

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.38352 of 2015
and
M.P.Nos.1 & 2 of 2015

G.Muruganantham,
Constable/GD No.045035104
77 Bn, Central Reserve Police Force,
Poonamallee,
Chennai-600 056. ...Petitioner

Versus

1. The Union of India,
Rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi
2. The Director General,
Central Reserve Police Force,
CGO Complex,
Lodhi Road, New Delhi-110 003.
3. The Inspector General of Police,
Central Reserve Police Force,
South Sector,
Banjara Hills, Hyderabad.
4. The Deputy Inspector General of police,
Central Reserve Police Force,
Group Centre,
Yalahanka, Bangalore,
Karnataka-560 064.
5. The Commandant,
77 Bn, Central Reserve Police Force,
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, to call for the records relating to the order passed by the 5th respondent dated 09.11.2015 in his Order No.T-IX-2/2015-77-EC-1 in so far as the item No.46 is concerned and the Movement Order dated 28.11.2015 issued by the 5th respondent and

quash the same and to direct the respondents to retain the petitioner under the 5th respondent to continue the treatment.

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

For Respondents :M/s.Venkataswamy Babu
Senior Panel Counsel [Central
Government of India] (SPCGOI)

O R D E R

The petitioner has come forward with this Writ Petition for quashing the orders passed by the fifth respondent dated 09.11.2015 and the Movement Order dated 28.11.2015 and to direct the respondents to retain the petitioner under the fifth respondent to continue the treatment.

2.The learned counsel for the petitioner contended that the writ petitioner while he was in his native place at Villupuram, he met with an accident during October, 2008, and treatments were given at Government General Hospital, Pondicherry and at Composite Hospiteal, C.R.P.F., Avadi, Chennai. Due to Head injury, he was referred to Institute of Mental Health, Chennai and according to the annual Medical checkup and categorization, he was brought under SHAPE-III. Thereafter, he was transferred to the Chennai during 2009 to May 2011, for taking further treatment at Composite Hospital, Avadi. Again the petitioner was transferred to 28th Battalion at Srinagar and subsequently, during January, 2012, the petitioner was transferred to 77th Battalion under the fifth respondent. However, suddenly, by an order dated 09.11.2015, the petitioner was transferred to the 212 Battalion, at Chattisgarh. Aggrieved over the said order, he has come forward with this Writ Petition.

3.This affidavit was filed in the year 2015. The learned counsel appearing for the respondents contended that the petitioner was staying in Chennai from the year 2012 and by virtue of the interim order granted by this Court in the year 2015, the writ petitioner is continuing in the same station at Poonamallee, Chennai for about five years from the date of his joining.

4.The learned counsel appearing for the respondents submitted that since the writ petitioner is allowed to perform the SHAPE-3 category, he cannot claim immunity from administrative transfers. Administrative transfers are issued in respect of all the categories and the employees are placed under various categories and wherever they are posted, they will be allowed to perform the same duties and responsibilities assigned

with the particular category. Such being the case, there is no reason whatsoever 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. Transfer order is independent and rehabilitation programme in favour of the writ petitioner is unconnected with the impugned order of transfer, which was issued on administrative grounds.

5. The learned counsel appearing for the petitioner contended that the Standing Order No.4 of 2011 dated 27th July, 2011, stipulates about the rehabilitation of Force Personnel. Class-A provides that those who are disabled due to injuries sustained in action against terrorist/anti-social elements/insurgents/naxalities/while maintaining law & order/internal security/undergoing training or any other bonafide duty. Further, the Board should examine a person with regard to his physical/mental capability, aptitude, job requirements etc., and after assessing the capability and health condition of the person, recommended to be whether he/she can be rehabilitated within the Force by assigning the jobs mentioned in para-7 & 8 of the Standing Order. Paragraph No.7 of the Standing Order stipulates for the job, based on the recommendation of the Board to be provided to the employees for rehabilitation.

6. On a perusal of the entire Standing Orders, this Court is of the opinion that the Standing Order relating to rehabilitation of Force personnel is nowhere connected with the transfer of a personnel from one place to another place. Rehabilitation is one aspect and the transfer of a personnel is another aspect. Rehabilitation of the employee is very much required especially in Uniformed Services, when they suffer certain injuries during the course of performing their duties. But, transfer can never be the right and the place and post can never be claimed as a right.

7. Under the Standing Orders, rehabilitation can be claimed by the personnel when they sustained injuries during the course of performing their duties. But, place and post can never be claimed as a matter of legal right. On rehabilitation or during the course of rehabilitation, if the Board finds that a particular persons is eligible to perform certain kind of light duty, then it is for the authorities to allot such light duties and post him in the appropriate place. In such circumstances, no personnel in the Uniformed Service can claim that either he should be posted in Chennai or any other place of his choice. In other words, choice of post or place are certainly not

available to the public servants.

8. 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 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 no 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.

9. 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 Chennai or not. Furthermore, the writ petitioner is continuing in Chennai, for about five years and further continuance is certainly not desirable, since he is working in a disciplined Uniformed Force, i.e. CRPF.

10. 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.

11. In respect of medical treatments, this Court can easily be able to presume that adequate medical facilities will be certainly available in all the State Head Quarters or nearby places. Intervention in administrative transfers will not only cause inconvenience to the administration, but also amounts to preventing the 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.

12. 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.

13. 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.

14. In the case on hand, by virtue of an interim order granted by this Court, the writ petitioner is continuously working in Chennai, for about five years. In fact, it is not preferable to allow the writ petitioner to continue in Chennai,

any further. Thus, the writ petition and the grounds raised therein deserve no merit consideration.

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

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
The Union of India,
Ministry of Home Affairs, New Delhi
2. The Director General,
Central Reserve Police Force,
CGO Complex, Lodhi Road, New Delhi-110 003.
3. The Inspector General of Police,
Central Reserve Police Force,
South Sector, Banjara Hills, Hyderabad.
4. The Deputy Inspector General of police,
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Group Centre, Yalahanka, Bangalore,
Karnataka-560 064.
5. The Commandant,
77 Bn, Central Reserve Police Force,
Poonamallee, Chennai-600 056.

+1cc to Mr.Venkataswamy Babu, Advocate, S.R.No.56538

+1cc to Mr.K.SivaKumar, Advocate, S.R.No.56757

W.P.No.38352 of 2015

GN(12/09/2017)