



WEB COPY

W.P. (MD) Nos.8546, 8549 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P. (MD) Nos.8546, 8549 of 2021

and

W.M.P. (MD) Nos.6428, 6429, 6431, 6433 of 2021

R.Suji : Petitioner in WP (MD) No.
8546/2021

S.Rama Prabhu : Petitioner in WP (MD) No.
8549/2021

Vs.

1.The Deputy Inspector General (Establishment),
Directorate General ITB Police,
Block - 2, CGO Complex,
Lodhi Road, New Delhi.

2.The Commandant,
45th BN, ITB Police,
Idayapatti Camp, South Amoor (Post),
Madurai - 625 110.

: Respondents in both WPs.

PRAYER in WP(MD)8546/2021: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned transfer order in No.I-47011/1g/2021 Establishment-9288-350 Directorate General, ITB Police, passed by the 1st respondent dated 01.04.2021, quash the same and further directing the 1st respondent to transfer the petitioner to Soft Areas (SA) duly giving 5 choice.

PRAYER in WP(MD)8549/2021: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned transfer order in No.I-47012/03/2021/ Establishment-9751-99 Directorate General, ITB Police, passed by the 1st respondent dated 08.04.2021, quash the same and further directing the 2nd respondent to transfer the petitioner to Soft Areas (SA) duly giving 5 choice.

For Petitioners : Mr.R.Balakrishnan

For Respondents : Mrs.L.Victoria Gowri
Assistant Solicitor General of India

[In both WPs]



COMMON ORDER

The petitioners before this Court are husband and wife and are working in the Indo-Tibetan Border Police Force. They have been transferred from 45th Battalion - Madurai to 9th Battalion - Arunachal Pradesh, vide the impugned orders and challenging the same, they have filed these writ petitions.

2. Learned Counsel for the petitioners submitted that as per the Standing Order of the first respondent in No.02/2016 dated 14.09.2016, all locations had been classified into three areas, viz., Extreme Hard Areas, Hard Areas and Soft Areas and transfers are to be effected periodically within these areas. Though 45th Battalion - Madurai was initially classified as Soft Area, on 25.09.2015, it was inducted in Anti-Naxal Operation (ANO) area and all the units, which are inducted in ANO will be treated as Extreme Hard Area. After having completed the normal tenure in Extreme Hard Area, the petitioners have given five options for transfer, but, without considering the same, they have been transferred to 9th Battalion - Arunachal Pradesh, which is also an Extreme Hard Area. He further submitted that the petitioners are having two children, aged about two and one year, respectively. Therefore, he prayed for appropriate orders.

3. Learned Assistant Solicitor General of India appearing for the respondents drew the attention of this Court to Clause 3(e) of the Standing Order No.02/2020, dated 15.10.2020 and submitted that Home Region will be treated as Soft Area. She further submitted that Home Region will not be repeated unless there is a gap of at least 5 - 6 years tenure in Extreme Hard Area / Hard Area. The petitioners are native of Theni District and as such, they have already served in the Home Region (Soft Area) for about five years. Therefore, they, as couples, have now been transferred to Arunachal Pradesh.

4. This Court paid it's anxious consideration to the rival submissions and perused the documents placed on record.

5. The issue of transfer and posting has been considered time and again by the Hon'ble Supreme Court and the entire law has been settled by catena of decisions. It is entirely upon the competent authority to decide when, where and at what point of time, a public servant is to be transferred from his present posting. Transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. The employee, holding a transferable post, does not have any vested right to be posted at a particular place.

6. In **Gujarat Electricity Board v. Atmaram Sungomal Poshani**, reported in **1989 AIR 1433**, the Hon'ble Supreme Court has observed as under:-

<https://hcservices.ecourts.gov.in/hcservices/>



"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the another is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration."

7. In **Union of India v. H.N. Kirtania**, reported in **1989 AIR 1774**, the Hon'ble Supreme Court has observed as under:-

"Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafide."

8. In **State Bank of India v. Anjan Sanyal, Appeal (Civil) No. 226 of 1997, dated 12.04.2001**, the Hon'ble Supreme Court has held as under:-

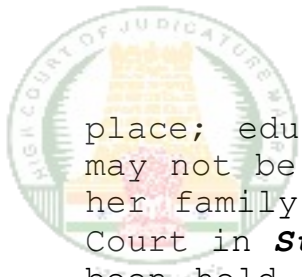
"4. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order."

9. The Hon'ble Supreme Court, in the decision reported in **(2004) 11 SCC 402 [State of U.P. v. Gobardhan Lal]**, has held as follows:-

"7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment, but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service."

10. In **Namratha Verma v. State of U.P. [SLP.No.36717 of 2017, dated 06.09.2021]**, the Hon'ble Supreme Court has held that "it is not for the employee to insist him / her and or not to transfer him / her at a particular place. It is for the employer to transfer an employee considering the requirement."

11. The transfer order may cause great hardship, as an employee would be forced to have a second establishment at a far distant



place; education of his / her children may be adversely affected; may not be able to manage his / her affairs and to look after his / her family. This aspect was also considered by the Hon'ble Supreme Court in **State of M.P. v. S.S. Kaurav, 1995 AIR 1056**, wherein it has been held that it is not permissible for the Court to go into the relative hardship of the employee. It is for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration.

12. In the cases on hand, the petitioners are not alleging any *mala fide* behind the passing of the impugned orders or questioning the jurisdiction of the respondents. Rather, they are challenging the orders of transfer on violation of the standing orders.

13. Clause 3(e) of the Standing Order No.02/2020, dated 15.10.2020, of the first respondent reads as follows:

"3.TENURES

... ..

(e)(i) Home region will not be repeated unless there is a gap of at least 05-06 years tenure in EHA / EHA or EHA / HA or HA / HA.

(ii) Home region will be treated as SA."

14. The petitioners, admittedly, are native of Theni District and they are working in Madurai from the year 2015. As such, they are in the Home Region, in other words, Soft Area, for the past six years. Under such circumstances and in view of the settled position of law, since the impugned orders have been passed as per the transfer policy of the respondents, this Court is not inclined to interfere with the same.

15. Accordingly, these writ petitions are dismissed. However, considering the fact that the petitioners are having two small children, aged about two and one years respectively, the respondents shall ensure that adequate and appropriate quarters facility is provided to the petitioners in their workplace. There shall be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

gk

<https://hcservices.ecourts.gov.in/hcservices/>



W.P. (MD) Nos.8546, 8549 of 2021

To

1.The Deputy Inspector General (Establishment),
Directorate General ITB Police,
Block - 2, CGO Complex,
Lodhi Road, New Delhi.

2.The Commandant,
45th BN, ITB Police,
Idayapatti Camp, South Amoor (Post),
Madurai - 625 110.

W.P. (MD) Nos.8546, 8549 of 2021
01.02.2022

RK(21/03/2022) 5P 3C