

Unreportable
IN THE HIGH COURT OF DELHI AT NEW DELHI
+WP(C) No.438/2008

Date of Decision: 31.01.2008

#JC-750587M Subedar Clk (GD)
Shri KPS Dhaka
!

.....Petitioner
Through: Mr.V.P.S. Tyagi

Versus

\$Union of India & Others
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.....Respondents
Through Ms.Barkha Babbar

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI**
THE HON'BLE MR. JUSTICE J.M. MALIK

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether the judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)

:

1. The petitioner in this petition is aggrieved by the Movement Order dated 5.11.2007 whereby his posting is diverted to 620 EME Battalion, Binaguri, West Bengal. The case projected by the petitioner in this writ petition is that he is due to retire in July 2009 and has, thus, he is left with less than 18 months service. In these circumstances, in accordance with Para 72 of EME Record Office Instructions

(hereinafter referred to as the 'ROI') the petitioner had applied for his choice posting giving choice of Meerut posting. Para 72 of the ROI reads as under:-

Choice Postings

72. To meet the aspirations of the PBOR to be near their home towns/kith & kin, specially during last years of their service, endeavour will be made by EME Records to provide one choice posting in the indl'sh state or recruiting zone for a two years duration, to pers of the Corps towards the end of their service but completion of 15 yrs of service. However, in case it is not considered possible to accommodate indls near their home towns due to non availability of vacancies, the indls may be considered for posting to either nearest available mil stn or to any of his other choice stns, subject to availability vacancies. Desirous PBOR be required to fwd their applications as per proforma given at Appx 'F' to this ROI. As a rule, an indl is eligible to apply for a choice posting only once during his entire service. However, if in case an indl avails posting near to his home town quite early in his service based on either a personal request or through the means of DO letter etc, such indl's application be placed at a lower priority, to be considered, subject to availability of surplus vacancies in any stns of his choice. No extn of tenure will be given under any circumstances when indl is on choice posting."

2. It is stated that his request was acceded to and Movement

Order dated 10.5.2007 was issued giving him permanent posting to the Headquarters Base Workshop, GP EME, Meerut. The petitioner even joined the said Base Workshop on 25.10.2007 when he was taken on the strength of the aforesaid Headquarters Base Workshop. Order dated 25.10.2007 was also issued indicating therein the status of the petitioner as 'Permanent'. However, within a short span the impugned message dated 5.11.2007 is sent by the respondents diverting his posting to 620 EME Battalion, Binaguri, West Bengal. The said order is accordingly challenged on the ground that it is violative of Para 72 of the ROI inasmuch as, after accepting the request of the petitioner and passing the aforesaid order, it was not permissible for the respondents to pass the impugned Movement Order. The petitioner has also stated in the petition that there are certain domestic problems and difficulties with which the petitioner is suffering inasmuch as, his daughter was abducted, who has not been recovered till date; the petitioner is prosecuting the said case with the police and is even receiving threats in respect thereof; he has his two younger sons who are studying in school and it is the petitioner only who is to take care of his children and

settle his domestic problems. Therefore, at the fag end of his service the petitioner should be allowed to remain at Base Workshop, Meerut.

3. The the counter affidavit filed by the respondents, the respondents have stated that the petitioners did not disclose the following facts in the petition:-

a) Though the petitioner was enrolled in the Army Corps of EME on 26.7.1979, during his service tenure he served at various stations, including Meerut, but never served in the field area/Eastern Command during his entire tenure, except with 39 EME Bn. (Tpt.), which is soft field.

b) Keeping in view the various postings of the petitioner in his service career, the petitioner was issued Movement Orders posting him to 620 EME Bn. located in peace station of Eastern Command vide posting orders dated 21.11.2005. At that time, the petitioner was serving with 39 EME Bn. located at Pathankot. However, the petitioner did not move to the said 620 EME Bn. as ordered by the authorities after having specified tenure at Pathankot. After a lapse of 10 months period, the petitioner, instead of moving on posting to the said battalion, took up the case with the Directorate General of EME, Integrated Headquarters of the Ministry of

Defence (Army) for diversion of his posting to any battalion located at Meerut vide his request letter dated 23.10.2006. In this, he has specifically mentioned about his domestic problems which he wanted to resolve. However, after examining the case at the Headquarters, his request for diversion of posting was not acceded to due to policy constraints, as the petitioner had already served at Meerut from 9.12.1996 to 14.1.1999 and he was due for posting to Eastern Command to meet the organisational requirement.

