

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6781 of 2022

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Brij Bihari Ray, Son of Shriram Ray, resident of House No. 94, Fathers Bagicha, Mithila Colony, Bataganj, P.S. Digha, Dist-Patna, presently posted at CISF unit, NTPC, Barh.

... .. Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Public Grievances and Pensions, Department of Personal and Training, North Block, New Delhi.
2. The Director General, C.I.S.F. Head Quarters, No. 13, CGOs Complex, Lodhi Road, New Delhi-100003.
3. The Inspector General, CISF Eastern Sector Headquarter, Ranchi.
4. The Assistant Inspector General, CISF Eastern Sector Headquarter, Ranchi.
5. The Group Commandant, CISF Group Head Quarters, Patna.
6. The Deputy Commandant, CISF Unit, NTPC, Barh, Patna.
7. The Inspector, CISF Unit, NTPC, Barh, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Satish Kumar Sinha, Advocate
For the Respondent/s : Mr. T.N. Thakur, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 27-04-2023 Learned counsel for the petitioner undertakes to remove defect no. 5 in course of the day. So far as defect no. 74 is concerned, the same is ignored.

2. Heard learned counsel for the petitioner and learned counsel for the respondents.

3. The petitioner in the present case is seeking the following reliefs:-

“(A) A writ in the nature of certiorari or any other appropriate writ/s order/s direction/s for quashing the order dated 20.04.2022, partially with respect to the petitioner contained in Letter No. 1938, issued by Assistant Inspector General, CISF Eastern Sector



Headquarters, Ranchi, by which the service of the petitioner has been transferred along with 5639 constables and he is posted in CISF Unit, BCCL, Dhanbad within the DIG BCCL Zone, Dhanbad.

(B) A writ in the nature of mandamus or any other appropriate writ/s, order/s, direction/s for the following:-

- (i) To restrain the respondent from transferring the service of the petitioner from the present place of posting to other Unit.
 - (ii) To hold that the order impugned is nonest in the eye of law.
 - (iii) To stay the operation of the order impugned, with respect to the petitioner, during the pendency of the writ petition.
 - (iv) To hold that order impugned is in the teeth of natural justice and law of equity.
- (C) Any other relief/s for which the petitioner is found entitled to.”

4. Learned counsel for the petitioner submits that the petitioner entered into service of Central Industrial Security Force (CISF) as Constable on 12.10.1984. During his service period, he suffered with disease of Brain Tumour and as per advice of the Doctor, he was operated upon at least four times during the year 2005 and 2016 in Indira Gandhi Institute of Medical Sciences, New Delhi. He was posted in the North Sector falling in the State of Rajasthan when the Doctor advised him for third surgery of the Brain Tumour. The petitioner applied for his posting in his home sector and after considering his representation, he was posted to his home sector on



01.08.2012 and at present he is discharging his duties at CISF Unit, NTPC, Barh. Prior to his posting at Barh, he was posted at CISF Unit, BCCL, Dhanbad but because there was no proper medical facility in the CISF Unit, BCCL, Dhanbad, on the request of the petitioner he was transferred and posted in CISF Unit, NTPC, Barh.

5. It is submitted that in the general transfer order, the name of the petitioner was also considered and by the impugned order dated 20.04.2022, the petitioner has been transferred along with 5639 employees and he has been again posted in CISF Unit, BCCL, Dhanbad.

6. Learned counsel for the petitioner submits that from the counter affidavit on behalf of the respondents, it would appear that the petitioner is posted at CISF Unit, NTPC, Barh w.e.f. 04.11.2017. The facts submitted by the petitioner that he was transferred from Dhanbad to Barh because there was not adequate medical facility for the treatment of the petitioner has not been denied in the counter affidavit. All that is stated is that because the petitioner has completed more than four years of service at the Unit, he was affected in the Inter-Unit transfer (IUT)-2022.

7. Learned counsel submits that earlier this Court vide



order dated 12.05.2022 directed the respondent authorities to reconsider the case of the petitioner and pass a speaking order after due consideration of the medical certifications and other domestic issues. In the meantime, this Court stayed the order of transfer.

8. Learned counsel submits that in compliance of the order of this Court, the respondents have passed an order dated 08.06.2022 (Annexure 'C' to the counter affidavit) whereby they have reiterated their decision. The prayer of the petitioner to continue him at present place of posting has not been accepted on the ground that it will deprive the other needy CISF personnel from their legitimate rights. As regards the medical issues of the petitioner, it is not denied that the petitioner has been taking post operative follow up treatment at AIIMS, New Delhi and thereafter he had undertaken CT Scan of Brain in course of regular follow up at Rajeshwar Hospital, Patna on 19.07.2021, still the respondents have taken a view that it is not necessary for him to stay at CISF Unit, NTPC, Barh for the said follow up treatment.

Submission of the Respondents

9. Learned counsel for the respondents have defended the order as contained in Annexure 'C' to the counter affidavit.



It is submitted that the petitioner may avail the medical facilities which are available at the CISF Unit, BCCL, Dhanbad. It is submitted that he can also take a follow up treatment at AIIMS, New Delhi.

Consideration

10. Having heard learned counsel for the petitioner and the respondents as also on perusal of the records, this Court finds that in Annexure 'C' to the counter affidavit, the respondents have failed to consider that the petitioner was earlier transferred from CISF Unit, BCCL, Dhanbad to CISF Unit, NTPC, Barh taking note of his medical conditions and the required treatment. Admittedly, the petitioner is going to retire from service on 29.02.2024. Learned counsel for the petitioner has submitted that there has been a policy not to give effect to transfer of an employee who is going to retire within one year.

11. In the nature of the submissions made on behalf of the petitioner and the respondents as also the materials available on the record, this Court is of the considered opinion that the order of transfer of the petitioner is required to be cancelled taking note of the undisputed case of the petitioner that he is taking his follow up treatment at Patna and also at Delhi and now, he is due to retire within next nine months.



12. This Court accordingly quashes the impugned order of transfer as well as Annexure 'C' to the counter affidavit of the respondents. The petitioner shall be allowed to continue at CISF Unit, NTPC, Barh till his retirement.

13. Learned counsel for the petitioner submits that the petitioner has not been paid his salary for the period during which the petitioner was under order of transfer which was later on stayed by this Court vide order dated 12.05.2022 but pursuant to the order of this Court the consequential order was issued by the respondents on 08.06.2022.

14. If it is so, the respondents are directed to make payment of the salary of the petitioner as the petitioner was seeking his remedy before this Court and this Court has entertained his writ application. Such payments shall be made to the petitioner within two months from today.

15. This writ application is disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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