

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 29.11.2018	Order Pronounced on : 10.12.2018
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CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA
Writ Petition No.30698 of 2018
and W.M.P.Nos.35809 and 35812 of 2018

Hav B.Sakthivel

... Petitioner

Vs.

1. Union of India,
Rep. by its Secretary to Government of India,
Ministry of Defence,
South Block, New Delhi - 110 011.
2. Directorate General of Signals/Signal-4
GS Branch, Integrated Head Quarter
of Ministry of Defence (Army),
Defence Head Quarters Post Office,
New Delhi - 110 011.
3. The Officer i/c Records Signals,
Record Signals, PIN - 908770, C/o 56 APO
4. The Commanding Officer,
No.8, Mountain Signal Regiment,
PIN - 917808, C/o 56 APO.
5. Commanding Officer,
Dakshan Bharat Area, Signal Company,
Fort Saint 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, to call for all connected records pertaining to the passing of the order dated 20.08.2018 in the Proceedings No.1807214 POM on the file of the 3rd respondent and to quash the same and consequently, direct the 3rd respondent to continue the petitioner at Chennai.

For Petitioner : Mr.M.Selvaraj

For Respondents : Mr.Srinivasamoorthy
Special Panel Counsel

ORDER

"Only a soldier! Musing, said the Czar,
Only a Russian, who was a poor and brave
Move on, I follow, such an one goes not
Unhonoured to grave" - Agnes Mac Donnell.

These poetic lines are the expression of the Czar, the great Russian Emperor, when he was casually replied by a man that it was only a soldier, to the Czar's query as to whose body he was carrying. Much like the Czar, this Court too found it shocked to hear that the care and concerns of the soldiers are routinely treated in a rather casual and careless manner with absolute impunity ignoring their sterling role in keeping the nation safe and secure.

2. "I belonged to that army, known as invincible in peace, invincible in war. But, I am invincible to my crying family now, please don't disturb me from last leg posting given to me." This is the plea made by the petitioner, who joined the Army on 25.06.1994, having completed 24 years of service, due to retire on 25.06.2020, having been posted at Chennai on last leg transfer on 30.04.2016 for 36 months, but, ordered to be transferred to Jammu and Kashmir by the order dated 20.08.2018. The order is under challenge in this writ petition.

Facts in nutshell:

3. The petitioner has served at various States in India in various area profile, like, hard area, high altitude area, field area and peace area. He worked at Jammu and Kashmir area alone for a period of 10½ years, which is defined as hard area and field area for the purpose of posting. The petitioner was given last leg posting and the petitioner was posted at Chennai on 30.04.2016 for a period of 36 months. The petitioner could report for duty at Chennai only on 29.11.2016. Now, the petitioner has completed 1 year 10 months of service and he is yet to complete the remaining period ending on 25.06.2020. The petitioner has claimed that the family circumstances are so critical for him and therefore, his presence at Chennai is indispensable. The following reasons are stated:

- a) the petitioner's wife is in advanced stage of pregnancy, who needs care and support of the petitioner
- b) The two children, studying in Central School are in 6th and 1st Standard and preparing for Annual Examination to be held during March-April 2019.
- c) The one legged 76-year-old father has to be looked after by the petitioner.
- d) The petitioner had worked in hard area for more than 10 ½ years.

4. The learned counsel for the petitioner submitted that the petitioner is entitled to be considered for retention at Chennai, on account of those circumstances and in any event, the last leg posting once granted for a period of 36 months cannot be altered before the expiry of that period, especially, without notice to the petitioner. Thus, the principles of natural justice is the main tool in the hands of the petitioner at this stage and thus, the petitioner seeks to quash the order dated 20.08.2018.

5. The learned counsel appearing for the respondents submitted that the petitioner made a request for discharge from service on 06.10.2018 on the ground that he was not able to concentrate on his official duties and later, he has withdrawn his request on 12.11.2018 and that was permitted by the respondents and therefore, there is no ill-will in the modification of the transfer order.

5.1. This contention may be right, but, the challenge itself is not on the ground of ill-will or malafide, but, only on the ground that the petitioner is under compelling circumstance to seek his retention at Chennai.

5.2. Unfortunately for the petitioner he was not in a position to even stick on to his plea for discharge and the financial situation in the family had driven him to withdraw the plea of discharge. Therefore, the plea for discharge is the significant factor that would go to show that the petitioner is under a compelling circumstance to remain at Chennai and that had drove him to go to the extent of seeking discharge of himself from service. Therefore, this would be an additional factor for the respondents to consider his retention at Chennai.

6. The learned counsel for the respondents submitted that one Murugan, who was given last leg posting, was again posted to field area by the order dated 13.07.2018 and there is no discrimination in the impugned order.

6.1. This contention also cannot be accepted as what is expected of the respondents is the pragmatic and practical approach in considering the case of the petitioner. May be there is no discrimination or ill-will. There is no fault on the part of the respondents in passing such an order. But the question is whether the rightful claim of the petitioner has been considered in a proper perspective and in this appropriate moment. To appreciate the impugned order, one need to consider the transfer policy which is in place, reflecting forethought and vision, providing for last leg posting.

