

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 19.02.2019

CORAM

THE HON'BLE MR JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE P. RAJAMANICKAM

W.P.No.4600 of 2017
and
WMP Nos.4824 and 4825 of 2017

N. Satheesan ... Petitioner

Vs

1. Union of India,
Represented by
Inspector General of Police,
Office of the Inspector General of Police,
Puducherry.
2. Superintendent of Police (HQ),
Office of the Inspector General of Police,
Puducherry.
3. Superintendent of Police,
Office of the Superintendent of Police,
Mahe.
4. The Registrar,
Central Administrative Tribunal,
Chennai - 600 104

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari to call for the records relating to OA No.1756/2015, dated 24.01.2017 passed by the 4th Respondent Tribunal, Order No.4882/SPM/CR/2015, dated 11.12.2015 issued by the Third Respondent and Order No.7/SP (HQ)/TR/2015-17 dated 14.12.2015 issued by the Second Respondent and quash the same.

For petitioner : Mr.V. Jai Bharath for
Ms.Y. Kavitha

For R.1 to R.3 : Mr.Syed Mustafa
Spl.Government Pleader (P)

For R.4 : Tribunal

ORDER

(Order of the Court was made by M VENUGOPAL, J.,)

Heard both sides.

2. The Petitioner has filed the present Writ Petition (as an Aggrieved Person) as against the Order dated 24.01.2017 in O.A.No.1756 of 2015 passed by the Fourth Respondent/Central Administrative Tribunal, Madras Bench.

3. Earlier, the Fourth Respondent/Central Administrative Tribunal, Madras Bench, while passing the Impugned Order in O.A.No.1756 of 2015 on 24.01.2017 (filed by the Writ Petitioner/Applicant), at Paragraph-6, had observed the following:

"It is not in dispute that the applicant was initially appointed as Police Constable on temporary basis on 07.07.1994 and thereafter regularized w.e.f. 06.07.1996, vide order dated 17.09.1997. During the year 2012, he was transferred from Mahe to Yanam and he joined duty at Yanam. He suffered cardiac arrest during June 2013 and thereafter he made several representations to post him at Mahe and by Order dated 07.08.2013, he was transferred to Mahe. While so, an alleged false complaint was made against the applicant by one P.P. Anandan, President of Sree Krishna Bhajan Samithy, Mahe and on investigation, it was found that it was a false complaint made by one K.K. Anilkumar in the name of P.P. Anandan, President of Sree Krishna Bhajan Samithy on personal enmity against the applicant and an FIR was registered against the said K.K. Anilkumar. While so, since the applicant was suffering from cardiac problems, he requested for casual leave and while he was on leave on medical grounds, he received a wireless message dated 11.12.2015 to report before the Superintendent of Police (PAP) Puducherry and when he made representation requesting for leave on medical grounds, he was issued with the impugned order dated

11.12.2015 on 13.12.2015 and passport form on 14.12.2015 with instructions to report before SP (PAP), Puducherry for further duty. The allegation of the applicant is that the transfer has been made at the behest of the said K.K. Anilkumar who is influential, with the help of his friend Mr.V.P. Dhillip Kumar who is working as Police Accounts Officer, Police Establishment Section, Puducherry in order to weaken the criminal case registered against him. From the perusal of the material of the record, we find that the transfer was effected by the Police Establishment Board which was constituted as per the order of GO Ms No.28 dated 25.03.2011 of Home Department, Puducherry, based on the judgment pronounced by the Hon'ble Supreme Court in the case of Prakash Singh Bathal Vs Union of India and the applicant was transferred purely on administrative grounds."

and refused to interfere with the Impugned Order of Transfer dated 14.12.2015 which was made on administrative exigencies and resultantly, dismissed the Original Application without costs.

4. According to the Learned Counsel for the Petitioner, the Petitioner was originally appointed as Police Constable on temporary basis with effect from 07.07.1994 as per Order dated 28.07.1994. Further, he was declared to have satisfactorily completed the probation period in the post of Police Constable with effect from 06.07.1996 by means of an Order dated 17.09.1997.

5. The Petitioner, being a native of Mahe, from the beginning he is rendering service to the utmost satisfaction of his superiors and have unblemished record during his service tenure of two 'Decades'. In the year 2012, he was posted at Mahe, Government Press and later he was transferred to Yanam vide Order dated 13.02.2012 and also joined duty. He suffered a Cardiac Arrest and was hospitalised in June 2013. He made numerous 'Representations' making a request to post him at his native place Mahe taking note of his 'Ailment and Family Circumstances'. By virtue of an Order dated 07.08.2013, he was transferred to Mahe and posted at Puducherry Armed Police, Mahe.

