

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.04.2018

Coram:

The Hon'ble Mr.Justice S.M. SUBRAMANIAM

W.P.No.5258 of 2018

and

W.M.P.Nos.6455 & 6456 of 2018

R. Sekar

Head Constable/GD

Office of the Assistant Commandant

CISF Unit, Bhavini,

Kalpakkam - 603 102.

...Petitioner

Versus

1. The Director General,
Central Industrial Security Force Headquarters,
CGO Complex - 13,
Lodhi Road, New Delhi - 110 003.
2. The Assistant Inspector General,
Central Industrial Security Force Headquarters,
CGO Complex - 13,
Lodhi Road, New Delhi - 110 003.
3. The Senior Commandant,
CISF Unit, Bhavini,
Kalpakkam - 603 102,
Kancheepuram District.
4. The Assistant Commandant,
CISF Unit, Bhavini,
Kalpakkam - 603 102,
Kancheepuram District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records in the order bearing No.E-38023/12(6)RP/Estt-II/2017-6577 dated 27.12.2017 passed by respondents 1 and 2 and quashing the same, and directing respondents 1 and 2 to defer the transfer of the petitioner from Bhavini Kalpakkam to ES for a period of one year from 30.03.2018.

For petitioner : Mr.M.Radhakrishnan

For Respondents : Mr.C.V.Ramachandramoorthy,
Central Government Standing Counsel

O R D E R

The impugned order of deferment issued by the respondents 1 & 2 in proceedings dated 27.12.2017 in respect of the transfer of the writ petitioner from Bhavini, Kalpakkam to Jharkand, ES is under challenge in this Writ Petition.

2.The Writ Petitioner is working as a Head Constable/GD in fourth respondent/CISF Unit. The petitioner was appointed in CISF on 01.03.1988 and he has already served in many parts of the Country. Further, the petitioner states that he had served for a period of more than eleven years out of his home zone, and therefore, he is entitled to continue his work in Kalpakkam as per his request.

3.The petitioner served in the States of Orissa, Uttar Pradesh, Kerala, Andhra Pradesh, Rajasthan, Gujarat and the Union Territory of Delhi apart from the State of Tamil Nadu. The petitioner was posted at Bhavini, Kalpakkam since 01.11.2012. Thus, he is serving in the present station for about 5 ½ years, the petitioner is having unlimited record of service.

4.The learned counsel appearing on behalf of the writ petitioner vehemently contended that the transfer policy in force has not been followed by the respondents. No doubt, the writ petitioner is continuing in the present station with effect from 01.11.2012. However, he is entitled to deferment of transfer on account of the fact that his daughter is studying XII Standard in Kendriya Vidhyalaya School at Chennai. Therefore, he is entitled for a deferment of minimum period of one year and the benefit of same has not been extended and the order impugned is absolutely non speaking.

5.The learned counsel for the petitioner further proceeded by stating that the transfer policy was issued in Circular No.22 of 2017 dated 25.09.2017. The circular is a transfer policy which is to be followed scrupulously by the Competent Authority at the time of considering the deferment application. The writ petitioner submitted his application before the Authorities regarding the issue of deferment of his transfer to Jharkand. The writ petitioner refers Clause 26 of the said circular, which stipulates the extension of tenure on education ground and the same reads as follows:

"NGOs will be permitted an extension in his/her present unit for one year if his/her ward is studying in 10th or 12th class in the current academic year and staying with him at the place of posting. He/she will not be given extension in the next year on the ground of 2nd ward/wards studying in 10th or 12th class in the subsequent year. This policy is applicable only for two living children and can be availed once for one child's education. However, if there are operational and administrative considerations, these facilities would be curtailed."

6.It is contended that the impugned order is non-speaking and, no reasons are provided for not considering the request of the writ petitioner for deferment. The impugned order simply states that the case of the writ petitioner was considered and the deferment is rejected. Thus, the policy relating to the transfer and deferment issue in Circular No.22 of 2017 dated 25.09.2017 had not been considered by the respondents at the time of scrutinizing the application submitted by the writ petitioner.

