

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1032 of 2023

In

Civil Writ Jurisdiction Case No.7027 of 2023

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Manoj Kumar Gupta Son of Om Prakash Gupta, resident of Flat No. 601 Sheela Residency, New Jakkampur, Police Station - Jakkampur, District Patna.

... .. Appellant/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, Government of India, New Delhi.
2. The Director General, Central Industrial Security Force (C.I.S.F), Block 13, CGO Complex, Lodhi Road, New Delhi 110003.
3. The Additional Director General (Head Quarter) Central Industrial Security Force (C.I.S.F), Block 13, CGO Complex, Lodhi Road, New Delhi 110003.
4. The Inspector General, Eastern Sector C.I.S.F (Head Quarter), Ranchi.
5. The Assistant Inspector General (Establishment) C.I.S.F. Block - 13 CGO Complex, New Delhi.
6. The Deputy Inspector General, Eastern Zone-1 Boring Road, Patna.
7. The Deputy Inspector General, A.S.G Bengaluru, Karnataka.

... .. Respondent/s

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C.I.S.F Act- Sec.15- post occupied by appellant is transferable- appellant's cadre liable to be deployed in OHS sector for 13 years- home sector is to be considered subject to availability of vacancies with regular posting in normal unit or station for three years extendable by one year. (Para-4,5)

Transfer is an incidence of service- the instant transfer is not punitive, malafide or motivated by extraneous consideration- transfer done by authority to satisfy the requirement of home sector and outside home sector posting- no reason to interfere with the judgement. (Para-8)

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7. The Deputy Insepector General, A.S.G Bengaluru, Karnataka.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Manoj Kumar, Advocate
For the Respondent/s	:	Dr. Krishna Nandan Singh, ASG
		Mr. Renuka Sharma, CGC
		Mr. Prakritita Sharma, JC to ASG
		Mr. Sriram Krishna, JC to ASG

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-09-2023

In law what is stated has to be restated, even if it is the obvious; lest we traverse beyond the boundaries of the jurisdiction conferred. Transfer, is an incidence of service and can be challenged only if it is malafide, a veiled punitive action, the authority ordering it, having no such power conferred or the



post being non-transferable. None of these circumstances arise in the above case and the defense of the respondent is one of better administration; to which end the pleas of an employee for compassion or leniency, has to bow down.

2. The appellant before the learned Single Judge challenged the inter sector transfer issued under signature of Additional Inspector General. The appellant is a Sub-Inspector Ministerial a non-gazetted member of the force.

3. According to the appellant, the appellant was posted in an out of home sector (for brevity 'OHS') for nine years and three months against the requirement of seven years. From 2010 to 2016, the appellant was posted to Eastern Sector at Patna and the Group Headquarters at Patna. From 01.04.2016 till April 2021, he served at Ranchi and in May 2021 he was transferred to the Eastern Zone, Patna. In anticipation of an inter sector transfer he filed representation dated 15.11.2022. His request to be retained in Patna, was on the ground of the treatment undergone by his wife in the Indira Gandhi Institute of Medical Science, (IGIMS), Patna and that he had continued in Patna only for one year and six months at this instance. Ignoring the representation, the appellant has been transferred and posted to the Airport at Bengaluru against which, he again filed



Annexure-4 representation, alleging that the transfer is premature, before completion of three years at the current place of posting and also raised the issue of his son's education, who is pursuing Class-9. The appellant filed the writ petition, pending which, his request was turned down by communication dated 04.05.2023 which was also challenged by way of a supplementary affidavit.

4. The respondents relied on Section 15 of the C.I.S.F. Act to contend that the post occupied by the appellant is a transferable one. It was also contended that for maintaining a balance there is ensured a mix of home personnel and out of home personnel in a Unit. Guidelines have been issued by Circular No. 22 of 2022 produced as Annexure-5, which are always subject to security considerations, availability of vacancies, new inductions, administrative and operational needs as also public interest.

5. An employee of the appellant's cadre is liable to be deployed in OHS sector for 13 years in total, excluding the training period. The OHS requirement is divided into a first tenure of seven years and a third tenure of 6 years. The home sector posting is at the second tenure of 12 years and remaining period of service. Home sector has to be considered subject to



availability of vacancies with a regular posting in a normal unit or station for three years at the Sector/Zonal/Group, extendable by one year. The appellant has a service of twenty-four years and four months wherein he spent twelve years and six months in his home sector and nine years and three months in OHS. He has hence to complete the requirement of a total of thirteen years in the OHS.

6. It was also contended that better medical facilities are available in Bengaluru and the studies of his son in Class-9, has been duly considered and rejected, again to maintain the balance of OHS and home sector postings.

7. The learned Single Judge found that there is a homogeneous mix of personnel, within the force, who are recruited from all parts of the country and every unit should have a fair distribution of personnel, sourced from that region and also the other regions. As per Clause 10C; the guidelines of the Circular only provides broad parameters for posting and the reigning consideration will be operational and administrative necessities. The learned Single Judge found no reason to interfere with the transfer especially noticing the well heeled proposition that transfer is an incidence of service.

8. We notice that none of the grounds we restated at



the opening paragraph, arise herein. The appellant is in a transferable post and the instant transfer is not punitive, malafide or motivated by any extraneous consideration. The appellant has been transferred by the competent authority that too to satisfy the requirement of home sector and outside home sector posting. The employer, a disciplined force also is concerned with a homogeneous mix of personnel, in every Unit it has all over the country, especially when the personnel are appointed from different areas within the country. This ensures sensitivity regarding the location as also objectivity in addressing the security concerns and implementing exact standards, in the various sensitive and secured locations, manned by the personnel of the security force.

9. We find absolutely no reason to interfere with the judgment of the learned Single Judge.

10. The appellant's counsel had been consistently urging compassion, which cannot be precipitated by proactive judicial orders. The appellant had approached the administrative authorities, who considered his case and found it to be not one worthy of surmounting or circumventing the administrative requirements of the force. We cannot sit in judgment of such administrative orders, especially, when the circumstance pointed



out, is not so compelling as to shock a reasonable person, motivating him to overcome and overstep the administrative expediency, stated.

11. The Letters Patent Appeal stands dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/-

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