

A. Vivekanathan Vs. Deputy Director, Establishment, Central Reserve Police Force and ors.

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Court : Chennai

Decided On : Mar-14-1997

Reported in : (1998)1MLJ145

Appellant : A. Vivekanathan

Respondent : Deputy Director, Establishment, Central Reserve Police Force and ors.

Judgement :

ORDER

E. Padmanabhan, J.

1. The petitioner, A Deputy Commandant in Central Reserve Police Force, has filed the present writ petition seeking for the issue of a writ of manda-mus forbearing the respondents from taking any steps in pursuance of the Telex Message No. T. IX-23/96 ESTT-1, dated 19.2.1996 issued by the first respondent.

2.. According to the petitioner, he had joined Central Reserve Police Force for Sub Inspector on 25.6.1973 that he had worked at various stations for the past 23 years, that he has clean record of service, that while stationed at Sri Nagar, the petitioner made representation for being posted at Avadi and that his request was considered and posted to Avadi from Sri Nagar, that suddenly on 19.2.1996 by

telex message the petitioner has been transferred and posted to Nagaland, that the petitioner made representation on 24.2.1996 for retention at Avadi, that without considering the said request, respondents are taking steps to relieve the petitioner and hence the present writ petition.

3. The learned Counsel appearing for the writ petitioner contended that, (1) he has been posted at his request from Srinagar to Avadi and before completion of three years, he being shifted to Nagaland; (2) very many senior persons are retained at Avadi and the petitioner alone being shifted to Nagaland, (3) respondents have violated the circular where the transfer policy has been prescribed and transfer during the middle of the academic year affect the petitioner and his family, and (4) there is no administrative reason for the transfer in the middle of the academic year and that the action of the respondents is mala fide.

4. By order dated 1.3.1996 this Court while admitting the writ petitioner has granted interim injunction.

5. The respondents have taken out an application/petition to vacate the interim injunction order passed on 1.3.1996. The respondents have filed a detailed counter. In the counter affidavit the circumstances under which the order of transfer has been issued has been explained, paras 5 and 7 of the counteraffidavit which are relevant read thus:

5. With reference to the averments made in para. 5 of the affidavit, I state that as per the transfer policy an officer becomes due for transfer only on completion of three years of service in a Unit establishment. The petitioner Dy. Commandant joined 32 BN at Sri Nagar on promotion as the Dy. Comdt. on 12.5.1994. He had submitted an application addressed to IGP S/s through proper channel on 10.2.1995 requesting for transfer to GS S/s on 7.3.1995. Since he did not become due to be transferred in public interest, Group Centre, Avadi is authorised for 1 ADIC, 1 Second-in-command, 2 Dy. Comdts and 4/A comdts. In the group Centre, Avadi there was a clear vacancy of one Dy. Comdt. and one A/Comdts 2-1/C and another Dy. Comdt. were also due for retirement on 31.5.1995 and 30.6.1995 respectively. However, considering his request and also keeping the urgent requirement of an officer to maintain the continuity of on Group Centre, Avadi at

that time, the petitioner Dy. Comdt. was transferred to GC, Avadi vide IGP S/S Office Signal No. T. IX. 23/95 Estt. I, dated 15.6.1995.

7. With reference to the averments made in para 8 of the affidavit under counter it is submitted that the circumstances under which he was transferred are given in para 5. 78.8 which is deployed on anti-insurgency duty in a very sensitive part of the Nagaland where daily one or more incidents are being reported. In this Bm. there were deficiencies of 2 Dy. Comdts. and 2/Acomdts. Therefore, posting of a young Dy. Comdt. was considered most essential who undertake various operational task. In Southern Sector 20 attached Bns. are deployed all over the country on different types of sensitive duties. Therefore none of the officers posted in these Bns could be posted to 78 Bm Among the five group centres which are static formation and doing house keeping job, considering the various aspects including capability age and past posting of officers posted in all the five group centres, Sri Vivekanathan was found suitable for posting to 78 Bn. The position of officers as in June 95 when the posting of the petitioner from 32 Bn to group Centre Avadi was ordered was also improved with the posting of one more Dy. Comdt. and one A/Comdt in between. Therefore, the posting of the petitioner from the Group Centre to 78 Bn was also administratively feasible. As can be seen from the posting particulars of the officers, out of his more than 22 years of service he remained posted in static places like Hyderabad/Avadi/Rampur/New Delhi/Nee much for more than 14 years. Thus, he is the luckiest officer in a force like CRPF which is always on the wheels to have such a long stint in static places. Even during his posting in 109 Bn from March 1991 to May 1994 though he was required to move from one place to another along with his company on law and order election duties, he was allowed to keep his family at Group Centre, Avadi in order to facilitate uninterrupted studies of his children. In view of this his transfer from Group Centre Avadi to 78 Bn in public interest and exigencies of service is justifiable. '

6. With the consent of parties, the main writ petition itself is taken up for final disposal. Counsel for the

petitioner reiterated the same contentions enumerated above and relied upon the decision of the Apex Court reported in M. Sankaranarayanan, I.A.S. v. State of Karnataka : AIR 1993 SC763 , Rajendra Roy v. Union of India : AIR 1993 SC1236 .

7. On the other hand, Mr. Udayakumar, learned Counsel appearing for the respondents placed reliance upon the judgment of the Supreme Court reported in State of U.P. v. Dr. V.N. Prasad (1995) 2 S.C.C. (Supp.) 151 besides various other judgments.