7.The learned counsel appearing on behalf of the respondents states that the writ petition is not maintainable, in view of the fact that already two deferments were granted to the writ petitioner during the academic year 2015-2016. One deferment was given to the writ petitioner on the ground that his daughter was studying in IX Standard and entering X Standard in the year 2015. Once again, the writ petitioner submitted an application seeking deferment of his transfer during the year 2016-2017 on the ground that his wife was taking treatment in Apollo Hospital, Chennai. Considering the aforesaid application, one more deferment was granted during the year 2016-2017. The present application submitted by the writ petitioner is the third application seeking deferment of transfer continuously for the past more than three years. The present application for deferment is a third application submitted by the writ petitioner on the ground that his daughter is studying in XI Standard and she has to get admission in XII Standard for the current academic year. The learned counsel appearing on behalf of the petitioner admitted the fact that at the time of submission of his application for his deferment, the transfer policy in Circular No.22 of 2017 dated 25.09.2017 was not in force.

8.The learned counsel appearing on behalf of the respondents further states that the Competent Authorities considered the application submitted by the writ petitioner and had taken a decision and issued an order in proceedings dated

29.12.2017 recording over grant of deferment. The present writ petition is filed challenging the said order. The learned counsel for the respondents states that transfers are issued mostly on administrative grounds after considering the personal grievances. Here, the personal grievance of the writ petitioner was considered by the Competent Authorities. The writ petitioner is working in Bhavini, Kalpakkam from 01.11.2012 onwards and he has already completed about 5 ½ years of service in the present station. The continuous deferment for a period of about two years were already granted and therefore, the Authorities found that the third extension of tenure need not be considered on account of certain administrative grounds. The writ petitioner is serving in a disciplined Uniform Force and the Authorities competent has to consider various other factors and shall take effective decisions regarding administrative transfers. Under these circumstances, the application of the writ petitioner was not considered. This apart, it is contended that the deferment of transfer can be issued once in respect of one child. However, the deferment was already granted in favour of the very same daughter of the writ petitioner during the academic year 2015-2016 at the time when she was studying XI Standard in the same Kendriya Vidhayala School, Chennai. Therefore, the second deferment cannot be granted on the ground that the very same daughter is studying XII Standard. At the outset, two deferments are impermissible in respect of the same child on the ground that she is pursuing studies either in X Standard or in XII Standard.

9. The learned counsel appearing on behalf of the writ petitioner opposed the contentions of the learned counsel for the respondents that the records and the details now submitted on behalf of the respondents were not served to the writ petitioner. There was no order of transfer at all and therefore, there was no application for deferment. The learned counsel for the petitioner opposes the contentions of the respondents' counsel by stating that the writ petitioner has neither made any request earlier and nor there was any deferment.

10. Considering the arguments as advanced by the learned Senior Advocate for the petitioner and the learned counsel for the respondents, this Court is of an opinion that transfer is incidental to service, more so, a condition of service. Administrative transfers in Uniformed services are effected in order to maintain an effective public administration. Central Industrial Security Force(CISF), undoubtedly, a disciplined Uniformed Force, wherein such administrative transfers are not only necessary, but imminent in order to maintain the discipline to the standard expected. Allowing a Uniformed personnel to serve in a same place for a longer tenure may not be certainly

preferable in public interest. Armed forces have to be deployed properly, diligently and intelligently based on the field assessments made by the respective superior Cops. Such decisions are taken administratively by such higher officials based on the needs of the particular locality and in public interest across our great Nation. Thus, all such administrative affairs are to be considered by the competent authorities and the Courts are not empowered to interfere with such activities of the Uniformed services, as the Courts cannot interfere in the day-to-day administration. These sensitive Police organizations, which provides protection to the highly sensitive areas, institutions of our great Nation.

11. This Court is of the considered view that day-to-day administrative affairs of these Uniformed services are the prerogative of the competent authorities and it is not preferable to enter into the arena of the administrative prerogatives and also respect the independency of such valuable forces of our great Nation. Undoubtedly, the Courts are empowered to look into the procedures adopted for the purpose of arriving a decision in a particular manner and in accordance with law. However, the decision itself cannot be questioned nor a writ can be entertained in a routine manner.

