

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.17303 of 2016 and W.P. No.15456 of 2017
and
W.M.P. No.14781 of 2016 and W.M.P. No.16741 of 2017

M. Prakash ...Petitioner in both WP's

-Vs-

1. The Inspector General of Police (Personnel)
Office of Directorate General, CRPF,
Block No.1, C.G.O. Complex,
Lodhi Road, New Delhi - 110 003.
2. The Deputy Inspector General of Police, (Establishment)
Office of Directorate General
Central Reserve Police Force,
Block No.1, C.G.O. Complex,
Lodhi Road, New Delhi - 110 003.
3. The Deputy Inspector General of Police,
Group Centre, Central Reserve Police Force,
Avadi, Chennai - 600 065. ...Respondent in Both WP's.
4. The Deputy Commandant (Administration)
Office of the Deputy Inspector General of Police,
Group Centre, Central Reserve Police Force,
Avadi, Chennai - 600 065.Respondent in No.4, in
WP.NO.15456/17

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for direction to call for the records relating to the impugned movement order dated 12.06.2017 issued by the fourth respondent and quash the same and forbear the respondents from transferring the petitioner from the present station, namely, Group Centre, Avadi, pending medical treatment for his wife, Mrs. P. Vasuke being taken at Chennai.

For Petitioner : Mr.P. Manoj Kumar
(for W.P. No.15456 of 2017)
: M/s.P. Mohan raj & P. Manoj kumar
(for W.P. No.17303 of 2016)

For Respondents: Mrs. S. Meeknakumari,
(Central Government Standing Counsel)
(For both W.P's.)

ORDER

The order of the transfer, transferring the writ petitioner from Avadi, Chennai to Chhatisgarh is under challenge.

2. The Writ petitioner challenged the order of the administrative transfer on the ground that he has to attend the health issues of his wife and he can not move from Chennai, since he has to provide continuous medical treatment to his wife.

3.This Court, in Writ Petition No.17303 of 2016, passed an order on 05.05.2016 directing the respondent to consider his representation and pass appropriate orders, on merits and in accordance with the transfer policy. Considering the same, the writ petitioner was allowed to continue at Avadi, Chennai for a period of further one year. After completion of one year period, again the order of transfer was issued in proceedings dated 12.06.2017, transferring him from the present station and directed him to report at 223 Battalion, Chatisgarh. The writ petitioner has filed the second Writ Petition No.15456 of 2017 challenging the transfer order.

4.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.

5. The learned counsel appearing for the writ petitioner contended that the writ petitioner's wife was diagnosed with seizure order with severe depression and his wife requires prolonged treatment and family support to recover her health. It was further stated that the writ petitioner's wife will benefit if his spouse be with her and support her at present.

6. By virtue of these grounds, the writ petitioner should be allowed to continue in Avadi. This apart, the learned counsel contended that the support of the family is very much essential for taking treatment in Avadi, Chennai to the writ petitioner and accordingly, the authorities ought to have considered the case of the writ petitioner sympathetically for his continuance in Chennai.

7. The learned counsel appearing for the respondents opposed the contentions raised by the writ petitioner on the ground that the respondents themselves admitted the fact that the writ petitioner's

wife suffers from Depression & Psychotic and she requires supervision and regular intake. Since the petitioner was already granted one year extension, either he can take his wife to the place where he has been posted for getting suitable treatment or he can leave his wife here to be taken care of by his family members. But he cannot be allowed to approach this Court seeking extension of time from administrative transfers. Such being the case, there is no reason whatever to challenge the order of transfer by the writ petitioner. This apart, the counsel for the respondents stated that administrative transfers are routine orders issued in the interest of administration and any intervention in the administrative transfers will certainly hamper the peaceful running of the very administration.

8. This apart, the writ petitioner is continuing in Avadi, Chennai for about four years and further continuance will cause inconvenience not only to the Department, but also to the other police personnel, who are waiting for transfer to Chennai from other States. Under these Circumstances, this Court has to consider that whether the order of transfer, transferring the writ petitioner from Chennai to Chattisgarh, is in accordance with law or not.

9. 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. 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 of a State 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.

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 /suggestions 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 on the basis of certain concessions shown in order to make the employees more accommodative and more effective for running 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. In the case on hand, the writ petitioner is continuously working for about four years in Avadi, Chennai and by virtue of an interim order granted by this Court, for about one year. 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.

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 Writ petitioner is continuing at Avadi, Chennai from the year 2013. Thus, the administrative transfer issued to the writ petitioner from Avadi, Chennai to Chandigarh is in order and there is no infirmity.

13.In view of the legal principles discussed above, no further consideration is required to be given on the grounds raised in the writ petition.

Accordingly, both writ petitions stand dismissed. However, no order as to costs. Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

lbm

To:

1. The Inspector General of Police (Personnel)
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4. The Deputy Commandant (Administration)
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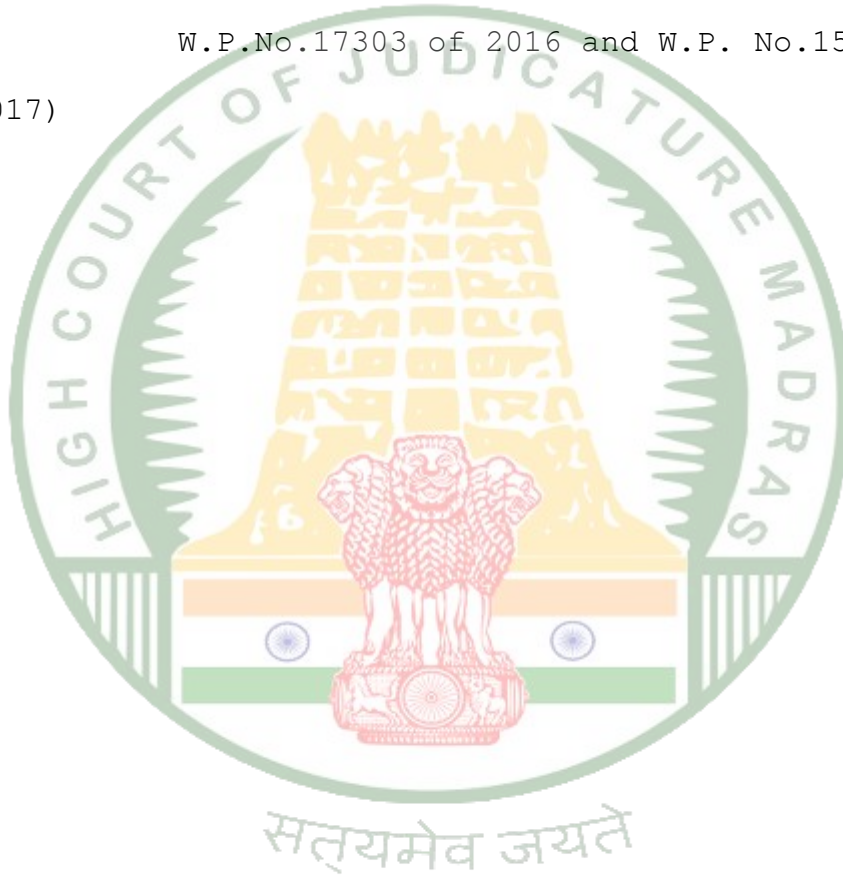
+1cc to M/s.J.Lakshmi Narayanan, Advocate sr.57159

+1cc to Mr.S.Meena kumari, Advocate sr.56948

+1cc to G.Hema, Advocate sr.56937

W.P.No.17303 of 2016 and W.P. No.15456 of 2017

ss (31/8/2017)



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