

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7467 of 2017 &
M.P.Nos.8155 & 8156 of 2017

G.Tamilselvan
No.055037894, CT/GD,
Barrack,
77 Bn Headquarters,
Poonamallee,
Chennai-600 056.

..Petitioner

Versus

1. The Inspector General of Police (Personnel),
Office of Directorate General,
Central Reserve Police Force,
Block No.1, CGO Complex,
Lodhi Road, New Delhi-110 003.
2. The Inspector General of Police,
Karnataka Police Force,
Group Centre, Doddaballapur Road,
Yelahanka, Bangalore-560 064.
3. The Commandant,
77 Bn Headquarters,
Poonamallee,
Chennai-600 056.
4. The Adjutant,
Office of the Commandant,
77 Bn Headquarters,
Poonamallee,
Chennai-600 056.

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned movement order dated 23.03.2017 issued by the fourth respondent and quash the same in so far as the petitioner is concerned and direct the respondents to rehabilitate the petitioner by providing lighter duty either at Group Centre, Avadi, Chennai or at Group Centre, Bangalore so as to enable him to avail mrdical treatment as enumerated in the Central Reserve Police Force standing order No.04/2011 dated 27.07.2011.

For Petitioner :M/s.J.Lakshmi Narayanan

For Respondents :Mr.N.Rajagopaln
Assistant Solicitor General Of India for
M/s.N.K.Nithila Devi
Central Government
Standing Counsel(CGSC)

ORDER

The petitioner has come forward with this Writ Petition to quash the impugned movement order dated 23.03.2017 issued by the fourth respondent and direct the respondents to rehabilitate him by providing lighter duty either at Group Centre, Avadi, Chennai or at Group Centre, Bangalore so as to enable him to avail medical treatment as enumerated in the Central Reserve Police Force Standing Order No.04/2011 dated 27.07.2011.

2. Before going into the facts of the case, this Court is of the view that the legal principle in the matter of transfer is well defined by the Hon'ble Supreme Court of India and by the High Courts. The writ petition filed challenging the administrative orders of transfer cannot be entertained in a routine manner. Writ can be issued against the orders of transfer only on exceptional circumstances if the order of transfer was issued by an authority without Jurisdiction or an incompetent authority issued the order or if the transfer order is in violation of the statutory rules in force or an allegation of mala fides are raised. In case of raising allegation of mala fides against the authority, it is necessary that such an authority against whom allegations are raised is to be impleaded as a party in the writ proceedings in his personal capacity. In the absence of any one of such legal grounds, no order of transfer can be subjected to judicial review under Article 226 of the Constitution of India.

3. The learned counsel appearing for the petitioner joined the Central Reserve Force as Constable (GD) on 30.12.2005. While the petitioner was serving in the 77th Battalion, stationed at Port Blair, Andaman, during 2016, he was asked to clear the CRPF Guest House. At that juncture, since the sunshade was in a dilapidated condition,

he fell down sustained severe injuries in his both limbs. Though he took medical treatment, he was not in a position to use him both hands even for his day today affairs and he required his spouse's support. Further, since his wife is staying in his native place at Dharmapuri District, he requested for sending him to Chennai for performance of surgery,so as to avail his family support. Accordingly, he came down to Chennai and he took medical leave for surgery. After expiry of leave, he joined duty on 28.11.2016 and he was categorized as Shape A3 (U) by the Medical Officer, Composite Hospital, CRPF, Avadi. Thereafter, he took one month medical leave and he was directed to attend Court of Inquiry to be conducted at Andaman. Accordingly, after attending the enquiry, he returned to Chennai on 10.03.2017. During December, 2016, in the Roll Call, the third respondent herein informed him that he has been transferred to 144th Battalion, stationed at Srinagar, Jammu & Kashmir. Aggrieved over the same, the petitioner filed W.P.No.6473 of 2017 and the said writ petitioner was disposed of by directing him to submit a detailed representation to the third respondent so as to forward the same through proper channel to the competent authority. However, the third respondent refused to receive the said representation by stating that his writ petitioner was dismissed by this Court and therefore, he will be relieved, after issuing the movement

order to join in the transferred place. Thereafter, the fourth respondent issued a Movement Order dated 23.03.2017, which is impugned in this Writ Petition.

4.The family circumstances and the personal inconvenience can never be claimed as a matter of right and it is for the public servant to make arrangement for taking care of the entire family members. On this ground, an administrative transfer cannot be interfered with.

