

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18791 of 2018

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Rahul Kumar, Son of Sri Anil Kumar Singh, Resident of Village- Ratoi, P.O.
Bhadara, Police Station- Roh, District- Nawada.

... .. Petitioners

Versus

1. The Union of India through Director General of Police, CRPF, New Delhi.
2. The Inspector General of Police, CRPF Range, Head Quarter, Patna, Ashiana Digha Road, Patna.
3. The Deputy Inspector General of Police, CRPF Range, Head Quarter, Patna Ashiana Digha Road, Patna.
4. The Commandant, CRPF Range, Head Quarter, Patna Ashiana Digha Road, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Sarvadeo Singh, Advocate
For the Respondent/s : Mr. Anjani Kumar Sharan, A.S.G.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
C.A.V. JUDGMENT
Date : 29-01-2019

Heard learned counsel for the petitioner and
learned counsel for the Union of India.

2. In this case, the petitioner is challenging the order dated 24.05.2018 (Annexure-2), whereby and whereunder the petitioner has been transferred from Patna (Bihar) to Sukma (Chattisgarh). Against that, the petitioner has filed a writ petition before this Court vide C.W.J.C. No.10769 of 2018 (Annexure-3), in which the Court has directed the petitioner first to join the place of posting and whereafter he was given liberty



to file a representation and the same was to be disposed of by a reasoned order and accordingly, the petitioner filed his representation before the Director General, C.R.P.F., C.G.O. Complex, Lodhi Road, New Delhi, in which he has stated that he was posted in 205 Cobra, which was deployed at Barachati, Gaya, for the period from 14.08.2010 to 05.01.2017, which comes under hard and naxal affected area and as per the Standing Order No.7 of 2018, specifically dealing with the transfer, posting and deployment of C.R.P.F. personnel, which provides after hard area posting, next posting would be made to soft/static posting, but instead of the same he was again posted in 36 Batalion Khonsa, Arunachal Pradesh, which comes under the hard area, but on the request and representation of the petitioner, the above transfer order was cancelled by the competent authority and he was posted in the range headquarter, Patna, but only after completion of one year, again he has been transferred from Patna (Bihar) to Sukma (Chattisgarh) whereas the normal posting tenure at Patna would have been for three years, which will be completing on 30.06.2020. It has been stated that the competent authority while passing order of transfer failed to take into consideration Para 4 (xv) of the Standing Order, which stipulates, premature transfer should not



be allowed save and except the order of transfer must be embodied by a reasoned order. As per Para-5(xiii) of the Standing Order, no transfer can be made in the middle of the academic session as it would hamper the study of his children, giving an instance that his three children are studying at Patna, one is in Don Bosco School and two others in other Public Schools. The petitioner is a low salary paid employee and transfer will cause an immense problem to him. Further, the petitioner has placed reliance of Clause-4(viii) of the Standing Order, wherein it has been mentioned that normal tenure in the field station i.e. static area and station place is for four years and for hard area it is for three years. Further stated that Clause-9(viii) on de-induction, the Cobra personnel shall be allotted to their choice zone and further will be posted at the soft field/static offices / peace stations as per the eligibility. It has further been stated that as per the Office order dated 01.03.2018 only the person up to the age of 32 years can be deployed or posted or engaged in Cobra Division. Apart from that, his old mother and father are getting treatment at Patna as both are suffering from ailments and they are fully dependent upon them. More so, he has stated that in the year 2016 he was the member of the Cobra Unit, participated in Dumri Nala (Aurangabad) a



naxal area operation, in which two naxalites were killed and 10 Jawans were killed in mine blast and requested the authority for reconsideration and withdrawal of his transfer from Patna (Bihar) to Sukma (Chattisgarh).

3. In this case, the primary question has been raised by the petitioner that he remained attached with Cobra unit for about 10 years combating the nexal menace, now again asking the petitioner to go to fight with the nexalites is against to its own Standing Order, which prescribes that a Jawan can only be attached with hard area for tree years, but in the present case, the petitioner remain attached with hard area and thereafter he was shifted Arunachal Pradsesh, which is also a hard area and on his request he was brought to Patna, but hardly he remained at Patna for one year, again he has been transferred to join at Sukma (Chattisgarh), which is highly volatile nexalite area and claims that his mother and father are being treated, so he should be allowed to remain at Patna Battalion posted in Static office.

4. Learned counsel for the Union of India has filed its counter affidavit, wherein the bio-data of the petitioner and place of posting right from his joining to present posting at Sukma (Chattisgarh) have been given. It has further been stated in the counter affidavit that out of seven years, the petitioner



remained absent for three year four months and seven days and in total he has performed the duty two years eleven months and seven days and further placed reliance on the Standing Order no.07 of 2015, wherein it has been mentioned that the person posted in his Home State, the same will not be counted as service rendered in the hard field area, it will be treated as normal field area. It has further been stated that he remain posted at Patna from 2007-2017, and as such, the plea of hard area does not in any way help the petitioner in challenging the order of transfer. Further submitted that in a short period of his service he has been visited with 13 punishments and mere violation of statutory instructions will not give a right to the petitioner to approach this Court and get an order of transfer nullified. It has further been submitted that executive instruction has been framed for internal administrative work and for smooth functioning, violation does not lead to create legal right to the petitioner to challenge the order of transfer.

