
(2013) 04 DEL CK 0096

In the Delhi High Court

Case No : Writ Petition (C) No. 2442 of 2013 and CM No. 4636 of 2013

Banna Ram Saini

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Central Industrial Security Force Act, 1968 — Section 14, 15

Citation : (2013) 04 DEL CK 0096

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : Hemant Sharma, for the Appellant; Sachin Datta and Mr. Vineet Tayal, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The petitioner in the instant case assails the order dated 31st March, 2013 whereby he has been transferred as Head Constable on General Duty from the Unit-National Museum which forms part of the North Zone to a Unit TPT Tuticorin in the State of Tamil Nadu contending that the same is in contravention of the policy of the respondents. It is undisputed that the petitioner joined the CISF on 16th July, 1986 and has served in various positions since his appointment which are summed up as follows:-

(i)

From 1986 to 1995

Unit BSP, Bhilai

(ii)

From 1995 to 1999

Unit-ZM Udaipur

(iii)

From 1999 to 2002

Unit-CLZS Chittorgarh

(iv)

From 2002 to 2005

Unit-Bhabha Atomic Research Centre, Tarapur

(v)

From 1st June, 2006 to 30th August, 2008

Unit-Bhabha Atomic Research Centre, Mumbai

(vi)

From 31st August, 2008 to 30th June, 2011

Unit 7th RB, Kishtwar, (Jammu & Kashmir)

(vii)

From July, 2011

Unit at National Museum, North Zone

2. The relief in the instant writ petition is premised on the issuance of a Circular No. 53/2011 (Originally issued on 15th February, 2012 (Page 25). The petitioner places heavy reliance on the following clauses therein contained:-

B) TENURE OF POSTING

The out of home zone and home zone 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:-

I) xxx xxx xxx

II) Out of Home Zone/Home Zone Tenure For Constables HCs ASIs SIs and Inspectors (Excluding Steno, Ministerial, Staff) of North Sector & East Sector.

BASIC TRAINING PERIOD

NEITHER TO BE COUNTED IN HOME ZONE NOR OUT OF HOME ZONE

a) 1st Tenure

09 years in Units in Out of Home Zone (excluding training)

b) 2nd Tenure

10 years in Units in Home Zone

c) 3rd Tenure

08 years in Out of Home Zone or more

d) 4th Tenure (Remaining Service)

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To continue in OHZ. Will be considered for Home Zone subject to vacancies in Home Zone (Vacancies should be calculated with stipulation that Home Zone should not have more than 50% of HZ personnel). Personnel will have to tender 8 years OHZ in 3rd tenure before this consideration starts and would be subject to the stipulation that number of HZ personnel does not exceed 50% above and on merit (i.e. personnel with more OHZ service will be posted first).

XXV) Hard Area Tenures

a) xxx

b) xxx

c) While posting to home zone, Sector IsF will given the personnel first a tenure of home zone hard area, if the person had not done hard area posting earlier and thereafter they will be posted to any other unit in their home zone.

3. So far as the submission based on the requirement of personnel being permitted to complete his tenure is concerned, the petitioner places reliance on Circular No. Estt-II/01/2012 dated 12th January, 2012, the relevant extract whereof reads as follows:-

3. In order to streamline the system, the following guidelines are issued:-

a) xxx

b) xxx

c) xxx

d) xxx

e) Almost all Sectors have both Zonal and Plant DIsG. Therefore the CISF personal from the rank of Constable to SI given to a Plaint will become due for transfer after a tenure of 3 years. They may go to another Plaint in the same Sector or they may go to a Zone of that Sector. This exercise will have to be done by the Sector IsG. Therefore before annual transfers each year, Sector IG may hold a coordination meeting in which persons who have done or about to complete 3 years in a Plaint have to be take out, and given to other Plaints or the Zone should be identified. While the exercise from a Plaint to Plaint would be simple, the Zonal DIG will have to be taken on board, because if certain number of persons are to be taken out of the Zone and are given to the Plaint, they should be identified before hand and the Zonal DIG should not transfer them from one Unit to other Unit.

