

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2017

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.A.No.1273 of 2017
C.M.P.Nos.17808 and 17809 of 2017

S. Dakshinamurthy

... Appellant

Vs.

1.The Inspector General of Police,
Southern Sector, Central Reserve Police Force,
Road No.10C, Jubilee Hills,
Gayathri Hills, Hyderabad 500 033.

2.The Deputy Inspector General of Police (Administration),
Southern Sector Headquarters,
Central Reserve Police Force,
Road No.10C, Jubilee Hills,
Gayathri Hills, Hyderabad 500 033.

3.The Deputy Inspector General of Police,
Group Centre, Central Reserve Police Force,
Avadi, Chennai -600 065.

... Respondents

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Writ Appeal filed under Clause 15 of the Letters Patent against the
order dated 22.08.2017 made in W.P. No.15169 of 2017.

For Appellant : Mr.P.Manojkumar
For Respondents : Mr.C.V.Ramachandramoorthy
Central Govt. Standing Counsel

J U D G M E N T

(Judgment of this Court was made by **S. MANIKUMAR, J.**)

Challenge in this appeal is to an order made in W.P. No.15169 of 2017 dated 22.08.2017, by which, the Writ Court, declined to interfere with the order of transfer of the appellant from Group Centre, CRPF, Avadi, Chennai to State of Odisha, in proceedings of the Director General, CRPF, New Delhi, dated 09.06.2017.

2. Before the writ court, it was the contention of the appellant that he was initially appointed as Constable(Driver) in the year 1991 and was subsequently promoted as Head Constable(HC/DVR) on 02.12.2002. When the writ petitioner was serving in 18 Battalion stationed at Kulgam, Jammu and Kashmir on 24.12.2011, about 22.15 hours when other cops were sleeping in Motor Transport (M.T) Line of Unit, one Mr. Sanjay Kumar Rai of the unit fired from his own rifle on his colleagues from close proximity of their cot. In the incident, three of the colleagues of

the appellant died, instantly and the appellant sustained grievous bullet injury in his abdomen, right leg and right thigh region. He was admitted as inpatient in Sher-I-Kashmir Institute of Medical Sciences, Srinagar and undergone treatment for a considerable length of time. Thereafter, he was brought to Chennai and admitted in MIOT Hospital, and his right leg above knee was amputated.

3. It was the further contention before the writ court that due to the serious injuries sustained by the appellant/writ petitioner, he has to be considered for rehabilitation. Rehabilitation Schemes are issued by the respondent time and again. Standing Order No.4/2011 dated 27.07.2011, relates to rehabilitation of Force Personnel. In accordance with the Rehabilitation Scheme, appellant/writ petitioner ought to have been allowed to continue in the same place at Avadi, Chennai.

4. After hearing the arguments of both sides and considering the available materials, writ court, at paragraph Nos.4 to 12, passed the following order:

"4. On a perusal of the entire Standing Orders, this Court is of the opinion that the Standing Order relating to rehabilitation of Force Personnel is no way connected with the transfer of personnel from one place to another. Rehabilitation is one aspect and the transfer of personnel is another aspect. Rehabilitation of the employee is very much required, especially in Uniformed Services, when they suffer certain injuries during the course of performing their duties. But, transfer can never be the right and the place and post can never be claimed as a right.

5. Under the Standing Orders, rehabilitation can be claimed by the personnel when they sustained injuries during the course of performing their duties. But, place and post can never be claimed as a matter of legal right. On rehabilitation or during the course of rehabilitation, if the Board finds that a particular person is eligible to perform certain kind of light duty, then it is for the authorities to allot such light duties and post him in the appropriate place. In such circumstances, no personnel in the Uniformed Service can claim that either he should be posted in Chennai or any other place of his choice. In other words, choice of post or place are certainly not available to the public servants.

6. Thus, the arguments advanced by the learned counsel for the writ petitioner that as per the Standing

Orders issued on rehabilitation of Force Personnel, the writ petitioner ought to have been accommodated only at Avadi, Chennai, deserves to be rejected. However, it is for the authorities to find out the nature of concession to be shown to a particular employee and accordingly, allot him any place or post. The Constitutional Courts cannot interfere with the day-to-day administration so as to cause any chaos in the running of the administration in a peaceful manner. Further, Standing Order No.4/2011 dated 27th July, 2011, never prevents the authorities from transferring and posting personnel from one place to another place. Contrarily, it provides a scheme for rehabilitation of Force personnel, which is to be undertaken by the competent authorities and this Court has no second opinion in this regard. All the personnel who sustained certain injuries on account of performing their duties have to be shown indulgence in providing rehabilitation in respect of the job responsibilities, but, not in respect of transfer and posting.

7.This being the view of this Court, all the Standing Orders are the subject matters to be considered only by the competent authorities and this Court may not be in a position to go into the factual aspects and decide whether the writ petitioner should be allowed to continue only in Avadi, Chennai or not. Furthermore, the writ petitioner is

continuing in Avadi, Chennai, for about twelve years and further continuance is certainly not desirable, since he is working in a disciplined Uniformed Force, i.e. CRPF.

8. Transfer of an employee is an administrative prerogative power vested with the competent authority. It is for the competent authority to decide how and where to post the personnel for effective administration. The writ petitioner, being an employee of an uniformed service, has to abide by the administrative orders, more specifically, of transfers.

9. Intervention in administrative transfers will not only cause inconvenience to the administration, but also amounts to preventing opportunity of other employees to come over to their native places. Administrative transfer policies are implemented in the interest of the department, more so, in the uniformed services, in order to maintain discipline and good conduct. Periodical transfers of uniformed personnel are highly essential. Keeping uniformed personnel in one place may create issues relating to others' right to come over to their native places or any native States. CRPF, being a disciplined force, has to maintain such a disciplined conduct throughout in the interest of our great nation. This apart, all the Standing Orders and the Guidelines in this regard are instructions to be followed and no Standing Order

prohibits the competent authority from issuing administrative transfer and posting.

10. This Court is very much conscious that administrative transfers are allowed to be implemented in the interest of administration. It is not for the Courts to interfere or exercise the power of judicial review in the matter of transfers. Only on exceptional circumstances i.e. to say, in the event of violation of any statutory rules, the power of judicial review can be exercised and not otherwise. Violation of certain guidelines /instructions given in the form of circulars or orders, will not confer any legal right on the employees. In other words, the circulars and orders of the Government with regard to the guidelines issued for implementing transfers will not confer any right on the employees. Certain concessions are provided in order to make the employees more accommodative and for effective functioning of the administration. Thus, it is for the competent authorities to consider all these aspects in respect of the personal grievances of the employees, while effecting transfers. Such being the legal principles on transfers, this Court is of the undoubted opinion that the administrative transfers cannot be challenged by way of writ petition and this Court has to be conscious, while exercising the judicial review against the orders of administrative transfers.

11. A Government servant holding a transferable post, has no vested right to remain posted at one place or the other and 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 right. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order, instead, the affected party should approach the higher authorities of the department. If Courts continue to interfere with day-to-day transfer orders issued by the Government and its sub-ordinate authorities, there will be complete chaos in the administration, which would not be conducive to public interest. The Courts need not overlook these aspects while interfering with the orders of transfers.

12. The learned counsel for writ petitioner further submits that the writ petitioner has joined in the present station in Avadi, Chennai in the year 2012 and continuing in the same place for about five years and further submitted that an earlier order passed in W.P.No.16008 of 2017 dated 27.06.2017 in respect of a direction issued to consider their case by referring the writ petitioner therein to Rehabilitation Board. However, it is left open to the authorities to consider the same in this regard after referring the writ petitioner to the Rehabilitation board,

but this court cannot provide any correct opinion in this regard. With regard to personal grievances, of the petitioner it is for the respondent to consider the same in accordance with the instructions/guidelines.

Accordingly, the writ petition stands dismissed. Consequently connected Miscellaneous Petition is also dismissed. However, there is no order as to costs."

