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W.P.No.12827 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.10.2025

PRONOUNCED ON : 17.10.2025

CORAM:

THE HONOURABLE MR. JUSTICE T.VINOD KUMAR

W.P.No.12827 of 2021

and WMP.No.13613 of 2021

G.Elumalai

.. petitioner

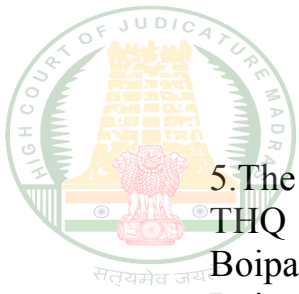
vs

1. Director General
Force Headquarters, Border Security Force,
Block No.10, CGO Complexm Lodhi Road,
New Delhi – 110003.

2. Inspector General, BSF
FTR HQ (SPL OPS) ODISHA at Bangalore
Post & PS : AFS station Yelahanka
Bangalore, Karnataka – 560064

3. Deputy Inspector General, BSF
SHQ BSF Chennai
Village – Keerapkkam
Post : Nallambakkam, PS – Kayar
Chennai – 600 127

4. K. Prabakaran
Assistant Commandant (Ministerial)
SHQ BSF CHENNAI
Village – Keerapkkam
Post : Nallambakkam, PS – Kayar
Chennai – 600 127



5.The Commandant
THQ 151, Bn BSF
Boipariguda Teshil
Boipariguda Post,
Karaput District,
Odisha – 764043.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorarified mandamus to call for the records transfer of the petitioner vide the inter office Note amounting to an order of the Establishment Branch vide No.Estt/posting/Tfr/SHQ Chennai/21/1144-47 dated 18.05.2021 issued by the 4th respondent as directed by the 2nd respondent, by quashing the same together with a consequential direction to the respondents for allowing the petitioner to continue in the same post in SHQ, Chennai at Keerapakkam, Chennai by way of rescinding the Movement Order issued by the 4th respondent to the petitioner vide No.Estt//Move-Odr./SHQ- Chennai/2021/1332-40 dated 10.06.2021 and pass such further order /other orders.

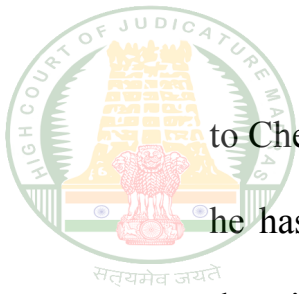
For Petitioner : Mr.A.Irundayam

For Respondents : Mr.Venkataswamy Babu, SPC

ORDER

Heard the learned counsel for the petitioner and the learned senior panel counsel appearing on behalf of the respondents and perused the record.

2. The case of the petitioner in brief is that he had joined the service of the respondents on 08.10.1998; that from joining the service till his transfer



to Chennai in the year 2018 to work under the control of respondents 3 and 4
he has worked in many places across the country in various capacity; and
that since 2018, he is working as Head Constable (HC) under the jurisdiction
of the 4th respondent.

3. It is further contention of the petitioner, that the 4th respondent by
an order dated 18.05.2021 [hereinafter referred to as impugned order] had
transferred him to 151 Battalion of BSF and posted him to work at Koraput
in Odisha.

4. It is further case of the petitioner that he has got son, who is born on
10.10.2008 and assessed by the statutory authority of suffering from 60%
mental disability; that since, the petitioner is required to take care of his son
who is disabled, the respondents could not have effected the transfer in a
routine and rotational manner by transferring him to Koraput in Odisha
without taking note of the fact that there are no rehabilitation facilities at the
said place of posting; that the Government of India, Ministry of Personnel,
Public Grievances and Pensions Department of Personnel and Training by
its Office Memorandum (OM) dated 06.06.2014 had granted exemption to a
Government Servant who is also a care giver of disabled child from



routine/rotational exercise of transfer subject to administrative constraints; and that the disabilities which are to be considered are also mentioned in the aforesaid Official Memorandum.

