

(2006) 12 MAD CK 0232

In the Madras High Court

Case No : Writ Petition No"s. 21342 and 21343 of 2005 and 13143, 13178, 17573, 17634, 19363, 19671 and 23947 of 2006, WVMP No"s. 2535 and 2536 of 2005, WPMP No"s. 23265 and 23267 of 2005 and 14735 of 2006 and M.P. No"s. 1 and 2 of 2006

T. Pitchai

APPELLANT

Vs

The Deputy Commandant/Adm., Central Industrial Security Force and Others

RESPONDENT

Date of Decision : 06-12-2006

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 72, 72(1)

Citation : (2006) 12 MAD CK 0232

Hon'ble Judges : S. Tamilvanan, J;P. Sathasivam, J

Bench : Division Bench

Advocate : M. Md. Ibrahim Ali, in WPs. 21342 and 21343/05 and 13143, 13178, 17573, 17634, 19363, 19671 and 23947/06, for the Appellant; A.S. Vijayaraghavan in W.Ps. 21342 and 21343/05 and 13143 and 17634/06, Patty B. Jeganathan, SCGSC in WPs 17573 and 19671/06, B. Shanthakumar, SCGSC in W.P. 19363/06, P. Chandrasekaran in W.P. 23947/06 and Devadoss, ACGSC in W.P. No. 13178/06, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Since the issue raised in all these writ petitions is one and the same and common, the writ petitions are being disposed of by the following common order.

2. Inasmuch as the petitioners have challenged the orders of transfer from one place to another, we are of the view that it is unnecessary to refer to the entire factual matrix as stated in the affidavits and the counter affidavits.

3. After taking us through the impugned proceedings, the provisions of the Central Industrial Security Force Act, 1968. The Central Industrial Security Force Rules, 2001 and the Circular No. 18 of 2004 (Guidelines) dated 20.11.2004 issued by the Directorate General, Central Industrial Security Force (hereinafter

referred to as "CISF"), New Delhi, the learned Counsel for the petitioner has raised the following contentions:

(i) All the impugned orders were passed by the Assistant Inspector General, CISF, who is not the competent authority to pass such orders and on this ground, all the impugned orders are liable to be interfered with;

(ii) In view of the various terms and conditions in Circular No. 18/2004 issued by the Directorate General, CISF and inasmuch as the same were not either considered or followed while passing the orders of transfer, the same are liable to be quashed.

4. On the other hand, the learned Senior Central Government Standing Counsel appearing for the respondents, by placing the records, submitted that the orders were passed only by the Directorate General, CISF and depending on the Unit/Zone, the orders were communicated by the respective Regional Officers. According to the learned Counsel appearing for the respondents, there is no jurisdictional error or flaw. It is submitted that the circular referred to by the learned Counsel for the petitioners is only guidelines, which are to be followed subject to fulfilling various conditions, viz., availability of vacancies, administrative/operational needs and public interest. It is further contended that if the petitioners have any grievance with regard to the transfers, they are free to make representations to the authorities concerned, and in fact, several representations have been made, which were duly considered and orders passed depending on merits. Accordingly, the respondents pray for dismissal of all the writ petitions.

5. Coming to the first contention, we have verified the impugned orders in all these cases. It was brought to our notice that not only the petitioners, but also nearly 2772 persons were transferred from one place to another place, one region to another region and one unit to other unit. It is also brought to our notice that all the decisions were taken by the competent authority and the same was communicated by the respective Regional officers. In this regard, it is useful to refer to Rule 72 of the Central Industrial Security Force Rules, 2001, which reads as follows:

72.Transfer: (1) Transfers of members of the Force may be made as under:

(i) of supervisory officers, by the Director General;

(ii) of and upto the rank of Head Constable from one unit to another unit under the administrative control of one Commandant, by the Commandant;

(iii) of the enrolled members of the Force from one unit to another within the Zone by the Deputy Inspector General of that Zone;

(iv) of the enrolled members of the Force from one unit to another unit within the sector by the (Inspector General) of that sector; and

(v) of the enrolled members of the Force from one unit or zone to another in the

entire Force by the Deputy Inspector General of Force Headquarters.

(2) An authority superior to the authority competent under Sub-rule (1) may make an order of transfer, annul, change or modify any order of transfer made under Sub-rule (1).