5. Being aggrieved by the order made in W.P. No.15169 of 2017 dated 22.08.2017, instant appeal has been filed on the following grounds:

(i) Writ Court has grossly erred in stating that rehabilitation is one aspect and transfer is another.

(ii). It is the case of the appellant that violating his shape categorization as enumerated in Standing order No.04/2008 pertaining to employability limitations, he has been transferred.

(iii) It is an undisputed fact that the appellant suffered multiple injuries and his leg above knee was amputated due to the injuries sustained during bonafide government duty. It is an admitted fact by the respondents that the appellant was categorized as Shape-5 and his case was referred to Medical Invalidation Board earlier.

(iv) Aggrieved by the said action the appellant submitted a representation, requesting for retention in service, as the injuries sustained by him were directly attributable to Government duty with 80% disability. The appellant further requested retention 'on educational grounds of his two children and he has no other source of income, except his salary.

(v) Upon consideration of the same the DIG (Welfare), CRPF Directorate, New Delhi gave his opinion that it is not fair to board out the appellant when the incident happened while he was on duty and not due to his negligence and that the appellant has to be provided with training to handle those jobs which someone with similar ailment and disability can easily perform. Based on the same, DIGP, Group Centre, Avadi, third respondent issued an order dated, the 31st August' 2016 allowing him to continue in service. However in clear contravention of the Welfare Directorate's instructions, action of the Deputy Inspector General of Police (Administration), Hyderabad/second respondent, in posting the appellant to battalion duty would cause immense hardship to the appellant's health. The aforesaid order of the department dated, the 31st August' 20 16 was not at all taken into consideration by the writ Court and therefore, the impugned order is liable to be set aside.

(vi) Writ court has failed to consider the well settled proposition of law that infraction of any professed norms or

principles governing transfer can be scrutinized. In the present case, no valid reason is assigned either by the department or by the writ Court, for deviating from the professed norms, issued in S.O.No.04/2008.

(vii) It is undisputed by the respondents that the appellant is placed in low medical category of SHAPE-P-5. Thus there cannot be any dispute that the appellant is a disabled person. Standing Order No.4/2011 provides safeguard to the disabled personnel.

(viii) Clause 9 (e) of the said Standing Order provides that while rehabilitating disabled personnel in units/offices, care should be taken to ensure that these personnel may be posted to the offices/institutions where adequate medical facilities are available and near to his home town, so that he can get the family support at the time of need. No reason whatsoever is assigned by the department for deviating from the above said Standing Order.

(ix) Action of the respondents in posting the appellant to Battalion for combatant duty, amounts to non-application of mind. The respondents are very well aware of the fact that the appellant suffered multiple injuries in his right leg and his leg above knee has been amputated due to the injuries sustained during bonafide government duty and right trans femoral prosthesis (fitment of artificial limb in right leg) was done.

(x) Ever since the injuries sustained by the appellant in the year 2012, he was provided with lighter duty. Even today the appellant is suffering on account of the said injuries and there is no change in circumstances enabling the appellant to perform combatant duty. In the said circumstances posting the appellant to Battalion for combatant duty is unwarranted and the Writ Court ought to have interfered with the order of transfer.

(xi) For the past 26 years, the appellant had served, in hard stations. The appellant had all along obeyed the orders of transfer rendering loyal service to CRPF. From 12.08.1994 to 04.09.2012 spanning for a period of more than 18 years, he was continuously posted in hard areas and the appellant had served there without any kind of protest. He has not even suffered a single punishment in his entire 26 years of service.

(xii) Due to the prevailing 80% disability condition the appellant is seeking retention and rehabilitation in accordance with the standing orders. The transfer policy enumerated in Standing Order No.07/2015 provides for relaxation in very deserving cases in respect of critical/serious disease if recommended by the board of medical officers/composite hospitals. Case of the appellant ought to have been considered, under the said clause. Posting the appellant to Combatant duty in LWE area contrary to the above is arbitrary.

(xiii) It is the contention of the appellant that routine orders of transfer are issued ignoring the health condition of personnel, who have served the force for several years (26 years in the present case).

(xiv). Avoiding physical and strenuous duties in counter insurgency areas is unavoidable for any CRPF Personnel. In the said circumstances, writ Court, ought to have pragmatically considered that it is also equally important for the force to rehabilitate the disabled personnel, in accordance with the Standing Order No.04/20 11 who had put in their service, for the force for several years with great zeal, vigor, valor, extreme patriotism, impeccable integrity, unflinching loyalty and utter disregard of their personal safety. Therefore the impugned judgment is liable to be set aside.

(xv) Having rendered the finding that it is left open to the authorities to consider referring the writ petitioner to the Rehabilitation board, writ Court erred in observing that the court cannot provide any correct opinion in this regard and that for the personal grievances, it is for the respondent to consider the same in accordance with the instructions/guidelines.

(xvi). On the earlier occasion, when the appellant was referred to Departmental Rehabilitation Board (DRB) the DIG (Welfare), CRPF Directorate, New Delhi gave his opinion that it is not fair to board out the Appellant when the appellant sustained injuries while he was on duty and not due to his

negligence and the appellant has to be provided with training to handle those jobs which someone with similar ailment and disability can easily perform. Based on the same, the Deputy Inspector General of Police, Chennai/third respondent issued an order dated, the 31st August'2016 allowing him to continue in service. In the said circumstances, writ Court ought to have deprecated the action of the respondents and allowed the writ petition.

(xvii) Writ Court erred in stating that the guidelines issued, are merely circulars/instructions and that the petitioner and others have brushed aside the Standing Orders without considering the relevant provisions, in the same. Writ Court, erred in equating the Standing Orders as mere circulars/instructions which is issued by the Head of the Force under the powers conferred on him by the Statute and which are held to be binding on the authorities by this Court in **M. John Vincent v. The Inspector General of Police & another** reported in **CDJ 2009 MHC 4634**.

(xviii) In the absence of any statutory rule with regard to Transfer of the personnel the Standing Order governs the field and the same having been issued by the Director General of CRPF under the powers conferred on him by the Statute have a statutory force.

(xix) Findings of the Writ Court that the Standing Orders and guidelines are only instructions and no Standing Order

prohibits the competent authorities from issuing administrative transfer and posting is clearly contrary to the judicial pronouncement of the Hon'ble Supreme Court in **Union Of India & Ors vs. Rajpal Singh** reported in (2009) 1 SCC 216. Observations of the Hon'ble Supreme Court at paragraph 13 assume significance in the present context as follows:-

"13. It needs little emphasis that fitness of the personnel of Armed Forces at all levels is of paramount consideration and there cannot be any compromise on that score. It is with this object in view, the Legislature has enacted the Army Act, 1950; the Armed Forces Medical Services Act, 1983 and framed the Rules. Army Orders are also issued from time to time in order to give effect to these statutory provisions in letter and spirit. As per the procedure detailed in the written submissions, filed on behalf of the appellants, annual or periodic medical examination of the army personnel is done on certain specific norms. The medical status of an army personnel is fixed on the basis of these norms, containing five components viz. (a) psychology (b) hearing (c) appendages (d) physical and (e) eye -- which is collectively known as SHAPE.

The medical status SHAPE is again characterised in five components known as:--

SHAPE I--physically fit for all purposes.

SHAPE II & SHAPE III--not fit for certain duties and are required

not to undertake strain.

SHAPE IV - those who are in hospital for ailments and

SHAPE V--unfit for further service of the Army."

CRPF being a Para-Military force is also following the aforesaid systematic procedure with regard to SHAPE categorization as done in Armed Forces. CRPF Act is similar to Army Act and Army orders are similar to Standing Orders. Therefore the Standing Orders in CRPF are issued from time to time in order to give effect to statutory provisions such as CRPF Act and CRPF rules in letter and spirit. In the said circumstances, observations of the writ Court that Standing Orders are only instructions is not correct.

