IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P.(C) No.299 of 2018

P.S. Maheka Anal, aged about 54 years S/O (Late) P.S. Moti anal, having IRLA No.Force No. 921690014 resident of Modi Village, P.O. & P.S. Chandel, District-Chandel, Manipur presently posted at the Group Centre, CRPF, Imphal as Inspector (M)/Head Clerk.

... Petitioner

-Versus -

1. The Union of India represented through its Home Secretary (Ministry of Home Affairs) North Block, New Delhi, Government of India.
2. The Director General of Police, CRPF, CGO Complex, Lodhi Road, New Delhi – 03.
3. The IGP, Manipur and Nagaland Sector, Group Centre CRPF Langjing, Manipur.
4. The IGP, Madhya Pradesh Sector, CRPF, Bhopal.
5. DIGP, Group Centre, CRPF, Imphal.

... Respondents

B E F O R E
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the Petitioner	**:**	Mr. M. Devananda, Advocate.
For the respondents	**:**	Mr.S. Samarjeet, CGSC
Date of Hearing	**:**	**18.08.2020.**
Date of Judgment & Order	**:**	**25.08.2020**

JUDGMENT & ORDER
(CAV)

Heard Mr. M. Devanda, learned counsel appearing for the petitioner and Mr. S. Samarjeet, learned CGSC appearing for the respondents.

[2] Mr. M. Devananda, learned counsel submitted that the petitioner was initially enlisted in the year 1992 and was promoted to the post of

Inspector (M) in the year 2015 and he is going to retire from service w.e.f. 28.02.2021 on attaining the age of superannuation. It is also submitted that the petitioner wife is a central employee holding the post of Office Superintendent, in the Ministry of Finance Department of Revenue, Government of India and is presently posted in the Office of the Joint Commissioner of Income Tax, range of Dimapur, Nagaland.

[3] The petitioner has 2(two) sons who are attending University in Assam and old aged mother suffering from acute Arthritis and other old aged ailment and an unmarried younger sister aged about 43 years suffering from breast-cancer at home in Chandel District, Manipur. In such a situation, it is submitted that the petitioner is facing serious problems managing his domestic affairs while also attending to his official duties.

[4] The counsel for the petitioner submitted that in view of such difficult situation the petitioner submitted an application dated 02.11.2017 in the prescribed format to the concerned authorities requesting for posting him at Group Centre(GC), Khatkati or range Khatkati highlighting his difficult situation about his younger sister suffering from breast-cancer, the illness of his old aged mother, about his impending retirement w.e.f. 28.02.2021 and also for posting him within proximity of Dimapur where his wife is posted, as provided at Para 4(iv) of the office memorandum dated 30.09.2009 issued by the Department of Personnel and Training,

Government of India regarding posting of husband and wife at the same station.

[5] It is the case of the petitioner that without at all considering his application dated 02.11.2017, the petitioner was transferred and posted to Central Zone from the GC, Imphal by an order dated 16.02.2018. Having been aggrieved, the petitioner again submitted a representation dated 21.02.2018 to the Special DG, Central Zone, CRPF, Kolkata (WB) requesting for posting him to 155/173 Bn on account of his personal difficulties as mentioned hereinabove. It is, however, submitted that the said representations has not been considered by the authorities till today. Thereafter, the petitioner again submitted another representation dated 10.03.2018 to the IGP, Madhya Pradesh Sector CRPF, Bhopal requesting for posting the petitioner to 155 Bn, CRPF. However, the said representation was not at all considered by the authorities and by signal dated 20.03.2018, the petitioner was again transferred and posted to 182 Bn which is at Jammu & Kashmir. Against this transfer order, the petitioner again submitted another representation dated 10.03.2018 to the IGP, Madhya Pradesh Sector, CRPF, Bhopal by highlighting his difficult situation and requesting for posting the petitioner at 155 Bn which is near Dimapur, Nagaland where his wife is posted. However, the said representation was also not considered by the authorities.

[6] The learned counsel for the petitioner submitted that the petitioner had never in his entire service career objected to any orders/directions with regard to his transfer and posting to any places in India and served diligently without any reservation. Only at the fact of his service career and because of his domestic problems and difficult situation he had requested the authorities to transfer him to either 155 Bn or 173 Bn so that he can live near his wife and to attend to his domestic problems. However, without at all considering his genuine and legitimate request, the respondents have transferred him to 152 Bn at Jammu & Kashmir arbitrarily and without any application of mind to the prevailing facts and circumstances. Having being aggrieved by and non-consideration of office representations by the respondents, the petitioner approached this Court by filing the present writ petitioner assailing the present order dated 20.03.2018 and also with a prayer for directing the respondents to consider for his transfer and posting at 155 Bn or 173 Bn in terms of the provisions of office memorandum dated 30.09.2019 regarding posting of husband and wife at the same station.

