

(2018) 04 OHC CK 0051
In the Orissa High Court
Case No : W.P.(C) No.10537 of 2017

DR PRASANT KUMAR ACHARI

APPELLANT

Vs

UNION OF INDIA AND OTHERS

RESPONDENT

Date of Decision : 09-04-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 04 OHC CK 0051

Hon'ble Judges : S.N.PRASAD

Bench : Single Bench

Advocate : Sidharth Sankar Mohapatra, P.Mohapatra, P.K.Hazary, Mr.J.K.Rath, Chandrakanta Pradhan,

Final Decision : Dismissed

Judgement

S.N.Prasad,J.

1. This writ petition is for quashing the order of transfer dated 21.4.2017 under Annexure-1 so far as the petitioner is concerned and to quash the

order dated 29.5.2017 under Annexure-7 with further direction upon the opposite parties to transfer the petitioner either of the places of choices given

as per the option dated 10.12.2016 under Annexure-3.

2. Brief facts of the case of the petitioner, as per the pleadings made in the writ petition, is that he has been appointed as Medical Officer in Central

Reserve Police Force on 29.9.1997 and is discharging his duty as a doctor being posted in different places of the country. The petitioner while

discharging his duty in 127 Battalion of CRPF has been transferred to 2nd Battalion of CRPF vide order of transfer dated 21.4.2017 who is now being

deployed in Sukma in the state of Chhattisgarh. The petitioner on earlier round has approached this Court by filing writ petition being W.P.(C)

No.7856 of 2017. The petitioner, in pursuance to the Summer Chain Transfer Policy, has submitted his option to be posted in five places i.e.

Composite Hospital CRPF, Hyderabad; Composite Hospital CRPF, Bhubaneswar, Medical Dte, Delhi, GC Pinjore and Composite Hospital

CRPF,Bangalore and this Court while disposing of the writ petition vide order dated 2.5.2017 has directed the opposite party to consider the

representation and pass appropriate order within period of three weeks from the date of communication of the order. According to the petitioner, the

order has been passed on 29.5.2017 but without considering the request made by the petitioner for his choice of posting, hence this writ petition has

been filed assailing the order of transfer dated 21.4.2017 and the subsequent order dated 29.5.2017, in terms of the order passed by this Court in W.P.

(C) No.7856 of 2017, inter alia, on the ground that the order dated 29.5.2017 is not speaking since the place of posting, on the basis of the request

made by the petitioner in terms of the transfer policy related to chain transfer, has not been considered. The authorities have only stated in the order

dated 29.5.2017 related to the Composite Hospital,CRPF, Bhubaneswar and Bangalore but there is no whisper regarding his posting either at

Composite Hospital,CRPF, Hyderabad or GC Pinjore and as such the order dated 29.5.2017 cannot be said to be sustainable in the eye of law.

The petitioner was posted in Left Wing Extremist (LWE) area that comes under category B and as such in pursuance to the chain transfer policy he

ought to have been posted at soft/choice location. According to the petitioner, he has already completed his posting by remained posted at Left Wing

Extremist area where present 127 Battalion is located i.e. at Bhanjanagar, Ganjam in the State of Odisha and as such he ought to have been posted in

soft/choice location as per the transfer policy as contained in scheme No.2(iv) of the Standing Order No.7 of 2014, which according to the petitioner,

is to be followed in its letter and spirit in transparent manner without any bias. He has also raised ground of jurisdiction, since according to him the

order has to be passed by the Director General but the order of transfer has been passed by the D.I.G.(Pers) not by the Director General, hence the

order is without any jurisdiction, the order of transfer is fit to be struck down.He further submits by reverting of the version of the opposite party that

due to non-availability of vacancy in the choice place of posting he has not been transferred, but according to him the place where the petitioner has

given his choice for his posting is being occupied by the contractual engagee and as per the communication dated 19.4.2011 the contractual appointees

are to make room for the direct recruits and the petitioner being a direct recruit cannot be given go by if the post has been occupied by the

contractual engagee.

He further submits by replying upon a note given by the Director General of the CRPF where he has given remark that there were cases where

personnel have already served their tenure in Left Wing Extremist but they have got a repeat posting after availing soft posting. Zone and Sector

office to ensure this does not happen. By referring to the same under Annexure-8 it has been submitted that the authorities while considering the order

of transfer has not complied to the observation made by the Director General, hence on this ground also posting of the petitioner from Left Wing

Extremist area to the Left Wing Extremist are i.e. from 127 Battalion, Ganjam to 8th Battalion, Sukma which is clear violation of the instructions of the

Director General.

Further ground has been taken that the persons who are posted in the static place have not been disturbed while the petitioner has been disturbed even

he has been posted at LWE zone and as such he ought to have posted in the static place of posting as per the Standing Order No.7/2014. In response,

learned counsel for the opposite party who on the strength of the counter affidavit and additional affidavits, has vehemently opposed the contention of

the petitioner by submitting that although the Standing Order No.7 of 2014 is there, the transfer since an incidence of service, the employee cannot

claim his posting as matter of right in particular place. The petitioner since worked under the disciplined force and as such as per the requirement he is

to be posted.

