



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on: 10.04.2024*
Judgment Pronounced on: 24.04.2024

+ W.P.(C) 4793/2024 & CM 19609/2024

PAWAN KUMAR MATHURI **Petitioner**

Through: Mr. Ravindra Kumar Singh, Adv.

Versus

UNION OF INDIA & ORS. **Respondents**

Through: Mr. Rakesh Kumar, CGSC with
Mr. Sunil, Ms. Perna Dhall, GP,
for UOI with Sanjay Kumar,
(Officer)(Law), CISF

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SAURABH BANERJEE, J.

1. As per facts, the petitioner joined the Central Industrial Security Force¹ on 23.08.2010. In the year 2018, while being posted in Agra Airport, the petitioner started suffering from cold and cough and was told by the Doctors that the same was due to cold air from air conditioners. As such, he was transferred to Indira Gandhi International Airport, New Delhi².

¹ Hereinafter referred to as "CISF"

² Hereinafter referred to as "IGI Airport"



2. Upon visiting All-India Institute of Medical Sciences, New Delhi on 23.08.2021, the petitioner was again advised to stay away from the cold air from air conditioner. It is the case of the petitioner that as he was being harassed by two officials of the CISF, i.e. respondent nos.3 and 4, he filed an appeal to the Director General, CISF, which was of no avail. Irrespective thereto, the petitioner was declared in SHAPE II Category in medical fitness for the year 2023. Thereafter, the respondents transferred the petitioner lastly to Sivagangia, Tamil Nadu on 20.03.2024.

3. Aggrieved thereby, the petitioner has preferred the present petition under Article 226 of The Constitution of India seeking to set aside the aforesaid order passed by the Deputy Inspector General/Office of CISF, IGI Airport, New Delhi-respondent no.4 and further a direction to the Union of India/ respondent no.1 to provide him transfer as per Guidelines for transfer/ posting of the CISF personnel vide Circular number 22/2017 dated 25.09.2017 vide letter No.E-38011/1/2017/ Estt.II/134³.

4. Primarily, it was the contention of the learned counsel for the petitioner that since the petitioner has already served 13 years, his posting should be in Home Sector as per the Guidelines, more so, considering his health condition.

5. *Per-contra*, leaned counsel for the respondents submitted that the petitioner herein is a habitual miscreant showing short temper and indiscipline as also that since he has been declared in SHAPE II Category, the IGI Airport being a hypersensitive area requiring personnel in SHAPE I Category, the petitioner cannot be posted there. He also submitted that

³ Hereinafter referred as “*Guidelines*”



transfer, being an exigency of service, nobody like the petitioner can ask for a choice posting.

6. We have heard the learned counsel appearing for the parties as also gone through the documents on record.

7. Before proceeding further, we wish to note that we cannot be oblivious of the fact that transfer, being an exigency of service, is neither a matter of right nor a matter of choice [Re.: *S.K. Naushad Rahman vs Union of India* (2022) 12 SCC 1; *Union of India vs SL Abbas* (1993) 4 SCC 357]. Particularly whence, anyone like the petitioner who once dons the Uniform and is in the Discipline Force, are/ is bound to serve within the length and breadth of the Nation, leaving hardly any scope of choice for themselves/ himself. In effect, everyone like the petitioner herein is bound to give precedence to the direction(s) issued by the respondents qua their place of transfer.

8. In fact, since the petitioner herein is working at the CISF unit, IGI Airport, New Delhi, which admittedly is classified as a hypersensitive area, the petitioner is required to be in SHAPE I Category, the same, thus requires caution and sensitivity on the part of CISF, leaving very little scope of interference by us. Under such circumstances and considering that the petitioner has been declared in SHAPE II Category, it is highly improbable for the CISF to continue with the posting of petitioner at the IGI Airport, New Delhi or any such place. Even otherwise, as per trite law, we, under Articles 226 and 227 of The Constitution of India have extremely minimal scope of interference in matters of transfer, and that too only lest there are/ is any element of arbitrariness, bias, mala-fide or likewise. [Re.: *Major General J.K. Bansal v Union of India* (2005) 7



SCC 227; *SGT. Navneet Kumar Singh vs Union Of India & ORS* 2022:DHC:3159-DB; *Ajaypal vs Union of India* 2024:DHC:2889-DB]

9. Interestingly, though the petitioner has referred to the Guidelines wherein the term of anyone like the petitioner has been segregated on the basis of tenure in four parts in Clause 12⁴. However, since the said Transfer Policy is only a Guideline for the benefit of those personnel like the petitioner, no benefit can accrue therefrom in his favour. In any event, the said Transfer Policy, being in the nature of a Guideline, is not mandatory but directory in nature to aid and supplement the existing position, especially, in view of the personnel like the petitioner in the CISF.

10. Furthermore, as per Clause 16⁵ of the aforesaid Guidelines also merit list of the personnel like the petitioner maintained by the CISF, the petitioner has low merit for Home Sector/ Eastern Sector. It is thus that the petitioner has been posted out of his Home Sector. Additionally, as

⁴ *BASIC TRAINING PERIOD: NEITHER TO BE COUNTED IN HOME SECTOR NOR OUT OF HOME SECTOR*

- a) *1st Tenure - 07 Years in Units in Out of Home Sector (excluding basic training)*
- b) *2nd Tenure - 12 Years in Units in Home Sector*
- c) *3rd Tenure - 06 years in Out of Home Sector*
- d) *4th Tenure (Remaining Service)- Home Sector*

⁵ a) *1st Home Sector tenure will be given to persons after they have completed 1st Out of Home Sector tenure. However, if number of persons who are so eligible is more than vacancies available in that Home Sector, then persons higher in merit i.e. more length of service in 1st Out of Home Sector(OHS) service will get priority and persons with less 1st Out of Home Sector service will have to wait. This may also be restricted by criterion that total number of persons belonging to that Home Sector should not be more than 60%. Further restrictions due to operational or administrative needs would also apply.*

b) *The number of personnel posted to a unit should be so regulated that not more than 30 % of personnel from 4th tenure are posted in a unit.*

c) *As clarified above, a person can be considered for Home Sector in his last tenure provided vacancies are available. Criterion for that will be Net Out of Home Sector posting (Net OHS = 1st OHS months + 2nd OHS months - 1st HS months). Persons with more Net Out of Home Sector posting will be given priority subject to operational or administrative requirements.*



provided therein, the 1st Home Sector tenure is given to persons after they have completed 1st out of Home Sector tenure. This is, however if number of personnel who are so eligible is more than vacancies available in that Home Sector, then persons higher in merit i.e. more length of service in 1st out of Home Sector (OHS) service are given priority than personnel with less out of Home Sector tenure.

11. Interestingly, we are told that there are many other CISF personnel like the petitioner who are placed much higher than the petitioner herein have been working in different sectors and awaiting their Home Sector postings. Therefore, giving precedence to the petitioner under the said existing circumstances will cause an unwarranted upheaval and disturb the existing list of such personnel like the petitioner maintained by the CISF.

12. Accordingly, the petition is dismissed in terms of above along with pending application.

SAURABH BANERJEE, J.

V. KAMESWAR RAO, J.

APRIL 24, 2024/rr