

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 09.01.2018**

**CORAM**

**THE HON'BLE MR.JUSTICE T.RAJA**

**W.P.No.605 of 2018**  
**and WMP.Nos.734 and 735 of 2018**

Hitesh Kumar

... Petitioner

Vs.

- 1.The Union of India,  
Represented by its Secretary,  
Ministry of Home Affairs, New Delhi.
- 2.The Director General,  
Central Industrial Security Force,  
CGO Complex, Lodhi Road,  
New Delhi-110 003.
- 3.Inspector General (Western Headquarters),  
CISF West Sector Kharghar,  
Sector-35, Near Owegaon,  
Kharghar-410 210.
- 4.The Deputy Inspector General (Airport),  
CISF, Southern Zone Headquarters,  
D Block, Rajaji Bhavan, Chennai-600 090.
- 5.The Commandant,  
Central Industrial Security Force,  
Airport Security Group (Central),  
Chennai Airport, Meenambakkam,  
Chennai-600 027.

... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the 2<sup>nd</sup> respondent in Service Order No.974/2017 dated 04.09.2017 and the consequential order on the file of the 3<sup>rd</sup> respondent in Sankya:I-38014/(09)/Pa.Ka./Karmik/2017/7394 dated 15.09.2017 and the consequential order of the 5<sup>th</sup> respondent in I-38014/K.Ow.Sub/ASG Che/Prasha-I/2017/11706 dated 29.12.2017 and consequential order of the 5<sup>th</sup> respondent in I-38014/ASG(CH)/Adm-I/APS posting/2017/11780 dated 30.12.2017 and quash it as illegal.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.S.Arockiam,  
Central Government Standing Counsel

### **ORDER**

This Writ Petition is directed against the impugned order passed by the second respondent viz., The Director General, Central Industrial Security Force (CISF), New Delhi dated 04.09.2017, in and by which the second respondent, who is the competent authority, has approved the posting of Constables (GD) and Constables/TM as mentioned in Appendix-"A" attached to that order, transferring 113 personnel from one place to another and the order dated 15.09.2017 passed by the third respondent viz., Inspector General (Western Headquarters), Kharghar, in and by which the third respondent has issued posting order for the

aforementioned 113 personnel and the consequential order dated 29.12.2017 passed by the fifth respondent viz., The Commandant, CISF, Airport Security Group (Chennai), Chennai, relieving the petitioner from Chennai.

2. Mr.V.Raghavachari, learned counsel for the petitioner, while heavily assailing the impugned order, submitted that the petitioner was subjected to departmental proceedings by issuing Charge Memo dated 30.08.2017 on the allegation that the petitioner has informed/requested his own group of friends in WhatsApp not to sign the form of TPT allowance stating that the respondents are using old time tactics and therefore, they should go through the contents of the form and then they should wait for some time till suitable order is obtained from the Court. The petitioner submitted his explanation denying the charge on the ground that the abovementioned message given to his own group of friends will not amount to misconduct. The respondents disallowing the petitioner's explanation, proceeded further by appointing an Enquiry Officer and on completion of enquiry, the petitioner was found guilty of the charges and thereupon, an order of punishment dated 29.12.2017 was issued against the petitioner, imposing punishment of stoppage of increment for 2 years with cumulative

effect and immediately, on the same day, the respondents have issued the impugned transfer order, posting the petitioner in LWE (Left Wing Extremist) affected area, which is punitive in nature, hence, the transfer order cannot be passed with punitive nature.

