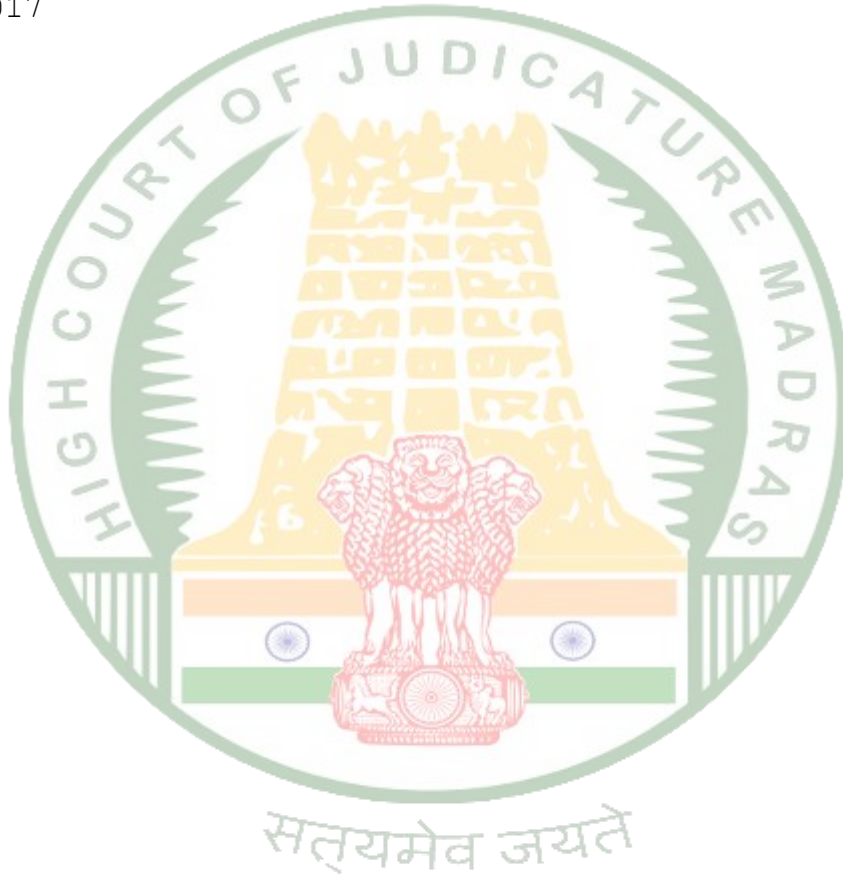
2. The Inspector General of Police
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3. The Director General of Police,
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+1 cc to Mr.J.Lakshmi Narayanan Advocate sr 73477

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