

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.12784 of 2016

and

W.M.P.Nos.11180 & 1182 of 2016

Mary Mathew,
Force No.941680192 Insp/Steno
House No.29, Vijayalaxmi Nagar,
Kadir Nayakan Palayam Village,
Thoppampatti Post,
Coimbatore-641 017.

..Petitioner

Versus

1. The Union of India,
Rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi-110 001.
2. The Division General,
Central Reserve Police Force,
CGO Complex,
Lodhi Road, New Delhi-110 003.
3. The Additional Director General/ADM,
Central Reserve Police Force,
South Zone,
Chandran Kutta,
Hyderabad.
4. The Inspector General,
Central Reserve Police Force,
South Sector,
MLA/MP Colony,
Banjara Hills,
Hyderabad.
5. The Deputy Inspector General-Training,
Central Reserve Police Force,
R.K.Puram,
New Delhi.

6. The Deputy Inspector General-ORG,
Central Reserve Police Force,
CGO Complex,
Lodhi Road, New Delhi-110 003.
7. The Principal/Deputy Inspector General,
Central Reserve Police Force,
Central Training College,
Thoppampatti,
Coimbatore-641 017.

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 3rd respondent dated 17.03.2016 in his order No.T.IX.7/2016-SZ-ADM-2 in so far as item No.2 is concerned and the order of the 3rd respondent dated 30.03.2016 in his order No.T.IX.2/2016-SZ-ADM-2 in so fr as item No.1 is concerned and quash the same and to direct the respondents to retain the petitioner up to May 2017 at RTC(Recruit Training Centre)) Coimbatore.

For Petitioner :M/s.A.S.Mujibur Rahman

For Respondents :Mr.P.Ayya Swamy
Senior Panel Counsel
Central Government (SPCCG)

O R D E R

The petitioner has come forward with this Writ Petition to quash the Orders passed by the third respondent dated 17.03.2016 and 30.03.2016 and to direct the respondents to retain the petitioner up to May 2017 at RTC(Recruit Training Centre)) Coimbatore.

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 for the writ petitioner submitted that the writ petitioner is serving at Coimbatore from 2012 and has completed only about five years of service. The learned counsel further contended that the writ petitioner's father is suffering from Throat Cancer and periodically taking treatment at the Hospital in Kerala, her husband is taking treatment for various ailments viz. Diabetics, Epilepsy and Psychic disorder. This apart, her children are school going and she has to look after the entire family. The learned counsel also contended that though the representation submitted by the petitioner was forwarded by the 7th respondent, recommending her case on compassionate grounds, the third respondent rejected the said representation on 30.03.2016.

4.The family circumstances and the personal inconvenience can never be claimed as a matter of right for retaining the petitioner in the same station 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 of the petitioner's family, if consideration is shown on these grounds, 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 our great 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 services. 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 Coimbatore during December, 2012 and she is continuing for about five years. Hence, further continuance in Coimbatore 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 Coimbatore or not. Furthermore, the writ petitioner is continuing in Coimbatore, for about five years and further continuance is certainly not desirable, since she 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 can easily able to presume that adequate medical facilities will be certainly available in all the 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, 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.In the case on hand, writ petitioner is posted to Coimbatore during June, 2012 and by virtue of an interim order granted by this Court, the writ petitioner is continuously working in Coimbatore, for about five years. In fact, it is not preferable to allow the writ petitioner to continue in Coimbatore, 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.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

rpa

To

1. The Secretary to Government Union of India,
Ministry of Home Affairs,
New Delhi-110 001.
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+1 CC to Mr.P. Ayyasamy, advocate sr 34311
+1 CC to Mr. Ibrahim Ali, Advocate sr 56755.
+1 CC to Mr.P. Ayyasamy, advocate sr 34311(21/09/2017)

W.P.No.12784 of 2016

SP(01/09/2017)