

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF NOVEMBER 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR.JUSTICE ANANT RAMANATH HEGDE

W.A. No.655 OF 2021 (S-TR)

IN

W.P. No.3562 OF 2021 (S-TR)

BETWEEN:

1. THE SECRETARY
MINISTRY OF HOME AFFAIRS
NORTH BLOCK
NEW DELHI-110001.
2. THE DIRECTOR GENERAL OF BSF
BLOCK NO.10, CGO COMPLEX
LODHI ROAD, NEW DELHI-110003.
3. THE INSPECTOR GENERAL
STC, BSF YELAHANKA
BENGALURU-560063.

... APPELLANTS

(BY MR. M.B. NARGUND, ASG FOR
MR. RAJASHEKAR S, CGC)

AND:

MR. P.S. VENKATESH
S/O SANNAIAH
AGED ABOUT 58 YEARS
INSPECTOR, BSF NO.841026016
WORKING AT OFFICE OF
INSPECTOR GENERAL

SPECIAL OPERATIONS
YELAHANKA
BENGALURU-560063.

... RESPONDENT

(BY MR. H. SUNIL KUMAR, ADV., C/R)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT, PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 24.05.2021 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN W.P. NO.3562/2021 (S-TR) AND IN REVERSAL OF THE SAME DISMISS THE WRIT PETITION AND GRANT SUCH OTHER AND FURTHER RELIEFS AS THIS HON'BLE COURT DEEMS FIT AND PROPER UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE.

THIS W.A. COMING ON FOR PRELIMINARY HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This intra court appeal has been filed against the order dated 24.08.2021 passed by the learned Single Judge by which the writ petition preferred by the respondent has been allowed and the movement order dated 08.02.2021 by which the respondent was directed to report for temporary duty at Border Security Force (BSF), Odisha has been quashed.

2. Facts leading to filing of this appeal in nutshell are that the respondent joined the services of Border Security Forces (BSF) in the year 1984 as constable. The

respondent was thereafter for a period from between from 1985 till 1999 was posted at different places such as Delhi, Tripura, West Bengal, Jammu & Kashmir, Gujarat, Haryana . The Respondent for a period from 1999 till 2011 was posted in Jammu & Kashmir, Punjab, Tripura as well as Shillong. Thereafter, he was posted in the year 2012 at Bangalore where he served till 2015. The respondent was again was posted in the State of West Bengal in the year 2016-17. The respondent was posted on 02.10.2018 at Bangalore.

3. The respondent was supposed to superannuate on attaining the age of superannuation on 02.10.2020. However, the age of superannuation was extended by a period of three years. The respondent on account of enhanced age of superannuation retired in the month of April 2023. The respondent was posted at Bangalore and a movement order dated 08.02.2021 was issued by which the respondent was required to report to BSF, Odisha for temporary duty.

4. The respondent thereafter, filed a writ petition before this court in which the movement order dated 08.02.2021 was challenged. The learned Single Judge by an order dated 24.05.2021, inter alia, held that there are no extraordinary circumstances warranting transfer of respondent from Bangalore to Odisha at the fag end of his career. It was further held that the order of transfer is in contravention of the Rule 10 of the Border Security Forces (Tenure of Posting and Deputation) Rules, 2000 (hereinafter referred to as 'the Rules' for short). Accordingly, the movement order was quashed. Being aggrieved, the appellants have filed this appeal.

5. Learned ASGI submitted that out of total span of 36 years of service rendered by the respondent in BSF, the respondent has served 15 years at Bangalore. It is further submitted that in accordance with Rule 10 of the rules, the respondent was posted at Bangalore, which is his home town on 02.10.2018 and his tenure of 2 years at Bangalore as contemplated by Rule 10 of the Rules stands already concluded on 02.10.2020. It is submitted that since, the age

of superannuation is enhanced, therefore, the respondent is due to retire in the month of April 2023. It is also urged that the respondent is a member of a disciplined force and the learned Single Judge in the facts of the case erred in holding that the order of transfer either has been passed in violation of Rule 10 of the Rules or no extraordinary circumstances have been demonstrated warranting transfer of the respondent from Bangalore to Odisha at the fag end of his career. It is further submitted that that the discretion of the appellant to post a particular officer at a particular place cannot be interfered with by the learned Single Judge in exercise of powers under Article 226 of the Constitution of India.

6. On the other hand, learned counsel for the respondent submitted that the movement order has been passed in violation of Rule 10 of the Rules. It is further submitted that that there is no concept of temporary posting in BSF and the respondent is a injured soldier. It is also submitted that only 1 year 5 months is left for superannuation of the respondent. It is also urged that the

respondent has submitted a representation in the month of August 2021 to the Director General of BSF, which has failed to evoke any response.

7. We have considered the submissions made by learned counsel for the parties and have perused the record. It is trite law that transfer is a incident of service and cannot be interfered by this court until and unless the same is shown to be mala fide or is in violation of the norms or principles governing the transfer. Rule 10 of the rules reads as under:

10. Terminal Posting - Members of the force having good record of service and free from disciplinary / vigilance angle, may be given posting near their home town, two years before attaining the age of superannuation subject to availability of vacancy of the post in such place and suitability for the job as assessed by the competent authority.

Thus, from perusal of the aforesaid Rule, it is evident that the members of the force having good record of service and free from disciplinary / vigilance angle may be given posting near their home town two years before attaining the

age of superannuation subject to availability of vacancy of the post in such place and suitability for the job as assessed by the competent authority. It is not in dispute that the home town of the respondent is Bangalore. In exercise of powers under Rule 10 of the rules, the respondent was posted in Bangalore on 02.10.2018. The respondent has already completed two years of posting as prescribed under Rule 10 of the Rules. On the aforesaid date, the respondent was supposed to superannuate, however, the age of superannuation of the officers was extended on 11.09.2019. Therefore, the respondent is due to retire on April 2023. Rule 10 of the rules is an enabling provision, which has been complied with in the case of the respondent. The aforesaid provision has not been violated in any manner while issuing the movement order dated 08.02.2021. Therefore, we find force in the contention of the appellants that the movement order has not been issued in violation of Rule 10 of the Rules. The respondent is a member of a disciplined force. Out of a span of 36 years, admittedly, the respondent has spent 15 years at Bangalore. The appellants in their statement of objections have stated that the respondent is a decorated

officer and is an experienced officer and has worked in very hard areas and extreme areas of service in the country. It has also been stated that the appellants require the respondent's services for anti naxalite operations in the State of Odisha. Therefore, in view of the aforesaid stand taken by the appellants in the statement of objections, it cannot be held that no material exist on the record for transferring the respondent to Bhubaneshwar. In any case, the question as to which officer has to be posted at which place has to be decided by the employer and this court cannot substitute its discretion in place of employer's discretion. Apart from this the respondent is a decorated and an experienced officer who is a member of the BSF whose service is required by the appellants for anti naxalite operations in the State of Odisha. The order of transfer has neither been passed in violation of statutory provisions nor the same suffers from the vice of mala fides.

For the aforementioned reasons, the order dated 24.05.2021 passed by the learned Single Judge in the writ petition viz., W.P.No.3562/2021 cannot be sustained in the

eye of law. It is accordingly quashed. However, the competent authority shall consider the representation given by the respondent sympathetically within a period of six weeks from the date of receipt of certified copy of the order passed today.

With the aforesaid direction, the appeal is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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