He contends that the petitioner has been posted in the static area almost for 20 years i.e. he remain posted more than 11 years with effect from

7/2001 to 4/2013 in the static location, he remain posted in the State of Odisha for more than 8 years, while posting under 127 Battalion he remained at

Composite Hospital, Bhubaneswar for a period of 5 months during the year 2014. He was also posted in the CH Bhubaneswar from June, 2009 to

April, 2013 and as such keeping this fact into consideration the authority has not considered his choice place of posting.

He submits that the provision made in the Standing Order No.7/2014 is not mandatory rather it is to be followed as far as it is possible however there is stipulation that the transfer policy should be followed strictly in letter and spirit but the authority while posting one or the other officers is to take into consideration that the officers who are posted in locations at Category-A may get benefit of posting in the static location and keeping this fact into consideration which is largest interest to safeguard interest of the all the persons. The petitioner's choice has not been acceded to however he has not posted at Bhubaneswar since he has not completed six years which is the cooling period.

So far as Bangalore is concerned, there is no post available. So far as other places of posting is concerned, same is also being occupied by the contractual employee, keeping this fact into consideration the petitioner has not been given choice posting. He submits that even after going through the policy as contained in Standing Order No.5/2017 it has not stipulated that the posting is to be given on the basis of the choice, however, the petitioner has given his option to be posted in 5 places but that does not confer any right upon him that he shall be posted according to his choice.

He while reverting the argument advanced by the learned counsel for the petitioner that the order passed by the authority is not by the Director

General but the stipulation made in the guideline is that the order is to be passed from the Directorate General and it is not the Director General, here

in the instant case, the order has been passed by the Directorate General under the power of delegation of I.G. (Personnel) and as such it cannot be

said that the order has been passed without jurisdiction. So far as the argument advanced on behalf of the petitioner that pick and chose policy has

been adopted, it has been submitted that the no pick and chose policy has been adopted, rather it is on the basis of the administrative decision the order

of transfer has been passed. He submits that so far as cases of officers figured at serial nos.20,21,22,32,37,38,39,41, 42,43,46,48 and 49, they all have

been transferred and posted and although same has not been referred in the order impugned but he, by referring to the statements made in the

additional counter affidavit, has submitted that proper explanation of transfer to such officer has been mentioned and explained at paragraph-4. So far

as other officers are concerned, some of them have been retained on functional requirement and on administrative grounds and that is the exclusive

domain of the authority to post one or the other officers on administrative ground. On the basis of this argument, it has been submitted that the

petitioner has not been able to make out a case for interference with the order.

3. Heard learned counsel for the parties and on appreciation of the their rival submissions, it is evident from going through the pleadings made by the

authority that the petitioner has been appointed as Medical Officer and now he is working as the Chief Medical Officer(Selection Grade) at 127

Battalion at Ganjam in the State of Odisha who has been transferred to 2nd Battalion, Sukma vide order dated 21.4.2017. The petitioner has taken

ground of bias, pick and chose method and non-transparency. The petitioner's main contention is that he has given option of 5 places to be posted

in pursuance to the policy decision of the opposite parties which contained in Standing Order No.7 of 2014.

The petitioner, against the order of transfer dated 21.4.2017, has approached this Court by way of filing W.P.(C) No.7856 of 2017 and this Court

while disposing of the writ petition dated 2.5.2017, has directed the opposite party no.2 to consider his representation and take decision within

stipulated time, in turn thereof, the order dated 29.5.2017 has been passed rejecting the claim of the petitioner, as such the order dated 21.4.2017 and

the order dated 29.5.2017 are challenged in this writ petition.

4. Before going into the rival submissions of the parties, it would be relevant for this Court to make reference of the transfer policy as contained in

Standing Order No.7/2014. The main features of the policy are:

(i) Transfer policy should be followed strictly in letter and spirit in a transparent manner without any bias.

(ii) Posting/Transfer should be impartial and based on the past posting particulars of an officer.

(iii) Normal tenure from Asst.Comdt. to DIG would be 03 years. No officer should be allowed to continue for more than a period of 03 years at a

stretch except Training Institution/Intelligence Setup/Parliament Duty, Group/Special Duty,Group/Signals/Legal Cells and COBRA. The tenure of

officer posted in Training Institution/Intelligence Set-up/Parliament Duty, Group/Special Duty,Group/Signals/Legal Cells and COBRA would be 04

years.

(iv) Officers who are posted in locations at Category-A shall be given posting at

soft/choices location only after completion of normal tenure. The officers posted in locations at Category-B shall be considered for soft/choice posting only after accommodating officers posted in locations at

Category-A i.e. preference for choices/soft posting shall be given to officers posted in locations at Category-A.

