

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.3990 of 2015

and

M.P.No.1 & 2 of 2015

M.Ravi
Constable (W/C)
No.913096583

S/o Late P.Munuswamy,
Plot No.414, 4th Link Road,
6th Main Road, M.K.B.Nagar,
Vyasarpadi,
Chennai - 600 039.

..Petitioner

Versus

1. The Director General,
CRPF, CGO Complex,
Lodhi Road,
New Delhi - 110 003.
2. The Addl. Director General of Police,
South Zone, CRPF,
Chandrakutta,
Hyderabad - 500 005.
3. The Inspector General of Police,
Southern Sector CRPF,
Road No.10C, Jubilee Hills,
Near MLA/MPs Colony,
Gayathri Hills,
Hyderabad - 500 033.
4. The Deputy Inspector General of Police,
Group Centre, CRPF,
Avadi,
Chennai - 600 065.

..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 order of 4th

Respondent dated 05.01.2015 in proceedings No.T.IX.4/2015.EC-I and quash the same and forbear the respondents from transferring the Petitioner concern to 211 Bn, CRPF Chattisgarh from GC, CRPF, Avadi.

For Petitioner :M/s.Dr.R.Gouri

For Respondents :Mr.A.Kumaraguru,
Senior Central Government
Standing Counsel(SCGSC)

O R D E R

The writ petitioner was transferred from Avadi, Chennai to Raipur, Capital of the State of Chattisgarh, in summer chain transfer order issued by the respondents on 05.01.2015. The order of administrative transfer is under challenge in this writ petition.

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 appearing for the writ petitioner contended that the writ petitioner is diagnosed for HIV(+) and he is under continuous medical treatment in the Medical College Hospital at Chennai. Thus, he should be treated as SHAPE-3 category. Accordingly, he should be allowed to perform light duties in the centre. Further, the learned counsel urged this court to consider the instructions given by the office of the Inspector General/Director, (Medical), DTE.GENERAL, on 3rd November, 2010 which is extracted hereunder:

"Regarding Promotion

All HIV positive personnel whose cD4 & CD8 count is

normal and not on ART are kept in Medical category P1 and are fit for all duties anywhere but when CD4 count goes below 200 Cells/Microlitre he is placed in P2 as his efficiency reduces and he should be posted where ART facilities are available.

"Further regarding keeping these persons where ART facilities are available"

Presently only 03 ART Centres i.e. CH New Delhi, CH Jammu & CH Hyderabad are functioning in CRPF and 11 ART centres are available in the country. HIV affected personnel may be posted near their Home town so that their family members can also take care of him. Similarly, HIV +ve husband and wife can also be posted together preferably where ART facilities are available.

4. By virtue of these instructions, 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 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.

5. 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 is categorized under SHAPE-3 and he is allowed to perform light duties applicable to SHAPE-3 category. Since, he 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 to various categories and wherever they are posted, they will be allowed to perform the same duties and responsibilities assigned with the particular category, i.e. to say, the writ petitioner even in Raipur, Chattisgarh will be allowed to perform the duties and responsibilities applicable to SHAPE-3 category. 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.

6. This apart, the writ petitioner is continuing in Avadi, Chennai for about eight 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 Raipur, Chattisgarh, is in accordance with law or not.

7. 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, Raipur is the State Head Quarters of the State of Chattisgarh and this Court is easily able to presume that adequate medical facilities will be certainly available in any State Head Quarters of a State. 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.

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 /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 eight years in Avadi, Chennai and

by virtue of an interim order granted by this Court, for about two and half 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.

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.

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

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1. The Director General,
CRPF, CGO Complex,
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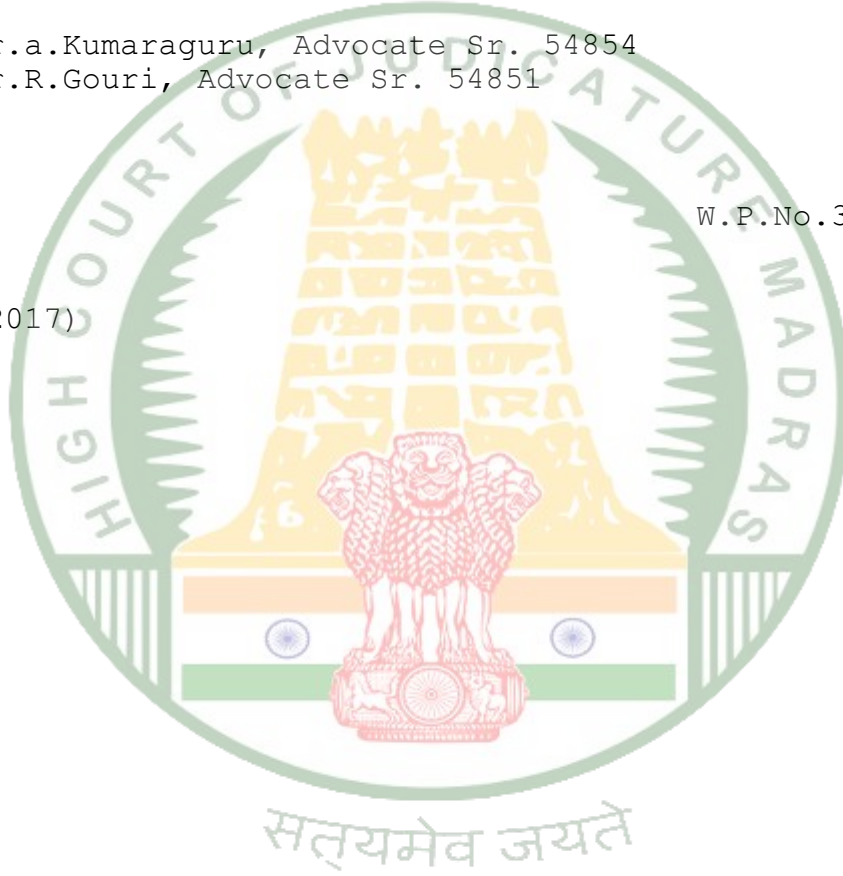
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Group Centre, CRPF,
Avadi,
Chennai - 600 065.

+1cc to mr.a.Kumaraguru, Advocate Sr. 54854

+1cc to Dr.R.Gouri, Advocate Sr. 54851

W.P.No.3990 of 2015

SKV(CO)
VR(28/08/2017)



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