8. Mr. Ibrahim Ali, reiterated the contentions. As regards the first contention that there has been violation of transfer policy it is pointed out that the petitioner had not completed his tenure at Srinagar but he was transferred to Group Centre, Avadi as the vacancy at Avadi required immediately posting of a Deputy Commandant which is the cadre of the petitioner. It is also pointed out that Circular Order No. 9/79 and 14/80, dated 29.1.1979 has no application to the cadre of the petitioner and the learned Counsel for the petitioner fairly accepted the same. However, the learned Counsel relied upon the transfer policy set out in the letter of the Director (Administration), CRPF, New Delhi, dated 17.8.1987 and sought to contend that the postings of staff/men had not been mentioned in such a way not more than 50% of the staff/men belonging to a particular State work in CRPF Establishments located in the said State. This is a new attempt on the part of the petitioner. No such plea had been set in the affidavit and no particulars have been furnished. Therefore, the said contention is not acceptable as no plea has been raised in the affidavit, nor the petitioner could rely upon the said letter dated 17.8.1987. In my view this contention is a factual misconception.

9. The respondents stated that it is in the administrative interest and exigencies of services, the petitioner had been transferred to Nagaland. According to the respondents that 70 Bn is deployed on anti-insurgency duty in a very sensitive part of Nagaland and there is shortage of Officers in the Cadre of Deputy Commandants and therefore, posting of a young Deputy Commandant was considered most essential who undertake various operation task and hence, the petitioner has been transferred and posted to Nagaland. The portion of the counter which is

relevant in this respect reads thus:

78 Bn which is deployed on anti-insurgency duty in a very sensitive part of the Nagaland where daily one or more incidents are being reported. In this Bn there were deficiencies of 2 Dy. Comdts and 2/A. commandants. Therefore, posting of a young Dy. Comdt was considered most essential who undertake various operational task. In south-ern sector, 20 attached Bns are deployed all over the country on different types of sensitive duties. Therefore, none of the officers posted in these Bns could be posted to 78 Bn. Among the five Group Centres which are static formation and doing house keeping job, considering the various aspects including capability, age and past posting of officers posted in all the five group centres, Shri Vivekanath was found suitable for posting to 78 Bn.

Thus, there is every justification for the petitioner being shifted. The petitioner being a member of the unformed service cannot contend that he cannot be posted in the event of exigencies of service that warrant.

10. As regards the plea of the petitioner that he has come to AVadi Group Centre at his request and he should not be transferred till he completes his 3 years of service, in my view, it is nothing but a misconception. If the exigencies of service warrant the petitioner can always be shifted. The allegation that number of Senior persons are stationed at Madras has also been considered by the respondents and as the petitioner was found suitable by the respondents he had been transferred to Nagaland. This contention is factually incorrect. Young and energetic person like the petitioner could be posted at Nagaland and it is part of his duty and he had to accept the same with challenge and spirit. The respondents have denied the allegation of the petitioner that he had been singled out and I find there is no reason at all to reject the same.

11. As regards the contention that the petitioner has been transferred during the middle of the academic year the exigencies of service when warrants a member belonging to the unformed para military force could always be transferred and it is for the authorities to decide suitability or otherwise and also the exigencies of service. this Court sitting in Article 226 of the Constitution will decline to interfere in such matters. The reliance posted upon the judgment of the Supreme Court in M.

Sankaranarayanan, I. A.S. v. State of Karnataka : AIR 1993 SC763 , is of no avail to the petitioner as there is no mala fide either in law or on facts. It is only exigencies of service which was taken into consideration by the respondents and the petitioner being a young officer had been posted. this Court sitting in writ jurisdiction under Article 226 of the Constitution of India will decline to go into the decision taken by the respondents and more so when they have taken into consideration, the exigencies of service and the national interest in which the petitioner has been ordered to be posted at Nagaland as Deputy Commandant. The petitioner had not made any specific allegation of mala fides. It is true that transfer may result in cer-tain amount of dislocation and cause difficulties in the family set up of the petitioner. But that cannot be the only criteria as the petitioner being a member of the uniformed force has to meet the challenge and he is bound to serve wherever he is posted. The petitioner is holding a transferable post and the order of transfer is normal. Personal difficulties are matters for consideration of the department. When the Battalion is posted to Nagaland and hence there is every justification to transfer the petitioner may cause inconvenience or hardship to the family of the petitioner and on the ground the petitioner who is a member of Central Reserve Protection Force cannot avoid the transfer ordered in the interest of nation and more so, it is warranted by the exigencies.

12. In State of U.P. v. Dr. V.N. Prasad (1995) 2 S.C.C. (Supp.) 151, it has been laid down that the presumption is in favour of the bona fides of the order unless contradicted by acceptable material. There is no material to establish mala fides which requires strong and convincing evidence.

13. The learned Counsel for the respondents pointed out that though the order of transfer has been passed during the middle of the academic year, the petitioner had obtained interim order and still he is continuing at Avadi from 1.3.1996 onwards and for the past one year, he had the benefit of interim orders. It is also pointed out that the petitioner who is holding the post of Deputy Commandant is not in any way being preju-diced by the transfer even at this stage as CRPF has established Kendria Vidayala and it is well open to the petitioner to educate his children in any one of the nearest Kendria Vidayala established for the purpose of Central Government employees and service personnel.

14. In *Shilpi Gose v. State of Bihar* : (1991)11LLJ591SC , the Apex Court had laid down thus:

The courts should not interfere with transfer orders which are 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. 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.

Following the principles laid down in the decision cited supra, the writ petition has to be dismissed.

15. In the foregoing circumstances, this Court holds that there are absolutely no merits in this writ petition and the writ petition is dismissed with costs of Rs. 2,000. Consequently, all connected W.M. Ps. are dismissed.

16. The petitioner is directed to approach the respondents for time to report and also for time to vacate the quarters and the respondents shall consider the matter of the petitioner on merits.

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