(f) In specific cases, Sector IsG may on requests made in request room or during

inspection/visit or on administrative grounds issue posting/transfer with respect of all ranks upto Inspectors.

4. So far as the Circular No. Estt-II/01/2012 dated 12th January, 2012 is concerned, we find that the same relates to intra Zonal transfer and does not relate to an inter zone movement. Even this circular confers the discretion on the Sector Inspector General in clause (f) which provides that in specific cases, the Sector Inspector General may on requests made in request room or during inspection/visit or on administrative grounds issue posting/transfer with respect of all ranks upto Inspectors. Therefore, no absolute right is conferred under these guidelines even qua transfers.

5. The petitioner has asserted an absolute right to a strict implementation of afore-noticed guidelines. We, however, find that the guidelines for positing/transfer of the CISF personnel dated 15th February, 2012 are concerned, the same also postulate posting otherwise then in strict compliance of the guidelines. Clause 12 contains General Instructions with regard to the positing, the relevant extract whereof is reproduced as follows:-

12. GENERAL

i) Due to non availability of adequate vacancy in the Zones it may not always be possible to adhere to the prescribed guidelines. In such circumstances, the NGOs due for home zone posting will be posted to their home zone on longer out of home zone tenure basis on merit.

6. So far as the spirit, intendment and object of the guidelines dated 15th February, 2012 are concerned, it has been noted that the Central Industrial Security Force is a premium security agency of the country which provides security to vital installations especially which are hypersensitive and sensitive from the security point of view. It is also noted that having regard to the duties and responsibilities required to be performed by the CISF personnel, they are liable to be deployed "at any place within India and Abroad." CISF has units all over the country in almost all the States. In order to maintain a balance and make system that there is a mix of personnel belonging to the home zone and out of home zone in a unit, the CISF had issued these " Broad Guidelines" regarding transfer and tenure of posting of the personnel. Clause 9 thereof provides that these guidelines are subject to security considerations, availability of vacancies, new inductions, administrative and operational needs and public interest.

7. Our attention has been drawn to Section 15 of the Central Industrial Security Force Act, 1968 which reads as follows:-

15. Officers and members of the Force to be considered always on duty and liable to be employed anywhere in India. (1) Every member of the Force shall, for the purpose of this act, be considered to be always on duty, and shall, at any time, be liable to be employed at any place within India.

(2) Save as provided in section 14, no member of the force shall engage himself in any employment or office other than his duties under this Act.

8. It is therefore obvious under the statutory provisions that a CISF personnel can be deployed at any place within or outside India according to the need and requirement of the force. It is trite that transfer is an exigency of service and no person has an absolute or exclusive right to be posted at a particular place.

9. As noted, these guidelines themselves stipulate that CISF is a force with all India character to which personnel from all parts of India are recruited. The guideline dated 15th February, 2002 have repeatedly emphasized that "on administrative grounds and in the interest of operational necessity of the force, the personnel can be posted anywhere in India.

10. The petitioner's contention that the respondents have to strictly enforce each and every word of the guideline dated 15th February, 2012 irrespective of administrative or operational requirement is devoid of any legal merit.

11. Before us, learned counsel for the petitioner has stated that he was posted out of home zone and in a hard zone with effect from September, 2008 stating that he was brought to his present unit in Delhi by a movement order dated 30th June, 2011. It is contended that the requirement of completing a tenure which is to the extent of three years in a unit is mandatory and the respondents cannot deviate from the same.

12. In this regard he drew our attention to the judgment dated 24th January, 2011 passed in WP (C) No. 10331/2009, Rajiv Kumar vs. Union of India & Others. Perusal of the judgment would show that the judgment was passed in the facts and circumstances of the case. The writ petitioner of this case, i.e., Rajiv Kumar had challenged the transfer order on grounds of mala fide and had alleged that the same was an act of retaliation to teach Rajiv Kumar a lesson for claiming transport allowance and filing the writ petition with this regard thereto. Rajiv Kumar had also set up a plea of hostile discrimination on the ground that others who had spent more time at the Unit, had been retained in Delhi. There is no such issue in the present case. Even Rajiv Kumar's petition was dismissed by the Court.