(xx) Rule 102 of the Central Reserve Police Force Rules, 1955 states that the conditions of service of members of the Force in respect of matters for which no provision is made in the said rules shall be the same, as are for the time being applicable to other officers of the Government of India. In addition to that Rule 4 of CRPF Rules has kept the residuary power with the Central Government or the Director General of CRPF which are not specifically covered by Rule 102 of the Rules of 1955 or the other related Service Rules.

(xxi). In respect of the disabled persons serving in CRPF apart from the above standing orders there is no specific provision to deal with their service conditions. However in respect of Central Government employees Department of

Personnel and Training, Ministry of Personnel, Public Grievances and Pensions issued guidelines in office memorandum in No.36035/3/29-Estt.(Res) dated 31.03.2014 providing certain facilities in respect of persons with disabilities who are already employed in Government for efficient performance of their duties. Wherein, clause H deals with preference in transfer/posting. The said clause reads as follows:-

"As far as possible, the persons with disabilities may be exempted from the rotational transfer policy/transfer and be allowed to continue in the same job, where they would have achieved the desired performance. Further, preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints. The practice of considering choice of place of posting in case of persons with disabilities may be continued. To the extent feasible, they may be retained in the same job, where their services could be optimally utilized".

On conjoint reading of rule 4 & 102 of CRPF Rules and office memorandum dated 31.03.2014 the Appellant is entitled for retention in the present place of posting itself since his services are optimally utilized without any blemish whatsoever.

(xxii) Writ Court erred in not following the judgment rendered in similar case in W.P.No.16008/2017 dated 27.06.2017. The Petitioner in the said writ petition and the

appellant were transferred by a same order dated 09.06.2017. By virtue of the said order the Petitioner in the said writ petition was referred to Board and was retained in Chennai. Non-consideration of the said aspect by the writ Court entitles the appellant to succeed in the present appeal.

6. Record of proceedings shows that on 20.10.2017, we passed the following order:

"Heard the learned counsel for the parties. Prima facie, we are satisfied that the impugned order of transfer has to be stayed. Hence, it is stayed.

For pronouncement of orders, post this matter before the same Bench on 24.10.2017."

Thus the matter has been listed today.

7. Reverting, on the basis of parawar remarks furnished by the DIG (P), Group Centre, CRPF, Avadi, and inviting the attention of this Court to Part-II, procedure for Medical categorization, in Standing Orders No.15 of 2008 and in particular, to paragraph No.5.6 of the Standing order, Mr.C.V.Ramachandramurthy, CGSC for the respondents submitted that the term 'posting' referred to in Paragraph No.5.6, means only the post and not the place. He further submitted that when the appellant

sought for retention in service, in terms of rehabilitative measure, as per the scheme framed by the department, appellant was allowed to retain in service, instead of boarding off and thus, orders were issued.

8. Learned counsel for the respondents further submitted that the appellant has been in Group Centre, CRPF, Avadi for more than five years and considering the request of others, transfers have been effected. It is his further contention that when the word 'posting' used in paragraph No.5.6 of the standing orders does not mean the place, there is no violation of any statutory provision warranting intervention. According to him, usage of the words posting / job assignment refer only to the post and not the place.

9. Placing reliance on the decision of a Hon'ble Division Bench of this Court, in W.A.No.1144 of 2017, dated 4/10/2017, (**C. Simion Vs. 1. The Inspector General of Police, Hyderabad and 2. The Deputy Inspector General of Police, Chennai**), and similar orders passed in writ appeals, Mr.C.V.Ramachandramurthy, learned for the respondents submitted that in similar circumstances, when the order of the writ

Court, dismissing the challenge to an order of transfer, was tested by one of the force personnel, a Hon'ble Division Bench directed the appellant therein, to join the transferred place on or before 1st December 2017 and then to make a representation to the authorities, to reconsider his retention from the place where he was transferred and that the Hon'ble Division Bench has further directed that if any such representation is made, the appellant therein shall be subjected to medical examination and thereafter, appropriate decision be taken by the authorities, on the basis of the medical report.

10. Inviting the attention of this Court to Clause 10 of paragraph 5 of the Standing Order No.7 of 2015 (Transfer of Non-gazetted (Executive/Technical/Tradesmen) Force Personnel including Mahila Personnel, Mr.C.V.Ramachandramurthy, learned counsel for the respondents submitted that as per the said Clause, cases of personnel injured seriously in operational duties and displayed gallant action may be given choice State or place once subject to administrative feasibility and that therefore, following the decision in W.A.No.1273 of 2017, dated 4/10/2017, similar directions be issued to the appellant herein also, to

join the transferred place and make a representation. It is also the submission of the learned counsel for the respondents that so far, no representation has been made to the Grievance Committee by the appellant herein.

11. Reasons for opposing the writ appeal, in the form of parawar remarks submitted by the DIG (P), Group Centre, Avadi, are extracted hereunder.

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(a)	The petitioner has stated about the whole incident in which he sustained injuries and his treatment. Further, it is submitted that as per the recommendation of Medical invalidation board, his case was referred to Directorate General, CRPF to get concurrence for his invalidation out from service. On checking the proposal for concurrence submitted by Group Centre, CRPF, Avadi, the DIGP (Wel), Directorate has conveyed the following orders of Director General, CRPF on said proposal and asked to take further necessary action:- “It is not fair to board him out when the incident happened while he was on duty and not due to his negligence. Let him to be trained to handle those jobs which someone with his ailment and disability can easily perform”. In compliance to order of DG, CRPF as conveyed vide DIGP(Wel), Dte signal No.W.V-16/2016-Wel-CWO-II dated 08/08/2016, the petitioner has been allowed to continue in service even though he placed in Shape-V medical category vide Group Centre, CRPF, Avadi O/O No.R.VII-1/2016-EC-I, dated 31/08/2016. As the petitioner has completed more than five years service against 3 years and 14 years against 10 years tenures in Group Centre, CRPF, Avadi and IGP, Southern Sector respectively, his case was considered under inter sector transfer by South Zone and allotted to IGP, Karnataka & Kerala Sector, Bangalore who in turn further posted him to 127 Bn vide IGP, KKS message No.T.IX-31/17-KKS-EC-III dated 03/06/2017.

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	Aggrieved with order of transfer to 127 Bn, the petitioner filed a writ petition No.15169/2017 before the Hon'ble High Court of Madras praying quash the order of transfer to 127 Bn and retain him in GC CRPF Avadi itself. The writ petition came up for admission/hearing on 16/06/2017 and the Hon'ble Court was pleased to grant "interim stay". The case again came up for hearing on 22/08/2017 and the Hon'ble Court was pleased to dismiss being devoid of merits. In compliance to the Hon'ble Court order, the petitioner was relieved on transfer to 127 Bn, CRPF on 14/09/2017 vide GC CRPF Avadi O/Order No.T.IX-2/2017-EC-I, dated 14/09/2017. Further, low medical category personnel wherever transferred to the units/offices located in hard/remote area, they have been assigned the duties as stipulated in Standing order and no low medical category personnel are being assigned in operational duties at any cost.
(b)	The Hon'ble learned single Judge has dismissed the writ petition No.15169/2017 filed by the petitioner after going through the Departmental Standing orders and other relevant instruction on the subject.
(c)	As the petitioner has completed more than five years service against 3 years and 14 years against 10 years tenures in Group Centre, CRPF Avadi and IGP, Southern Sector respectively, his case was considered under inter sector transfer by South Zone and allotted to IGP, KKS, Sector, Bangalore who in turn further posted to 127 Bn vide IGP, KKS message No.T.IX-31/17-KKS-EC-III dated 03/06/2017. Though, the petitioner has been placed in Shape-V medical category, his service is being utilized in lighter duties as prescribed in Standing order. Further, low medical category personnel wherever transferred to units/office located in hard/remote areas, they have been assigned in operational duties at any cost. Despite declaring unfit for combatant duty by medical invalidation board, he has been retained in service on humanitarian ground keeping in view of education purpose of his children as requested by O/Order dated 31/08/2016. Thus, the Hon'ble Judge has dismissed the writ petition No.15169/2017 filed by the petitioner on merit.
(d)	Though, the petitioner has been placed in Shape-V medical category, his service is being utilized in lighter duties irrespective area wherever he is posted, as prescribed in Standing order 04/2011. Even though the petitioner is posted to combatant battalion, his service is to be utilized for lighter duties and NOT COMBATANT DUTY as prescribed in Standing order - 04/2011. Further, para 9(e) of S/O-4/2011 has clearly stipulated that number of disabled persons per office / institution, should be kept within reasonable limits but not more than 2% so that the overall efficiency of the institution / unit does not suffer

