

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.12.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.15430 of 2019
and W.M.P.Nos.15380 & 15382 of 2019

J.Durai Murugan

Petitioner

vs.

1. The Director General,
CRPF, CGO Complex,
Lodhi Road,
New Delhi - 110 003.
2. The Special Director General of Police,
South Zone, CRPF,
Chandrakutta,
Hyderabad - 500 005.
3. The Inspector General of Police,
Southern Sector, CRPF,
Road No.10 C, Jubilee Hills,
Near MLA/MPs Colony,
Gayathri Hills,
Hyderabad - 500 033.
4. The Deputy Inspector General of Police,
Group Centre, CRPF,
Avadi, Chennai - 600 056.
5. The Commandant,
77 Bn, CRPF,
Karaianchavadi,
Poonamallee,
Chennai - 600 056.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to transfer order dated 18.04.2019 issued by the 2nd respondent in proceeding No.P.VII.1/2018-SZ-Pers and his subsequent order dated 22.05.2019 in proceeding No.P.VII.1/2019-SZ-Pers and quash the same and retain the petitioner in Group Centre, CRPF, Avadi till completion of his normal tenure.

For Petitioner : Ms.R.Meenakshi
For Respondents: Mr.R.Vasudevan for R1 to R5

ORDER

This writ petition was filed challenging the order passed by the 2nd respondent dated 18.04.2019 transferring the petitioner from GC AVD to 77 Battalion at Poonamallee.

2.It is seen from records that the petitioner was directly appointed as a Sub-Inspector (General Duty) during the year 2004. The petitioner was also posted in duty Battalion at various places in the Country. The tabular column herein below will give a clear idea regarding the postings that have been made to the petitioner and the places where he has served.

S.No	From	To	Unit/Office	Place
1	03/01/2004	04/2006	GC Bhopal/CTC	Under Basic Trg.
2	04/2006	08/2007	129 Bn	Jammu (J&K)
3	08/2007	10/2012	129 Bn	Baramulla (J&K)
4	10/2012	03/2015	129 Bn	Bhotgaon (Assam)
5	03/2015	08/2018	168 Bn	Bijapur, Chattisgarh (Specialized Operational Zone)
6	04/08/2018	20/12/2018	77 Bn	Tamil Nadu
7	20/12/2018	Till Date	GC AVD	Chennai, Tamil Nadu

3.The petitioner was working as an Assistant Commandant in Group Centre (GC), Avadi. At that point of time, the impugned order came to be passed by the 2nd respondent transferring the petitioner to 77 Batalion, CRPF at Poonamallee on the ground that the petitioner has to complete the Mandatory Field Service (MFS).

4.Ms.R.Meenakshi, learned counsel appearing on behalf of the petitioner submitted that the entire transfer is governed by the Statnding Order No.7/2014 dated 24.11.2014. The learned counsel submitted that the transfer order that is passed has to satisfy the requirements of the Standing Order. The learned counsel specifically relied upon the main features of the policy and also Clause xi of the Standing Order and the same is extracted hereunder:

xi) All officers up to the rank of Comdt on promotion should compulsorily be posted to duty Bn in order to complete Mandatory Field Service so as to become eligible for next promotion. However, if officer posted to static/peace area after completion of full tenure in Category-"A" unit locations will be allowed to remain in the same area on promotion till completion of normal tenure as far as possible subject to availability of vacancy.

5.The learned counsel submitted that the transfer policy itself makes it clear that up to the rank of Commandant on promotion, the concerned candidate will be compulsorily made to complete the Mandatory Field Service. However, this is subject to the exception that where an officer has already served the full tenure in a Category-"A" unit, then the concerned officer will be permitted to remain in the same area on promotion till the completion of normal tenure. The learned counsel submitted that the normal tenure for an Assistant Commandant is three years as per the Policy.

6.The learned counsel submitted that the petitioner has already brought his family and settled them at Avadi and therefore the present transfer causes a lot of hardship to the petitioner and it also goes against the Standing Order dated 24.11.2014.

7.Per contra, Mr.R.Vasudevan, the learned Central Government Standing Counsel appearing on behalf of the respondents submitted that the transfer is an incident of service and the petitioner must be ready to go on transfer depending upon the exigency. The learned counsel heavily relied upon the counter affidavit that has been filed by the respondents and he submitted that the petitioner had approached the Delhi High Court seeking for promotion and on the intervention of the Court, the petitioner was given seniority/notional promotion. The learned counsel submitted that the transfer policy makes it mandatory for all officers up to rank of Commandant on promotion to complete the Mandatory Field Service. In the present case, GC AVD does not satisfy that requirement and therefore, the petitioner has to necessarily do the Mandatory Field Service at 77 Battalion. The learned counsel submitted that the respondents have permitted the petitioner to have his family at Avadi and the petitioner has only been transferred to Poonamalli which is very near to Avadi. The learned counsel further submitted that there are absolutely no grounds to interfere with the order passed by the 2nd respondent and present writ petition is liable to be dismissed. To substantiate his arguments, the learned counsel relied up on the following judgments:

