

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.6718 of 2015 and
M.P.Nos.1 and 2 of 2015

Vimal Kishore

..Petitioner

.. Vs ..

1. The Officer in Charge, Bureau of Naviks,
Cheetah Camp, Mankhurd,
Mumbai - 400 088.
2. The Commander,
Head Quarters Coast Guard Region (East), Chennai,
Fort St. George, Chennai - 600 009.
3. The Commander,
Head Quarter Coast Guard District No.4,
Kalavathy Road, Fort-Kochi,
Kerala, Pin - 682 001.
4. Director (Personnel)
Coast Guard Head Quarters,
National Stadium Complex,
New Delhi - 110 001.
5. V.R.Raghu,
UttamAdhikari (RO), 02184-R,
Comstan Chennai,
C/o. Head Quarters, Coast Guard Region (East),
Fort St. George, Chennai - 600 009.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorarified mandamus calling for all the connected records pertaining to the passing of the order dated 02.10.2014 in proceedings No.257/AMEYA (I) on the file of the first respondent and quash the same consequently direct the first respondent to continue the petitioner at Chennai.

For Petitioner : Mr.M.Selvaraj

For RR-1 to 4 : Mr.G.Karathikeyan

Assistant Solicitor General of India

For R-5 : Dismissed vide Court order

dated 15.09.2016

ORDER

This writ petition has been filed challenging the correctness of the impugned order of transfer posting the petitioner at Kochi from Chennai.

2. Assailing the same, the learned counsel appearing for the petitioner pleaded that when the petitioner was transferred to Chennai on 13.05.2013 before completion of even three years time, he has been disturbed on 02.10.2014. As per the Coast Guard (Condition of Service) Rules, 1986, Rule 13 gives power to the authorities to transfer the enrolled persons within the service. But the impugned order dated 02.10.2014 transferring the petitioner to ICGS Kochi was not signed by the Officer-in-charge of Bureau of Naviks. Therefore, the transfer order is in violation of statutory provision of Sub Rule (2) of Rule 13 of Coast Guard (Condition of Service) Rules, 1986. This apart, the petitioner is also suffering from Multiple Ulcers of varying sizes in the Abdomen in Cecum part and he has been taking treatment and his health also weakened. The Doctors also advised him to take prolonged frequent treatment. In view thereof, he was admitted as in-patient in Acute Medical Ward-I at Military Hospital, Chennai, on 10.02.2015. Immediately, in view of chronic IBD, explaining the fact that he is unable to continue the treatment, if he is transferred to Kochi, made a request on 12.02.2015 to retain him at Chennai and in support of his request, he has also enclosed the genuine Medical Certificate and the non availability of Gastroenterologist at Military Hospital at Kochi. Accepting the genuine request, his date of report was extended from 20.10.2014 to 23.02.2015 by order dated 26.11.2014. Even today, he has been taking treatment visiting the hospital at Bangalore. Since it has been taking more time for his travel from Chennai to Bangalore, if he is further transferred to Kochi, he would be put to grave prejudice.

3. Referring to the Medical Boards Proceedings for 2015 and 2017, the learned counsel appearing for the petitioner submitted that the summary and opinion given by Command Hospital AIR Force Bangalore, which is enclosed at page No.9, clearly shows that the petitioner has undergone severe weight loss and he has history of solitary episode of blood in stools and there were no constitutional symptoms. The learned counsel further submitted that although the petitioner has been visiting the hospital for frequent evaluation after full diagnosis of IBD (Intermediate), he is not fully cured of the said problem. Therefore, the impugned order transferring the petitioner before completion of three years in Chennai may be quashed.

4. A detailed counter affidavit has been filed on behalf of respondents 1 to 4.

5. Mr.G.Karthikeyan, learned Assistant Solicitor General of India appearing for respondents 1 to 4 submitted that when the petitioner has been visiting the hospital in Bangalore, it is not going to make any big difference, if he comes from Kochi and further, he had submitted that when the transfer order has been passed, the petitioner knows that there is no hospital either in Chennai or Kochi. Therefore, either he can ask for transfer to a place where the medical facility is available. Leaving that course, he cannot come to this Court, that would show his disobedience to the order of transfer.

6. The summary and opinion given by Command Hospital AIR Force Bangalore, which is enclosed at page No.9, reads as under:-

"COMMAND HOSPITAL AIR FORCE BANGALORE

Name : Vimal Kishore	Age 44 Yrs	Service No. 02486-Z	Rank : Uttam Adhikar i
Unit/Shi p : CGRHQ (E) Chennai	Army/Corps/Branch/Trade : COMMN Service : 26 Years		

SUMMARY AND OPINION OF WG CDR AS PRASAD CL SPL MED AND
GASTROENTEROLOGY DATED 12 JAN 2017

Sr. No.	DISABILI TI ES	ONSET	MEDCAT
I	Indetermin ate Colitis	Jun 2013	S2A2IP) PMT

PRESENTATION : This individual had presented with history of altered bowels discomfort and malaise in June 2013. There was unquantified weight loss. he has history of solitary episode of blood in stools. There were no constitutional symptoms. No other Co-morbidity. He does not consume alcohol. He was evaluated and diagnosed as a case of IBD but had no relief with conventional therapy. He was re-evaluated and treated with ATT wef 17/09/2013 to 17/06/2014 but had no relief of symptoms. He was again re-evaluated and colonoscopy 20 June 2014 showed multiple ulcer in caecum. A firm diagnosis of IBD (Indeterminate) was made and treatment initiated with Mesacol. He had subsequent relief of symptom with weight gain of 04 kg. He has presently

reported for recat and is asymptomatic."

7. This Court, after going through the above, requested the Chief Medical Officer attached with the High Court to give her opinion.

8. Accordingly, Dr.T.Avvai, MS, Chief Civil Surgeon, High Court Dispensary, after reading the paper, came and reported that the petitioner is indeed having chronic bowels disorder and he would also undergo weight loss. Moreover, he has to take frequent and continuous medical treatment, failing which he would face irreversible problem.

9. Since the Chief Medical Officer, after going through the medical reports of the petitioner, stated that the petitioner is indeed having the medical problem IBD (Intermediate), this Court deems it fit to interfere with the impugned order of transfer, as he has been continuously taking treatment by visiting the hospital belonging to the respondents at Bangalore. Therefore, the writ petition stands allowed and the impugned order dated 02.10.2014 passed by the first respondent is set aside. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

Jr1

To

1. The Officer in Charge, Bureau of Naviks,
Cheetah Camp, Mankhurd,
Mumbai - 400 088.
2. The Commander,
Head Quarters Coast Guard Region (East), Chennai,
Fort St. George, Chennai - 600 009.
3. The Commander,
Head Quarter Coast Guard District No.4,
Kalavathy Road, Fort-Kochi,
Kerala, Pin - 682 001.

4. Director (Personnel)
Coast Guard Head Quarters,
National Stadium Complex,
New Delhi - 110 001.

+1cc to Mr.G.Karthikeyan, Advocate SR.No.20334

W.P. No.6718 of 2015

GN(06/04/2018)



WEB COPY