5. In support of his submission, learned counsel for the Union of India placed reliance on the following decisions:-

(i) Union of India and Others vs. S.L.

Abbas reported in *(1993) 4 SCC 357*.

(ii) State of Uttar Pradesh and Others vs.



Gobardhan Lal reported in ***(2004) 11 SCC 402.***

(iii) ***Major General J.K. Bansal vs. Union of India and Ors.*** reported in ***2005(7) SCC 227.***

6. Having considered the rival contentions of the parties, the issue of transfer and posting has been examined many a times by the Hon'ble Supreme Court, delineating the circumstances and the reason for interfering with the order of the transfer, namely, if the order is *de hors* to the statutory provisions or actuated by mala fide. In normal circumstance, the transfer has been held to be an incidence of service and it should not be interfered with in a normal circumstance otherwise it will create hindrance to the administration in carrying out the work efficiently and properly and for the aforesaid proposition this Court has to examine the aforesaid three decisions of the Hon'ble Supreme Court.

7. In the case of ***Union of India vs. S.L. Abbas (supra)*** the Court in a specific term has held that an order of transfer is an incidence of Government service. The Government servant is a 24 hours employees and can be transferred for the proper administrative of work. The order of



transfer would only vitiate on account of mala fide and in the event of violation of statutory provision not of the guidelines issued from time to time by the Government, would be interfered with transfer order. The transfer is not vitiated unless suffers from mala fide or violation of any statutory provision.

8. It will be relevant to quote paragraph nos. 6 and 7 of the said judgment, which are as follows:-

"6. An order of transfer is an incident of Government Service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". Fundamental Rule 15 says that "the President may transfer a government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that order of his transfer is vitiated by mala fides on the part of the authority making the order,- though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at shillong, his children are studying there and also because his health had suffered a set-back some time ago. He relies upon certain executive instructions issued by the Government in that behalf.



Those instructions are in the nature of guidelines. They do not have statutory force.

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right.”

9. In the case of ***State of Uttar Pradesh and Ors. vs. Gobardhan Lal (supra)*** the Hon'ble Supreme Court has held that an order of transfer should not normally be interfered with by the Court or Tribunals. The Courts or Tribunals should not substitute their own decisions in the matter of transfer for that of competent authority of the State, even allegations of mala fides, must be based on concrete materials and ought not to be interfered with on the mere making of allegation or on consideration borne out of conjectures or surmises, except for strong and convincing reasons, no interference could ordinarily



be made with an order of transfer.

10. It will be relevant to quote paragraph no.8 of the said judgement, which is as follows:-

“8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

11. In the case of ***Major General J.K. Bansal vs. Union of India and Ors. (supra)*** which was the case of transfer and posting and the Hon’ble Supreme Court has considered the scope of interference under Article 226 of the Constitution of India, placing reliance on previous judgements and after discussing it has been culled out that the Court would normally not interfere with the order of transfer except in the event it is



actuated by mala fide or violates the statutory provision, prohibiting any such transfer and the Court should not act as an appellate authority while exercising the power of judicial review. It has further been held by the Hon'ble Supreme Court that the administrative instructions are meant to be followed and failure to observe by the authority in the matter of transfer will not give any right to the Government servant to challenge the order of transfer.

12. It will be relevant to quote paragraph nos. 8 and 12 of the said judgement, which are as follows:-

“8. Before we advert to the submissions made by the learned counsel for the appellant, it will be useful to take notice of the law regarding the scope of interference in a writ petition filed under Article 226 of the Constitution assailing an order of transfer.

12. It will be noticed that these decisions have been rendered in the case of civilian employees or those who are working in Public Sector Undertakings. The scope of interference by courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The Courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made.”



13. Same principle has been reiterated in the case of *State of U.P. and Anr. vs. Siya Ram and Anr.* reported in *(2004) 7 SCC 405*.

14. In the present case, learned counsel for the petitioner has argued that the respondents have not followed the guidelines of transfer and posting meant for the employees of the C.R.P.F. and placed reliance on Clause-4, Sub Clause- (i), (ii), (iv), (iv) (b), (v) and (viii). For better understanding, it will be relevant to quote the same, which are as follows:-

“04. ELIGIBILITY FOR TRANSFER

NGOs (Executive) personnel will be eligible for static posting subject to vacancy and administrative convenience as per the following conditions:-

(i) Deployment of CRPF Battalions vis-a-vis the prevailing Security Scenario in the country can be broadly categorized as under:-

(a) J&K Ops Theatre

(b) North-Eastern Ops Theatre,

(c) L.W.E. & Special Operational Zone (SOZ) Theatre.

(d) Other areas including Law and Order Bns.

(ii) Newly appointed S.Os/Constables should invariably be posted to duty Bns deployed in SOZ, CoBRA & LWE Bns. In case it is not possible, then they should be posted to duty Bns deployed in Kashmir/N.E. difficult interior areas. They shall not be posted or attached to soft field area and peace stations.