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	and in case of more personnel then a reasonable time of posting out be also ensured that other disabled personnel also get chance of posting etc. On going through instructions and relevant standing order, the Hon'ble Judge has dismissed the writ petition No.15169/2017 filed by the petitioner on merit.
(e)	To give equal opportunity to all members of Force, to serve at least a minimum one or two tenure at their choice places within available static places, a Standing order 07/2015 has been framed and issued by Directorate General CRPF. Further, para 9(e) of S/O-4/2011 has clearly stipulated that number of disabled persons per office/institution, should be kept within reasonable limits but not more than 2% so that the overall efficiency of the institution/unit does not suffer and in case of more personnel then a reasonable time of posting out be also ensured that other disabled personnel also get chance of posting etc. In the instant case, the petitioner has completed static posting for more than 5 years 1 month and also completed over 12 years in Southern Sector which is over and above of actual entitlement of 03 years and 10 years respectively and hence he deserve no relaxation. As per Standing order No.7/2015, no person can be retained at peace / static station beyond the period of 03 years at any cost. Thus, his posting to 127 Bn CRPF rightly ordered by the competent authority. Moreover, each and every Battalion is having own MI room where one Medical Officer and para Medical staff are posted for providing medical coverage. Thus, the petitioner can continue to do his lighter duty whatever he is doing in present place and take medical treatment, if he requires, at new place of posting without any difficulties.
(f)	Despite declaring unfit for combatant duty by medical invalidation board, he has been retained in service on humanitarian ground keeping in view of education purpose of his children as requested by the petitioner vide Group Centre, CRPF, Avadi O/Order dated 31.08.2016. The petitioner has been retained in service only to fulfill some obligation and NOT to be retained in Group Centre, CRPF, Avadi itself as interpreted by the petitioner. As per Standing order No.7/2015, no person can be retained at peace / static station beyond the period of 03 years and extendable for one year in very deserving cases by the competent authority. In order to accommodate the person who is having similar / more problems than the petitioner, the Hon'ble Judge has rightly been dismissed the writ petition No.15169/2017 and thus the present writ appeal is also liable to be dismissed.
(g)	The contention of the petitioner is denied as the Hon'ble Judge has applied proper application of mind on each and every case dismissed. Though, the petitioner has been placed in Shape - V medical category, his service is being utilized in lighter duties irrespective of area wherever he is posted as prescribed in Standing order -04/2011. Further, low medical category personnel transferred to units / offices located in hard / remote areas, they

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	have been assigned lighter duties as stipulated in Standing order 04/2011 and no low medical category personnel are being assigned in operational duties at any cost. Moreover, each and every Battalion is having own MI room where one Medical Officer and para Medical staff are posted for providing Medical coverage. Thus, the low medical category personnel can continue to do their lighter duty whatever they are doing in present location and take medical treatment, if they require, at new place of posting without any difficulties. Therefore, the Hon'ble Court has rightly been dismissed the writ petition No.15169/2017 and thus the present writ appeal is also liable to be dismissed.
(h)	The contention of the petitioner is denied. As per Chapter II, Rule 4 (Powers of the Central Government and certain Officers of the Force) of CRPF Rules, 1955, in all cases not specifically provided, for in these rules, instructions issued from time to time by the Central Government or the Director General or under his direction by the Additional Director General or the Inspector General shall regulate working of the Force. Based on the above rules, the Director General is empowered to frame the Standing orders. To give equal opportunity to all members of Force to serve at least a minimum one or two tenure at their choice places within available static places, a Standing Order 07/2015 has been framed and issued by Directorate General CRPF. The case of M. John Vincent has referred in this para by the petitioner is not relevant. Accordingly, the Hon'ble Judge has applied proper application of mind and rightly dismissed the writ petition No.15169/2017 being devoid of merits and the present writ appeal is also liable to be dismissed. Order of DG has been misinterpreted by the petitioner as well as the Hon'ble Court. DG has nowhere ordered that the petitioner should continue in the present place of posting. Order of DG is not to send him on invalidation pension.
(i)	In order to classify the medical deformity/ disability of the Force personnel, the medical status of SHAPE has been categorized vide standing order - 04/2008. According to the categorization under Standing order - 04/2008, the duties are to be assigned to the Low medical category personnel by all establishments of CRPF as per Standing order 04/2011. Though, the petitioner has been placed in Shape-V medical category, his service is being utilized in lighter duties as at present, irrespective of the area wherever he is posted as prescribed in Standing order-04/2011. Therefore, supreme Court orders quoted in this para are not relevant to the present case. Further, In case No.1991 Supp (2) Supreme Court Cases 659 (Shilpi Bose(Mrs) and others) wherein the Hon'ble Supreme Court held that "in our opinion, 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 malafide". Further court held that even if a transfer order is passed in violation of executive

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	instructions or orders, the Courts ordinarily should not interfere with the order. Thus, the Hon'ble Judge has rightly been dismissed the writ petition No.15169/2017.
(j)	The contention of the petitioner is denied. As per Chapter II, Rule 4 (Powers of the Central Government and certain Officers of the Force) of CRPF Rules, 1955, in all cases not specifically provided, for in these rules, instructions issued from time to time by the Central Government or the Director General or under his direction by the Additional Director General or the Inspector General shall regulate working of the Force. Based on the above rules, the Director General is empowered to frame the Standing orders. As per Standing order No.7/2015, no person can be retained at peace/static station beyond the period of 03 years and extendable for one year in very deserving cases by the competent authority. Since the petitioner has completed more than five years in Avadi, Chennai against three years normal tenure, he has been posted out to other unit due to administrative constraint so as to accommodate the person who is having similar or more problems than the petitioner. The petitioner will be assigned the same nature of duties at new place of posting as he is performing at present place at GC CRPF, Avadi whatever he is doing in present place of posting. In the light of above, the Hon'ble Judge has been dismissed the writ petition No.15169/2017 and thus the present writ appeal is also liable to be dismissed.
(k)	The writ petition No.16008/2017 filed by Ct/GD Subramaniam of Group Centre, CRPF, Avadi has been disposed off with direction to constitute a special DRB to examine the petitioner's medical records and pass necessary order with regard to his condition and nature of duties he can be awarded vide Hon'ble Court order dated 27/06/2017. While the DRB/MIB was under process, the petitioner expired on 02/10/2017. The case of Ct/GD Subramaniam is not relevant to the present case and hence the writ appeal is liable to be dismissed.
(l)	Since, the petitioner has completed more than 05 years and 01 month stay in Group Centre, CRPF, Avadi and over 14 years in Southern Sector against entitlement stipulated as 03 years and 10 years respectively in Standing order No.7/2015. Further, para 9 (e) of S/O 4/2011 has clearly stipulated that number of disabled persons per office/institution, should be kept within reasonable limits but not more than 2% so that the overall efficiency of the institution / unit does not suffer and in case of more personnel then a reasonable time of posting out be also ensured so that other disabled personnel also get chance of posting etc. In the said circumstance, posting of the petitioner to unit is unavoidable and rightly transferred to 127 Bn which is placed under Administrative control of Kerala & Karnataka Sector and presently stationed at Ganjam (District), Odisha (State) by the IGP, KKS CRPF vide message No. T.IX.31/2017-KKS-EC-III dated 03/06/2017. While the filing of

S.No	Comments
	Counter Affidavit was in final stage, the Hon'ble Court was dismissed the writ petition No.15169/2017 being devoid of merit. Hence, the present writ appeal is also liable to be dismissed.
(m)	The Hon'ble Judge has applied proper application of mind and was being found no merits, the writ petition No.15169/2017 filed by the petitioner was dismissed. Therefore, the present writ appeal is also liable to be dismissed.