5. It is the further case of the petitioner that the above mentioned Official Memorandum was reiterated once again with the enactment of the Rights of the Persons with Disability Act, 2016 repealing and replacing. The Persons with Disability (equal opportunities, protection of rights and full participation) Act 1995, where under the scope of disability has been expanded and the Government employee who is a care giver of the dependant daughter/son/parents/spouse/brother/sister is granted exemption from routine / rotational transfer.

6. It is further case of the petitioner that since, the petitioner son is found having specified disability as defined under the Act 2016, the respondents ought not to have transferred him from Chennai to Koraput as part of routine / rotational transfer by the impugned proceedings claiming that the petitioner had completed 4 years of service.



7. It is further contended by the petitioner that on the 4th respondent issuing the transfer order, he had submitted a representation dated 18.05.2021 detailing the above facts and sought for being granted exemption from routine / rotational transfer and for retaining at the present posting on compassionate/medical ground to look after his son who is found to be having specific disability and thus being a Special child; that the 4th respondent without considering the representation, had issued the movement order dated 10.06.2021, to report at his place of posting; and thus, the petitioner is constrained to approach this Court by the present writ petition.

8. In support of the aforesaid contentions reliance is placed on the decision of ***High Court of Jharkhand at Ranchi*** in ***WP(S).No.3856 of 2017 dated 11.07.2017***.

9. Counter affidavit deposed by the 3rd respondent is filed on behalf of all the respondents.

10. The respondents by the counter affidavit while denying the writ averments to the extent that they are not admitted specifically, claimed that



the petitioner was posted to Sector HQ Chennai vide order dated 03.01.2017 /
and joined on 17.02.2017 under movement order dated 14.02.2017.

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11. By the Counter affidavit it is claimed by the respondents that BSF sector Chennai is functioning at dual places in the name of Rear HQ and Tactical HQ located at Chennai (TN) and Malkangiri (Odisha) respectively; that the Sector HQ BSF Malkangiri required maximum strength of manpower in order to conduct specific operations; that considering the request made by the petitioner he was allowed to remain stationed at Rear Headquarters Sector Chennai on humanitarian ground, due to medical problem of his son.

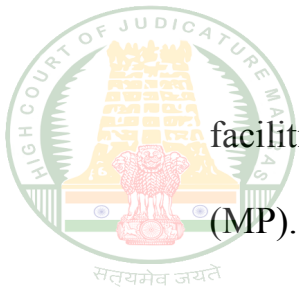
12. It is contended by the respondent that the petitioner had submitted a representation dated 05.11.2020 for his retention at Sector HQ by quoting the reference of DoP&T OM dated 06.06.2014 claiming that the routine/rotational transfers are to be taken up after 4years, while as per instructions issued by the first respondent dated 05.09.2016, tenure in static Head Quarters will be 3 years for GD personnel. In the facts of the case since, the petitioner had completed three years in Static HQ and also having served in the desired place of posting for more than prescribed period, the



petitioner was issued with the impugned order by transferring and posting him to 151 Battalion BSF and thereafter was issued with movement order on 10.06.2021. Insofar as the claim of the petitioner of having submitted a representation against his transfer on the ground of his son aged about 12 years suffering from mental retardation (i.e.,) intellectual disability / Autistic traits / Probable Mucopolysaccharidosis Type III, since his birth and undergoing treatment at CMC Vellore, as no specific record of ailment and disability was made available to the office of the respondents, the said representation was not considered.

13. By the counter affidavit it is further contended that since, the petitioner's son was born on 10.10.2008, while the petitioner was rendering services at various BSF locations, even after the birth of his son having disability and being provided medical care in his absence for 9 years before being posted at Sector HQ Chennai, the petitioner on the above basis cannot seek to be retained at Chennai HQ.

14. By the counter affidavit it is also stated that since, the petitioner is posted at 151 Battalion BSF at Koraput, with its headquarters at Bhopal (MP) being a Tactical HQ and Rear HQ respectively, sufficient medical

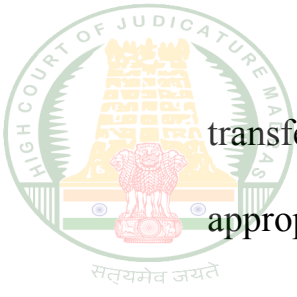


facilities are available in the Rear HQ location of 151 Battalion at Bhopal (MP).