3. Again assailing the impugned order of transfer, the learned counsel for the petitioner further pleaded that the respondents cannot punish the petitioner twice for the same charge and while the petitioner was imposed with punishment of stoppage of increment for 2 years with cumulative effect, vide order dated 29.12.2017, posting the petitioner in LWE affected area again after completing two years clearly shows that the impugned order was issued with *malafide* intention to harass the petitioner. The learned counsel for the petitioner drawing the attention of this Court to Guidelines for Posting/Transfer of CISF Personnel in Circular No.22/2017 dated 25.09.2017 issued by the second respondent, more particularly Clause 37(c) stated that the posting tenure in LWE affected units and Uri-I, Uri-II, PGCIL Wagoora, DHEP Dulhasti, 7<sup>th</sup> RB Kistwar, DHEP Doyang would be 2 years and the tenure at proposed KGHP deployment in Gurej Valley and Bandipora shall also be for 2 years and the tenure of other units located in

hard area will be 3 years. But in the present case, the petitioner has already completed the tenure of 2 years in hard area and after imposing him the punishment of stoppage of increment for 2 years with cumulative effect, he cannot be again imposed with punishment by way of transfer, more particularly to LWE affected area, which is meant for fresh personnel who have not served in LWE affected area.

4. Again the learned counsel for the petitioner also inviting the attention of this Court to Clause 37(f) of the Guidelines for Posting/Transfer stated that posting of a person belonging to a State where Hard Area unit is located would be considered only one Hard Area posting notwithstanding any number of tenures served by him in hard area, in his Home State, but in the case on hand, the petitioner has not completed 7 years of service and therefore, reposting the petitioner again in LWE affected area is not only untenable but also contrary to the transfer guidelines. Concluding his argument, the learned counsel for the petitioner argued by referring to Clause 39(xiii) of the Guidelines for Posting/Transfer which states that personnel with punishment, bad behaviour, bad habits (drunkenness) etc., may not be posted to sensitive units and admittedly, the petitioner, on the

date of transfer is carrying the punishment of stoppage of increment for 2 years with cumulative effect, vide order dated 29.12.2017 and therefore, even as per their own transfer guidelines, the respondents should not have posted the petitioner in sensitive unit, especially when he has already served for more than 2 years in hard area.

5. *Per contra*, Mr.S.Arockiam, learned Central Government Standing Counsel for the respondents submitted that the impugned order of transfer cannot be considered as double punishment for the reason that when the second respondent has passed *en masse* transfer order dated 04.09.2017 transferring 113 personnel from one place to another, the third respondent has issued consequential posting order dated 15.09.2017 and pursuant to those two orders, the fifth respondent has issued the present relieving order dated 29.12.2017 and since the order of punishment dated 29.12.2017 and the relieving order are coincidental, the petitioner conveniently takes a ground against the respondents as if he has been imposed with punishment twice, which is factually incorrect.

6. This Court also finds merit in the said submission of the learned Central Government Standing Counsel for the respondents for the reason that the second respondent has chosen to effect *en masse* transfer, vide order dated 04.09.2017 transferring as many as 113 CISF personnel all over the country to various places, in pursuant to the order passed by the competent authority. The third respondent has passed the posting order dated 15.09.2017 and consequently, the Commandant, CISF, Chennai/fifth respondent herein has relieved the petitioner from Chennai to BIOM Kirandul, vide order dated 29.12.2017. Therefore, I do not find any punitive colour on this transfer order.

7. The second contention of the learned counsel for the petitioner is that as per Clause 37(c) of the Guidelines for Posting/Transfer of CISF Personnel dated 25.09.2017, the posting tenure in LWE affected units would be two years. However, Clause 39(xx) of the very same transfer guidelines says that notwithstanding the guidelines contained in this circular, any personnel may be posted anywhere at any stage by the competent authority without assigning any reason and these guidelines shall not come in the way

of such transfer/posting. In view of the Non Obstante Clause, Clause 37(c) cannot come in the way of the transfer order. Besides, in the case on hand, while the second respondent took decision to transfer 113 personnel including the petitioner, the petitioner was facing departmental proceedings and the reliving order of the fifth respondent dated 29.12.2017 also clearly says that the petitioner will be relieved on posting on BIOM Kirandul from Chennai after completion of Departmental Enquiry under Rule -36 of CISF Rules, 2001. Thus it makes it clear that even the third respondent was unaware of the result of departmental proceedings initiated against the petitioner, hence it cannot be taken as an order passed with punitive nature.

