

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.38469 of 2016
and
W.M.P.Nos.32950 & 32951 of 2016

Jiju V.M.

.. Petitioner

vs.

1. The Director of General,
CRPF, CGO Complex,
Lodhi Road,
New Delhi - 110 003.
2. The Inspector General of Police,
Southern Sector CRPF,
Road No.10C, 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,
72 Battalion, CRPF
JK AP Complex, Channi Himmat,
Jammu (J & K) - 180015

.. Respondents

Prayer: The Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records pertaining to the transfer order dated 14.10.2016 issued by the 3rd respondent in proceedings No.J.II.1/2016-77-EC-2 and quash the same and forbear the respondents from transferring the petitioner from 77 Bn, CRPF, Poonamallee to 72 Bn CRPF, J&K and retain him in 77 Bn CRPF or in other establishments of CRPF at Chennai/Hyderabad/Bangalore.

For Petitioner : Dr.R.Gouri
For Respondents : Mr.T.L.Thirumalaisamy
Central Government Standing Counsel

ORDER

The petitioner has come forward with this Writ Petition challenging the order of transfer, transferring him from Poonamalle to Srinagar and thereafter from Srinagar to Jammu.

2. The case of the writ petitioner is that he met with an accident during December 2013 while performing his duties and sustained severe jerk (Trauma) on his back and neck and also sustained severe injury on his right hand. Further, the petitioner was also medically declared as Shape-3(P) by the Medical Board of Composite Hospital, CRPF, Avadi, thus he should not be transferred.

3. However, there is no dispute with regard to the severe jerk (Trauma) on his back and neck and severe injury on his right hand and further there is no dispute with regard to the allotment of work applicable to Shape-III category.

4. The learned Central Government Standing Counsel appearing for the respondents also emphasized that wherever the writ petitioner is posted, he will be allotted with Shape-III duties and responsibilities and he will not be posted to perform hard duties. He further contended that the writ petitioner was transferred to Jammu, which is a plain area and thus, the contention of the writ petitioner need not be considered. Further, the writ petitioner has completed his four years of tenure in Avadi, Chennai.

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 stipulated 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 person 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/she should be posted in Chennai or any other place of his/her choice. In other words, choice of post or place are certainly not available to the public servants.

8. 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 Tamil Nadu or not. Furthermore, the writ petitioner is continuing in Avadi, Chennai, for about four 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 Head Quarters of the State 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.

12. 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.

13. 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.

14.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.

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

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Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

To

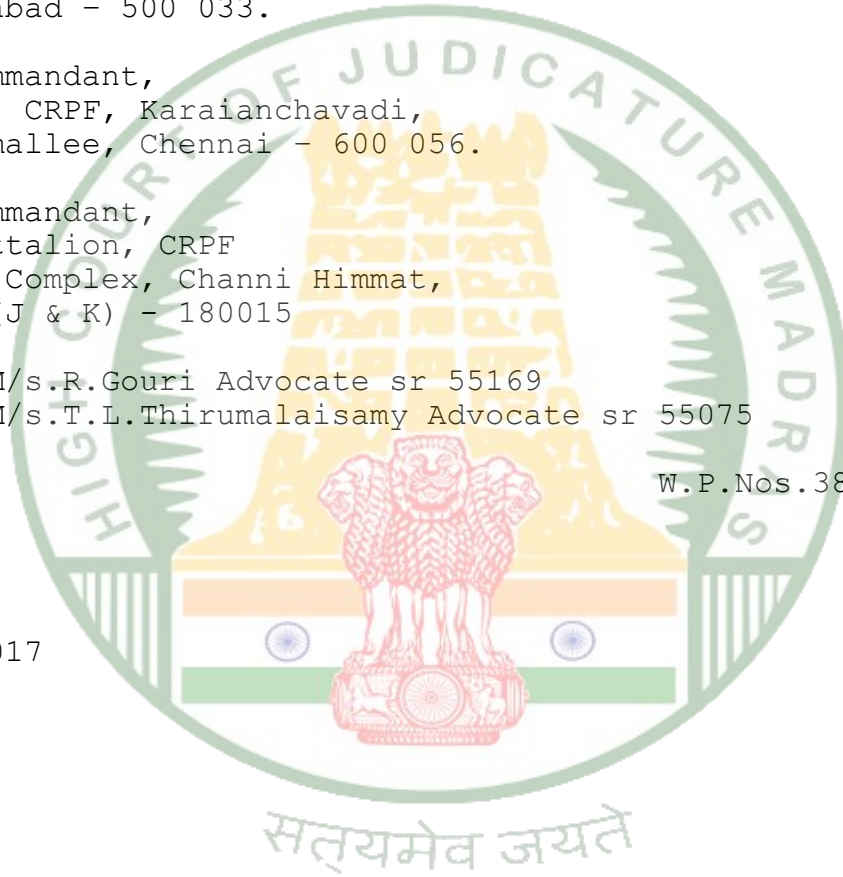
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+1 cc to M/s.R.Gouri Advocate sr 55169

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