

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.08.2017
CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
WRIT PETITION No.38159 of 2015
and
M.P.Nos.1 & 2 of 2015

G.Saravanan,
HC/Driver, RTC,
Central Reserve Police Force,
Avadi, Chennai - 600 065.

... Petitioner

Vs.

1. The Deputy Inspector General of Police,
Recruit Training Centre,
Central Reserve Police Force,
Avadi, Chennai - 600 065.
2. The Inspector General of Police,
Central Reserve Police Force,
Southern Sector,
Gayathri Hills,
Hyderabad - 500 003.
3. The Director General of Police,
Central Reserve Police Force,
CGO Complex, Lodhi Road,
New Delhi - 110 003. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in respect of the Office Order No.T.IX-12/2015-SS-Adm-II dated 08.11.2015, passed by the 2nd Respondent and quash the same in so far as it relates to the Petitioner herein and consequently direct the Respondents not to transfer the Petitioner herein in the light of Clause 5 (iii) and (vii) of Standing Order No.01/2014 and Office Memorandum issued by Ministry of Personnel, Public Grievances and Pensions, Government of India under Ref.No.AB.14017/41/90-Esstt.(RR) dated 15.02.1991, under Ref.No.AB.14017/41/90-Esstt.(RR) (vol.II) dated 05.01.1993, and under Ref.No.42011/3/2014-Estt. (Res) dated 06.06.2014.

For Petitioner : Mr.P.Mohanraj

For Respondents : Mr.A.Murugan
Central Government Standing
Counsel(CGSC)
for R1 to R3

O R D E R

An order of transfer issued by the 2nd respondent in proceeding dated 8th November, 2015 is under challenge in this writ petition. The writ petitioner is transferred from Avadi, Chennai to Manipur. It is a summer chain transfer issued in the year, 2015 and the office order, transferring these uniformed personnels are issued for Rationalization of Surplus Strength of NGOs (Exe/Tech/Tradesmen). Thus, it is an administrative transfer issued by the respondents, transferring the writ petitioner from Chennai to Manipur.

2. The learned counsel appearing for the writ petitioner contended that the writ petitioner is having a differently abled child and he has to take care of the child. Further, he has got certain inconveniences in the family and therefore, the transfer affected his normal family life. Relying on the office Memorandum dated 6th June, 2014, the learned counsel for the petitioner contended that an employee having a differently abled child is eligible to continue in the same station. This Court is unable to agree the proposition mooted out by the learned counsel for the writ petitioner, in view of the fact that the transfer is incidental to service more so, condition of service.

3. The legal principle in the matter of transfer is well defined by the Hon'ble Supreme Court of India and by the Hon'ble High Courts. The writ petition has been 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 the 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 orders of transfer can be subjected to judicial review under Article 226 of the Constitution of India.

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 to 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. 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 a uniformed service has to abide by the administrative orders more specifically of transfers.

7. 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.

8. 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.

9. 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.

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10. In view of the above observations , the writ petition stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

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New Delhi - 110 003.

+1 cc to Mr.A.Murugan CGSC Advocate sr 57311
+1 cc to Mr.J.Lakshmi narayanan Advocate sr 57158

W.P.No.38159 of 2015

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