

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

W.A.No.179 of 2018 and C.M.P.No.1195 of 2018

Hitesh Kumar

... Appellant

Vs

- 1.The Union of India
rep. 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-90.
5. The Commandant,
Central Industrial Security Force,
Airport Security Group (Chennai),
Chennai Airport, Meenambakkam,
Chennai-27.

... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 09.01.2018 made in W.P.No.605/2018 by a learned Single Judge.

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 2nd respondent in Service Order No.974/2017 dated 04.09.2017 and the consequential order on the file of the 3rd respondent in Sankya: I-38014/(09)/ Pa.Ka./

Karmik/2017/ 7394 dated 15.09.2017, and the consequential order of the 5th respondent in I-38014/ K.Ow.Sub/ ASG Che/ Prasha-1/ 2017/11706 dated 29.12.2017 and consequential order of the 5th respondent in I-38014/ ASG(CH)/ Adm-1/APS posting/2017/11780 dated 30.12.2017 and quash it as illegal

For Appellant :: Mr.V.Raghavachari

For Respondents :: Mr.J.Madanagopal Rao,
Senior Standing Counsel for UOI

JUDGMENT

(Judgment of the Court was pronounced by HULUVADI G.RAMESH, J.)

The Writ Appeal is directed against the Order dated 09.01.2018 made in W.P.No.605/2018 by a learned Single Judge.

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

3. According to the petitioner, he was subjected to departmental proceedings by issuing a Charge Memo dated 30.08.2017 on the allegation that he has informed 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 said Writ Petition came to be filed.

4. After hearing the rival submissions made on either side, the Single Judge of this Court dismissed the Writ Petition by an Order dated 9.1.2018 and aggrieved over the same, the petitioner is before this Court again with this Writ Appeal.

5. When the matter is listed today under the caption, ''for admission'', Mr.V.Raghavachari, the learned Counsel for the appellant submitted that the respondents cannot punish the appellant twice for the same charge and while he was imposed with punishment of stoppage of increment for 2 years with cumulative effect, vide order dated 29.12.2017, posting the appellant to 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 appellant further 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) submitted that the posting tenure in LWE affected units and Uri-I, Uri-II, PGCIL Wagoora, DHEP Dulhasti, 7th 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. The learned Counsel for the appellant further invited the attention of this Court to Clause 37(f) of the Guidelines for Posting/Transfer submitted that the appellant has not yet 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.

6. Mr.J.Madanagopal Rao, learned Standing Counsel for the respondents submitted that there is no infirmity in the transfer order of the 2nd respondent and the Writ Petition filed against the same is dismissed by the learned Single Judge of this Court and the same has to be confirmed.

7. Considered the submissions made on either side and We have also carefully gone through the materials placed on record.

8. At the outset, the facts that the petitioner is a member of the Central Industrial Security Force who joined in the year 2012 and from 12.7.2012 to 31.03.2015 he was serving in the CISF Unit at ONGC, Nazira and thereafter, he was transferred to the CISF Unit at the Airport Security Group, Chennai on 1.4.2015 are not in dispute. Since in the later place, the salary received by him was far lesser than what was due to him, on perusal of the records, he came to know that various allowances, namely, Transport Allowances, House Rent Allowance and out Door Medical Allowance were not paid to him and there was a discrepancy in disbursement of salary in various units across the country, the petitioner has filed a W.P.No.2336/2017. Thereafter, on 12.7.2017, the petitioner had posted a message citing the pendency of the case. While so on 13.7.2017, an explanation was called for from the petitioner in this regard and after submitting his explanation for the same on 14.7.2017, a Memorandum dated 30.8.2017 was issued for which the petitioner has submitted his explanation on 4.9.2017. It appears that on the same day, he was transferred to western sector without any specific posting and on 15.9.2017, the Western Headquarters is alleged to have transferred him to BIOM, Karendul, Dhantewara District, Chattisgarh which is a hard/disturbed area. But, according to the learned Counsel for the appellant, when the appellant has already worked in the hard/disturbed area for nearly 3 years, in violation of the transfer guidelines of the Central Industrial Security Force in order to wreck vengeance that the appellant has already moved the High Court for not disbursing various allowances, the present transfer order has been passed.

