
(1998) 02 MAD CK 0001
In the Madras High Court

M. Velayudham

APPELLANT

Vs

Deputy Director (Training), Central Reserve Police Force and
Others

RESPONDENT

Date of Decision : 18-02-1998

Acts Referred:

Citation : (1998) 2 MLJ 673

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—In the writ petition, petitioner seeks the issuance of a writ of mandamus, forbearing the respondents from taking any

steps in pursuance of the order No.T.IX.2/96 ESTT.2, dated 22.5.1996 issued by the second respondent.

2. The writ petition was filed on 10.6.1996.

3. In the affidavit filed in support of the writ petition, it is stated that the petitioner joined in the Central Reserve Police Force as Constable in the

year 1977. He underwent training at Baruah, Madhya Pradesh from 4.7.1977 to 14.7.1978. He was serving at various places as detailed in para 3

of the affidavit. Finally, on 27.7.1995, he was transferred to CRPF., Avadi. But, within ten months, second respondent has passed the impugned

transfer order. It was not communicated to him. He was able to get an unofficial copy, and by using that he has filed the writ petition. The transfer

order has been passed by the second respondent on the basis of some complaints against the petitioner. In the various grounds referred to in the

writ petition, it is stated that the transfer order has been passed by the second respondent on the recommendation of the third respondent, who has

made the recommendation based on the complaints made by the Force personnel. No enquiry was conducted by the second respondent, and really the transfer amounts to punishment. It is said that the transfer order has been passed before the completion of three years, i.e., within ten months. The petitioner is entitled to continue in a station for a period of three years from the date of transfer. Since the impugned order is violative of the guidelines for transfer, the good faith of the same will have to be explained by the respondents. It is also said that there is no administrative exigency requiring the transfer of the petitioner before completion of three years. In this 20 years of service, petitioner has worked in difficult areas like Punjab, Kashmir, Nagaland and Manipur. According to him, the transfer order has been passed without non-application of mind, and if it is implemented, he will be put to great hardship.

4. In the counter-affidavit filed on behalf of respondents, it is stated that though the petitioner has not completed a tenure of 3 years at Avadi, his case was taken up for transfer on administrative grounds as he was found not professionally sound as a Training Instructor and also due to his involvement in undesirable activities, as intimated by the Additional D.I.G., Group Centre, CRPF, Avadi regarding the appointment of one G. Thukkan, a candidate, for the post of Water Carrier. It is further said that there had been various complaints against the petitioner. It is also said that the transfer order of the petitioner dated 22.5.1996 was received in the third respondent's office on 4.6.1996, and copy of the same was given his company commander, for intimation to the petitioner. Petitioner was intimated about his transfer on 5.6.1996, and he was at liberty to represent against the transfer order from 5.6.1996 onwards, whereas no such representation or any intimation was received till 14.6.1996. Petitioner was served with Movement Order on 14.6.1996. Afternoon, relieving him with effect from that time, It is said that the petitioner was transferred due to professional incompetency as a Training Instructor. He was also indulging in undesirable activities of demanding money from candidates coming for recruitment in CRPF. Being a Training Institution, of the disciplined Force, Personnel, especially the Instructors posted in the Respondent-Institution are required to be well-disciplined, trustworthy, loyal, and their integrity should be beyond any trace of doubt, so that they

remain as ideal examples to the Trainees. It is further said that internal intelligence reports indicated the involvement of the petitioner in stealthily

approaching candidates reporting in the Station for recruitment, promising jobs for them in C.R.P.F. in return for monetary consideration.

Apparently he had been indulging in such activities detrimental to the discipline of the Force by virtue of his long period of stay at Avadi and local

association. As complained by one G. Thukkan, petitioner demanded money for his enlistment, for the post of Water Carrier, and he threatened

him during his stay at C.R.P.F. campus and also at his home. Because of such reliable information, a case was moved for his transfer, in the interest

of administration. He was not transferred as a punishment. It is further stated that the petitioner has already enjoyed an uninterrupted home posting

from March, 1991 to February, 1995 and again from July, 1995 to the date of present transfer. It is also said that in C.R.P.F. normally a person

gets home posting hardly once during his entire service, i.e., 30 years, whereas, in the case of the petitioner, he has already enjoyed two postings at

the present station, viz., Avadi. According to the respondents, the impugned Order of transfer was issued in good faith and in the best interest of

the administration, as well as the petitioner, and, therefore, it is not liable to be interfered with.

5. Along with the counter-affidavit, copies of certain documents were also filed by the respondents wherein it has been stated that the petitioner

had been demanding money from various persons, and one or two complaints were filed against him.

6. The contempt application has been filed by the petitioner alleging wilful disobedience of an order of this Court dated 17.6.1996 in

W.M.P.No.10313 of 1996 in W.P.No.6666 of 1996 by the third respondent.

7. As per that order, a learned Judge of this Court restrained the respondents herein from taking any steps in pursuance of the transfer, order

No.T.IX/2/96 Estt.2, dated 22.5.1996, issued by the second respondent, for a period of four weeks from that date. It is seen that the very same

order was also extended by the very same Judge with liberty to the respondents to have the same vacated.

