

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.38546 of 2015 &
M.P.Nos.1 & 2 of 2015

P.Ramesh
Constable (GD)
No.921161235
S/o.P.Palanichamy
Quarter No.2367, Type-II, A Block
GC, CRPF, Avadi
Chennai-600 065.

..Petitioner

Versus

1. The Director General,
CRPF, CGO Complex,
Lodhi Road,
New Delhi-110 003.
2. The Inspector Director General,
Southern Sector CRPF,
Road No.10 C, Jubilee Hills,
Near MLA/MPs Colony
Gayathri Hills
Hyderabad-500 033.
3. The Commandant,
77 Bn, CRPF,
Karaianchavadi,
Poonamallee,
Chennai-600 056.
4. The Commandant,
143 Bn, CRPF,
Manipur.

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the movement order dated 28.11.2015 issued by the 3rd respondent in pursuance of the proceedings No.POL S/S SIG No.T-IXI12/2015-SS-ESTT-3 dated 08.11.2015 and quash the same forbear the respondents from transferring the petitioner from 77 Bn, CRPF to 143 Bn CRPF and retain him in 77 Bn CRPF or in other establishments of CRPF at Chennai.

For Petitioner :Dr.R.Gouri

For Respondents :Mr.K.S.Jeyaganeshan
Central Government
Standing Counsel (CGSC)

O R D E R

The petitioner has come forward with this Writ Petition to quash the movement order dated 28.11.2015 issued by the third respondent in pursuance of the proceedings No.POL S/S SIG No.T-IXI12/2015-SS-ESTT-3 dated 08.11.2015 and forbear the respondents from transferring him from 77 Bn, CRPF to 143 Bn CRPF and retain him in 77 Bn CRPF or in other establishments of CRPF at Chennai.

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 77th Battalion, Chennai, from May, 2011 and has completed only about six years of service. The learned counsel further contended that when the writ petitioner was serving in Leh, J & K, due to high altitude area as well as difficult and stressful/oxygen deficiency area, he

was severely affected by the hypertension and his both kidneys' were collapsed. Therefore, he was immediately admitted in Unit Hospital and referred to Army Hospital for diagnosis. Thereafter, he was shifted to PGIMER Hospital, Chandigarh and was given treatment for acute renal failure and they advised the petitioner to take treatment at Chennai. From 2011 to till date the petitioner is undergoing continuous dialysis twice in a week. The petitioner has also been examined and declared medical categorization as Shape-3(P). Further, the writ petitioner has two school going children and as his wife expired due to heart attack, he has to look after his children, apart from taking care of his mother aged about 70 years. At that juncture, the third respondent informed that the writ petitioner was transferred to 143 Bn, CRPF, Manipur by the second respondent verbally. Though the petitioner submitted a representation on 16.11.2015, requesting to retain him in 77th Bn, CRPF, Poonamallee, the third respondent issued movement order on 28.11.2015. Thus, the petitioner has come forward with this Writ Petition.

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 Chennai during May, 2011, and he is continuing for about six years. Hence, further continuance in Chennai 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 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.

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 Chennai during May, 2011 and by virtue of an interim order granted by this Court, the writ petitioner is continuously working in Chennai, for about six years. In fact, it is not preferable to allow the writ petitioner to continue in Chennai, furthermore. Thus, the writ petition and the grounds raised therein deserve no merit consideration.

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

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Director General,
CRPF, CGO Complex,
Lodhi Road,
New Delhi-110 003.
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Chennai-600 056.
4. The Commandant,
143 Bn, CRPF,
Manipur.

+1 cc to Mr.K.S.JayaGaneshan Advocate sr 56547
+1 cc to Dr.R.Gouri Advocate sr 57112

W.P.No.38546 of 2015

pvs(co)
aa25/09/2017