

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17307 of 2017 and
W.M.P. No.18808 of 2017

Ajaya Kumar.V

... Petitioner

Vs.

1. The Director General (CRPF),
Ministry of Home Affairs, CGO Complex,
Lodhi Road, New Delhi-110 003.
2. Inpsector General (P),
Southern Sector, CRPF,
Ayathri Hills, Hyderabad-500 033.
Andhra Pradesh.
3. The Deputy Inspector General of Police,
Group Center, CRPF, Avadi,
Chennai, Tamilnadu.
4. The Inspector General of Police,
Central Zone, CRPF Campus,
HC Block, Sector-III, Salt Lake,
Kolkata(WB) 700 106.

... Respondents

Prayer :

Petition filed under Article 226 of the Constitution of India to grant Interim Stay of all further proceedings pursuant to the impugned movement order of the Respondent-3 dated 04-07-2017 under the direction of the Respondent-2 vide Test Signal message details No.T.IX.10/2017-Admin.II dated June 2017 pending disposal of the writ petition.

For Petitioner : Mr.J.Arokhiaaraj,

For Respondents : Mr.D.Rameshkumar CGSC,
for RR1 to 4.

O R D E R

The Order of Transfer dated 04.07.2017 transferring the writ petitioner from GC CRPF Avadi to 19th Battalion, Rourekela, Orissa, is under challenge in this Writ Petition.

2. The writ petitioner is continuing in the present station at Avadi, Chennai for about four years continuously. Under these circumstances the writ petition is moved on the ground that the writ petitioner is having certain Medical History and he is directed to perform the duties attached to Shape-2 category as per the Standing Orders.

3. There is no quarrel with regard to the ailments being suffered by the writ petitioner or the allotment of duties under Shape-2 to the writ petitioner. The guidelines issued by the department in this regard states that person's having Medical History has to be considered in respect of the allotment of duties either light or lighter in nature. But, with regard to transfer the employees have no right to question the same, transfer is an incidental to service more so a condition of service. All these standing Orders relating to the consideration of Medical History never prevent the Competent Authorities to impose transfer on the employees, Post and Place can never be claimed as a matter of right and the concessions are given only in respect of the performance of the duties and responsibilities and not in respect of the Place or Post.

4. Place and Post cannot be the choice of an employee, more so in the disciplined Uniformed Forces i.e., CRPF. This Court is of the firm view that instructions/guidelines issued in this regard ought to be followed by the competent authorities while considering the facts and the circumstances of each case. It is not for this Court to interfere in such exercise in this writ petition filed under Article 226 of the Constitution of India.

5. Exercising judicial review against an Order of Transfer is certainly limited and only on exceptional circumstances a Writ can be issued against the Transfer.

"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 a 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 second opinion in this regard. All the personnel who sustained certain injuries on account of performing their duties has to be shown indulgence in providing rehabilitation in respect of the job responsibilities, but, not in respect of transfer and posting.

This being the view of this Court, all these 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 those 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.

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 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.

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.

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.

In the case on hand, the petitioner was posted to GC Avadi, Chennai during September, 2013 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.

6. Under these circumstances, the writ petitioner cannot claim that he should be allowed to continue in Avadi, Chennai for an unspecified period and in a Uniformed Disciplined Services, Transfers are unavoidable and in order to maintain Discipline and Conduct amongst the Uniformed Personnel, it is necessary to effect Administrative Transfers by the Competent Authorities. Intervention in the Orders of administrative Transfers will certainly cause prejudice to the Administration. Thus the writ petition is devoid of merits.

7. Accordingly Writ Petition stands dismissed. However, no Order as to Costs.

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

True Copy

Sub-Assistant Registrar

msvm/rpa

To

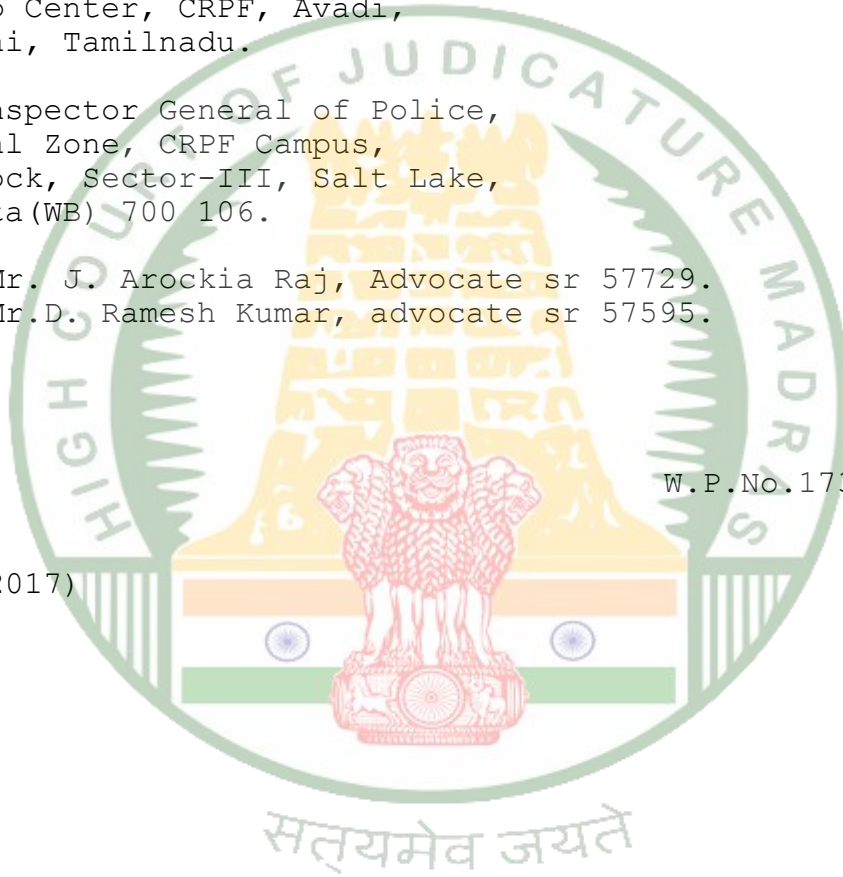
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+1 Cc to Mr. J. Arockia Raj, Advocate sr 57729.

+1 CC to Mr.D. Ramesh Kumar, advocate sr 57595.

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SP(04/09/2017)



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