- (a) State of M.P and Another vs. S.S.Kourav and Others reported in (1995) 3 SCC 270.
- (b) Major General J.K. Bansal vs. Union of India and others reported in (2005) 7 SCC 227
- (c) Rajendra Roy vs. Union of India and Another reported in (1993) 1 SCC 148
- (d) Gujarat Electricity Board and Another vs. Atmaram Sungomal Poshani reported in (1989) 2 SCC 602
- (e) Union of India and Others vs. S.L.Abbas reported in (1993) 4 SCC 357

8. This Court has carefully considered the submissions made on either side and also the materials available on record.

9. Before venturing into taking a decision in this writ petition, this Court has to remind itself that there is a very limited jurisdiction available for this Court to interfere with the order of transfer. This Court can interfere with an order of transfer only if the same is made due to malafides or if it is punitive in nature or it goes against the rules or has been made by a person who has no jurisdiction. This Court cannot sit as an appellate authority and substitute its own judgment with regard to the transfer in the place of the decision taken by a competent authority.

10. Transfer in this case is governed by Standing Order No.7 of 2014 dated 24.11.2014. The relevant portion in the Standing Order has been extracted supra.

11. The different places in which the petitioner has served has been tabulated supra. The petitioner was promoted as an Assistant Commandant by an order dated 06.11.2018 and he was posted at GC AVD. The Standing Order specifically states at Clause xi that all officers up to the rank of Commandant on promotion should compulsorily complete Mandatory Field Service so as to become eligible for next promotion. There is an exception to this rule provided by the very same Clause. It states that where an officer has completed a full tenure in Category-"A" unit locations, he will be permitted to remain in a static/peace area on promotion till the completion of the normal tenure, as far as possible.

12. In the present case, the petitioner was serving at Bijapur, Chattisgarh from 2015 to 2018 and this unit has been brought under Category-"A" in the Standing Order. The petitioner was promoted as an Assistant Commandant and was posted at GC AVD which was considered to be a static/peace area. The 2nd respondent by virtue of the impugned order has shifted the petitioner to 77 Battalion on the ground that the petitioner has to necessarily complete the Mandatory Field

Service. This position has been reiterated even in the counter affidavit filed by the respondent.

13.While passing the impugned order, the 2nd respondent failed to take note of the second limb of Clause xi of the Standing Order. The 2nd respondent failed to note that the petitioner had already completed a full tenure in Category-"A" location at Bijapur, Chattisgarh. Once an officer has completed a full tenure in such an area, he is allowed to remain in a static/peace area on promotion till the completion of normal tenure.

14.There is a reason as to why such an exception has been added to Clause xi of the Standing Order. Exposing an officer continuously in a field service will have a consequence on the mental health and efficiency of an officer and the same will get reflected in his work. There are very many cases reported where these officers go into a depression mode and even take the extreme step of committing suicide or shooting their co-officers. It is only to avoid such instances, they are allowed to settle down in a static/peace area for some time.

15.It is seen from records that the petitioner has been exposed to Mandatory Field Service for a very long time and right from 2006 to 2018, he has been continuously posted at sensitive area like Jammu & Kashmir, Assam, Bijapur, etc., After promotion to the post of Assistant Commandant, the petitioner must be allowed to stay in a static/peace area till the completion of the normal tenure which is three years according to the Standing Order. The Standing Order also makes it clear that the transfer policy should be followed strictly in letter and spirit in accordance with the Standing Order. Of course, in a Military service, extraordinary situation may arise where the Standing Order will not come into operation and the security of the Nation will become the priority. At that point of time, the transfers / postings will depend upon the exigency of the situation. Such a situation has not arisen in the present case.

16.In view of the above discussion, this Court is of the considered view that the transfer order passed by the 2nd respondent is in violation of the Standing Order No.7 of 2014 dated 24.11.2014. The 2nd respondent has not taken into consideration the purport of Clause xi of the Standing Order. The 2nd respondent ought to have permitted the petitioner to continue at GC AVD which is static/peace area at least till the completion of the normal tenure. Therefore, transferring the petitioner again to the Mandatory Field Service and posting him in 77 Battalion, is not in accordance with the Standing Order, which governs the entire transfer policy.

17.In the result, the impugned orders passed by the 2nd respondent in his proceedings dated 18.04.2019 & 22.05.2019 are hereby quashed and respondents are directed to retain the

petitioner at GC AVD till his completion of his normal tenure.

18.This writ petition stands allowed with the above directions. Consequently, connected miscellaneous petitions are closed. No Costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssr
To

1. The Director General,
CRPF, CGO Complex,
Lodhi Road, New Delhi - 110 003.
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5. The Commandant,
77 Bn, CRPF,
Karaianchavadi,
Poonamallee,
Chennai - 600 056.
6. The Public Prosecutor,
High Court of Madras,
Madras.

+1cc to Ms.R.Meenakshi , Advocate SR.No. 103316
+1cc to Mr.R.Vasudevan , Advocate SR.No. 103594

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A.SK(18/12/2019)