12. No writ can be entertained against an order of transfer issued on administrative grounds. Writ proceedings can be entertained against an order of transfer, if the same is issued by an incompetent authority, having no jurisdiction or an allegation of malafides are raised or if the same is in violation of the statutory rules in force. Even in case of an allegation of malafides, the authorities against whom such an allegation is raised to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any one of these legal grounds, no writ proceedings can be entertained. Judicial Review in this regard are certainly limited. Thus, the Courts are to be cautious, while entertaining such writ petitions filed against an order of administrative transfer. In the present case on hand, the learned counsel for the petitioner mainly placed reliance on the Circular No.22 of 2017 dated 25.09.2017, which provides certain guidelines for the purpose of grant of deferment to the employees and the writ petitioner states that he claimed deferment on the ground that her daughter is studying XI Standard in Kendriya Vidhyalaya, Chennai.

13. On a perusal of the Circular No.22 of 2017 dated 25.09.2017, this Court is of an opinion that there are certain guidelines for posting/transfer of CISF Personnel (NGOs - Constables, HCs, ASIs, SIs & Inspectors) in various Sectors of CISF. Guidelines in Clause 9 categorically states that

"09. However, to maintain a balance and make a system so that there is a mix of personnel belonging to Home Sector and Out of Home Sector in a Unit, the following broad guidelines are hereby issued regarding transfer and tenure of posting of the personnel, which are subject to security considerations, availability of vacancies, new inductions, administrative and operational needs and public interest."

14. Thus, the Circular issued by way of guidelines for the purpose of maintaining uniformity by the officials concerned, cannot be construed as a rule for the purpose of strict implementation. Such guidelines are issued by the Department in order to avoid discrepancies at the time of taking certain administrative decisions by the competent authorities. Thus, the guidelines issued in this regard cannot be construed as a statute nor the same can have a strict enforceability in the Eye of Law. In other words, these guidelines will not confer any legal right on the employees, so as to claim that the deferment of administrative transfers must be granted in a routine manner. Each case has to be considered by the competent authorities based on the facts and circumstances and also the personal grievances if any raised by applying the guidelines in a uniformed manner. Thus, reliance of such guidelines or Circular will not constitute a ground for the writ petitioner to claim deferment as a matter of right nor this Court can direct the authorities to grant deferment in a routine manner or strictly in accordance with the guidelines. Even in the said Circular as extracted in the above paragraph, it is categorically stated that the guidelines are subject to security considerations, availability of discrepancies, new inductions, administrative and operational needs and public interest.

The word 'public interest' is incorporated in the guidelines in order to provide wide interpretation, so as to cover the administrative transfers taken on certain particular grounds. Thus, the reliance placed by the learned Senior Advocate on the Circular issued by the respondents are of no avail.

15. This Court is of an opinion that the Uniformed personnels like Central Industrial Security Force (CISF) has to work wherever they are posted in the interest of our great Nation. Their services are saluted by the public at large. Their command in the field are not only respected, but appreciated by all concerned. Serving in a prestigious organization like 'CISF' is a chance and opportunity to serve the Nation with pride and proud. Such opportunity provided to these Cops are to be utilized in right spirit, in order to achieve the meaningful life. The services of these Cops are to

be utilized in a judicious manner. Equally, the authorities competent, while taking administrative decisions have to consider all factual circumstances, so as to avoid or minimise the discrepancies and discriminations. The authorities competent must be fair and impartial, more specifically, in transfers. Favoritism and Nepotism can never play a role in effecting administrative transfers. Such evil terms are not only unconstitutional, but will create frustration in the minds of the personnel. The equality clause enshrined in Indian Constitution are to be followed scrupulously by the competent authorities. By creating inequalities, one should keep in mind that they are demoralizing the Uniformed forces. Therefore, it is also the duty of the higher officials to ensure that the administrative transfers are issued uniformly, so as to create an impression amongst the personnel that they are not discriminated and their grievances are properly considered equally. After all, every family may have their own advantages and disadvantages, happiness and sorrow and also varieties of problems. In spite of all these, people are thriving hard to protect our Nation and the interest of public in general. Under these circumstances, it is the duty of everyone concerned to ensure that all these Police personnel are treated equally without any discrimination. Certain additional concessions may be required in view of certain special circumstances. However, those cases cannot be followed as a precedent, nor the same benefit can be provided to all the Police officials, who all are otherwise equal.

