

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 6TH DAY OF JULY 2022 / 15TH ASHADHA, 1944

WP(C) NO. 14666 OF 2022

PETITIONER:

AKHIL M.
AGED 39 YEARS
INSPECTOR/EXECUTIVE, CISF NO.031350194, CISF UNIT
BPCL KR COCHIN, PRESENTLY RESIDING AT QUARTER
NO.CF-3, CISF COMPLEX, IRUMPANAM, ERNAKULAM,
KERALA, PIN - 682 309.

BY ADVS.
T.SANJAY
SANIL KUMAR G.
MIDHUN R.

RESPONDENTS :

- 1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF HOME
AFFAIRS, NORTH BLOCK, NEW DELHI - 110 001.
- 2 THE DIRECTOR GENERAL/CENTRAL INDUSTRIAL SECURITY
FORCE CISF HQ
CGO COMPLEX, LODHI ROAD, NEW DELHI, PIN - 110 003.
- 3 THE INSPECTOR GENERAL/CISF
SOUTH SECTOR HEAD QUARTERS, CHPT CAMPUS, CHENNAI,
PIN - 600 013.
- 4 THE DEPUTY INSPECTOR GENERAL/CISF
CISF SOUTH ZONE HEAD QUARTERS, RAJAJI BHAVAN,
BASANT NAGAR, CHENNAI, PIN - 600 090.

- 5 THE COMMANDANT
CISF GROUP HEAD QUARTERS, KENDRIYA BHAVAN,
KAKKANAD, COCHIN, KERALA, PIN - 682 030.
- 6 THE DEPUTY COMMANDANT
CISF BPCL-KR, IRUMPANAM P.O., ERNAKULAM, KERALA,
PIN - 682 309.

BY ADV MANU S., ASG OF INDIA

OTHER PRESENT:

ASGI SRI.MANU S

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 28.06.2022, THE COURT ON 6.7.2022 DELIVERED
THE FOLLOWING:

ANU SIVARAMAN, J.

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W.P.(C).No.14666 of 2022

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Dated this the 6th day of July, 2022

JUDGMENT

1. This writ petition is filed with the following prayers:-

- "i. to declare that the petitioner is entitled to serve in CISF Unit BPCL Cochin till completion of his 3-year normal tenure as mandated in Ext P-1;
- ii. to issue a writ of Certiorari or any other appropriate writ or direction quashing Ext P-6 in respect of the petitioner prematurely transferring him to CISF Unit SCCL Singereni
- iii. To direct the 3rd respondent to reveal the cause of "administrative ground transfer" of the petitioner; "

2. Heard the learned counsel for the petitioner and the learned ASGI appearing for the respondents.

3. It is submitted by the learned counsel for the petitioner that the petitioner while serving as Inspector in the C.I.S.F. Unit BPCL, Kochi Refinery, Cochin has been transferred to C.I.S.F. Unit, SCCL, Singereni, Telengana by Exhibit P6 transfer order. It is submitted that though Exhibit P7 representation had been preferred before the 2nd respondent pointing out that the

transfer is premature and that he has not completed the normal tenure of three years in Cochin, the representation has been dismissed by Exhibit P9 order dated 10.06.2022 and that the petitioner has been served with movement order. The learned counsel for the petitioner submits that the petitioner has aged parents and his mother is bedridden. It is further submitted that his wife is undergoing hormone replacement therapy and that the treatment will be jeopardised if the petitioner is transferred. It is contended that the petitioner, who is a member of uniformed service gets a posting in his home State only very rarely and that he is able to carry out his familial obligation only during the said period. It is contended that the refusal on the part of the respondents to permit him to complete his three year tenure at Cochin is illegal and arbitrary.

4. The learned counsel for the petitioner relies on the decisions of the Apex Court reported in **Ravi Yashwant Bhoir v. District Collector, Raigad and others** [(2012) 4 SCC 407], **Punjab State Electricity Board and others v. Jit Singh**

[(2009) 13 SCC 118] and of this Court in **Sathyan A.V. v. Government of Kerala and another** [2008 (4) KHC 120] and **Malu M and others v. State of Kerala and others** [2015 KHC 590]. It is contended that Exhibit P9 is a non-speaking order and that no reasons whatsoever are stated for transferring the petitioner before his normal tenure expired. Relying on the decisions the learned counsel for the petitioner contends that a speaking order is required to be passed when this Court directs a consideration of the representation.