For the abovesaid reasons, the respondents have prayed for dismissal of the appeal.

Heard the learned counsel for the parties and perused the materials available on record.

12. Before advertng to the rival contentions, mainly, as to whether standing orders issued by the department, cover the aspect of posting a person in a particular place or only to a post or assigning a particular job or task, as the case may be, let us have a cursory look at the impugned order of transfer, which is extracted hereunder

Signal (by hand)

To: OC Adm/HQr Coy
Info: SI (Adjt)
Fm : GC Avadi
No.T.IX.2/207-EC-I

dated:9/06/2017

U/C (.) Within Zone (Inter Sector Transfer) - 2017 of NGOs
(Executive/Technical/Tradesmen) (.) Following personnel of this

GC were allotted to KKS vide SDG, SZ signal No.T.IX-19/2017-SZ-Adm-I dated 24/05/17 (.). Considering unit GC wise status of vacancies, provisions of transfer policy organizational / operational requirement. Choices submitted by the personnel, PPS and unapproved by competent authority, they have been posted to the units shown against each by Polcent KKS vide Signal No.T.IX-31/17-KKS-EC-III dated 03/06/17 (.).

Sl.No.	Force No.	Rank	Name	Transferred to
1.	891160572	ASI/GD	P.Veeramani	170 Bn
2.	871160791	ASI/GD	B.Annamalai	170 Bn
3.	913093289	HC/GD	P.Elumalai	170 Bn
4.	911272988	CT/GD	K.Subramanian	170 Bn
5.	913099895	HC/Dvr	S.Dakshinamurthy (* produced before 26th DRB on 09/12/16 at Ch, Avd. As desired, individual be produced in net DRB)	127 Bn
6.	841161755	HC/Tlr	C.Paramasivan	GC Blr

(.) Para (.) Polcent KKS ajas also intimated that the transfer of above personnel have been ordered keeping in view of their previous particulars, longest stay in particular units and considering choice as well as vacancy position, therefore no representation against above transfer will not be entertained (.)

(.) Request Relieve all affected personnel of to their new place of posting with the time prescribed in S.O.07/2015 and report to this effect may be submitted to this office 20/06/2017 without fail.(.)

Sd/-

8/6/17

For DIGP, GC, Avadi

13. Reading of the impugned order of transfer dated 09.06.2017,

indicates that the transfer intended, was within Zone (inter-sector transfer of Engineers/executive/technical/ tradesmen). Impugned order further discloses that decision was taken after considering the longest stayees in particular units, , as well as vacancy position in the units, and accordingly, orders have been issued.

14. Reading of the order also indicates that force personnel mentioned in the order have been posted to the units shown against each by Polcent KKS vide Signal No.T.IX-31/17-KKS-EC-III dated 03.06.2017 from Karnataka Kerala Sector. Pursuant to the signal dated 03.06.2017, DIG (P), Group Centre, Avadi has issued the impugned order dated 09.06.2017. As per the remarks furnished by the DIG (P), Group Centre, CRPF, Avadi, appellant has been allowed retention in service vide order dated 31.08.2016, consequent to the decision of the Director General, CRPF, New Delhi, who had decided that it is not fair to board out the appellant, when the incident happened while he was in duty and not due to his negligence. DG, CRPF has further ordered that the appellant to be trained to handle those jobs, that someone with this ailment and disability can perform. In compliance with the order of DG, CRPF,

conveyed vide DIG (Welfare) Dte signal No.W.V.16/2016-Wel-CWO-II dated 08.08.2016, appellant placed in Shape-V, Medical category, has been allowed to continue in service.

15. Contending inter alia that the appellant has completed more than five years of service, as against three years, and fourteen years as against ten years in group centres, CRPF, Avadi and IGP Southern Sector, his case has been considered for inter-sector transfer and allotted to IGP Karnataka and Kerala Sector, Bangalore, who inturn has signalled to post him to 127 Battalion by Polcent KKS vide Signal No.T.IX-31/17-KKS-EC-III dated 03.06.2017.

16. From the above remarks offered by DIG (P) Group Centre, CRPF, Avadi, it could be seen that the appellant had been placed under the administrative control of Kerala and Karnataka Sector, and shifted to Kanjam District, Odisha State.

17. On this day, Deputy Commandant (Legal), Southern Sector,

CRPF, Hyderabad 33, has submitted a brief note, which is extracted hereunder:-

“As on date CRPF has 240 Battalions, 42 Gcs, 20 Sectors and 04 zones. Each Battalion comprising of 1149 personnel in various ranks. Each Battalion headed by commandant. In view of present situation out of 240 Battalions about 215 Battalions have been deployed permanently either in Special Operation Zone/Left Wing extremist area/disturbed area or hard climate area of our Country (i.e., Chattisgarh/Jharkhand/Bihar/Jammu & Kashmir/North Eastern States etc). Only few establishments are located in peace or soft area.

2. For better administration and effective supervision, CRPF has been divided into four zones considering the large number of Battalions deployed in Naxal infested/insurgency areas of the Country, i.e., South zone/Central zone/Jammu & Kashmir zone/North East zone. Each zone is headed by Special Director General under which sectors headed by Inspector General of Police are functioning.

3. South Zone comprising of three sectors i.e., South sector/West sector/Karnataka & Kerala Sector. Each sector monitoring functioning of three group centres located in different states. Under each group centre, 5 Battalions are placed for better administration and logistic support besides ensuring drawal of pay and allowances, maintenance

of service records etc. These Battalions though belongs to a particular group centres or sector they have been scattered deployed all at different states depending upon the necessity and requirement of the force in view of the disturbance/insurgency in that particular State. In order to avoid stress with continuous duties of same nature, the personnel of a Battalion are been transferred within the sector after completion of prescribed tenure of 03 years in a Battalion as per transfer policy, framed by Dte. General, CRPF (Standing Order No.7/2015) after considering many other aspects in the larger interest of the Force Personnel. Further, after completion of prescribed tenure in a sector, the personnel are been transferred to other sector and likewise to other zone being the CRPF is a Paramilitary Force liable to serve anywhere in the Country.”

18. Deputy Commandant (Legal) Southern Sector, CRPF, Hyderabad, present in Court, explained that,

(i) A transfer within range, means transfer within the battalions in the group sector.

(ii) Transfer within sector means, if there are more than one group centres, in a sector, then, transfer within sector, means from one sector to another sector.

(iii) Within zone means that if there is a Battalion at a

particular zone, within the administrative control of zone, and located outside the zone i.e., territory, then transfer can be done by the Special DG/ADG zone).

19. Directorate General CRPF, (Ministry of Home Affairs), CGO Complex, Lodhi Road, New Delhi 110 003, has issued Standing Order No.7/2015, dated 4th August 2015, on the subject "**transfer of non-gazetted (Executive/Technical/Tradesmen) Force Personnel including Mahila Personnel**". The competent authorities, as per para No.2 of the said Standing Order, **competent authority for issuing transfer orders** in respect of Non-Gazetted (Executive) Personnel are:-

(i)	Within range	Respective Range DIG
(ii)	Within sector	Respective Sector ISGP
(iii).	Within zone	Special DG/ADG zone
(iv).	Inter zone	Transfer Committee comprising of DIG (Estt.) and DISG (Adm) of all zones will supervise and ensure fair balance across zones.

20. CRPF is divided into four zones. For the purpose of this case, suffice to consider two zones, viz., Southern Zone and Central Zone, for

the reason that the appellant has been transferred from the centre Avadi, falling within Southern Zone to 127th Battalion, at Kanjam in the State of Odisha, stated to be under the administrative control of the Southern Zone, but the place falls within the territory of Central Zone. Details of the places in southern and central zones, as furnished by the Deputy Commandant, Legal, CRPF, Hyderabad, are extracted herein.

