

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.26685 of 2016 and
WMP.Nos.29901 to 29903 of 2016

C.Manimaran

... Petitioner

Vs

1.The Chief Record Officer,
Armoured Corps Records,
PIN-900 476,C/o.56 APO.

2. The Commandant,
64 Cavalry, C/o.56 APO.

3. The Commandant,
Embarkation Headquarters,
PIN-900 432, C/o.56 APO.

4. The Officers Incharge Records,
Armoured Corps Records,
PIN-900 476, C/o.56 APO.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the concerned records in Posting Order No.373/2016 in Proceedings No.505111/Gen/86/CA-3 dated 03.05.2016 passed by the 1st respondent herein and to quash the same and consequently, direct the 1st respondent herein to accept the application for the premature retirement on compassionate grounds dated 21.04.2016 of the petitioner herein and send him on pension from the present unit itself.

For Petitioner : Mr.M.Arumugam

For Respondents : Mrs.S.Meenakumari,
S.C.G.S.C.

O R D E R

Challenging the Posting Order No.373/2016 in Proceedings No.505111/Gen/86/CA-3 dated 03.05.2016 passed by the 1st respondent herein, namely, The Chief Record Officer, Armoured Corps Records, PIN-900 476,C/o.56 APO, thereby transferring the petitioner from Embarkation Headquarters, Chennai to 64 Cavalry, this Writ Petition has been filed.

2. Learned Counsel for the petitioner submitted that the petitioner joined the Indian Army on 6.11.1990 in the clerical cadre and underwent trade training at Training Centre and after successful completion of the Trade Training, he was posted to 71 Armoured Regiment and thereafter posted to various places and promoted to various ranks. While he was holding the rank of Risaldar Clerk, he was posted to Embarkation Headquarters, Fort Saint George, Chennai on 17.04.2014. Since his wife was suffering from some uterus problem, the petitioner decided to go for Premature Retirement to take care of his wife and also his children and his aged parents. Therefore, he applied for Premature Retirement on compassionate grounds on 21.4.2016 from the Embarkation Headquarters, Fort Saint George, Chennai Unit informing that if his premature Retirement Application on Compassionate Ground is accepted, he would be able to take care of his wife and also save her after treatment including surgery. The said representation was also received by the respondents and he was also interviewed by the Commandant on 22.4.2016 and also on 27.04.2016 and in the said interview, the petitioner has explained his family problems. The learned Counsel further submitted that accepting the claim of the petitioner, the 3rd respondent has also recommended his Premature Retirement Application dated 21.4.2016 by duly forwarding the same to the 1st respondent on 27.04.2016 and the same was also received by the 1st respondent on the same day through AWAN (Army Wide Area Network) vide Embarkation Headquarters Message ID No.03 dated 27.04.2016.

3. The learned Counsel appearing for the petitioner also submitted that till the receipt of application for the Premature Retirement on 27.4.2016 by the 1st respondent, there was neither any posting order nor any communication issued by the 1st respondent, while serving in the present place. Thereafter only, the Posting Order dated 03.05.2016 thereby transferring the petitioner from Embarkation Headquarters, Chennai to 64 Cavalry was issued and while the present Writ Petition was filed, the same was considered by this Court and an interim order of stay was granted on 01.08.2016 which is also duly communicated to the 1st respondent on 12.08.2016. Therefore, although a Movement Order dated 08.08.2016 was issued, the

respondents cannot compel the petitioner to accept or leave the present place to join the transferred place. Finally, it is argued by the learned Counsel for the petitioner that the petitioner is going to reach the age of superannuation on 30.11.201, therefore, the petitioner may be allowed to reach the age of superannuation in the present place, if they are not able to process the Premature Retirement Application.

4. A detailed Counter affidavit has been filed by the third respondent.

5. The learned Central Government Standing Counsel appearing for the respondents submitted that when the present Writ Petition was filed before this Court, they were not impleaded as necessary parties and no notice whatsoever has been served on them and the notice was served only on the State Government Counsel about the interim order of stay dated 01.08.2016 staying the operation of the impugned posting order dated 03.05.2016 issued by the 1st respondent., therefore, they are unaware of the interim order of stay passed by this Court dated 01.08.2016. That could be evidently seen from the subsequent Movement Order dated 08.08.2016. Had the respondents been put on notice about the interim order of stay granted by this Court on 01.08.2016, the respondents having regard and respect to the order passed by this Court, would not have passed the Movement Order dated 08.08.2016, directing the petitioner to move from the present place to the transferred place. The learned Central Government Standing Counsel further submitted that moreover, the 1st respondent also has not rejected the request of the Premature Retirement request of the petitioner. The 1st respondent has only asked the petitioner to resubmit the premature retirement application to be processed through the proper channel where he has been transferred. But the same has not been done by the petitioner.

6. This Court is unable to find any merit in the above said submissions of the learned Central Government Standing Counsel for the respondents. The reason being, neither the State Government nor the State Officials was impleaded as a party, whereas all the respondents 1 to 4 are rightly impleaded. This could be evident from the cause title. The Posting Order dated 03.05.2016 issued by the 1st respondent transferring the petitioner from Embarkation Headquarters, Chennai to 64 Cavalry has been considered by this Court and an order of interim stay has been granted on 01.08.2016. Immediately thereafter, the petitioner also has communicated the said order to the respondents on 12.08.2016. In the mean while, it appears that the Movement Order dated 08.08.2016 has been passed by the 3rd respondent. Secondly, as pleaded by the learned Central Government Standing Counsel, calling upon the petitioner to

process his Premature Retirement Application in the place where he was transferred cannot be accepted. The reason being, as I have mentioned above, the original posting order itself was stayed by this Court by order dated 01.08.2016. Hence, he is entitled to continue in the present place. Moreover, the petitioner is reaching the age of superannuation on 30.11.2018 and thus, the Movement Order dated 08.08.2016 has no legs to stand.

7. Considering the above facts and circumstances, more particularly, the fact that the request of the petitioner for Premature Retirement on Compassionate Ground was recommended by the Commandant, Embarkation Headquarters, the 3rd respondent herein to the 1st respondent, namely, the Chief Record Officer, Armoured Corps Records for acceptance, the impugned Posting Order dated 03.05.2016 passed by the 1st respondent is quashed and the Movement Order dated 08.08.2016 is also cancelled with a direction to the 1st respondent to accept the Premature Retirement Application of the petitioner as he is going to retire from service on reaching the age of superannuation on 30.11.2018. Needless to mention that the respondents shall process the pensionary benefits and other benefits for which the petitioner is entitled to subject to the filing of necessary papers, within a period of four weeks from the date of receipt of a copy of this Order.

8. With the above observation and direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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PIN-900 476,C/o.56 APO.

2. The Commandant,
64 Cavalry, C/o.56 APO.

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Embarkation Headquarters,
PIN-900 432, C/o.56 APO.

4. The Officers Incharge Records,
Armoured Corps Records,
PIN-900 476, C/o.56 APO.

+1cc to Mr.M.Arumugam, Advocate, S.R.No.80845

+1cc to Mr.S.Meena Kumari, Advocate, S.R.No.80848

W.P.No.26685 of 2018

VSN(CO)
GSP(28/11/2018)



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