16.The learned counsel appearing on behalf of the respondents contended that the daughter of the writ petitioner at the time of studying in IX Standard in Kendriya Vidhayalaya, Chennai, the writ petitioner was granted with one deferment of transfer. Accordingly, the writ petitioner continued in the same station. Now, once again, the writ petitioner submitted an application seeking deferment on the ground that the very same daughter is studying in XI Standard and she has to complete XII Standard in Chennai. There is no provision to grant deferments on the ground that the same daughter is studying in IX Standard and in XII Standard. In other words, two deferments are impermissible on the ground of the School Education of the same daughter.

17.Administrative transfers do not require any reasons. Administrative transfers cannot be construed as punishments. Transfers are issued on various grounds in the interest of public administration. Certain reasons cannot be disclosed, more specifically, in an organization like Central Industrial Security Force (CISF). Confidential reasons may also be considered by these security forces. Thus, the claim of the writ petitioner that certain informations relating to transfers

are not provided to him cannot be accepted. It is not necessary that all the reasons culminated into administrative transfers need not be communicated to the personnels concerned.

18.This being the principle to be followed, this Court is of an opinion that the arguments so advanced by the learned Senior Advocate appearing on behalf of the writ petitioner that certain decisions were not communicated, deserves no merit consideration. The challenge in the present writ petition is the rejection of deferment issued by the respondents. The rejection of deferment is the consequential decision taken pursuant to the order of transfer issued to the writ petitioner from Bhavini, Kalpakkam to Jharkand, Es.

19.In view of the discussions made in the aforementioned paragraphs, this Court is of an opinion that the writ petitioner has miserably failed to establish any legally acceptable ground for the purpose of interfering with the decision taken by the respondents in relation to the administrative transfer of the writ petitioner, so also grant of further deferment.

20.Accordingly, the writ petition on hand, stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mrr/kak

To

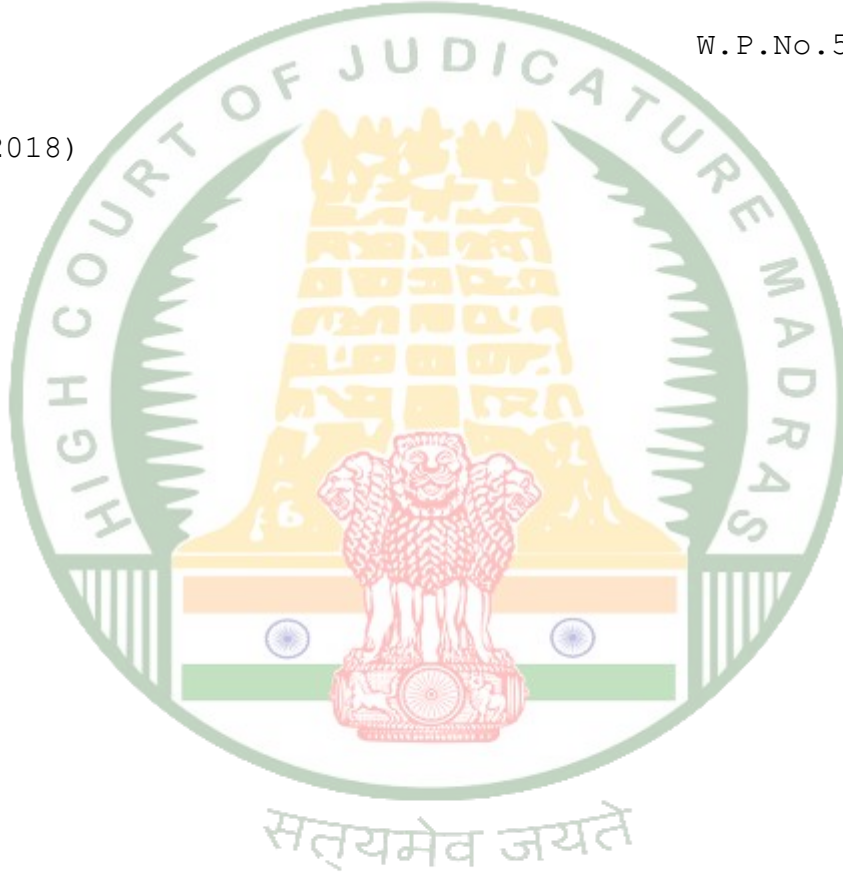
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+1cc to Mr.M.RADHAKRISHNAN, Advocate, S.R.No. 25329

W.P.No.5258 of 2018

NRL(CO)
TR(27/04/2018)



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