CENTRAL ZONE	
JSR	JAMSHEDPUR
RCH	RANCHI
MKG	MOKAMEGHAT
MZR	MUZAPHARPUR
RPR	RAMPUR
KGM	KATGODAM
LKW	LUCKNOW
ALLD	ALLAHABAD
AMT	AMETI
SBPR	SAMBALPUR
BBSR	BHUBANESHWAR
DPR	DURGAPUR
SLG	SILIGURI
JDPR	JAGDALPUR
RAR	RAIPUR
BPL	BHOPAL
GWL	GWALIOR
NMH	NEEMVEH

SOUTH ZONE	
GNR	GHANDHI NAGAR
NGR	NAGPUR
PUNE	PUNE

SOUTH ZONE	
HYD	HYDERABAD
RRY	RANGA REDDY
AVD	AVADI
PPM	PALLIPURAM
BLR	BENGALUR
CH	COMPOSITE HOSPITAL

21. Reverting to the transfer order, dated 9/6/2017, it could be seen that vide STG, South Zone Signal No.T.IX-19/2017-SZ-Adm-I, dated 24/5/2017, has allotted six persons, including the appellant, a Non-Gazetted Officer (Executive/Technical/Tradesmen) to Karnataka Kerala Sector.

22. As per paragraph No.2 of the Standing Order No.7/2015, issued by DG CRPF (Ministry of Home Affairs), New Delhi, for allotment of force personnel, within zone (inter-sector), the competent authority is the Special DG/ADG zone. As per the note of the Deputy Commandant (Legal), Southern Sector, CRPF, Hyderabad 13, Southern Zone, comprises of three sectors, viz., South Sector, West Sector and Karnataka & Kerala Sector. If the transfer has to be made within zone, inter sector, as ordered by the STG, Southern zone Signal, dated 24/5/2017, it should be

within the three sectors, viz., South sector/West sector/Karnataka & Kerala Sector. Thus, as per paragraph No.2 of the Standing Order No.7 of 2015, the appellant who has been working in Group Centre, CRPF, Avadi, Southern sector, has already been allotted to KKA Sector, within south zone. This order has been passed by Special Director General, Southern Zone Signal No.T.IX-19/2017-SZ-Adm-I, dated 24/5/2017.

23. Inspector General of Police, Karnataka & Kerala Sector has intimated the DIG of Police, GC, Avadi, within whose territorial jurisdiction, the appellant is currently serving, stating that the appellant along with 5 others, allotted to Karnataka & Kerala Sector, vide Signal No.T.IX-19/2017-SZ-Adm-I, dated 24/5/2017, have been transferred to 127th Battalion, located at Kanjam District, State of Odisha, which territory falls within Central Zone, Calcutta. Central Sector, and under the control of Special Director General, Central Zone, Calcutta. Copy of Signal, dated 9/6/2017 of the Special Director General, South Zone, reads thus:

“Within Zone (Inter Sector Transfer) - 2017 of NGOs (Executive/Technical/Tradesmen), following personnel of this GC were allotted to KKS vide SDG, SZ signal No.T.IX-

19/2017-SZ-Adm-I dated 24/5/2017. Considering unit GC wise status of vacancies, provisions of transfer policy organisational/operational requirement. Choices submitted by the personnel, PPS and unapproved by competent authority, they have been posted to the units shown against each by Polcent KKS vide Signal No.T.IX-31/17-KKS-EC-III dated 3/6/2017.

S.No.	Force No.	Rank	Name	Transferred to
1.	891160572	ASI/GD	P. Veeramani	170 Bn
2.	871160791	ASI/GD	B. Annalamalai	170 Bn
3.	913093289	HC/GD	P. Elumalai	170 Bn
4.	911272988	CT/GD	K. Subramanian	170 Bn
5.	913099895	HC/Dvr	S. Dakshninamurthy (* produced before 26 th DRB on 9/12/2016 at Ch, Avd. As desired, individual be produced in next DRB)	127 Bn
6.	841161755	HC/Tlr	C. Paramasivan	GC Blr

24. Within Zone (inter sector transfer) - 2017 of NGOs (Executive/Technical/Tradesmen) - Special Director General, South Zone, is stated to have given a signal stating that 81 personnel have been allotted to KKA Sector for deciding their posting. Thus, in the signal, dated 3/6/2017, Special Deputy Director General South Zone himself has transferred the appellant to 127th Battalion which is located at Kanjam, State of Orissa, which falls within the territory Central Zone. When the

Special Director General South Zone himself has transferred the appellant, order, dated 9/6/2017 of the DIGP Group centre, Avadi is nothing but implementation of the orders of the Special Director General South Zone, communicated by IGP KKS Karnataka Kerala Sector or in short, Polcent KKS.

25. Scrutiny of the Standing Order No.7 of 2015, dated 4th August 2015 of the Directorate General CRPF, New Delhi, shows that while laying down the transfer policy, guidelines have been issued to the effect that inter-zonal transfers would be monitored by a Committee, comprising of DIG Establishment as P.O and DISG (Admn)/commandant of zones as members). Proper balance/in-out ratio should be ensured.

26. Reading of the above also indicates that in case where there is a necessity of re-deployment of Force Personnel, in different states, due to disturbance, insurgency in a particular State, inter zonal transfers can be made subject to administrative feasibility.

27. In case of personnel, on the verge of retirement (two years or less), they should be considered for choice of posting, as far as

possible, if he has not availed the same in his previous tenures.

28. As per Clause 10 of paragraph No.5 of the Standing Order 4/2008, dated 15/12/2008, cases of personnel injured seriously in operational duties and displayed gallant action may be given choice State or place, once, subject to administrative feasibility. As per Clause 13 of said paragraph, parents of specially abled children may be considered for static posting or Battalions in peace areas to facilitate specialised treatment to such children. After completion of tenure, they can be posted to nearby units.

29. As per Clause 14 of the Standing Order 4/2008, husband and wife/posted employed in CRPF will be posted at the same place/distance covered by over night train journey as far as possible for alternative tenures. Clause 5.6 of the Standing order No.4 of 2008 dated 15/12/2008, speaks about the **Employability of Low Medical Category personnel**, which is extracted hereunder:-

Posting/job assignment by the competent authority
(Pers Directorate/Frontier/Sector/Range) of personnel under
Low Medical Category will be guided by matrix based on:

(i). Medical advice as given in medical report/board proceedings.

(ii). Job contents.

(iii). Endorsement in ACR as given by initiating/reviewing/accepting Officer regarding individuals demonstrated physical capacity.

30. Now, let us consider few decisions of the Courts, explaining the word, "post",

(i) In **State of Assam & Ors. v. Shri Kanak Chandra Dutta** reported in **AIR 1967 SC 884**, it is held as follows:-

"A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310 (2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may

create or abolish the post and may regulate the conditions of service of persons appointed to the post."

(ii) In **P.R.Nayak v. Union of India** reported in **AIR 1972 SC 554**, it is held as follows:-

"The word 'post' and its previous counterpart the word 'office' mean position in service"

(iii) In **R.K.Sabharwal v. State of Punjab** reported in **AIR 1995 SC 1371**, it is held as follows:-

"The word "post" means an appointment, job, office or employment. A position to which a person is appointed. "Vacancy" means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a 'post' in existence to enable the 'vacancy' to occur. The cadre - strength is always measured by the number of posts comprising the cadre."

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31. Post refers to the position in a cadre. Posting means the act of the employer in allotting a person to a post and having regard to the transfer policy, includes the choice State or place or static posting or

battalion in peace areas, as the case may be, depending upon the circumstances set out, for posting a person.

32. In the light of the usage of words “posting” in the rehabilitative policy, we are not inclined to accept the contention of the learned counsel for the respondents that term “posting” used in Clause 5 (6) of the Standing Order No.4 of 2008, dated 15/12/2008, does not include the place or station to which a person, has to be posted. If posting and job assignment, refer only to post, i.e., position and not the place or station, then there is no need to use both, in Clause 5.6 of the Standing Order dated 15/12/2008.