8. This Court is not inclined to entertain this writ petition on the ground that the petitioner either cannot be posted in the LWE affected areas or he should not be re-posted after completion of 2 years in LWE affected unit.

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9. In the result, this Writ Petition fails and accordingly, it is dismissed. Needless to mention that the petitioner is granted two weeks from today to report to the place where he has been transferred through the

impugned order. No costs. Consequently, connected miscellaneous petitions are dismissed.

09.01.2018

Index : yes / No  
Internet : yes / No  
jvm

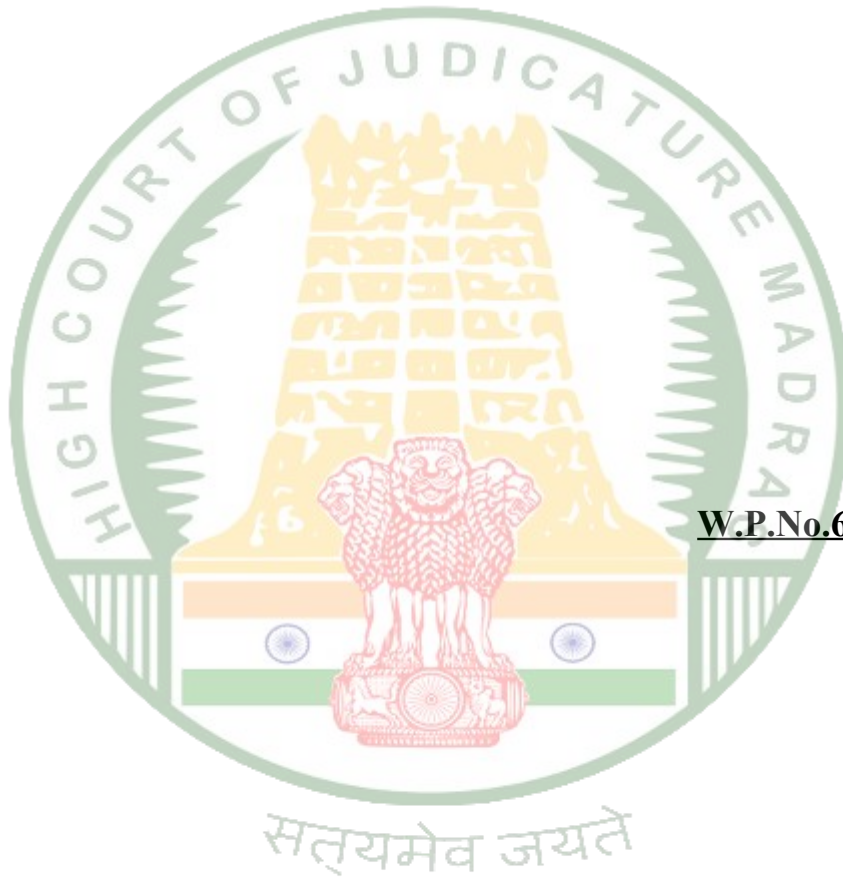
**Note: Issue Order on 10.01.2018**

To

- 1.The Secretary,  
The Union of India,  
Ministry of Home Affairs, New Delhi.
- 2.The Director General,  
Central Industrial Security Force,  
CGO Complex, Lodhi Road,  
New Delhi-110 003.
- 3.Inspector General (Western Headquarters),  
CISF West Sector Kharghar,  
Sector-35, Near Owegaon,  
Kharghar-410 210.
- 4.The Deputy Inspector General (Airport),  
CISF, Southern Zone Headquarters,  
D Block, Rajaji Bhavan, Chennai-600 090.
- 5.The Commandant,  
Central Industrial Security Force,  
Airport Security Group (Central),  
Chennai Airport, Meenambakkam, Chennai-600 027.

**T.RAJA, J.**

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