6. At this stage, Learned Counsel for the Petitioner submits that as against the Petitioner, there was a Complaint dated 12.08.2015 lodged by P.P. Anandan, President of Sree

Krishna Bhajan Samithy, Mahe, alleging that he is preventing the Mahe Police from taking action against the Anti-social Elements who were hindering the temple activities and further, he abused the erstwhile Home Minister and present M.L.A of Mahe in 'Filthy Language'. For an enquiry in the subject matter of Complaint, he was called by Circle Inspector of Police, Mahe.

7. The Learned Counsel for the Petitioner proceeds to point out that on perusal of the complaint, Mr.P.P. Anandan, President of Sree Krishna Bhajan Samithy, Mahe, submitted a Representation dated 11.09.2015 communicating that no such complaint dated 12.08.2015 was sent by him and no such anti-social activities are happening. The complaint has been filed with ulterior motives and totally baseless.

8. Indeed, the complaint was preferred in the Official Letter Head of the Temple which was stolen from the Office of the Temple by someone and unauthorisedly used to tarnish his image and that his signature has been forged. First Information Report was registered in Cr.No.75 for the offences punishable Under Sections 451, 380, 468, 471 Indian Penal Code against the Secretary K.K. Anilkumar of Sree Krishna Bhajan Samithy, Mahe. Later, the said K.K. Anilkumar had obtained an 'Anticipatory Bail' and he was directed to appear before Police Station at Karaikal.

9. The Learned Counsel for the Petitioner points out that the Petitioner was suffering from Cardiac problems and he made a Representation dated 01.12.2015 and prayed for 'Casual Leave' and 'Holiday Permission' from 09.12.2015 to 13.12.2015 on 'Medical Grounds' which was sanctioned from 10.12.2015 to 12.12.2015. However, he was on 'Medical Leave', to a shock and surprise he received a wireless message dated 11.12.2015 with instructions to Report before the Superintendent of Police (PAP), Puducherry and that, he submitted his Representation dated 13.12.2015 together with Medical Certificate mentioning his 'Heart Ailments' and that he was to undergo 'Angiogram' and requested for further Leave for a period of 15 days from 12.12.2015. But he was issued with an impugned order dated 11.12.2015 on 13.12.2015 and passport form on 14.12.2015 (9.30 am) with instructions to Report before Superintendent of Police (PAP), Puducherry for further duty. Also, his mother made a representation dated 14.12.2015 to the First Respondent. But the Second Respondent issued the impugned order of transfer dated 14.12.2015 which was served upon him on 24.12.2015, he was also not relieved from service.

10. The Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner made a Representation dated 27.12.2015 for 'Medical Leave' along with

'Medical Certificate' on 'Medical Ground' as he was suffering from 'Coronary Artery Disease'. In fact, the Petitioner learnt that an impugned order of Transfer was issued at the behest of the said Mr.K.K. Anilkumar with the help of his friend Mr.V.P. Dhillip Kumar, who is working as Police Accounts Officer, Police Establishment Section, Puducherry in order to weaken the criminal case registered against him.

11. The plea taken on behalf of the Petitioner is that as per the Transfer Policy, frequent transfer of Constables is forbidden and they should be kept at the same Police Station/Out Post for a period of two or three years and that those natives of Mahe and Yanam may be allowed to continue for a maximum period of three years in these regions. However, the impugned order of transfer has been issued before the expiry of the maximum period.

12. It is not in dispute that the Petitioner filed an Application in O.A.No.1756 of 2015 challenging the order of transfer. The Fifth Respondent/Central Administrative Tribunal granted an interim order of status quo with respect to the order of transfer. Later, a reply statement was filed by the Respondents annexing 'Minutes of Meeting of Police Establishment Board' and only from the contents of Reply Statement, the Petitioner came to know that the Police Establishment Board met on 14.12.2015. In the order of transfer, it was mentioned that the order of transfer was an administrative decision taken in public interest and since malafides are not made out, the transfer order cannot be interfered with.

13. The Learned Counsel for the Petitioner strenuously projected an argument that the impugned order of transfer is based on 'Plea' of 'Malafides'. The Central Administrative Tribunal finally, on 24.01.2017, had dismissed the Application in O.A.No.1756 of 2015 holding that the transfer was effected by the Police Establishment Board which was constituted as per the Order of G.O.Ms.No.28 dated 25.03.2011 of Home Department, Puducherry and that the Petitioner was transferred purely on administrative grounds. Further, the Tribunal came to the conclusion that there was no reason to interfere with the impugned order of transfer dated 14.12.2015 which is made on administrative exigencies.