(xii) Cooling off period will be six years for posting to the previous place of posting.

(xviii) Transfer applications shall be routed through concerned Sector/Zonal HQrs only with their recommendations. Competent authority to transfer.

(vi) Transfer of Medical Officer up to the rank of CMO(CG) excluding Specialists and CDMO with PG qualification will be decided by the

Directorate General.

6. Director General reserves the right to relax one or more of the above guidelines, at his discretion on administrative or operational grounds.â? The

petitionerâ??s contention is that in pursuance to the transfer policy as contained in Standing Order No.7/2014 he has submitted his option by giving

five places i.e. CH Hyderabad or CH Bhubaneswar, or Medical DTE, Delhi, or GC Pinjore or CH Bangalore as would be evident from the

representation made on 10.12.2016 to the IG/Director(Medical, CRPF, New Delhi. The petitioner has given his option in terms of the communication

dated 25.11.2016 Annexure-2.

The grievance of the petitioner that the authority has transferred him from 127 Battalion to the 2nd Battalion which is situated at Sukma in the State of

Chhattisgarh, being aggrieved with the same, he has approached to this Court by filing writ petition being W.P.(C) No.7856 of 2017 and in terms of

the order passed by this Court, the authority has passed order dated 29.5.2017.

5. This Court has thought it proper to discuss about the jurisdiction of this Court of the power of judicial review conferred under Article 226 of the

Constitution of India in the matter of transfer.

Reference may be made to the judgment rendered by the Honâ??ble Supreme Court in the case of Mrs. Shilpi Bose and others â?"vs-State of Bihar

and others, reported in AIR 1991 Supreme Court 532 whereby and where under at paragraph-4 the Honâ??ble Apex Court has been pleased to hold

that the Courts should not interfere with a transfer order 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 not 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.

In the case of Union of India and others â?"vs- S.L.Abbas reported in (1993)4 SCC 357 wherein at paragraphs 6 and 7 the Honâ??ble Supreme

Court held that the an order of transfer is an incident of Government service who should be transferred where, is a matter for the appropriate

authority decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with

it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a

person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of

administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not

confer upon the government employee a legally enforceable right.

In the case of Mohd. Masood Ahmad â?"vs- State of U.P. and others reported in(2007)8 SCC 150 wherein at paragraphs 4 and 7 it has been laid

down that interference by the courts with transfer orders should only be in very rare cases, it should not be interfered with ordinarily by a court of law

in exercise of its discretionary jurisdiction under Article 226 unless the court finds that either the order is mala fide or that the service rules prohibit

such transfer, or that the authorities who issued the orders, were not competent to pass the orders. In the case of Government of Andhra Pradesh

â?"vs- G.Venkataratnam reported in (2008)9 SCC 345 wherein it has been laid down by the Honâ??ble Supreme Court that if the transfer neither

suffers from violation of any statutory rules nor can it be described as mala fide by any stretch of imagination, the orders needs no interference.

In the case of Novartis India Limited â?"vs- State of West Bengal and others reported in (2009)3 SCC 124 wherein the Honâ??ble Supreme Court

has been pleased to hold at paragraph-34 that the transfer is an incident of service, unless an order of transfer is passed contrary to the provisions of the statutory rule or settlement, the same should not be interfered with.

6. In the light of this settled legal position vis-à-vis the Standing Order No.7 of 2014 the fact of the case of the petitioner has been examined by this

Court. It is evident from the Standing Order No.7/2014 that it is by way of executive instruction although there is stipulation under the provision of the

guideline no.2(i) to the effect that the transfer policy should be followed strictly in letter and spirit in a transparent manner without any bias but in the

ultimate line of the said policy decision it has been stipulated that the Director General reserves the right to relax one or more of the guidelines, at his

discretion on administrative or operational grounds.

If the guideline no.2(i) will be read it would be clear that the Standing Order No.7 of 2014 is not having its statutory force rather it is by way of

executive, instruction. Case of the petitioner is that he, while working under the 127 Battalion of the CRPF which falls within the jurisdiction of the

district of Ganjam in the State of Odisha, was transferred by virtue of the order of transfer dated 21.4.2017. Petitioner has challenged the said order of

transfer on the ground that the petitioner, who has exercised option vide Annexure-3 dated 10.12.2016, has not been given effect to by the authority.

This Court while examining the policy decision under Annexure10 has nowhere found that the transfer is to be made on the basis of the option rather

it is by way of policy decision to consider in the way of chain summer transfer. However, option has been sought for from the Medical Officers to

submit five choice places as would be evident from Annexure-2 dated 25.11.2016, in turn thereof, the petitioner has given request place of posting,

first at CH Hyderabad, second CH Bhubaneswar, third Medical Dte.Delhi, fourth GC Pinjore and fifth CH Bangalore in preference wise. It is evident

from the order impugned that the complaint made by the opposite party that the petitioner has been posted in static location for more than 11 years

which has been reflected by way of table below: