

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9118 of 2015 &
M.P.Nos.1 & 2 of 2015

S.Kathiravan

..Petitioner

Versus

1. The Director General of Police
Central Reserve Police Force
CGO Complex, Block No.1,
Lodhi Road, New Delhi 110 003.
 2. The Additional Director General of Police
Central Reserve Police Force, Group Centre
Chantrankuddan, Keshopgri (Post)
Hyderabad 560 005.
 3. The Inspector General of Police,
Central Reserve Police Force,
Western Sector
CGO Comple, CBD Balapur
Navi Mumbai - 400 614.
 4. The Deputy Inspector General of Police
Central Reserve Police Force,
Group Centre,
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, to call for records relating to the transfer order made in CENTPOL SZ HYD SIGNAL No.T.IX.12/2015-SZ-ADM-I dt. 11.3.2015 by the second respondent herein and the consequential Posting Order made in POLCENT WS SIGNAL NO.T.IX.29/2015. WS - ADM - V dt 17.3.2015 by the third respondent herein and quash the same and consequently, direct the respondents herein to retain the petitioner herein in the present place of posting in the 4th respondent's office.

For Petitioner : M/s. R.Meenakshi

For Respondents : Mr.K.Raju
Central Govt. Standing Counsel

O R D E R

The petitioner has come forward with this Writ Petition for quashing the transfer order issued by the second respondent dated 11.3.2015 and the consequential Posting Order issued by the third respondent dated 17.3.2015.

2.The learned counsel for the petitioner contended that the writ petitioner is working in Avadi and has been transferred to Pune, by proceedings dated 17.3.2015.

3.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.

4.The learned counsel appearing for the writ petitioner contended that the writ petitioner is suffering from 'Hernia' and had undergone surgery in General Hospital, Chennai. This apart, it is stated that the wife of the petitioner is employed as Staff Nurse in the Government Stanley Hospital, Chennai and she is also suffering from Lumbar Disc Pralapse from December, 2009 onwards. The learned counsel further pleaded that the writ petitioner is having two school going children and therefore, 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 as well as to his wife and accordingly, the authorities ought to have considered the case of the writ petitioner sympathetically for his continuance in Chennai.

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

6.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 as the writ petitioner is categorized under SHAPE-2, he was not suffering from any serious illness and therefore, 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, i.e. to say, the writ petitioner even in Pune, will be allowed to perform the duties and responsibilities applicable to SHAPE-2 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.

7.This apart, the writ petitioner is continuing in Avadi, Chennai for about six 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 Pune, is in accordance with law or not.

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. In respect of medical treatments, this Court is easily able to presume that adequate medical facilities will be certainly available in any State Head Quarters of a State and 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.

9. 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.

10. 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.

11. In the case on hand, the writ petitioner is continuously working for about six 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.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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Avadi, Chennai -600 065.

+1cc to M/s.K.Raju, Advocate, S.R.No.57128

+1cc to M/s.R.Meenakshi, Advocate, S.R.No.57076

W.P.No.9118 of 2015

SSI (CO)
CU(24/08/2017)