

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.35291 of 2022

Jayadev Senapati

....

Petitioner

Mr. Budhadev Routray, Sr. Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. P.K. Parhi, DSGI

with Ms. Sulocahna Patra, CGC

**CORAM:
JUSTICE A.K. MOHAPATRA**

ORDER

21.12.2022

**Order
No.**

01.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. Heard Mr. B. Routray, learned Senior Counsel appearing for the Petitioner and Mr. P.K Parhi, learned DSGI with Ms. S. Patra, learned CGC appearing for the Union of India-Opposite Parties. Perused the writ petition and the documents annexed thereto.

3. The present writ petition has been filed by the Petitioner with a prayer to quash the impugned order dated 31.10.2022 passed by the Opposite Party No.4-D.I.G., Group Centre, CRPF, Bhubaneswar under Annexure-6 with a direction to Opposite Party No.2-the Director General, CRPF, New Delhi to allow him to continue in Group Centre, Bhubaneswar till the treatment is completed within a reasonable time.

4. It is submitted by Mr. Routray, learned Senior Counsel appearing for

the Petitioner that the Petitioner at present serving in C.R.P.F. as Assistant Commandant on being appointed on 9.12.2013. While he was posted at Jamu and Kashmir, the Petitioner got married in the year 2017 and thereafter he was transferred and posted in 12 Battalion, Sambalpur on 15.09.2018 and till such date of appointment, the Petitioner is continuing in the State of Odisha at different remote locations and discharging duties to the satisfaction of the authorities. It is further submitted that the Petitioner also served in the Naxalalite area of Kandhamal district and perform his duties to the satisfaction of the authorities. It is further contended that after four years of marriage, the Petitioner and her wife not having any children, they have to undergo treatment for infertility. On that ground the Petitioner approached the competent authority to the post at the place where his wife is undergoing treatment. Accordingly, considering his prayer, he was posted at Group Centre at Bhubaneswar vide order dated 14.09.2021 and, accordingly, the Petitioner joined on 06.10.2021 and while posted at Bhubaneswar, the wife of the Petitioner was undergoing treatment at different center and finally Mr. Routray, learned Senior Counsel draws the attention of this Court to the medical document filed at Annexure-4, specifically referred to a document issued by the Specialist Medical Officer (Gynecologist), Composite Hospital, CRPF, Bhubaneswar. The Specialist Medical Officer (Gynecologist), Composite Hospital, CRPF, Bhubaneswar has given a certificate that the Petitioner's wife is undergoing treatment and the procedure for treatment has also narrated in such certificate. He further stated in the said certificate that the

whole procedure requires the presence of the husband and the same is very essential for further treatment. It is further contended that the Petitioner again submitted another representation dated 10.09.2022 under Annexure-5. However, the same has been rejected vide order dated 31.10.2022 under Annexure-6. On perusal of the rejection order, this Court is of the view that the same is devoid of specific reason and the representation has been rejected only on the ground that the same is devoid of merit. He further contended that although the standing order dated 27th September, 2022 of the Director General, Central Reserve Police Force, New Delhi under Clause-7 provides that Special Category/Retention which provides that officer can be posted at a specified place on certain ground and the Petitioner comes within the scope and ambit of Clause-7 of the standing order dated 25th September, 2022. As such, he submits that the rejection order under Annexure-6 dated 30.10.2022 under Annexure-6 is illegal, arbitrary and erroneous.

5. Mr. P.K. Parhi, learned DSGI appearing for the Union of India-Opposite Parties, on the other hand, submits that considering the prayer of the Petitioner, the Petitioner was transferred and posted at Bhubaneswar. Thereafter, he was retained to continue one year giving scope to undergo the treatment of his wife. Thereafter, the prayer of the Petitioner to retain at Bhubaneswar has been rightly rejected by the authorities, as he was given sufficient opportunity for such treatment. Therefore, he further submits that there is no fault found with the authority in rejecting the prayer of the Petitioner for retention at Bhubaneswar. It is further submitted that the writ

petition is devoid of merit and this Court should not entertain the prayer made in this writ petition. It is further submitted that the Opposite Party No.4-The D.I.G., Group Centre, CRPF, Bhubaneswar is the competent to take a decision in the matter. Accordingly, the Opposite Party No.4 be directed to take a decision in the matter.

