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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 08.07.2024*

+ W.P.(C) 8945/2024

KAMLESH SHARMA

.....Petitioner

Through: Mr. M.M. Kashyap, Ms. Mona, Mr.
Rashil Imran, Ms. Amanulla Irfan and
Mr. Yashvardhan Sharma, Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Abhishek Khanna, Mr. Chetan
Jadon, Advs. with SI Prahlad
Devendra, SI A. Mohan an SI Amit**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****J U D G M E N T****REKHA PALLI, J (ORAL)****CM APPL. 36542/2024 (exemption)**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 8945/2024 and CM APPL. 36543/2024—stay

3. The present writ petition under Article 226 of the Constitution of India seeks to assail the order dated 20.05.2024 vide which the petitioner, who is serving as a Head Constable in the Central Industrial Security Force [CISF] has been transferred from ISP(B) Burnpur, West Bengal to ASG, Bangalore and has been directed to report at his new place of posting by



30.06.2024.

4. The primary submission of learned counsel for the petitioner is that out of his 30 years of service, the petitioner has already served for 16 years and 6 months in 'out of home sector' and is, therefore, as per the applicable transfer policy entitled to 'home sector' posting to deal with his domestic problems. He contends that once the respondents have themselves issued a Circular dated 25.09.2017 laying down the transfer policy, they are bound to follow the same.

5. By drawing our attention to para 12 of the Circular dated 25.09.2017, he submits that CISF personnel are required to serve in the 'out of home sector' for a maximum period of 13 years in their entire service career, with 7 years in the first tenure and 6 years in the third tenure, with the intervening second tenure of 12 years in the 'home sector'. The petitioner having already served in the 'out of home sector' for an additional 3½ years than the prescribed period of 13 years, he is entitled to be posted to his home sector. Further, he submits that though no specific averment in this regard has been made in the writ petition, the respondents are well aware that the petitioner's aged father is suffering from dementia and often leaves home at night during sleep. He, therefore, prays that the respondents be directed to abide by the terms of their policy and post the petitioner in the home sector.

6. On the other hand, Mr. Abhishek Khanna, learned counsel for the respondents opposes the petition by urging that even though the circular dated 25.09.2017 lays down the guidelines to be generally followed for transfer of personnel, the guidelines contained therein are not mandatory but are in the nature of guiding factors to be taken into account while deciding the postings. Even otherwise, the circular relied upon by the petitioner in



itself provides in para 10(c) and 39 (xix) and (xx) that notwithstanding the guidelines contained therein, any personnel may be posted anywhere at any stage by the competent authority without assigning any reason and without these guidelines coming in the way of such transfer/posting. In support of his plea that the transfer policy was only directory in nature and no vested right is created in favour of any personnel to claim posting on the basis of the said circular, he places reliance on the decision of the Apex Court in ***Punjab and Sind Bank & Ors. vs. Durgesh Kumar [(2020) 19 SCC 46]***.

7. Furthermore, being conscious of the transfer guidelines which provide for home sector posting at regular intervals, the respondents made every effort to accommodate the petitioner in his home sector but taking into account the large number of personnel who were required to be accommodated in their respective home sectors, it was found that the petitioner was lower in merit based on the cumulative 'Net Out of Home Sector Posting' period, which calculation was based on Notes 1 and 2 to para 12 of the policy. Consequently, due to service exigencies, he was posted to Bangalore where all medical facilities for treatment of his father is available. He, therefore, prays that the writ petition be dismissed.

8. Having considered the submissions of learned counsel for the parties, we find that the only submission of learned counsel for the petitioner is that the petitioner's transfer to the 'out of home sector' was impermissible at this stage being contrary to para 12 of the policy. His plea being that since the petitioner has already completed both his tenures of 7 years and 6 years in the 'out of home sector', he is, by way of his fourth tenure, entitled to 'home sector' during the remaining period of his service. *Per contra*, learned counsel for the respondents has urged that these guidelines are not



mandatory and in any event the petitioner was lower in merit list for which purpose reliance has been placed on the 'Note' to para 12 of the guidelines.

9. Thus, what emerges is that both sides have relied on the same Circular and therefore, it would be apposite to note the relevant extracts of the Circular dated 25.09.2017 which lays down the guidelines for posting/transfer of CISF personnel. The same read as under:-

"10. (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."

