

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP (C) No. 20079/2005 & CM No.14803/2005**

% Date of decision: 20.08.2008

VIJENDER SINGH

...PETITIONER

Through: Mr. Sanjoy Ghose, Advocate
With Ms. Pragnya, Advocate .

Versus

UNION OF INDIA & ORS.

...RESPONDENTS

Through: Ms. Preeti Dalal, Advocate
(Proxy) for Ms. Manisha Dhir, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to Reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

SANJAY KISHAN KAUL, J. (ORAL)

1. The petitioner joined as a Constable in the Indo Tibet Border Police (ITBP) on 20.08.1990 and as on date has about 18 years of service. The service profile of the

petitioner shows that the petitioner was on deputation from 25.03.1994 to 11.07.2003 out of which most of the period was with the Special Protection Group (SPG), Delhi. The petitioner was posted back with the ITBP on 12.7.2003 and after 12.08.2003 was posted to Leh where he continued to serve till July, 2005. The Battalion of the petitioner under the Unit Rotational Transfer was posted to Delhi in August, 2005 and the petitioner came back with his Battalion.

2. Upon reaching Delhi, the petitioner was soon served with a transfer order to North-East dated 14.09.2005. Simultaneously a memo was also issued to the petitioner on disciplinary ground as he was alleged to have brought pressure on the respondents for permission to go on deputation to Intelligence Bureau (IB). It is the case of the respondents that such deputation in the case of the petitioner was not permissible as he had not completed the cooling off period of three years and bringing of political pressure was improper. The petitioner represented against his transfer which was not considered favourably in terms of a decision taken on 21.1.2006.

3. The petitioner, thereafter, filed the present writ petition seeking quashing of transfer order on the ground

that there was no reason for transferring the petitioner from Delhi within such a short span. Interim orders were granted staying the transfer order on 7.10.2005. The petitioner, thus, continued to serve at Delhi till interim orders dated 7.10.2005 were vacated as the petitioner has already served for a period over two years even at Delhi. The petitioner has now been posted to North-East.

4. Learned counsel for the petitioner, however, insists that the grievance of the petitioner and the relief sought have not become infructuous as the petitioner can be transferred back to Delhi or to any other posting in accordance with the Transfer Policy of the respondent annexed to writ petition as Annexure P-1 dated 29.12.2004. The said transfer policy/guidelines is not in dispute.

5. The affidavits filed by the respondents show that the same are like shifting stand where the respondents have been giving different reasons for the transfer of the petitioner. On the one hand, an affidavit was initially filed affirmed on 25.10.2005 to the effect that the name of the petitioner has been sent for selection to the IB erroneously by overlooking the fact that the petitioner remained on deputation in SPG, Delhi and has not completed the tenure

of three years as per the deputation policy in force and on the same being deciphered, the nomination was cancelled. The second affidavit affirmed on 2.12.2005 states that the petitioner had tried to use political and outside influence to go on deputation to IB inviting the provisions of Rule 20 of the CCS(Conduct) Rules and, therefore, the petitioner was transferred in terms of the transfer order dated 14.9.2005 and simultaneously a memo was also issued on the same date. Thus the transfer is effected on punitive ground.

6. In the course of the hearing today as well, learned counsel for the respondents is unable to state the real reason as to why the petitioner was so transferred. It has also not been brought on record nor any record has been shown to us as to what is the nature of political and outside influence brought by the petitioner to go on deputation to IB, nor have any proceedings been held during the last three years in pursuance to memo dated 14.09.2005. It, thus, must be assumed that the said memo has been given a burial.

7. The only question which arises for consideration is that any further posting of petitioner at the present location or at a subsequent destination must be in conformity with

the transfer guidelines dated 29.12.2004. In terms of the said transfer guidelines, the area of deployment is divided into three categories of extreme hardship, hard areas and soft areas. The posting of the petitioner in Leh and the present posting, if taken together, would be almost three years in extreme hard area and thus the petitioner would be liable to be posted to an area of a different category.

8. We thus deem it appropriate to direct that when the next posting of the petitioner becomes due on completion of the period of three years in extreme hard area, taking the tenure of the petitioner at Leh and the present tenure into consideration, the case of posting of the petitioner would be examined as per the guidelines dated 29.10.2004 uninfluenced by the memo dated 14.09.2005.

9. Petition stands disposed of.

CM No. 14803/2005

The application does not survive for consideration and is accordingly disposed of.

SANJAY KISHAN KAUL, J.

AUGUST 20, 2008
mv/dm

MOOL CHAND GARG, J.