

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7027 of 2023

Manoj Kumar Gupta, Son of Om Prakash Gupta, Resident of Flat No. 601
Sheela Residency, New Jakkanpur, Police Station-Jakkanpur, District Patna.

... .. Petitioner/s

Versus

1. The Union of India Through the Secretary, Ministry of Home Affairs, Government of India, New Delhi.
2. The Director General, Central Industrial Security Force (C.I.S.F), Block 13, CGO Complex, Lodhi Road, New Delhi 110003.
3. The Additional Director General (Head Quarter), Central Industrial Security Force (C.I.S.F), Block 13, CGO Complex, Lodhi Road, New Delhi 110003.
4. The Inspector General, Eastern Sector C.I.S.F (Head Quarter), Ranchi.
5. The Assistant Inspector General (Establishment), C.I.S.F, Block 13 CGO Complex, New Delhi.
6. The Deputy Inspector General, Eastern Zone-1 Boring Road, Patna.
7. The Deputy Inspector General, A.S.G Bengaluru, Karnataka.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr.Siya Ram Shahi, Advocate Mr.Manoj Kumar, Advocate
For the Union of India	:	Ms.Renuka Sharma, CGC Mr.Rajni Kant Singh, Advocate Mr.Rakesh Kumar, Advocate Mr.Manish Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 24-07-2023

1. Heard learned counsel for the petitioner and learned counsel for the Union of India.

2. The petitioner seeks quashing of service order No. 134/2023 being the inter sector transfer issued under signature of Additional Inspector General (Establishment). The petitioner is a non-gazetted member of the force being the Sub Inspector Ministerial.



3. It is submitted by learned counsel for the petitioner that the petitioner has been posted in out of home sector (hereinafter referred as "OHS") for 9 years and 3 months whereas in the first tenure, he was required to be in a unit OHS for 7 years only (excluding the basic training). After September, 2010, the petitioner was posted to Eastern Sector at Patna and Group Headquarters Patna up till 31st March, 2016. From 1st April, 2016 till April, 2021, he served in the 2nd Reserved Battalion at Ranchi. Thereafter, petitioner was transferred to the Eastern Zone, Patna on 01.05.2021. While posted at Patna, he filed a representation dated 15.11.2022 seeking exemption from the inter sector transfer to be effected in 2023 in view of the fact that his wife was getting treatment at Indira Gandhi Institute of Medical Science (IGIMS), Patna and that he has been posted here only for one year and six months. Despite such request, the impugned order transferring the petitioner OHS has been issued and he has been transferred to be posted at the Airport at Bengaluru. Against this inter sectoral transfer order dated 24.03.2023, he filed a representation on 10.04.2023 (Annexure-4). In his communication, he has alleged that the transfer is premature, being effected before completion of 3 years at his current place of posting. He has also raised a plea of



his son's education being adversely effected by the transfer since his son's quarterly fee has already been deposited in a prestigious school of the city where he is studying in Class-9.

4. Having made such application, he has approached this court by filing the instant writ application and during pendency of the writ application, the petitioner's request has been turned down under communication dated 04.05.2023. The petitioner has placed on record this rejection order dated 04.05.2023 by way of a supplementary-affidavit, however, he has not assailed or put to challenge rejection of his request for cancellation or deferment of his posting under the impugned order dated 24.03.2023 by one year.

5. The respondents have appeared and filed counter-affidavit. They have placed reliance on Section 15 of the C.I.S.F. Act to submit that every member of the force is considered to be always on duty and at any time liable to be employed at any place within or outside India. It is submitted that for maintaining a balance so as to ensure a mix of personnel belonging to home sector and OHS in a unit, broad guidelines has been issued regarding transfer and tenure of posting of personnel under Circular No.22/2017 dated 25.09.2017 (Annexure-5). The guidelines, however, are subject



to security considerations, availability of vacancies, new inductions, administrative and operational needs and public interest.

6. During entire period of service, a non-gazetted officer like the petitioner is to be deployed in OHS sector for 13 years, excluding basic training period, which in the first tenure is 7 years and third tenure is 6 years. As per the circular, the tenure in home sector in the second tenure is of 12 years and remaining period of service. Home sector, however, is to be considered subject to availability of vacancies in the home sector. A normal tenure of posting in a normal unit for station is three years and at Sector/Zonal/Group it is three years extendable by a maximum of one year. The circular provides a three years tenure at a place extendable by two years. The petitioner has served the force for approximately 24 years and 4 months. Within this service period, he has spend 12 years and 6 months approximately in his home sector and 9 years and 3 months in OHS. He thus has not completed the OHS posting as per the circular dated 25.09.2017 of 13 years.

7. It is submitted by the learned CGC that though the guidelines are subject to the various considerations such as security considerations, availability of vacancies, new



inductions, administrative and operational needs and public interest, even as per the same, the petitioner has not completed 13 years of service in OHS. As per this service tenure, he is due for OHS positing and, therefore, the petitioner cannot raise a grievance regarding the posting OHS.

8. Insofar as treatment of the petitioner's wife is concerned, respondents in the counter-affidavit have stated that the best of medical facilities are available in Bengaluru and in this regard, the petitioner shall not be at any disadvantage in Bengaluru, as opposed to Patna. The claim of his son studying in Class-9 also has been duly considered and rejected having regard to the requirement of the force for maintaining the balance of OHS and home sector posting.

9. Considering the rival submissions, this court finds that as per the circulate dated 25.09.2017 and the objection contained therein, personnel are required to be recruited from all parts of the country and it mandates that each unit has a fair distribution of personnel from that region, as well as from other regions. Atleast 40 per cent personnel in a unit, as per the circular, should be from OHS. The salient features contained in Clause 10C of the circular reads as follows:-

“C) It is again clarified that these guidelines would only serve as broad parameters for posting the personnel,



but the final decision will rest with the competent authorities in CISF and will be governed by the operational and administrative necessities of the Force.”

10. It is also apparent from the circular that posting in home sector is to be in a manner so that the same does not have more than 60 percent of home sector personnel. The requirement of a tenure of 13 years OHS is also manifest from clause 12 of the circular. There is also no dispute of the fact that the petitioner has served OHS only for 9 years and 3 months.

11. The law regarding transfers is also well settled that it is an instance of service and the court while exercising judicial review normally should not interfere in matters of transfer unless for very limited grounds such as being contrary to the rules, on a lower post, actuated by manifest *mala fide* etc..

12. None of these grounds are made out in the instant case for this court to interfere with the petitioner's transfer. The petitioner also cannot rely upon clause 26 of the circular, on which the learned counsel for the petitioner has placed reliance during the course of hearing as the same talks about extension of tenure on education ground if the ward of the non-gazetted officer is studying in 10th or 12th Class in the current academic year and staying with him at the place of posting. In the instant



case, the petitioner’s son is neither studying in Class-10th, nor in Class-12th. On this ground alone, the petitioner cannot invoke clause 26 of the circular, let alone claim any enforceable right from the same to the exclusion of other provisions in the same circular, taken note of above.

13. This court, therefore, finds that no case is made out in the favour of the petitioner for quashing the inter sector transfer dated 24.03.2023.

14. The writ petition is devoid of merit and dismissed.

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	NAFR
CAV DATE	NA
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