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12. TENURE OF POSTING

The Out of Home Sector(OHS) and Home Sector(HS) tenure for posting in respect of NGOs are subject to availability of vacancies, operational and administrative needs and new inductions. The details are as follows:

OUT OF HOME SECTOR/HOME SECTOR TENURE FOR CONSTABLEs, HCs, ASIs, SIs & INSPECTORs OF ALL SECTORS EXCEPT FOR EXCEPTIONS MENTIONED IN THIS CIRCULAR

BASIC TRAINING PERIOD: NEITHER TO BE COUNTED IN HOMESECTOR NOR OUT OF HOME SECTOR

- a) *1st Tenure-07 Years in Units in Out of Home Sector
(excluding basic training)*
- b) *2nd Tenure- 12 Years in Units in Home Sector*
- c) *3rd Tenure- 06 years in Out of Home Sector*
- d) *4th Tenure (Remaining Service)- Home Sector"*

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Note:

1. During the Inter Sector Transfer for 3rd tenure the Individuals shall be asked their choice of Out of Home Sector(OHS) from among the existing OHSs by giving their preference for the OHSs in the order of priority and efforts shall be made to accommodate their Out of Home Sector(OHS) choices on merit subject to availability of vacancies.

Explanation

- (i) Merit shall be based on the duration of OHS (in months) already served.*
- ii) In case of tie, preference would be given to those having higher age. If*



there is still tie between two or more personnel, the preference will be given to those who have joined CISF earlier (Date of joining).

2. Home Sector posting will be considered subject to vacancies in Home Sector (Vacancies would be calculated availability of with stipulation that the Sector should not have more than 60% of HS personnel). This shall be applicable for both HS tenures (2nd and 4th tenures)

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39. GENERAL

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(xix) These are only broad guidelines for posting and transfer of CISF personnel.

(xx) Notwithstanding the guidelines contained in this circular, any personnel may be posted anywhere at any stage by the competent authority without assigning any reason and these guidelines shall not come in the way of such transfer/posting."

10. From a perusal of para 10(c) and para 39 (xix) and (xx) of the Circular, it is evident that the Circular clearly prescribes that the guidelines contained therein would serve only as broad parameters and the final decision of posting will be governed by the operational and administrative necessities of the Force. It has also been made clear that despite the guidelines prescribing for rotation of tenures between 'home sector' and 'out of home sector', any personnel may be posted anywhere at any stage by the competent authority without assigning any reasons. When the policy in itself makes it clear that despite these guidelines, the Force personnel may be posted anywhere in operational and administrative necessities of the Force, we are unable to accept the petitioner's plea that merely on account of these guidelines, he could not be posted to an 'out of home sector' posting after he had already completed more than 13 years of 'out of home sector'



postings.

11. Even otherwise, in our considered view, it is trite law that such guidelines regulating transfers are only in the nature of laying broad parameters of the manner in which postings are to be directed. The same cannot be treated as mandatory and cannot entitle any employee to claim that he must be posted only in accordance with the tenures specified therein. In this regard reference may be made to the observations of the Apex Court contained in para 17 of the decision in ***Punjab and Sind Bank & Ors.*** (*supra*), the same read as under:-

“17. We must begin our analysis of the rival submissions by advertng to the settled principle that transfer is an exigency of service. An employee cannot have a choice of postings. Administrative circulars and guidelines are indicators of the manner in which the transfer policy has to be implemented. However, an administrative circular may not in itself confer a vested right which can be enforceable by a writ of mandamus. Unless an order of transfer is established to be mala fide or contrary to a statutory provision or has been issued by an authority not competent to order transfer, the Court in exercise of judicial review would not be inclined to interfere. These principles emerge from the judgments which have been relied upon by the appellants in support of their submissions and to which we have already made a reference above. There can be no dispute about the position in law.”

12. Furthermore, even though we are of the considered view that the petitioner has no right to claim that he must be granted ‘home sector posting’ merely on the basis of the tenures provided in the policy, we have also considered the respondents’ plea that upon application of the formula mentioned in the ‘Note’ to para 12 of the Circular, the petitioner was found to be lower in merit and therefore could not be adjusted in the ‘home sector’. Since it emerges that the respondents have, after considering all eligible personnel for ‘home sector posting’, found that based on the tenure of his ‘out of home sector’ posting, the petitioner was lower in merit, we are of the



view that the respondents have acted fairly and therefore, there is no reason for this Court to interfere with the administrative decision taken by the respondents to transfer the petitioner to Bangalore.

13. Before we conclude, we may also deal with the petitioner's submission that on account of his father's medical problems, he ought to be posted in the 'home sector'. We, however, find no merit in the same. Firstly, because the petitioner has filed no medical document in support of his father's purported medical ailment. Secondly, even if it is accepted that the petitioner's aged father is suffering from dementia, that in itself cannot be a ground to interfere with the impugned order when the petitioner has been transferred to a metro city such as Bangalore, where all the requisite medical facilities for treatment of his father would be readily available.

14. We, therefore, find no merit in the writ petition which is, accordingly, alongwith the accompanying application, dismissed.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

JULY 08, 2024
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