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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 2177 of 2018 and

W.M.P. (MD) Nos. 2429 & 5814 of 2018

Sokkalinga Pandian

... Petitioner

Vs.

1. The Director General,
Railway Protection Force,
Ministry of Railways,
Rail Bhavan, Railway Board,
Raisina Road,
New Delhi - 110 001.

2. Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Moore Market Complex,
Chennai - 600 003.

3. The Divisional Security Commissioner,
Railway Protection Force,
Madurai Division, Southern Railway,
Madurai - 625 001.

4. The Inspector,
Railway Protection Force,
Madurai Railway Station,
Southern Railway,
Madurai.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records pursuant to the impugned Transfer Order passed by the third respondent in No. UXP/535/IDT/Con. dated 19.01.2018 and the consequential relieving order passed by the fourth respondent in No. MDU/04/2018 dated 19.01.2018 and quash the both and consequentially directing the respondents to retain the petitioner at Madurai Railway Station itself.

For Petitioner

: Mr. T. Senthil Kumar

For R-1 to R-4

: Mr. C. Vakeeswaran

Standing counsel for R.P.F.,

**ORDER**

The petitioner is working as a Constable in Railway Protection Force since 1998. He was serving at Chennai up to 2007. He was transferred to Madurai Division in the year 2007. The petitioner underwent training in Bomb disposal and was posted in the Bomb disposal Squad in the year 2013. By the impugned order dated 19.01.2018, the petitioner has been transferred to Trichy division. Questioning the same, the petitioner has filed this Writ petition.

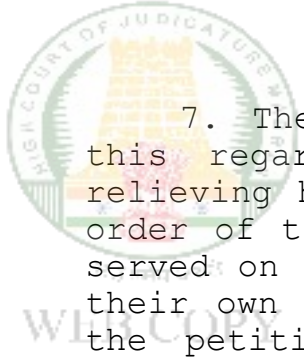
2. This Court granted an interim order of Stay on 02.02.2018. The official respondents have filed W.M.P.(MD)No.5814 of 2018 to vacate the same. Since the interim order granted by this Court was not complied with, the Writ petitioner filed Cont.P.(MD)No.407 of 2018. It was administratively directed that the Contempt petition could be taken along with the Writ petition and that is how the matter has been posted before this Court.

3. The learned Standing counsel appearing for the Railways pointed out that the petitioner is the member of an Armed Force. He is therefore expected to render complete obedience to an administrative order. In this case, he has only been transferred from Madurai to Trichy which is at the distance of 135 Kilometers. The learned Standing counsel further pointed out that the Hon'ble Supreme Court in more than one decision has held that the scope for interference in such matters is extremely limited. He placed particular reliance on the decision reported in AIR 2005 SCC 3341 (J.K.Bansal V. Union of India).

4. The learned Standing counsel also raised a technical plea that the Writ petition is not maintainable in the absence of a formal challenge to the order of transfer. What has been questioned is only the relieving order which is only consequential in nature. According to the official respondents, the petitioner had already been relieved and that therefore the interim stay granted by this Court was infructuous even at the inception. He therefore wanted this Court not only to dismiss the Writ petition, but also close the contempt proceedings.

5. This Court gave its anxious consideration to the rival contentions.

6. The petitioner has no doubt been posted at Madurai right from 2007 onwards. The tenure period for an enrolled member like the petitioner is normally five years. The petitioner has been posted in Madurai division for more than 11 years. Therefore, there may not be any difficulty in accepting the contention of the learned Standing counsel for the official respondents that the petitioner is due for transfer. But then, this Court will have to see if the order of transfer has been passed in administrative interest or on administrative grounds.



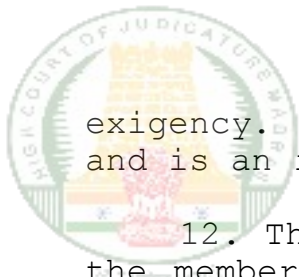
7. The order relieving the petitioner is no doubt silent in this regard. The petitioner was served only with the order relieving him from Madurai and he was not formally served with the order of transfer. The petitioner can question only what has been served on him. The official respondents cannot take advantage of their own wrong. Without serving the formal order of transfer on the petitioner, they cannot contend that the challenge to the consequential order relieving the petitioner is not maintainable. Therefore, this Court rejects the preliminary objection raised by the learned Standing counsel and holds that this petition is very much maintainable. As already pointed out by the learned counsel for the Writ petitioner, the reason for effecting the transfer of the Writ petitioner from Madurai is set out in paragraph Nos.4 and 5 of the affidavit filed in support of the vacate stay petition.

8. It is seen that the petitioner is having dispute with his wife Jeyalakshmi. The petitioner has also filed H.M.O.P.No.158 of 2017 seeking dissolution of his marriage. The said proceedings are pending before the Sub Court, Kovilpatti. It appears that the petitioner's wife had lodged a complaint with the petitioner's administrative superiors. The said complaint lodged by the petitioner's wife triggered the impugned order of transfer. In fact the authorities have been fair enough in indicating this in paragraph No.5 of their affidavit.

9. This Court is of the view that the Department could have transferred the petitioner only on administrative grounds and for administrative interest. The quarrel between the petitioner and his wife before the Court of law cannot furnish a ground for transferring the Writ petitioner.

10. The learned counsel for the petitioner submits that the petitioner has undergone the training course for Bomb disposal. It is not in dispute that he is a member of Bomb disposal squad. The members of such units need not be visited with periodical transfers. Therefore, merely because the petitioner has been serving in Madurai division for 11 years, the same cannot be a ground for transferring him. The learned counsel for the petitioner would further point out that in Madurai division, there are enough vacancies in Bomb disposal unit. He also made a firm assertion that persons who had put in more number of years in service in Madurai division than him have been retained. This Court is therefore of the view that the petitioner has been selectively targetted only on account of his family quarrel and not on any administrative ground.

11. The Hon'ble Supreme Court in the decision reported in (2009) 2 SCC 592 (Somesh Tiwari Vs. Union of India and others) held that an order of transfer can be interfered with, if it suffers from malice in law. This principle will be attracted if the transfer order is not based on any factor germane to passing of an order of transfer and based on an irrelevant ground. In this case, the employer has not passed the impugned order in administrative



exigency. The reason for transferring the petitioner is not germane and is an irrelevant ground.

12. Though the scope for interfering with an order transferring the member of an Armed force is rather limited, the same does not stand totally ousted. In exceptional circumstances, this Court can interfere with the order of transfer. Since this Court is of the view that the order transferring the petitioner is vitiated by malice in law, interference is called for. The order impugned in the Writ petition is set aside.

13. The Writ petition stands allowed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Director General, Railway Protection Force,
Ministry of Railways, Rail Bhavan, Railway Board,
Raisina Road, New Delhi - 110 001.
2. Chief Security Commissioner,
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Railway Protection Force, Madurai Division, Southern Railway,
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4. The Inspector,
Railway Protection Force, Madurai Railway Station,
Southern Railway,
Madurai.

+1CC to Mr.T.SenthilKumar Advocate in SR.No.70164.

+1CC to Mr.C.Vakeeswaran Advocate in SR.No.70395.

PMU

DS/SKN-RSK/SAR-4 :29.06.2018: 4P/7C

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