4. It is also disclosed in the counter affidavit that the petitioner did not move to the said battalion and instead made another request for consideration of his case for diversion of his posting to any unit at Meerut citing a different reason, namely, his elder daughter went missing while staying at his native place. This request contained in the D.O. letter dated 9.1.2007 was also considered and turned down after due examination by the Directorate General of EME Integrated Headquarters of the Ministry of Defence (Army) on the ground that he had already served at Meerut from 9.12.1996 to 14.1.1999 and his posting to Eastern Command to meet the organisational requirement was due. It is, thus, submitted that twice same very request was turned down

and these facts are not disclosed by the petitioner in his petition.

5. It is further clarified that in spite thereof, the petitioner made request third time vide his application dated 1.3.2007 and this time he applied for choice posting to a station at Meerut/Delhi invoking the provisions of Para 72 of the ROI. He had not mentioned about the earlier request made by him which had already been rejected. This application was accepted inadvertently by the respondents without the knowledge that request had already been rejected earlier on the aforesaid grounds as the respondents were not informed about the earlier rejection of such a request twice. On coming to know of the aforesaid fact, his posting to Meerut is cancelled and the earlier Movement Order directing his posting to 620 EME Bn., Binaguri, West Bengal, is revived.
6. In the rejoinder filed by the petitioner, no doubt, the petitioner has disputed the averments made by the respondent to the effect that he never served in field area/Eastern Command and has stated that he had served in the field area earlier as well, but he has not denied the averments made by the respondents in the counter affidavit to the effect that the petitioner's request for cancellation of

positng to 620 EME Bn. was rejected twice.

7. It is clear from the aforesaid that his posting order to 620 EME Bn. was also passed on 21.11.2005. At that time, the petitioner had more than 3½ years of service left as he is due to retire in July 2009. The petitioner has been able to avoid the said posting on one pretext or the other even when his earlier requests in this behalf were rejected. The petitioner has not even disclosed these facts in the writ petition and the petition, to that extent, suffers from concealment of relevant facts.
8. In view of the circumstances disclosed, we are also of the opinion that the petitioner cannot take advantage of Para 72 of the ROI, as it is on the strength of posting orders dated 21.11.2005 that the petitioner is asked to report to 620 EME Bn. The reason given by the respondents is that it was not possible to accede to the petitioner's request to post him at Meerut due to policy constraints as he had already served at Meerut from 9.12.1996 to 14.1.1999. It is also explained that his posting to Eastern Command was to meet the organisational requirement. Posting of any employee by the employer in the exigency of service is the prerogative of the employer and Courts cannot interfere with the same unless it

is proved that the same is mala fide or against any statutory provision. We do not find any such ground in the present case.

9. The Supreme Court has held, time and again, that personal problems of an employee could not be a ground which the Courts would consider and interfere with the transfer orders on that account, as that is an aspect which is left to the employer to look into (See Shilpi Bose v. State of Bihar, AIR 1991 SC 532; B. Varadha Rao v. State of Karnataka, AIR 1986 SC 1955; Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey & Ors., (2004) 12 SCC 299). The Supreme Court in Major General J.K. Bansal v. Union of India & Ors., (2005) 7 SCC 227 clearly laid down that the scope of interference by 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.
10. Having regard to the aforesaid facts and law on the point, we are not inclined to interfere with the impugned

order in the instant case. Therefore, we dismiss this writ petition. However, it would be open to the petitioner to make request for transfer in terms of Para 72 of the ROI after the lapse of some time to the competent authority, and we are hopeful that keeping in view the true spirit behind such provision, the competent authority shall consider this request appropriately.

(A.K. SIKRI)
JUDGE

January 31, 2008
HP.

(J.M. MALIK)
JUDGE