5. The learned ASGI appearing for the respondents submits that Exhibit P6 order of transfer is clearly on administrative grounds and the petitioner cannot claim any right to continue in a particular station for a particular tenure in view of the fact that his services are required elsewhere. It is contended that transfer is an incident of service and the scope of interference in an order of transfer is extremely limited as has been held by the Apex Court. It is further submitted that Exhibit P9 specifically considers the contentions raised by the petitioner in Exhibit P7 and it is specified in Exhibit P9 order

that the transfer is necessitated due to administrative grounds.

6. The learned ASGI also places reliance on a decision of the Apex Court in **Major General J.K.Bansal v. Union of India and others** [(2005) 7 SCC 227]. It is contended that the Apex Court had considered the precedents and had held that constitutional courts should not interfere with a transfer order, which is made in public interest and for administrative reasons, unless the transfer orders are made in violation of any mandatory or statutory rule or on the ground of *mala fide*. In the case of members of armed forces, it was held as follows:-

“12. It will be noticed that these decisions have been rendered in the case of civilian employees or those who are working in public sector undertakings. The scope of interference by the courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made.”

7. Having considered the contentions advanced and in view of the specific reasons stated in Exhibit P9 that the transfer was necessitated on administrative grounds, I am of the opinion that this Court would not be justified in interfering in an order of transfer, especially where the petitioner is a member of a uniformed service. This Court cannot enter into an enquiry as to the reasons for the transfer or the necessity for the same, in the absence of any sustainable grounds of *mala fide* or violation of any statutory provisions. The guidelines issued with regard to transfer are non-statutory in nature and in the above view of the matter, I am of the opinion that the contention raised by the petitioner that he is entitled to continue at the present station till he completes his normal tenure of three years cannot be accepted, since the respondents specifically state that the transfer is necessitated due to administrative reasons.

The writ petition fails and the same is accordingly dismissed.

sd/-

Anu Sivaraman, Judge

APPENDIX OF WP(C) 14666/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE CIRCULAR NO.22/2017 DATED 25/09/2017 ISSUED BY THE 2ND RESPONDENT.
- Exhibit P2 TRUE COPY OF THE MEDICAL TREATMENT CERTIFICATE DATED 23/4/2022 ISSUED BY THE MEDICAL OFFICER OF FAMILY HEALTH CENTER NATTAKOM, KOTTAYAM
- Exhibit P3 TRUE COPY OF THE MEDICAL TREATMENT (OPD) RECORD DATED 22/03/2022 OF GOVT. MEDICAL COLLEGE IN RESPECT OF THE FATHER OF THE PETITIONER.
- Exhibit P4 TRUE COPY OF MEDICAL TREATMENT (OPD) RECORD DATED 24/03/2022, OF DEPARTMENT OF OPHTHALMOLOGY OF GOVT GENERAL HOSPITAL KOTTAYAM IN RESPECT OF THE FATHER OF THE PETITIONER.
- Exhibit P5 TRUE COPY OF THE TRANSFER ORDER DATED 05/04/2022 ISSUED BY THE 3RD RESPONDENT.
- Exhibit P6 TRUE COPY OF TRANSFER ORDER DATED 21/04/2022 ISSUED BY THE 3RD RESPONDENT.
- Exhibit P7 TRUE COPY OF REPRESENTATION DATED 23/04/2022 PREFERRED BY THE PETITIONER ADDRESSED TO THE 2ND RESPONDENT THROUGH DG'S E-MAIL.
- Exhibit P8 TRUE COPY OF JUDGMENT DATED 20/03/2017 IN WP NO.29239/2016 ISSUED BY HIGH COURT OF KERALA.
- Exhibit P9 A TRUE COPY OF ORDER NO.(12565) DATED 10.6.2022 ISSUED BY THE 2ND RESPONDENT.

True copy

PS to Judge