33. At the risk of repetition, we deem it fit to extract Clause 5 (10) of the transfer policy, which states that the cases of personnel injured seriously in operational duties and displayed gallant action may be given choice State or place once subject to administrative feasibility. A Conjoint reading of said clause with paragraph No.5.6 of Standing order No.4 of 2008, dated 15/12/2008, makes it clear that rehabilitative measures of the Ministry of Home Affairs, specifically address the issue of

choice state or place and therefore, we are of the view that the word “posting” is referable not only to post, but also the place or State.

34. Organized cadre of CRPF is divided into four Zones. The word, "Zone" indicates territorial and geographical distribution of CRPF Personnel in different places. While transferring the personnel, the competent authority has to consider, whether the place or state, to which, a person is transferred, falls with the territorial jurisdiction of the Zone and not the administrative control of the authority, alone.

35. The word, "post" means position and job assignment to the force personnel, by the competent authority, should be with reference to the capacity of such person, to perform the task or assignment. Requirement of posting an individual to a particular post or place, as the case may be, has to be decided by the competent authority, by considering the factors, enumerated in Paragraph 5.6 of the Standing Orders. If transfer is intended to be within Zone, it should be within three sectors, viz., South Sector, West Sector or Karnataka Kerala Sector. Though 127th Battalion, stationed at Kanjam, State of Odisha, is within

the administrative control of Karnataka Kerala Sector, within South Zone, the said place falls within the territory of Central Zone.

36. Though Mr.C.V.Ramachandramurthy, learned Counsel for the respondents contended that the word “posting” referred in Clause 5.6 of the Standing Order No.4 of 2008 dated 15/12/2008, does not have any relevance to the transfer policy, and that the word “posting” refers only to the post and not to the place, in the light of the decisions, cited supra and for the reason that the relevant paragraphs, which we have extracted in the foregoing paragraphs, makes a specific mention of the following, we are not inclined to accept the interpretation of the learned counsel for the respondents,

“Choice State or place in Clause 5 (10); static posting or battalion in peace areas in Clause 5 (13). Same place/distance in clause 5 (14).”

37. Standing Order No.4 of 2008 dated, 15/12/2008 has underwent an amendment on 14th August 2012 by which the Director General or CRPF, New Delhi, has made the following amendments, as hereunder:-

REHABILITATION OF FORCE PERSONNEL

The following amendments/addendum to Standing Order No.04/2011 is hereby issued with immediate effect:-

para 7	For	Read
	7. After critical examination of the person and DRB will recommend any of the tasks for him/her as specified below: a. Dak/Office Runner b. Telephone Operator c. Attendants in R/Room, Welfare Centre, School Bus d. Sales person in Canteen, Co-operative, Floor Mills e. RTO at Railway Station f. Office jobs viz., copy writer etc. g. Mess Constables, Service man h. Any other specified job considered suitable from time to time.	The various jobs which can be given to the persons required to be rehabilitated/recommended any of the tasks for him/her as specified below: (A) Light duty for ORs: 1. Canteen (dry/wet) 2. Telephone attendant/Control Room duty 3. Office Assistant 4. Attendant in Recreation Room Welfare Centre, School Bus. 5. Sales person in Canteen, Co-operative Shop, Floor Mills 6. Signal dak runner 7. Temple Priest 8. Store man/NCO 9. Water supply by trucks 10. Hygiene & sanitation NCO 11. LO duty 12. Post office/Bank duty 13. Mess Constable in officers' mess/SOs mess/ORs mess 14. Railway station transport bus conductor 15. Internet cafe/online works (GC/BN/HQ) 16. Electrician duty (after completion of related course) 17. Gardener, carpenter (for vacant post after trade training) 18. Sick report NCO

para 7	For	Read
		19. Atta Chakki NCO 20. Line NCO 21. Hospital attendant to other casualties 22. Dak.office runner 23. Line men 24. RTO at Railway Station 25. Office job viz., coy writer etc 26. Any other job considered suitable (B) Light duty for SOs: 1. Control Room Duty (IG/DIG office) 2. Mess SO 3. I/c COperative Shop 4. Canteen SI 5. Welfare Centre SO 6. QM/SI particularly in GCs 7. Building Branch SO in GCs. 8. Adm SO in training centre 9. Computer.Internet related work 10. OPS branch SO 11. Training bransh SO 12. Liaison Officer with Senior Officers (C) Light duties for Officer 1. Control Room officer 2. Intelligence collation/rocessing officer 3. AC (Adm) in GCs/BN 4. DC store in GCs. 5. Transit camp I/c.

para 7	For	Read
		6. Adm Officer in training centre 7. I/c building branch in GCs 8. Course I/c in training centre (as per physical condition) 9. Adjutant, QM in BN HQ, in peace area 10. Staff officer duties depending on the aptitude.
para 8	For	Read
	Above mentioned duties are mostly for ORs. In case any person of the rank of ASI and above (executive) and personnel of Technical Trades like MT, Signals and Ministerial Cadre etc., are disabled, they will be retained in the same rank and cadre and will be preferably posted in BNs Offices/ Institutions, which are located in comparatively less operational active areas. The nature of their duties will be decided by the DRB in consultation with Sector IsG on the basis of their physical and mental health condition. Disabled personnel will not be eligible for any pre-promotional or promotional courses and for promotion.	The list is illustrative and not exhaustive. In case any person of the Technical Trades like M.T Signals and Ministerial Cadre etc., is disabled, he should be preferably posted in BNs.
		Officers/Institutions which are located in comparatively less operational active areas. The nature of their duties/tasks can be decided on the basis of their physical and mental health condition.

38. Assignment means, issuance of appropriate orders by the competent authority, to perform the duties in any one of the above 26 posts, mentioned in the amended Standing Order, which depends upon

consideration to the following factors,

- (i) Medical advice as given in medical report/board proceedings
- (ii) Job contents
- (iii) Endorsement in ACR as given by initiating/reviewing/accepting Officer regarding individuals demonstrated physical capacity.

39. Perusal of the materials does not indicate that the Special Director General, Southern Zone, has considered the above factors, while posting/job assigning to the appellant, when he transferred the appellant to 127th Battalion, located at Kanjam, Odisha State.

40. Though Mr.C.V.Ramachandramurthy, learned counsel for the respondents contended that Battalion 127 located at Kanjam within the State of Orissa, falls within the administrative control of southern zone and therefore, the impugned order of transfer, is within zone (inter sector), for the reasons stated supra, we are not inclined to accept his contention.

41. Now, reverting to the impugned order made in the writ

petition, writ Court has observed that Standing Order relating to Battalion Police personnel is in no way connected with the transfer of personnel from one place to another. Writ Court has also observed that Standing Order No.4 of 2011, dated 27th July 2011, does not prevent the authorities from transfer and posting personnel, from one place to another place.

42. Writ Court has further observed that intervention in administrative transfers will not only cause inconvenience to the administration, but also prevent opportunity of other employees to come to their native places. Writ Court has further observed that violation of guidelines/instructions given in the form of circulars/orders would not confer any legal right on the employees.

43. Though we are in agreement with the view of the writ Court as regards general transfers to be made in service and that interference in disciplined force should be less, yet we are not in agreement with the conclusion that Standing Order No.4 of 2008, dated 15/12/2008 relating

to Force personnel is in no way connected to transfer from place to another. Even the general transfer policy deals with injured force personnel and other cases, as stated supra, Clause 5.6 of the Standing order No.4/2008, dated 15/12/2008 has to be read in conjunction with the transfer policy and looking from that perspective, Standing Order No.4 of 2008, dated 15/12/2008 certainly has relevance and assumes significance, in so far as the employment of Low Medical Category of force personnel, is concerned.

44. Writ Court has observed that keeping uniformed personnel in one place may create issues relating to others right, to come over to their native places or any native State. In certain circumstances, transfer policy provides for a choice of any force personnel, to seek for posting inter native place or nearer place, and on the facts and circumstances of this case, indulgence and discretion is required to be exercised in favour of persons, who require rehabilitation and in such circumstances, it cannot be said that interference with and order of transfer cause any inconvenience to the administration by retaining such persons of Low Medical Category persons, inter native place or nearer to

the same.