[7] Mr. M. Devananda, learned counsel appearing for the petitioner further submitted that the Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel & Training), Government of India issued an office memorandum regarding posting of husband and wife at the same station. In para No. 4(iv), 5 & 6 of the said office memorandum it is provided as under:-

"4.(iv) Where the spouse belongs to one Central Service and the other spouse belongs to another Central Service:-

The spouse with the longer service at a station may apply to his/her appropriate cadre controlling authority and the said authority may post the said officer to the station or if there is no post in that station to the nearest station where the post exists. In case that authority, after consideration of the request, is not in a position to accede to the request, on the basis of non-availability of vacant post, the spouse with lesser service may apply to the appropriate cadre authority accordingly, and that authority will consider such requests for posting the said officer to the station or if there is no post in that station to the nearest station where the post exists.

5. Complaints are sometimes received that even if posts are available in the station of posting of the spouse, the administrative authorities do not accommodate the employees citing administrative reasons. In all such case, the cadre controlling authority should strive to post the employee at the station of the spouse and in case of inability to do so, specific reasons, thereof, may be communicated to the employees.

6. *Although, normal channels or representations/complaints redressal mechanism exist in the Min./Deptts., added safeguards to prevent non-compliance may be provided by ensuring that the complaints against non-adherence to the instructions are be decided by the authorities at least one level above the authorities which took the original decision when they are below the level of secretary to the Govt. of India/Head of the PSU concerned and all such representations are considered and disposed off in time bound manner."*

[8] By relying on the aforesaid provisions of the above office memorandum dated 30.09.2009 issued by the Government of India, Mr. M. Devananda, strenuously submitted that the petitioner is entitled to be posted either at 155 Bn or at 173 Bn where the petitioner can live near his wife and to attend to all his domestic problems, more specially when there

are vacancies available at the said 2(two) BN. The counsel further submitted that the act of the respondents for not considering representation of the petitioner is arbitrary and discriminatory and accordingly, the respondents may be directed to consider the said representations on its own merit in terms of the relevant orders/guidelines issued in respect of transfer and posting of the petitioner. The counsel also submitted that the petitioner is going to retire from service after about 6(six) months, the respondents may take into consideration such situation at the time of considering the aforesaid representation.

[9] Mr. S. Samarjeet, learned CGSC, appearing for the respondents submitted that as per the transfer policy of Ministerial Staff of CRPF as envisaged in CRPS – SO No. 03/2016, normal tenure of Ministerial Staff for static posting is 03(three) years, Sector tenure is 10(ten) years and Zonal tenure is 18(eighteen) years. The counsel submitted that the petitioner had already availed 3(three) years static tenure and 9(Nine) years Sector tenure and 19(Nineteen) years Zonal tenure and accordingly, the petitioner had already completed his normal tenure as provided in the said transfer policy.

[10] On completion of his normal tenure of posting as provided under the aforesaid transfer policy, the petitioner had been transferred in a routine manner and there is no arbitrariness or illegality in issuing such transfer order. So far as the request of the petitioner for his transfer and posting

either at 155 Bn or 173 Bn is concerned, the learned counsel for the respondents submitted that as there is no vacancies available in the said 2(two) Bn, the request of the petitioner could not be granted and accordingly, he had been posted to the 182 Bn. The counsel further submitted that the transfer is an incident of service and no employee has any right to claim for his transfer and posting at a particular place of his choice and accordingly, the learned counsel submitted that the present writ petition is devoid of merit and deserved to be dismissed.

[11] After hearing both the counsels and after perusal of the records, this Court is of the considered view that the petitioner is at least entitled to have his representations considered by the concerned authorities and disposed of by taking into consideration the transfer and posting policy of the Government for posting husband and wife at the same station as provided in the office memorandum dated 30.09.2009 issued by the Government of India and also by taking into consideration that he is going to retire in about 6(six) months from today.

Considering the facts and circumstances of the present case, the present writ petition is disposed of with the following directions:-

(a) The respondents should consider and disposed of the representations dated 02.11.2017, 21.02.2018, 10.03.2018 and 31.08.2018 submitted by the petitioner in terms of the transfer policy for posting husband and wife at the same station as

provided in the office memorandum dated 30.09.2009 sympathetically by taking into consideration that he is going to retire after about 6(six) months.

(b) Pending consideration and disposal of the said representations, the petitioner should be allowed to continue at his present place of posting.

With the above direction, the present writ petition is disposed of. Parties are to bear their own costs.

JUDGE

FR/NFR

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