14. The Learned Counsel for the Petitioner contends that the Fourth Respondent/Central Administrative Tribunal had failed to appreciate that the Transfer Order dated 11.12.2015 was served upon the Petitioner much before the meeting to be held by the Police Establishment Board. The other plea taken on behalf of the Petitioner is that there are several vacancies available in Mahe Police Stations viz., at Palloor, Pandakkal, Coastal

Police Station and there is no requirement to transfer the Petitioner to Puducherry and it is a clear case of 'malafides'.

15. The Learned Counsel for the Petitioner points out that Petitioner's seniors viz., Mr.Priyesh, Mr.Prasad, Mr.Sarosh and Mr.Nithesh are still posted within the Mahe region and have been transferred only to the nearby stations and as such, the order passed by the Fourth Respondent/Central Administrative Tribunal is unsustainable in the eye of Law.

16. Before the Central Administrative Tribunal, the Respondents No.1 to 3 took a stand that the Police Force is a 'Disciplined Force' and 'Proper Decorum' should be maintained by each and every Police officers/Personnel who posted only for public related service. The Petitioner/Applicant was considered for his transfer by the Police Establishment Board which is constituted for the said purpose. In short, the transfer was issued only by the Police Establishment Board and as such there is no 'malafide intention' on the part of Respondents No.1 to 3. Viewed in that perspective, the plea of 'malafides' raised by the Petitioner is clearly not tenable in Law.

17. The Learned Special Government Pleader (Pondicherry) for Respondents 1 to 3 comes out with a plea that with a view to maintain 'Discipline' and 'Decorum' and in the interest of maintaining 'Law and Order' both in and out of Police Establishment, administrative decisions are taken in 'Public Interest' and the said decision was bonafide decision.

18. The Learned Special Government Pleader for the Respondents 1 to 3 takes a plea that the employee is governed by service conditions and an order of transfer is not normally required to be interfered by a Court of Law unless on malafide grounds and in support, he refers to a decision of the Hon'ble Supreme Court in (Mrs. Shilpi Bose vs State of Bihar) reported in AIR 1991 SC 532.

19. Yet another argument advanced on behalf of the Respondents Nos.1 to 3 is that the 'Transfer' is an incidence of service and as such, the Tribunal was right in dismissing the Application in O.A.No.1756/2015 filed by the Petitioner, as an Applicant.

20. It is to be pointed out that a 'Transfer Order' issued by a Competent Authority does not violate any of the Legal Rights of the concerned individual. A Government Servant, occupying a Transferable Post, has no vested right to remain seated/posted at one place or the other. Furthermore, this Court aptly points out the decision of the Hon'ble Supreme Court in

State of Madhya Pradesh vs S.S. Kourav reported in AIR 1995 SC 1056, wherein, it is held that the Courts and Tribunals are not the Appellate Forums to determine an Order of Transfer when made on Administrative Grounds.

21. Be that as it may, in view of the detailed upshot and also considering the qualitative and quantitative facts and circumstances as aforesaid and also in the considered opinion that the transfer in respect of the Writ Petitioner was made by the Police Establishment Board as per G.O.Ms.No.28, dated 25.03.2011 of Home Department, Puduhery, resting upon the decision of Hon'ble Supreme Court between Prakash Singh Badal vs Union of India. Further, the Applicant was transferred vide Order dated 14.12.2015. Notwithstanding the fact that the impugned order of transfer dated 14.12.2015 does not spell out the aspect of an exigency yet the same is free of flaw as opined by this Court. Looking at from any angle, the Fourth Respondent/Central Administrative Tribunal is free from legal infirmities. Resultantly, the Writ Petition fails.

22. In fine, the Writ Petition is dismissed leaving the parties to bear their own costs. Consequently, the Order dated 24.01.2017 in O.A.No.1756 of 2015 passed by the Fourth Respondent/Central Administrative Tribunal is affirmed by this Court for the reasons assigned in this Writ Petition. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sr

To

1. The Inspector General of Police,
Office of the Inspector General of Police,
Puducherry.
2. Superintendent of Police (HQ),
Office of the Inspector General of Police,
Puducherry.
3. Superintendent of Police,
Office of the Superintendent of Police,
Mahe.

4. The Registrar,
Central Administrative Tribunal,
Chennai - 600 104.

+1 cc to M/s.Giridhar & Sai, Advocate Sr.No.15775

+1 cc to The Government Pleader, (Puducherry), Sr.No.15716

W.P.No.4600 of 2017

VD(CO)
CSL/14.03.2019



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