(iv) The eligibility criteria for first static posting and



subsequent static postings will be as under:-

(a) For Male

RANK	FIRST PEACE STATION /STATIC (Including b/tRG)	SUBSEQUENT PEACE STATION/STATIC
Group B	06 years service	04 years subsequent field as on 31 March of year under consideration.
Group C	08 years service (one tenure hard field area)	08 years subsequent field service (one tenure hard field area) as on 31 March of year under consideration.

(b) For female – As per para 12.

Example- A new SO/Ct firstly will be posted to “Hard Field Area” as as as possible and after completion of tenure he will be posted to field area and after completion of 06/08 years (SO-06 yrs & Ors. 08 yrs.) of field service he will be eligible for static / peace posting. He may be posted to peace/static place subject to availability of vacancies/adm/ops feasibilities.

After completion of his tenure at peace/static, he has to complete 08 years field service for Group C, (04 years for Group B personnel), out of which one tenure should be in Hard Field Area, to become eligible for subsequent peace/static posting.

(v) A person, if posted in his/ her home State, same will not be counted as service rendered in ‘hard field area’. It will be treated as Field/Static as the case may be.

(viii) Normal tenure in field station is of 04 years and for hard field area/SOZ, Static and peace stations is 03 years.”

15. By placing reliance on those provisions, learned



counsel for the petitioner submits that the petitioner remained sufficiently in the hard area as he was posted in the Cobra unit and after that he was transferred and post to Arunachal Pradesh, but on his representation he has been transferred to Patna, but in a short span of time he has again been transferred to Sukma (Chattisgarh) which is a hard area and if a person remained in the hard area for three years, as per the Executive Instructions he will have to be posted in the peace area.

16. Learned counsel for the Union of India submits that the submission of the petitioner is not correct as the petitioner was posted in Cobra unit, but he remained in the State of Bihar and as per Clause-4 (v) if a personnel remained posted in the home State, the same will not be counted as service rendered in the hard field area, in the present case, the petitioner has remained for 10 years in the home State.

17. In paragraph no.3 of the counter affidavit, the details of posting of the petitioner has been given, therein it has been averred that the petitioner remain posted in the Bihar based unit for entire service upto to 06.06.2018. During his service, he was posted in 205 Cobra Battalion and he remained OSL for 368 days with effect from 25.11.2012 to 28.12.2013 without prior permission of the competent authority, for that a



departmental proceeding was conducted against the petitioner, resultantly, the disciplinary authority awarded punishment of removal from service with effect from 28.11.2013. The Appeal and the Revision filed by the petitioner were also rejected by the competent authorities, whereafter he filed a Mercy petition before the D.G., C.R.P.F., New Delhi, who vide order no. R.XIII.209/2015 -Vig. (Legal) dated 20.04.2015 reinstated the petitioner in service with a direction to conduct a fresh departmental enquiry for the alleged charges considering the medical documents submitted by the petitioner. After reinstatement a fresh departmental enquiry was initiated against him, as a result of which, the punishment of withholding of two annual increments was passed and his absence period with effect from 25.11.2012 to 27.11.2013 was regularized as “Dies-Non” vide order no. P-VII.2/15-205-EC-II dated 15.03.2016. Further, the petitioner was relieved on transfer to 36 Battalion from 205 Cobra Battalion on 05.01.2017. After serving about 2 months, he further relieved from 36 Battalion with effect from 25.03.2017 on transfer to D.I.G., C.R.P.F., Patna, where he reported on 07.04.2017 and further relieved on transfer from Range Office, Patna to 150 Battalion on 06.06.2018. The said order was challenged by the petitioner in C.W.J.C. No.10769 of



2018, which was disposed of by this Court vide order dated 06.06.2018 with a direction that the petitioner would join the new place of posting and file a representation before the Director General of Police, C.R.P.F., New Delhi, who will examine the claim of the petitioner and dispose of the same within a period of three weeks from the date of filing of representation.

18. In pursuance of the said order, the petitioner filed a representation, which was rejected by the Director General of Police, C.R.P.F. vide order dated 02.08.2018, wherein it has been stated that transfer order has been issued as per the Standard Transfer Policy and Standing Order and posting in the home State will not be counted in the hard field area posting.

19. On the above discussion, it is very much clear that it is normal transfer of the petitioner and his posting in Bihar is as per the guidelines, will not be treated to be a hard area posting, which attached with the Cobra as that Battalion remained in the State of Bihar. The petitioner is challenging the order on the strength that guideline, which itself prescribes that posting in the Home State will not be treated to be a posting in the hard field area and he was transferred to Arunachal Pradesh for a short period and whereafter returned to Patna. The



guideline has not statutory force even if there is some deviation, will not give a right to the petitioner to refuse to join the new place of posting as no where any statement has been made that the order has been passed on account of mala fide or violation of any statutory provision. In terms of the guideline prescribed by the Hon'ble Supreme Court, the area of interference is very limited that too in the case of military and para military force, where the force is supposed to obey the order of the superior authority and serve the nation.

20. For the foregoing reasons, this Court does not find any merit in this writ petition, accordingly, the same is dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	18.12.2018
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