

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.26930 of 2016 &
W.M.P.No.23155 & 23155 of 2016

R.Kabilraj
Constable (General Duty)
No.911221228
77 Bn, CRPF,
Karaianchavadi
Poonamallee,
Chennai-600 056.

..Petitioner

Versus

1. The Director General.
CRPF, CGO Complex,
Lodhi Road,
New Delhi-110 003.
2. The Inspector General of Police,
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,
144 Bn. CRPF,
Boulewad Hotel,
Dal Lake,
Srinagar, (J&K).

..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 transfer dated

13/07/16 issued by the third respondent in proceedings No.T.IX.2/2016-77-E-C-I and his consequential movement order dated 28.07.2016 and quash the same in so far as petitioner concerned and forbear the respondents from transferring the petitioner from 77 Bn, CRPF, Poonamallee to 144 Bn CRPF, Srinagar and retain him in 77 Bn CRPF or in other establishment of CRPF at Chennai/Bangalore/Hyderabad/Kerala and pass such other orders as this Court may deem fit and necessary.

For Petitioner :M/s.R.Meenakshi

For Respondents :M/s.V.Balasubramanian
Senior Panel Counsel (SPC)

ORDER

The petitioner has come forward with this Writ Petition to quash the movement order dated 28.07.2016 and forbear the respondents from transferring him from 77 Bn, CRPF, Poonamallee to 144 Bn CRPF, Srinagar and retain him in 77 Bn CRPF or in other establishment of CRPF at Chennai/Bangalore/Hyderabad/Kerala and pass such other orders as this Court may deem fit and necessary.

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 Avadi, Chennai from October, 2012 and has completed only about five years of service. The learned counsel for the writ petitioner contended that during the year 2003, while he was proceeding on two days casual leave from Group Centre, Avadi, he met with an accident and sustained multiple injuries. The petitioner was medically categorized as Shape-3 (Permanent) during the year 2004 and from 2015 onwards. Further, the petitioner was also declared 40% disability by the

District Medical Board R.G.H, Rourekela, Orissa. In spite of the above, the writ petitioner was transferred to 144th Battalion, Srinagar. Aggrieved over the same, 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 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 heart ailment of the petitioner's mother, 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 October, 2012, and he is continuing for about five years. Hence, further continuance in Avadi, Chennai is not desirable. The other grievances with regard to his medical history, the same 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 Avadi, Chennai or not. Furthermore, the writ petitioner is continuing in Avadi, 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 a uniformed service has to abide by the administrative orders more specifically of transfers.

9. 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 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 October, 2012 and by virtue of an interim order granted by this Court, the writ petitioner is continuously working in Avadi, Chennai, for about five 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.

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 V)

//True Copy//

Sub Assistant Registrar

rpa

To

1. The Director General.
CRPF, CGO Complex,
Lodhi Road,
New Delhi-110 003.

WEB COPY

2. The Inspector General of Police,
Southern Sector CRPF,
Road No.10 C Jubilee Hills,
Near MLA/MPs Colony
Gayathri Hills,
Hyderabad-500 033.

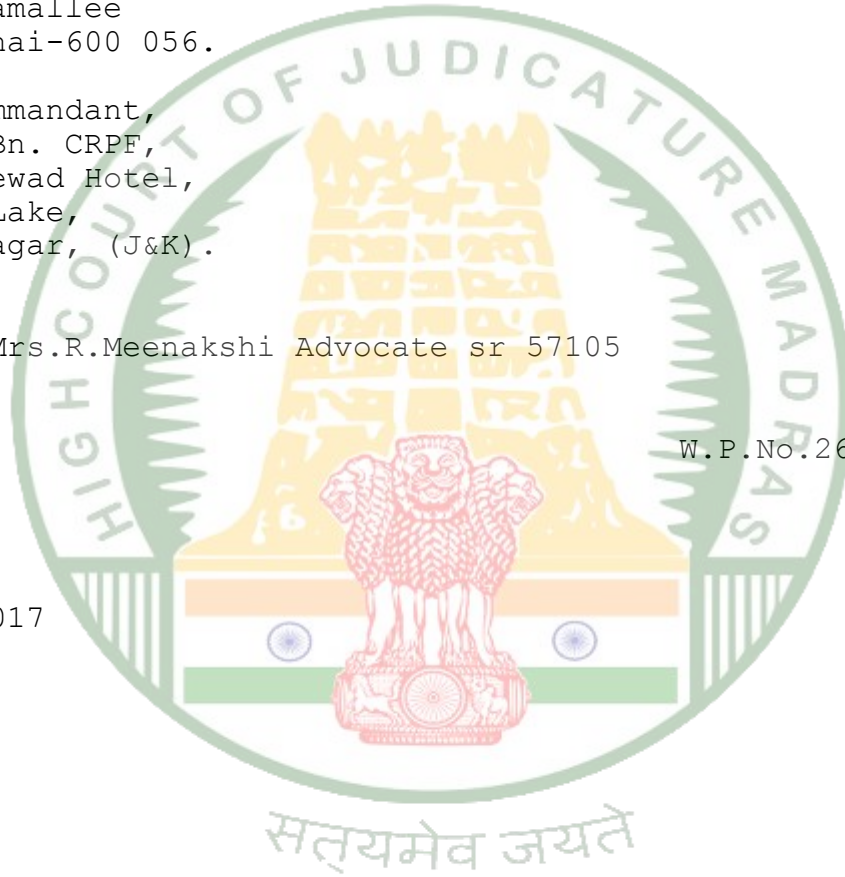
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+1 cc to Mrs.R.Meenakshi Advocate sr 57105

W.P.No.26930 of 2016

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