5.This Court is unable to accept the grievances raised in this Writ Petition. With regard to the sufferings expressed by the writ petitioner, if any consideration is shown, no transfer can be effected by the authorities concerned. The CRPF being a disciplined Uniformed Service, everyone is supposed to serve in the interest of the Nation. Any compromise shown in this regard is deprecated. Facilities and concessions are provided by the Government time and again in order to encourage the personnel working in hard area in Uniformed service. But, such concessions or facilities can never be claimed as a matter of legal right. Post or place is the prerogative of the Government and the employee can never claim the post or place as a matter of legal right. Repercussions while interfering with the administrative transfers are

also be considered by the Constitutional Courts. Because, always, administrative transfers are made posting the personnel from one place to another place so as to bring some other personnel from the other places to a particular place. Thus, the All India level repercussions are involved in such administrative transfers, transferring the Uniformed personnel in the Department. Any intervention in this regard will certainly cause inconvenience to the peaceful administration of the Uniformed Forces.

6. Further, the writ petitioner was posted to Chennai during January, 2013, and he is continuing for about four years. Hence, further continuance in Avadi, Chennai is not desirable. The other grievances with regard to the medical history has to be considered only by the competent authorities and not by this Court.

7. This being the view of this Court, all the Standing Orders and guidelines are only instructions and no Standing Order prohibits the competent authorities from issuing administrative transfer and posting. Thus, 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 four 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 a 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. In respect of medical treatments, this Court is easily able to presume that adequate medical facilities will be certainly available in any State Head Quarters or in nearby places. 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 an 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 circular or orders, which 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 to claim. 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 subordinate 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.In the case on hand, writ petitioner is working in Chennai right from January, 2013, when he is posted to Chennai and by virtue of an interim order granted by this Court, the writ petitioner is continuously working in Avadi, Chennai, for about four years. In fact,

it is not preferable to allow the writ petitioner to continue in Avadi, Chennai, furthermore. Thus, the writ petition and the grounds raised therein deserve no merit consideration.

13. Accordingly, the writ petition stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

07.08.2017

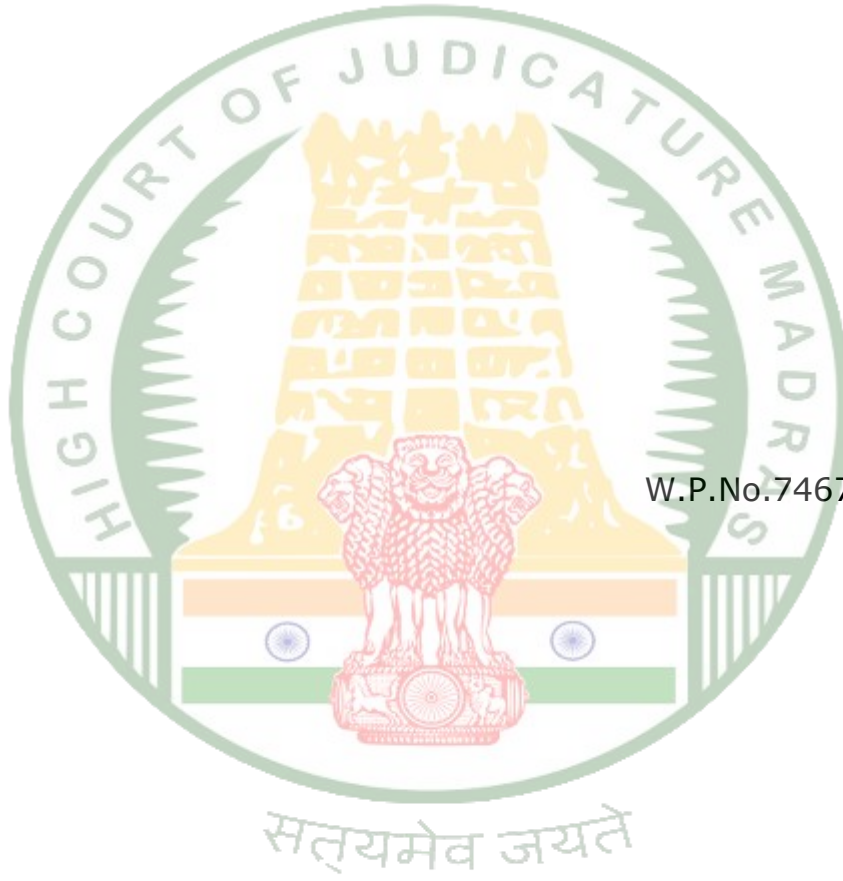
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To

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S.M.SUBRAMANIAM,J

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