13. The learned counsel has placed strong reliance on the observations made in para 23 of the Rajiv Kumar (Supra) to the effect that the transfer policy does not require three years posting at a particular place and that it contemplate a tenure of three years in a city. As noted above, the policy confers discretion upon the respondents to deviate from the policy depending on the force exigency and the need based assessment of the matter by the CISF.

14. Mr. Sachin Datta, learned counsel appearing for the respondents has placed before us a decision dated 15th July, 2011 in WP (C) No. 2188/2011, HC Shirpal Singh vs. Union of India & Others wherein the same Circular (as is relied upon by the petitioner) and the guidelines relating to transfer of the CISF personnel arose

for consideration. This Court noted the statutory requirements u/s 15 of the CISF Act. In the context of the guidelines and the policy relied upon by the petitioner, the following observations were made in this judgment which valuable light on the issue and would bind adjudication upon the subject matter of this case:

4. But, the policy clearly noted that as per Section 15 of CISF Act 1968, since every member of a force has an all India liability to serve, on administrative grounds and in the interest of operational efficiency of the force a force personnel can be posted anywhere in India, irrespective of the guidelines.

5. The policy is logical. It lays down guidelines pertaining to posting, but keeps into account the larger public interest and thus, if administrative grounds or operation efficiency so requires, the policy can be deviated from.

6. One issue which arises for consideration, is whether the policy can be deviated from; but as an ancillary issue which was argued as the main issue is somewhat different.

22. Law of judicial intervention in transfer or posting is clear. Even if there is a transfer policy, the same cannot be enforced as a statute. It is subject to exigencies of services. Instant transfer policy itself states that it is a guideline to be followed and various stipulations therein would be subject to exigencies of service. Transfer policy also clearly recognizes that force personnel of CISF have an All India liability to serve.

The above observation supports the conclusion drawn up by us as noted hereinbefore.

15. Another submission has been made by learned counsel for the petitioner to the effect that he has not been permitted to serve in his home zone in terms of the above guidelines. We are informed that the petitioner's home zone is "North Zone".

We have set out hereinabove the postings of the petitioner. This includes postings from 1995 to 1999 in Udaipur and Chittorgarh respectively which are in the state of Rajasthan. The petitioner contends that at the relevant time when he underwent these positing, Udaipur and Chittorgarh were placed in the West Zone and that on account of subsequent change in the zoning, the states of Rajasthan has been included as part of the North Zone. It is an admitted position that as on date, Udaipur and Chittorgarh are in the North Zone.

16. HC Shirpal Singh had urged a vested right on account of his having been treated in the official records in a different zone. In this regard, in paras 15 & 16 of HC Shirpal Singh (Supra), the court had observed as follows:-

15. So understood, keeping in view the fact that all force personnel of CISF have an All India liability to serve, but to bring transparency in the transfer policy the department divided the country into 4 zones, would not vest any right in any person of the kind, claimed by the petitioner.

16. If the zones are re-drawn, service rendered in the past in a particular place would be deemed to be service rendered as per the re-drawn boundaries of a zone.

17. In view of the above principles, the petitioner's objection that his tenure between 1995 to 2002 are outside his home zone is devoid of legal merits and is hereby rejected.

18. This writ petition fails for yet another reason. The perusal of the posting of the petitioner would show that apart from single positing in Jammu & Kashmir, the petitioner in his 25 years of service has served only soft postings. This fact by itself would not entitle the petitioner to claim any posting. Given the permissible discretion to the authorities under the statutory as well as the guidelines, the respondents are entitled to post the petitioner to such place where he is most needed. The petitioner is bound by the force discipline.

19. For all these reasons, we find no merit in this petition and application which are hereby dismissed. At this stage, the petitioner submits that he may be given a period till 1st July, 2013 to settle his family affairs and thereupon join his place of posting. We, accordingly, direct that the petitioner shall ensure that he joins his place of posting in terms of the order dated 31st March, 2013 on or before 1st July, 2013.

No further extension shall be granted to the petitioner.