

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 776 of 2019

Shraddha Dewangan D/o Shri Manharan Lal Dewangan, Aged About 32 Years, Posted As - Sub Inspector, At - CISF, Unit - Airport, Raipur.

---Petitioner

Versus

1. Union Of India, Through Its Secretary, Ministry Of Home Affairs, North Block, New Delhi, 110001.
2. The Director General C.I.S.F. Head Quarters, No. 13, CGO Complex, Lodhi Road, New Delhi.
3. Deputy Commandant, C.I.S.F. Unit, Airport, Raipur, District Raipur Chhattisgarh.

---Respondents

For petitioner : Shri Manoj Kumar Jaiswal, Advocate.
For respondents : Shri Rajkumar Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/02/2019

1. The challenge in the present Writ Petition is to the orders Annexures-P/1 and P/2.
2. Annexure-P/1 is an order whereby the services of the petitioner has been transferred from Raipur to Aurangabad and Annexure-P/2 is an order whereby the representation of the petitioner stands rejected.
3. The challenge is on the ground that, the petitioner has been subjected to frequent transfer.
4. According to the counsel for the petitioner, the petitioner was posted at Raipur only in May-2018 and since then he has only completed about 7-8 months of service at Raipur when the impugned order has been passed

transferring the petitioner from Raipur to Aurangabad and thus the impugned order should be interfered by this Court on the ground of the petitioner being subjected to frequent transfer. According to the counsel for the petitioner, the transfer policy of the respondents itself envisages that the normal tenure of a person at a particular place of posting would be 3 years and as such the impugned order is violative of the said transfer policy also. He further contended that, the impugned order has been passed by the inferior authority whereas as per the circular dated 25/09/2017 – Annexure-P/4, the department has decided that the Director General shall be the final authority for deciding all such transfer postings etc. and on this ground also, the petitioner could not be transferred. It was further the contention of the counsel for the petitioner that, the order of transfer could not have been made at this juncture when it is otherwise a ban period. According to him, the transfer order should normally be issued by 31st of March and in any case not later than 31st of April as per the circular dated 25/09/2017 itself.

5. The counsel for the respondents/Union of India however opposing the petition submits that, it is a case where the transfer has been made on administrative grounds. According to him, on administrative grounds, it is the prerogative of the respondents to decide when, where and for how long a person should be posted. According to him, the circular dated 25/04/2017 is only a guideline which may not have mandatory force and it is not also the case where the respondents under any circumstance even on administrative exigency would not be able to transfer or change the place of posting of a

person under the respondents and thus prayed for dismissal of the Writ Petition.

6. Having heard the contentions put forth on either side and on perusal of record, what cannot be lost sight of is that, the petitioner admittedly is a person belonging to the uniformed force. The petitioner till now was posted at Raipur and his duty was given at the Airport, Raipur. On administrative exigency, the impugned order has been passed whereby the petitioner has been sent from Raipur to Aurangabad. What also is reflected from the documents enclosed with the Writ Petition is that, the petitioner prior to his being posted at Raipur was posted at New Delhi for a period of about 5 years. Before that also, the petitioner was posted at Agra where again he had remained for a period of about 2 years. Thus, prima-facie, it does not appear that the petitioner has been subjected to frequent transfer as the earlier transfers were made much after the normal tenure was over.

7. Further perusal of record would also show that, the petitioner has not infact alleged any malafides on part of any of the officers under the respondents on the basis of which the order of transfer has been issued.

8. So far as the legal position is concerned, the law by now in transfer case is well settled. The transfer being an incidence to service. It is always the prerogative of the employer to decide where a particular person has to be posted and also to decide as to how long the persons should discharge his duties at the said place of posting. It is always within the domain of the employer/respondents to decide the place of posting and tenure of

employee. In case, if the respondents on administrative exigency require the services of any particular employee at a particular place, they are always free to take appropriate measures in this regard. The only fact which should be taken note of is that, the order of transfer should not be made with malafide, nor should it be made to victimize the petitioner for any reason.

9. In the instant case, neither is there pleading of malafide, nor has he pleaded of victimization.

10. Some of the recent judgments of the Hon'ble Supreme Court on the issue of transfer are **“Shilpi Bose v. State of Bihar”, “Union of India v. S.L.Abbas”, “State of U.P. v. Siyaram”, “Union of India v. Janardan Devanath”, “State Bank of India v. Anjan Sanyal”, “State of U.P. v. Gobardhan Lal”, “Mohd. Masood Ahmad v. State of U.P. & Ors. JT [2007 12 SC 467]”, “Union of India & Anr. v. Murlidhar Menon & Ors. [2009 11 SCALE 416]” and “Rajendra Singh & Ors. v. State of U.P. & Ors. JT [2009 10 SC 187]”.**

11. Given the said facts that the petitioner has not been able to show any malafide, nor has he been able to show that the impugned order has been passed with an intention of victimizing the petitioner, this Court finds it difficult to exercise of its Writ Jurisdiction to interfere with the order of transfer.

12. The Writ Petition thus being devoid of merits deserve to be and is accordingly rejected.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE