
(2011) 07 DEL CK 0442

In the Delhi High Court

Case No : Writ Petition (C) No. 2188 of 2011

HC Shripal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Central Industrial Security Force Act, 1968 — Section 15

Citation : (2011) 07 DEL CK 0442

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Sourabh Ahuja, for the Appellant; Sunil kumar, CGSC and Rajiv Ranjan Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Let us note the undisputed facts.

2. Vide Policy Circular No. 1/2008 dated 28.1.2008, CISF has notified, guidelines pertaining to transfer of its force personnel.

3. Pertaining to those force personnel who are assigned "North Zone" the policy stipulates that their tenure would be divided in 4 components. First tenure; of 8 years would require these officers to serve in Units in out of home zone. Thereafter, the second tenure would require these officers to be deputed in units within their home zone. The third tenure requires the officers to be posted in units out of home zone for 8 years, and the last being the 4th tenure would require these officers to be stationed within the home zone.

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.

7. The same is: Whether it is permissible to shift a particular place from one zone to another? And further, whether the effect thereof would be prospective or retrospective?

8. Having joined service on 7.7.1982, and allocated the home zone; "North Zone", Petitioner served in Dhanbad, Pradip, Ranchi, all 3 cities in the East Zone. Thus for the first 7 years, the Petitioner served in units outside the home zone.

9. From 1.8.89 till 8.6.1994 the Petitioner performed duties at Vindhanagar, which at the relevant time was not a part of North Zone i.e. the home zone of the Petitioner. It was only when office order dated 6.10.2009 was issued that Vindhanagar was placed in the North Zone. The reason was the expansion of CISF units and induction of more Battalion as also administrative and operational control shifting some place inter-se between headquarters at Mumbai and Delhi.

10. Since from 1.8.1989 till 8.6.1994 Petitioner was treated as having worked in North Zone, the home zone of the Petitioner, treating as per policy that the Petitioner had completed his second tenure i.e. 10 years in the home zone, and additionally for the reason Petitioner's working at IGI Airport was far from satisfactory, the Petitioner has been found unfit for rendering duty at an Airport and has been posted to Vizag, which transfer was suspended for a period of 6 months on account of the scheduled marriage of elder daughter of the Petitioner.

11. Now, learned Counsel for the Petitioner concedes that it is permissible for the employer, on account of the operational and administrative control, to shift one region operational command to the other i.e. change the boundaries of the various zones in which India stands administratively divided by the department, but would urge that implementation thereof has to be prospective.

12. Why should the implementation be prospective? Learned Counsel answered that if a person has worked at a place which is in a different zone at the point of time when the service was rendered, a vested right would accrue to the person to have it treated in the official record that said service was rendered in a different zone.

13. Now, a vested right is one which cannot be taken away by legislating retrospectively.

14. For example, a grant is treated in law as in perpetuity and when the law stands, the grant is made. The grantee can allege that at the point of time he took grant, the same was in perpetuity and based on said understanding he took the grant and this formed the consideration which he gave to the grantor and

thus, any revision in law, has to be prospective. As against that, a law, for example, a Rent Control law may protect the grantee and an amendment takes away the protection. Such an amendment cannot be said to be taking away a vested right for the reason the person concerned acquired the right under the grant, and but for the Rent Control law he would have faced an action at law for ejectment when the tenure of the lease expired.

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. Thus, the petition must fail on this account.

18. It must fail even on the other account, inasmuch as the counter affidavit filed would reveal that Petitioner's tenure at the IGI Airport has been far from satisfactory, and conceding the same to be satisfactory, learned Counsel for the Petitioner urged that this may justify Petitioner being removed from the Airport and given duties at some other place, but in the home zone.

19. We find that apart from other misdemeanor, while on duty at Airport, the Petitioner was found twice sleeping, while on duty and on one occasion left the quarter unauthorisedly for over 9 days and submitted false medical certificates. Further 2 persons were found unauthorisedly present in his quarter.

20. If Petitioner had to be moved out from the Airport and since the liability for him to serve is on All India basis, we see no reason why he should not work at Vizag.

21. That apart, we find no malafide in the action taken by the Respondents.

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.

23. We dismiss the writ petition but refrain from imposing any costs.