6. On perusal of the standing order dated 27th September, 2022 of the Director General, Central Reserve Police Force, New Delhi under Annexure-7, this Court observes that Clause-5 deals with transfer which provides to make retention of transfer of the CRPF personnel and Clause-7 provides Special Category/Retention of personnel on certain grounds. The Clause-7 of the standing order dated 27th September, 2022 of CRPF reads as thus:-

“Special Category/Retention

Any officer/official/personnel can apply for special category/retention. Only exceptional and genuine cases will be considered under these two categories. If any officer/official/personnel feel that his case should be considered separately under Special or retention, then he will have to apply along with required documents as main grounds for considering under this category.

Merely applying under these categories does not create any right for posting under these categories. The Board of officers at Unit/Sector/Directorate level will scrutinize their cases and only suitable cases will be finally allowed. If found suitable, he may be posted considering the request, facilities of treatment, provision to keep family, available vacancies and other administrative/operational constraints etc., to a suitable places which may even be different from preferences given. The cases which can be considered under this category may be as under:-

(i) On Medical grounds

Posting of officers/officials/personnel on medical grounds (including spouse and children) suffering from following illness may be considered based on the request or as per availability of treatment facilities subject to availability of vacancy. Their

posting may be considered as per their status of health as certified by Medical officer/Composite Hospital or recent medical documents:-

1) Infertility	2) Cancer	Paralytic Stroke	3) Renal failure
4) Coronary artery, disease, Thalassemia,	5) Parkinson's disease	7) Motor-neuron disease	

(ii) **Officers/Officials/Personnel having Autistic child**

Such officers/officials/personnel can be considered for posting to suitable places keeping in mind facilities of treatment, available vacancies and other administrative/operational constraints etc.

(iii) Apart from above, the following cases may be considered under special category subject to Ops/Adm constraints and availability of vacancies:-

- Divyang warriors
- Injured seriously in current posting in operational duties and undergoing treatment.
- Sudden death of spouse or child.
- Gallantry Medal awardees in current posting.

(iv) **Couple posting**

Where both Husband and Wife are members of CRPF can apply for couple posting. Their cases will be examined and may be considered for posting in alternate tenure of SCT at same place or any other alternate place/Unit which are nearby and not more than overnight journey.

(v) **Veer Nari**

Veer Nari may be rotated within their home State or neighbouring State as per tenure policy.

(vi) **Terminal Posting**

The officers/officials/personnel who are due to retire within 2 years to be reckoned from the cut-off date, may be considered for a terminal posting to his place of preference or to the nearby place/station/region covered by overnight journey by train provided he was not posted there in previous tenure.

(vii) The officers/officials/personnel who have not availed home

state/choice posting in 20 years of service.”

7. This Court upon perusal of the Clause-7 of the standing order 27th September, 2022 of CRPF is of the considered view that the CRPF personnel can be allowed the benefit of order of retention at a specified place on medical ground. On further examination of the said standing order, this Court is also of the opinion that the Petitioner possessed the eligibility criteria to be considered under Clause-7(i) of the order dated 27th September, 2022 of CRPF, as has been medical certificate issued by the Specialist Medical Officer (Gynecologist), Composite Hospital, CRPF, Bhubaneswar to make him eligible to be considered for retention at the present place of posting under Clause-7(i) of the standing order dated 27th September, 2022 of the Director General, Central Reserve Police Force, New Delhi. However, the impugned order under Annexure-6 does not discuss about the ground taken by the Petitioner and the documents filed, but simply the authority rejected the claim of the Petitioner on the ground that the same is devoid of merit. In such view of the matter, this Court is of the view that the authorities should have considered the case of the Petitioner taking into consideration the medical certificate obtained from the Composite Hospital, CRPF, Bhubaneswar under Annexure-4 and in view of the provision under Annexure-7(i) of the standing order dated 27th September, 2022 of the Director General, Central Reserve Police Force, New Delhi under Annexure-7. Having not done that the impugned order passed by the authority, which is non-speaking one, is unsustainable in the eye of law.

8. Accordingly, this Court disposes of the writ petition at the stage of admission by directing the Petitioner to file fresh representation before the Opposite Party No.4-D.I.G., Group Centre, CRPF, Bhubaneswar along with supporting documents by taking all the grounds available to him within a period of one week from today along with certified copy of this order and in the event of such representation is filed, the same shall be considered in the light of the standing order dated 27th September, 2022 of the Director General, Central Reserve Police Force, New Delhi under Annexure-7 and the medical certificate issued by the Composite Hospital, CRPF, Bhubaneswar under Annexure-4 and take a decision within two weeks thereafter. Further, it is directed that in the event the Petitioner shall not be relieved, he shall not be relieved till the decision taken on the representation of the Petitioner.

9. Urgent certified copy of this order be granted on proper application.

(*A.K. Mohapatra*)
Judge