45. During the course of hearing, when a specific question was posed to the Deputy Commandant (Legal), South Sector, Hyderabad, as to how many Force Personnel have been transferred from group centre Avadi belong to Low Medical Category, reply of Officer is that among the six persons transferred from Group Centre, CRPF, Avadi, Chennai to 127th Battalion, at Kanjam, Orissa State, under the Administrative control of Karnataka & Kerala Sector (South Zone), the appellant alone belongs to the said category.

46. Though Mr.C.V.Ramachandramoorthy, CGSC, learned counsel for the respondents submitted that there is a Grievance Redressal Committee in the Department and similar to the directions given by a Hon'ble Division Bench in W.A.No.1144 of 2017, and other appeals, appellant can also be directed to approach the said authority, to make a representation, which would be considered, we are not inclined to accept the said contentions for two reasons, with due respect that order made in W.A.No.1144 of 2017 cannot be said to have precedential value

on the interpretation of the expressions used in the transfer and rehabilitative policy of the Directorate CRPF Ministry of Home Affairs, New Delhi and that the order made in the Writ Appeals, only enables the appellant therein to make a representation to the competent authorities, after joining the transferred station.

47. When the impugned order itself says that no representation against the order of transfer would be entertained, argument of the learned counsel for the respondents, runs contra to the decision already taken by the department. When the order of transfer proceeds on the footing that no representation would be entertained, i.e., post facto hearing, if it all to be directed to be done, would only be a *fait accompli*, moreso, on the interpretation of the respondents, as regards the expressions used in the transfer/rehabilitation policy, before this Court. Contention to the contra is negatived.

48. On the facts and circumstances of this case of a differently abled person, and similarly placed persons, categorised under low medical category, serving the country, though the intention of CRPF, in rehabilitating them is laudable, instead of boarding them, out of service,

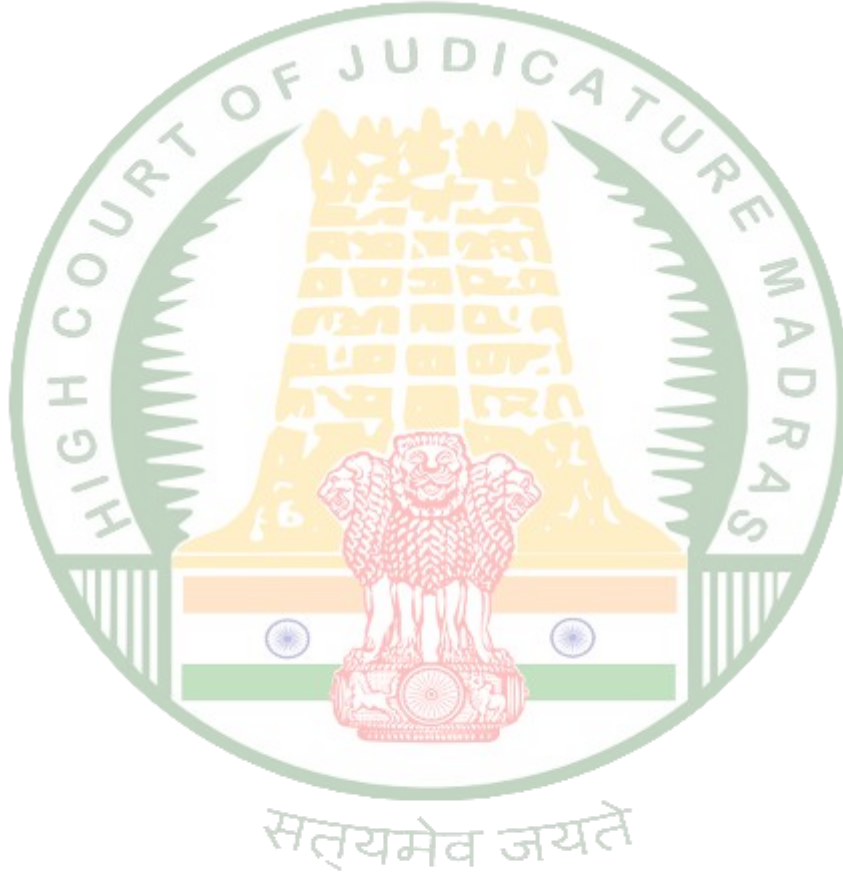
considering their plight, categorised under low medical category, it is desirable that such force personnel, be transferred or allowed to serve in a place, nearer to their respective families, to have moral support, which the transfer policy has envisaged, in the case of personnel injured and force personnel having specially disabled children, to be considered for static posting or Battalions, in peace areas to facilitate treatment to such children. In the case of the latter, it is the policy of CRPF to post the personnel to nearby areas. One cannot lose sight of the fact that force personnel do require moral support, not only from the employer, but also from their respective families, moreso, when they are categorised under low medical category.

49. We are of the view that the order made in W.P.No.15961 of 2017, dated 22/8/2017, requires interference. Order of transfer, dated 09.06.2017, is set aside. Movement order, dated 14/9/2017 is set aside.

50. Accordingly, **Writ Appeal is allowed.** Consequential movement order is set aside. No costs.

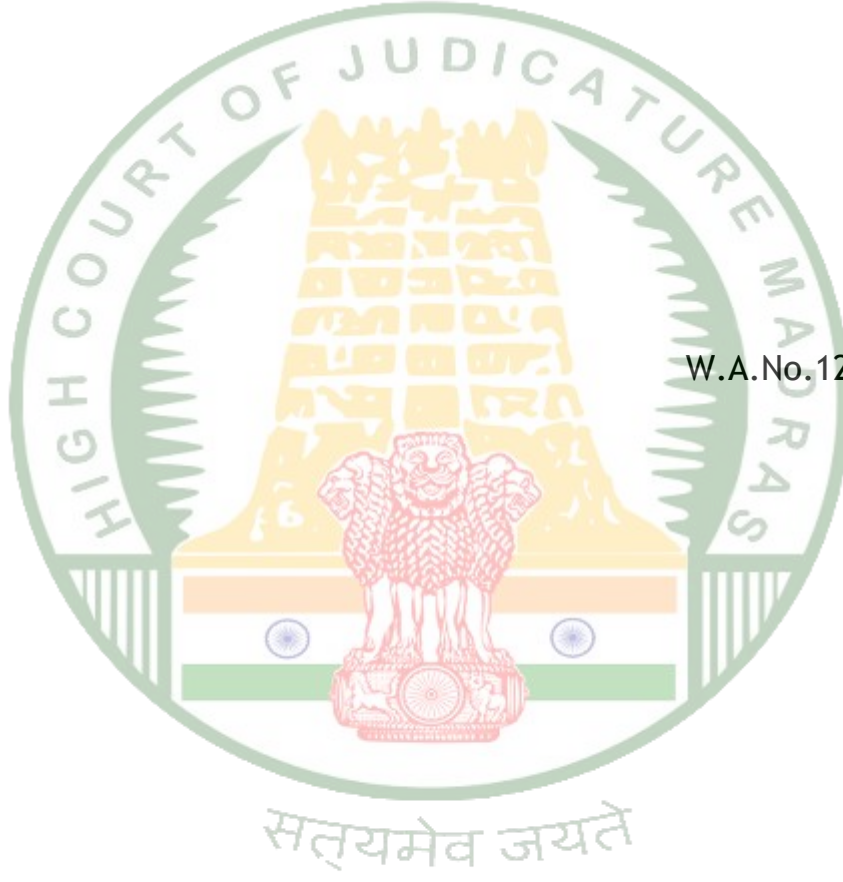
(S.M.K., J) (R.S.K., J)
25th October 2017

Index : Yes/No
Internet : Yes/No
mvs



WEB COPY S. MANIKUMAR, J.
AND
R.SURESHKUMAR, J.

mvs



W.A.No.1273 of 2017

25.10.2017

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