8. Alleging violation of the interim order, contempt application has been filed by the petitioner against the third respondent. When the contempt

application came up for admission, the same learned Judge directed the Registry to post the contempt application along with the writ petition.

9. Insofar as the contempt application is concerned, I do not think anything survives in this case.

10. Petitioner wants to initiate contempt for alleged violation of the order dated 17.6.1996. From the records produced by the respondents, it is

seen that the petitioner has already been transferred and relieved on 14.6.1996. Interim order, the violation of which is complained by the

petitioner, was passed only after his relief. Therefore, nothing survives in the contempt application and the same is accordingly dismissed.

11. The only other question that requires consideration is, whether the Order of transfer is liable to be interfered with.

12. The trump-card of the petitioner is that there are guidelines issued by the respondents to be followed in cases of transfer, and, so far as the

petitioner is concerned, the same have been violated.

13. According to him, he is entitled to remain in one place for a period of three years, and the impugned Order was passed within ten months from

the date of his joining at Avadi. I do not think that on the basis of the guidelines, the petitioner has got any legal right to forbear the respondents

from transferring a person. If due to administrative exigencies or for valid reasons, a transfer becomes necessary, the guidelines cannot stand in the

way of the authorities passing an order of transfer. After all, guidelines are only Departmental instructions and they have no legal force. They do not

prohibit the transfer of an employee or a member of the Force, if circumstances warrant. If it is a case of transfer under normal circumstances,

petitioner may rely on the guidelines.

14. The court's jurisdiction to interfere with orders of transfer is very limited. Unless the petitioner is able to show that the order of transfer is

tainted, with mala fides, or that it was issued with some ulterior (purpose, or that he is holding a non-transferable post, |the scope of judicial review

is very much limited.

15. In Chief General Manager v. Rajendra Ch. Bhattacharjee (1955)2 S.C.C. 532 of the judgment, their Lordships have held that "the transfer of

a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and compelling grounds

rendering the transfer order improper and unjustifiable". In that case, against the delinquent employee, there were many complaints, or certain

irregularities were found out in his work. In spite of guidelines, he was transferred. It was challenged before the Honourable Supreme Court. While

discussing the same, in para 7, their Lordships held thus:

It is needless to emphasise that a government employee or any servant of a public undertaking has no legal right to insist for being posted at any

particular place. It cannot be disputed that the respondent holds a transferable post and unless specifically provided in his service conditions, he

has no choice in the matter of posting.

.. . . .

In that case, their Lordships further said that since there were some complaints, or some irregularities were found out, the Government servant was

transferred, so that he can work in a better atmosphere.

16. In *State of M.P. v. S.S. Kourav* (1955)3 S.C.C. 270 their Lordships said in para 4 of the judgment thus:

...The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should

be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the

officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by

mala fides or by extraneous consideration without any factual background foundation.. . . .

In para 6, Their Lordships have further said thus:

...This Court cannot go into the question of relative hardship. It would be for the administration to consider the facts of a given case and mitigate

the real hardship in the interest of good and efficient administration. If there is any such hardship, it would be open to the respondent to make a

representation to the Government and it is for the Government to consider and take appropriate decision in that behalf....

17. In *State of Uttar Pradesh v. Dr. D.N. Prasad* their Lordships held that there is a presumption of *bona fides* not the order of transfer, unless it is

contradicted by acceptable material.

18. In Balwant Singh and another Vs. State of Punjab, , it was held thus:

...It is also not within the scope of permissible judicial review in such matters relating to mere transfer made by the competent authority for administrative reasons.

19. In Laxmi Narain Mehar Vs. Union of India and others, , it was a case of transfer of a scheduled Caste employee. The guidelines provided that

as far as possible the scheduled caste employees are to be posted near their home towns. In that case, the transfer of a schedule caste employee

was challenged, alleging that the Order was passed as a vindictive measure. Their Lordships held that in the case of administrative exigency, the

power of transfer is not liable to be interfered with. Respondent-Government contended that in view of the necessity for getting experienced staff,

the concerned employee had to be transferred, and the reason was sheer administrative exigency, and was not by way of punishment. Considering

the case, their Lordships held that the transfer was due to administrative exigencies and not punitive.

20. In this case, learned Counsel for petitioner submitted that at the instance of the third respondent, the second respondent has transferred the

petitioner. He further submitted that it is averred by the respondents that they received some complaints against the petitioner, and, therefore,

according to learned Counsel, if that was the reason for the transfer, that will amount to punishment, and, if the transfer is by way of punishment, he

is entitled to be heard before the order is passed.

21. The said argument also has no force. Respondents have unequivocally admitted in the counter that the transfer is only for administrative

reasons, and the same is not by way of punishment.

22. On going by the entire counter affidavit, it is further clear that what the respondents wanted was, the petitioner must work in a better

atmosphere, so that he may work without any room for further complaints from any source. An opportunity is given to him to work in a better

atmosphere by way of the impugned transfer. Therefore, I do not find any merit in the writ petition.

23. In the result, for the foregoing reasons, The writ petition as well as the contempt application are dismissed, however without any order as to

costs. Connected W.M.P. is also dismissed consequently.