6. A reading of the various sub-clauses under Sub-rule (1) makes it clear that the competent authority has been named depending upon the category of person/persons/officers. For convenience, we refer to the specific information furnished by the respondents in W.P.No. 21342 of 2005, where in para 4 (iii), it is specifically stated as follows.

The posting order of the respondent/petitioner was originally ordered by CISF Directorate, New Delhi, 5th petitioner/respondent marking him to North Sector vide Service Order No. 60/05 dated 23.02.2005 and later he was posted to 5th Reserve Battallion, Ghaziabad, Uttar Pradesh by Deputy Inspector General, North Zone vide service order No. 74/05 dated 31.03.05, under whose jurisdiction the said Battallion comes. Therefore the respondent/petitioner has placed wrong facts before this Honourable Court and obtained stay by stating that the transfer has been ordered to North Sector 5th Reserve Battallion, Ghaziabad, Uttar Pradesh from Southern Sector, Chennai Port Trust, Chennai.

7. In view of the factual information as well as Rule 72 of the Central Industrial Security Force Rules, 2001, which we have already referred to above, we are satisfied that a decision was taken and an order was passed by the competent authority, as provided under Rule 72, and the same was also communicated by the respective Regional Officers. Accordingly, we reject the first contention raised by the learned Counsel for the petitioners.

8. Coming to the second contention with regard to Circular No. 18 of 2004, first of all, the details mentioned in the said "circular" or "guidelines" issued by the Directorate General, CISF, New Delhi have to be noted. The first paragraph of the circular makes it clear that the tenure of postings prescribed in the circular is only by way of guidelines and can be increased/curtailed on administrative grounds, operational need and in public interest. Clause 11 makes it clear that these guidelines shall be subject to (i) availability of vacancies; (ii) administrative/operational needs; and (iii) public interest. No doubt the said circular contains various aspects, viz., equitable distribution of manpower, service under home zone, out of home zone, tenure of posting in an Unit/Station, etc.

9. The learned Counsel for the petitioners heavily relied on the various clauses mentioned in the said circular and submitted that the present orders of transfer are not strictly in accordance with the conditions prescribed therein. As rightly pointed out by the learned Counsel appearing for the respondents, first of all, the circular speaks about certain guidelines which have to be followed depending on various factors, which we have already referred to in the earlier paragraph. It is not in dispute that there is no statutory rule which compels the authorities to adhere to the same in the strict sense. As stated earlier, it depends upon various

factors, including administrative/operational needs as well as public interest. Apart from this, it is also brought to our notice that an aggrieved person is permitted to make a representation to the authority concerned highlighting his grievance. In fact, it is brought to our notice that some personnel also made representations and those representations were duly considered and in some cases, the requests were accepted. In such circumstances and in view of the various terms and clauses in the guidelines and in view of the reply by the respondents, we are of the view that there is no merit in the second contention also.

10. The learned Counsel appearing for the petitioners pointed out that in so far as the petitioner in W.P.No. 17634 of 2006 is concerned, inspite of pointing out her grievance/difficulty, the same was not properly/duly considered by the authority concerned. Though the learned Counsel for the respondent has brought to our notice that her representation was duly considered and rejected, it is made clear that if there is any additional point, the petitioner is free to make a further representation. It is also made clear that if the same is permissible under the Rules, it is for the concerned authority to take a decision one way or other.

11. It is settled law that transfer is an incidence of service and the same cannot be lightly interfered with by the Courts vide *State of Rajasthan and Others Vs. Anand Prakash Solanki*, 2005 (2) ctc 349 (*K.Selva Rajan v. The Managing Director, Tamil Nadu Tourism Corporation Limited, Chennai-2 and Ors.*) and 2005 (2) CTC 467 (*M. Ameetha Begam v. The Commissioner, Marungapuri Panchayat Union, Trichy District and Ors.*). It is also not in dispute that there is no specific allegation of mala fides while passing the orders of transfer. In the absence of such specific allegation and in view of our conclusion that there is no violation or infringement of any of the statutory provisions as observed in the above said decisions, interference in the orders of transfer is either very limited or not possible.

12. In these circumstances, we do not find any merit in these writ petitions. Consequently, all the writ petitions are dismissed. No costs. Connected WVMPs and WPMPs are also dismissed.