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15. By the counter affidavit it is further claimed that on the 4th respondent issuing impugned order and the petitioner making representation dated 18.05.2021 for allowing him to continue his services at Sector HQ, Chennai by quoting the reference of DoP&T OM dated 06.06.2014 and DoP&T OM dated 08.10.2018, the competent authority had examined the aforesaid representation in the light of the existing policy of the respondents as well, the other connected documents and OM relied by the petitioner and rejected the same on merits.

16. By the counter affidavit it is contended that insofar as the persons working in Central Armed Police Force (hereinafter referred to as “CAPF”), the Ministry of Home Affairs had formulated the policy / guidelines / instructions vide OM dated 07.09.2017; that as per the aforesaid OM, CAPF personal though are not exempt /routine / rotational transfer had to be accommodated in the post and adjusted in such places which are suitable and having adequate medical rehabilitation facilities for the disabled employees / disabled children of CAPF personnel. Thus, the petitioner was issued with



transfer order by posting him at 151 Battalion BSF whereat sufficient and appropriate medical facilities of good quality from super speciality hospitals are available.

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17. The respondents also contended that since, the petitioner has been considered once by giving him posting at Sector HQ Chennai on his request for treatment of his son and completing the tenure, by retaining the personnel at one particular place beyond the prescribed period of three years is not possible; that as per Section 7 of BSF Act 1968, every person of the force shall be liable to serve in any part of India; and that since the petitioner is part of CAPF and being a disciplined force cannot seek for being continued at only one place.

18. In support of the aforesaid contentions, reliance is placed on the decision of the Hon'ble Apex Court in the case of **M/s.Shilpi Bose and others v. State of Bihar and others** reported in **1991 Suppl (2) SCC 659**.

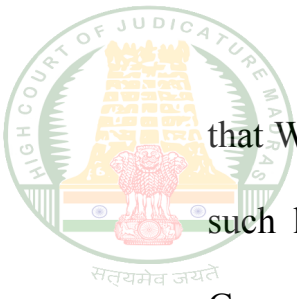
19. I have taken note of the respective contentions urged.



20. At the outset, it is not in dispute that BSF is a disciplined force Governed by the provisions of BSF Act 1968 and is considered as forming CAPF. Though, the petitioner in support of his contention had placed reliance on OM's dated 06.06.2014 and 08.08.2018 as issued by the DoP&T, a reading of the aforesaid OM's would indicate that the same are issued in relation to Central Government employees and does not cover the personnel recruited under specific enactments and forming part of CAPF.

21. Notwithstanding the fact that the aforesaid OM's relied upon by the petitioner are not applicable to advance the case of the petitioner, it is to be noted that the Ministry of Home Affairs vide OM dated 07.09.2017 had formulated policy /guidelines / instructions for rehabilitation disabled CAPF personal /rehabilitation of disabled dependants of CAPF personal.

22. One of the policy guidelines / instructions issued under the aforesaid OM deals with guidelines for “deciding transfer / retention of disabled persons / having disabled dependants”. Guideline No.4(e) states that “the disabled personnel and personnel having disabled dependants should be considered for posting to suitable locations having adequate rehabilitation facilities”. Clause (g) of the aforesaid guideline further states



that Welfare and Rehabilitation Board (WARB) may prepare data relating to such locations which have proper rehabilitation facilities for the disabled Government servants and the Government Servants with disabled dependants and such data could be further utilized by CAPF for considering posting / transfer of disabled Force persons and person with disabled dependants.

23. Since, the petitioner being a member of BSF would be governed by the aforesaid guidelines issued by the Ministry of Home Affairs; thus the 4th respondent ought to have considered the case of the petitioner while effecting his transfer to a place whereat rehabilitation facilities are available enabling him to avail such facilities for his disabled dependant.

