



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: April 1, 2024*

+ W.P.(C) 4651/2024

(52) AJAY PAL

..... Petitioner

Through: Mr. Sudhanshu Prakash and Ms.
Anisha Agarwal, Advocates

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Theepa Murugesan, SPC with
Ms. Sanya Bhatia, Adv. alongwith
Insp. Sanjay Kumar and SI Prahlad
Devenda, CISF

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J. (ORAL)

CM APPL. 19049/2024 (exemption)

Allowed, subject to just exceptions.

The application is disposed of.

W.P.(C) 4651/2024 & CM APPL. 19048/2024 (interim relief)

1. As per the facts before us, the petitioner, working on the post of a Sub-Inspector in the Central Industrial Security Force¹, was transferred from Agartala to Delhi due to his father's diagnosis of throat cancer in 2018, having completed approximately 6 years of service in out of home sector, on compassionate grounds to be closer to his ailing father. Subsequently, transfer to Hyderabad was deferred for about a year, where

¹ Hereinafter referred to as 'CISF'.



he was slated to fulfil 1.2 years service requirement in the out-of-home sector. It was only thereafter that the request of the petitioner for an extension in Delhi was rejected by the authority, on 23.02.2024 and he was informed about relieving the Unit on 30.03.2024, indicating his impending transfer.

2. This has led the petitioner filing the present writ petition under Article 226 of the Constitution of India seeking the following reliefs:-

- i. *“To declare that the petitioner is eligible to be continued either in the present unit or in any units in Delhi on extreme Compassionate ground of his father's cancer disease;*
- ii. *To quash Airport Sector HQ Service Order No. 111 /2023 dated 02.05.2023 [P-2], Order dated 15.03.2024 passed by the Deputy Inspector General/office of CASO [P 8], transferring the petitioner from Delhi to Hyderabad;*
- iii. *To quash the Email dated 23.02.2024 to all concerned CASO /Unit Commanders[P-6] and order dated 07.03.2024 passed by the Deputy Inspector General / office of CASO [P-7], and 2nd Respondent mechanically rejecting his request for retention in the present unit.*
- iv. *To issue a writ of Mandamus or other writ or direction to the 2nd Respondent to retain the Petitioner in the present station for another one year in view of the present severe medical condition of the father of the Petitioner;*
- v. *To issue such other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*
- vi. *Pass any such orders as the Court may deem fit in the interest of justice.”*

3. Putting forth his case, learned counsel appearing for the petitioner submits that the rejection orders issued by the respondent no.3 herein are mechanical, illegal and arbitrary. He further submits that transfer of the petitioner from his home sector before completing 12 years is patently unreasonable and violative of principles of natural justice. Lastly, he submits that the father of the petitioner is in the last stage of cancer with poor prognosis and therefore shifting the petitioner to a different city, at this stage, would be reckless and unwarranted.



4. On the other hand, learned SPC for the respondents appearing on advance notice, submits that the petitioner cannot be allowed to seek transfer as a matter of right, more so, in view of the fact that he has been residing in New Delhi for a very long time.

5. We have heard the learned counsel for the parties and have also perused the documents on record.

6. Admittedly, as the petitioner is working with the CISF, he is governed by and is thus bound by the rules, regulations and policy guidelines of the said organisation, as may be applicable to him from time to time. Moreover, since the petitioner has not challenged the policy relating to transfer of those like the petitioner working with the CISF, as applicable to him in the present case, the same has to be taken on the face of it as it is. In any event, it is not the case of the petitioner, and in fact it cannot be his case also, that the said policy of the CISF is not applicable to him.

7. Needless to mention, such rules and/ or regulations and/ or policy guidelines are in the realm of legislature and the executive and thus leaving minimal scope of interference by the judiciary. We say so, as we find able support from *Home Secretary, U.T. of Chandigarh and Anr. vs. Darshjit Singh Grewal and Ors.*², wherein the Hon'ble Supreme Court has held as under:-

“14. It may be relevant to emphasise at this juncture that while the Rules and Regulations referred to above are statutory, the policy guidelines are relatable to the executive power of the Chandigarh Administration. It is axiomatic that having enunciated a policy of general application and having communicated to it all concerned including the Chandigarh engineering college, the

² (1993) 4 SCC 25



Administration is bound by it. It can, of course, change the policy but until that is done, it is bound to adhere to it."

8. In any event, it is a settled position of law that transfer is an exigency of service. That being so, the appropriate authority being the best judge to decide on all matters relating to transfer of those like the petitioner, it is in their realm to take all decisions thereto. To summarize, it is for the appropriate authority to opine as to who and when like the petitioner is to be transferred. It is for them to take a call regarding transfer of those like the petitioner. The Hon'ble Supreme Court in ***Union of India and Others vs. S.L. Abbas***³, which was recently followed by the Hon'ble Supreme Court in ***S.C. Saxena vs. Union of India and Anr.***⁴, has also held as under:-

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it."

9. Thereafter, the Hon'ble Supreme Court in ***Shilpi Bose vs. State of Bihar***⁵ has also held as under:-

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department."

³ (1993) 4 SCC 357

⁴ 2006 SCC (L&S) 1890

⁵ AIR 1991 SC 532



10. Significantly, the Hon'ble Supreme Court has then repeatedly reiterated the same view in multifarious judgments delivered, including but not limited to *S.L. Abbas* (supra), *State of Punjab and others vs. Joginder Singh Dhatt*⁶ and *State of U.P. and Ors. vs. Gobardhan Lal*⁷ from time to time.

11. Thus, not only there is negligible scope of interference by those like the petitioner but there is also hardly any scope of interference by a Court of law, especially whence it is under judicial review and we are exercising jurisdiction under Article 226 of The Constitution of India.

12. Interestingly, we find that it is the same petitioner who, as per S. no.12 of the policy guidelines was to remain out of home-sector for a period of 7 years, was prematurely transferred after 5.8 years by giving an early transfer to home-sector, i.e. North-sector on the basis of the request made by him. Thus, the respondents have already acceded to the request of premature transfer made by the petitioner once before.

13. Moreover, though the term of the petitioner in the home-sector had ended way back in the year 2022, the respondents gave him an extension for a period of one year till the year 2023 and thence again gave him another extension for a further period of one year till the year 2024. Presently, though the petitioner is continuing in the home-sector despite his aforesaid extended period of one year has already expired long back. This, once again shows that the respondents have twice already acceded to the requests of extensions made by the petitioner before.

⁶ AIR 1993 SC 2486

⁷ AIR 2004 SC 2165



14. Thus, more particularly because of the aforesaid acts of concern by the respondents, there cannot be any mala fide and/ or bias attributable to the respondents. All these, in fact, show that the respondents have always acted in the interest of the petitioner.

15. Under the present factual scenario as also the settled position of law qua transfer of those like the petitioner, we find no reason for exercising jurisdiction under Article 226 of The Constitution of India or judicial review by interfering with the actions of the respondents, especially when matters relating to transfer ought to be interfered only when the transfer is *mala fide* or arbitrary or perverse or when it adversely alters the service conditions in terms of rank, pay and emoluments or when guidelines laid down by the department are infringed or when it is frequently done or lastly, if there is a statutory infraction. More particularly, the case of the petitioner does not fall in any of the above.

16. As such, the present petition along with the application is dismissed, leaving the parties to bear their respective costs.

SAURABH BANERJEE, J.

V. KAMESWAR RAO, J.

APRIL 1, 2024/akr