6.2. The policy of last leg tenure posting is a recognition that a member of Armed Force, who has served the country well and has spent more than 50% of the tenure in non-family stations is entitled to settle his personal affairs before he retires, so that, post retirement he can live in peace. The purpose behind last leg posting at a place of choice is that the member of the

force can find an accommodation where he can live peacefully in the twilight of his life.

7. Pointing out this policy, the learned counsel for the petitioner submitted that the father, an amputee with only one leg in terms of functional efficiency, will not be able to take care of the family of the petitioner and that the pregnant wife will not be able to take care of the other two children, who are studying 6th and 1st standards respectively and that the petitioner cannot peacefully discharge his duty in between these two extreme difficulties is entitled to be retained at Chennai.

8. In support of his contention, the learned counsel for the petitioner relied upon the following decisions:

(i) W.P.No.29873/2016 (Ramachandra Singh vs. Union of India, Rep. by its Secretary, Ministry of Defence, New Delhi and others), wherein, the Hon'ble High Court of Karnataka at Bengaluru held that the 3rd respondent ought to have taken a practical, pragmatic and sympathetic view of the matter by considering the entire materials on record and that the authorities have to adopt a pragmatic approach in such matters and not a pedantic one.

(ii) W.P.No.1394 of 2015 (Colonel Anil Kumar Sharma vs. Union of India, through Secretary, Ministry of Defence, New Delhi and others), wherein, the Hon'ble High Court of Bombay held that such request for Last Leg Posting made on personal ground not to be dealt strictly in accordance with the Rule and that the authority is expected to consider such request on humanitarian ground so as to redress the genuine problems of their employees/officers.

9. This issue assumes greater significance, as it would have implications in terms of human resource development, quality of performance and and motivation of other employees.

9.1. Managing the human resources is vital to any organisational set up and Armed Forces are no exception. A strong, professionally led military controlled by capable leaders, having impeccable credentials, strength of character and integrity is vital to national interest. The task ahead is to recognize the nature of problems faced by the soldiers and improve the service conditions, so that "Indian Military Officers" is a dream job of all the bright, ambitious and motivated youngsters of India.

9.2. It is reported that Indian Army has become unattractive career option for youth, nowadays. The Army already has been facing a manpower crunch as since 2001, 1900 Captains, Majors and Lieutenant Colonels have pre-maturedly quit, as per reports.

9.2.1. There is no shortage of patriotism in our country, but why is it that there's such a shortage of officers in the Armed Forces.

9.2.2. Today's knowledge based youths seeks not just superior salaries, but better service conditions and other compensatory packages too.

9.2.3. It only the respondents are willing, they can motivate these youngsters to join the armed forces. The aberrations and egregious errors committed by the respondents as in the instant case may have a negative bearing and potentially demotivate the future aspirants to the armed forces.

10. This Court is conscious of the fact that the scope of interference by Courts in regard to the members of Armed Forces is limited and Court should be extremely slow in interfering with such order of transfer and posting of civilian employees or members of Armed Forces.

10.1. However, as it is alleged that the principles of natural justice has been violated and the policy of the last leg posting has been forgotten in the while passing the impugned order, this Court has to take a balancing view.

11. Equity, justice and good conscience pervades the judicial process. The power of a Court to mould relief, according to the demands of a situation, is well recognized and is available to a writ court to do justice between the parties, as was opined by the Hon'ble Supreme in the case of Rajesh Kumar & Ors. Vs. State of Bihar & Ors., reported in (2013) 4 SCC 690.

12. It is not the case of the respondents that the retention at Chennai is asked for with any hidden agenda or to get any undue benefit. The situation of the petitioner demands that this Court has to exercise its jurisdiction and discretion in favour of the petitioner in order to take care of the limbing family. The respondents have not pointed out that there are any emergency requirements or compelling circumstances to show that the presence of the petitioner in the transferred place is indispensable and only that alone could save the situation.

13. Considering the peculiar facts and circumstances of this case, the impugned order dated 20.08.2018 passed by the 3rd respondent is hereby set aside and the writ petition is allowed accordingly. The respondents are directed to permit the petitioner to remain at Chennai for the remaining period, i.e. till his superannuation. Connected MPs are closed.

14. It is said that the measure of civilization is how the judiciary treats people, who are at the dawn of life and those who are at the twilight of life and those who are at the shadow of life. The same thing applies to all those who exercise the power and authority, i.e. the respondents also.

15. The Registry is directed to send a copy of this Judgment to the Ministry of Defence, for the purpose of issuing further guidelines, in respect of last leg posting.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government of India,
Union of India, Ministry of Defence,
South Block, New Delhi - 110 011.
2. Directorate General of Signals/Signal-4
GS Branch, Integrated Head Quarter
of Ministry of Defence (Army),
Defence Head Quarters Post Office,
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5. Commanding Officer,
Dakshan Bharat Area, Signal Company,
Fort Saint George, Chennai - 600 009.

+1cc to Mr.M.Selvaraj, Advocate, S.R.No.85351

+1cc to Mr.Srinivasamoorthy, Advocate, S.R.No.85166

W.P.No.30698 of 2018

RJI (CO)

CS/11/12/2018