24. Though, the respondents by the counter affidavit had claimed that the present place of posting of the petitioner (i.e) 151 Battalion BSF with Tactic HQ at Koraput and Rear HQ at Bhopal (MP) is having sufficient and appropriate medical facilities of good quality from Super Speciality Hospital thereat, it is to be noted that the said statement is made by the respondent is in relation to Rear HQ at Bhopal and not in relation to Tactical HQ at Koraput.

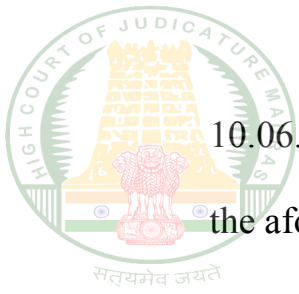


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25. This fact would be clear from the statement made by the respondent in Paragraph 9 of its counter affidavit. Since, the purport of the OM is to transfer personnel having disabled dependant to a suitable location having adequate rehabilitation facility does not mean posting such personnel in far off locations under the control of the HQ, but is to ensure that the personnel is posted in a place having rehabilitation facilities.

26. On being queried by this Court, the learned Senior Panel Counsel had confirmed that there are no rehabilitation facilities at Koraput for this Court to accept the contention of the respondent of petitioner being posted at a place having adequate rehabilitation facilities to take care of his disabled dependant in terms of OM dated 07.09.2017.

27. As the respondents have failed to take the aforesaid OM into consideration while considering the representation made by the petitioner for being retained at Chennai and instead having transferred him to 151 Battalion BSF to work at Koraput with its Rear HQ at Bhopal, this Court is of the view that the said action of the 4th respondent in issuing the transfer order dated 18.05.2021 and thereafter issuing the movement order dated



10.06.2021 cannot be said in accordance with the guidelines issued under the aforesaid OM dated 07.09.2017, for the said action to be sustained.

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28. Insofar as the reliance placed by the petitioner on the decision of the **High Court of Jharkhand at Ranchi** (*cited supra*) is concerned, the said decision would not advance the case of the petitioner; as in the aforesaid decision the Court had directed the petitioner to submit a representation for it to be considered. However, since it is now brought to the notice of this Court that specific OM dated 07.09.2017 having been issued in relation to personnel of CAPF, the respondents are required to act in accordance with the aforesaid OM.

29. Similarly, reliance placed by the learned Senior Panel Counsel for the respondents on the decision in the case of **Shilpi Bose** (*cited supra*) is concerned, the little assistance to advance the submission made, as the facts under consideration in the aforesaid case dealt with normal transfer and not a specific case in relation to rights of a disabled person under Act, 2016.

30. In view of the above, this Court is of the view that the respondents are to be directed to consider the availability of the adequate rehabilitation



facilities while effecting routine/rotational transfer, the petitioner to take care of his disabled son, more particularly taking note of the fact that the petitioner subsequent to filing of this writ petition in the year 2021 having completed another four years period thereafter, by being retained at HQ, Chennai.

31. Accordingly, the impugned proceedings dated 18.05.2021 and the movement order dated 10.06.2021 are hereby set aside and the respondents are directed to issue fresh transfer order and movement order by following the guidelines of OM dated 07.09.2017.

32. With the above observations and directions, this writ petition is disposed of. No order as to costs. Consequently, connected miscellaneous petition is closed.

17.10.2025

Speaking order / Non-speaking order

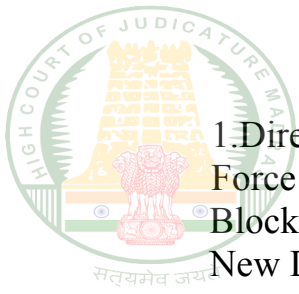
Index : Yes / No

Neutral Citation : Yes / No

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To

14/16



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Block No.10, CGO Complexm Lodhi Road,
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2. Inspector General, BSF
FTR HQ (SPL OPS) ODISHA at Bangalore
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T. VINOD KUMAR, J.

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Pre-Delivery Order in

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