9. Though in the usual course, when the CISF People are working in some units for the security purpose, certain transfers have to be effected by the respondents and such orders of transfer have been passed on administrative grounds and no doubt, the transfer is not only a condition of service, but, it is also an incident of service, but, the respondents should keep some uniformity in transferring the said CISF personnels. In this matter, without calling for any explanation or without issuing any notice, the appellant has been transferred twice to the hard/disturbed area which is in violation of the transfer guidelines of the said Force. Since it is stated that the appellant has to look after his ailing father, though we are not interfering with the present impugned order of transfer, we hereby direct the respondents to consider the case of the appellant sympathetically during the next transfer by transferring him to one of the areas out of two or three areas which he proposed, then, his grievance would be redressed. Anyhow, two months time from the date of receipt of a copy of this Order is given to the appellant to go and report to the transferred place.

10. Further, the CISF Personnels are eligible for various allowances in certain places and on their transfer to such places, they are all also entitled to get the same without demand. When such monetary benefits have to be provided with other allowances, if it is not given within a time, there is nothing wrong in seeking for the such allowances and by giving representations and approaching the Court seeking suitable directions, but, that should not be a basis for victimisation of any of the officers for having raised their voice for the due rights available to them as per the rules.

11. With the above observation and direction, the Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-vii)

//True Copy//

Sub Assistant Registrar

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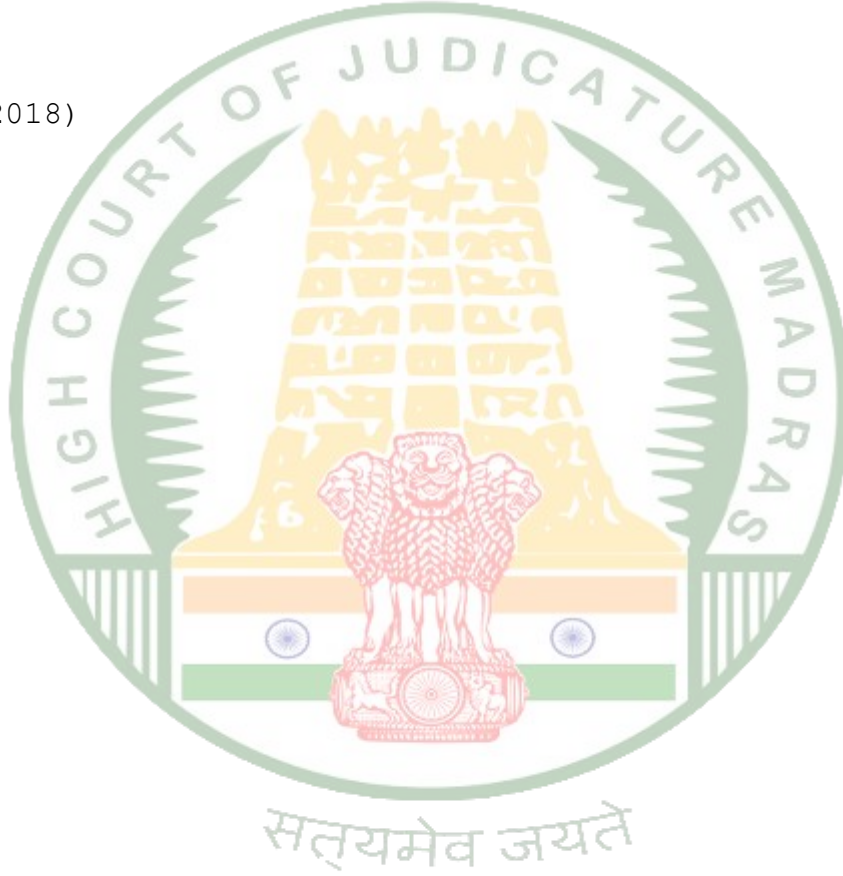
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+1cc to Mr.V.RAGHAVACHARI, Advocate, S.R.No. 5870
+1cc to Mr.J.MADANAGOPAL RAO, Advocate, S.R.No. 5874

W.A.No.179/2018

PA (CO)
TR(19/02/2018)



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