

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.3276 of 2015(O&M)

Date of Decision: **September 22, 2015**

Suraj Bhan Kajal

...Petitioner

Versus

Union of India and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr. R.D. Bawa, Advocate for the petitioner.

Mr. Chetan Mittal, Assitant Solicitor General with
Mr. Vivek Singla, Advocate for the respondents.

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HARINDER SINGH SIDHU, J.

The petitioner is serving in the Central Reserve Police Force and is presently posted as Inspector General of Police in North West Sector, CRPF at Chandigarh (Union Territory). He has filed this petition praying for quashing the order dated 17.02.2015 (Annexure P-7), whereby, he has been transferred from his present posting as I.G. North Western Sector to Eastern Sector.

The petitioner joined the service of CRPF on the post of Deputy Superintendent of Police on 06.10.1984. He was promoted to the post of Deputy Commandant on 18.01.1992 and further promoted to the post of Second in Command on 11.05.1997. He was promoted as Commandant on 02.06.2002; to the post of Additional DIGP on 13.10.2007; to the post of DIGP on 23.10.2008 and finally to the

present post of IGP on 01.11.2013.

The petitioner has averred that he has been decorated with various medals recognizing his commendable service to the Department. Unfortunately, the wife of the petitioner, Smt. Sunita Kajal suffered from Acute Lymphoblastics Leukaemia (blood cancer) in September, 2005 and since then she is under treatment from All India Institute of Medical Sciences, New Delhi. Because of loss of immunity, she has also developed diabetes and hyper-tension and is also being treated for the same. Treatment/prescription slips for the period from 2005 to 2014 have been annexed with petition. Because of the disease of the petitioner's wife, he made a representation dated 15.10.2013 for his transfer to North West Sector on his promotion as IGP. In the representation, it was mentioned that as per medical advice a responsible member of the family is required to look after and boost the morale of the petitioner's wife and there was no other member in the family other than the petitioner, who could take care of her in such a condition. On consideration of this representation, the petitioner was posted to North West Sector, Chandigarh vide order 27.05.2014, where he joined on 09.06.2014. The home town of the petitioner is district Bhiwani in Haryana and the petitioner is due to retire on 31.01.2017. When the petitioner had just completed eight months in North West Sector, the impugned transfer order dated 17.02.2015 transferring him to the Eastern Sector has been issued. The petitioner has challenged the above transfer order mainly on three grounds:

(i) The petitioner was posted at Chandigarh on his request on compassionate grounds to ensure proper follow up treatment of his wife from AIIMS at Delhi and he cannot be posted out barely eight months thereafter.

(ii) The petitioner is due for retirement on 31.01.2017 i.e. after 1 year and 11 months and in the light of the Standing Order (Annexure P-8), he is not liable to be disturbed in the last two years of his service before superannuation.

(iii) The transfer order has been issued only to facilitate the stay in Chandigarh of Sh. Nalin Prabhat, IPS, IG (Ops.) by giving him additional charge of North West Sector, Chandigarh. It is stated that Sh. Nalin Prabhat, who is the resident of Chandigarh, was earlier posted at Chandigarh as DIG from 23.01.2010 to 23.06.2012 and then IG North West Sector, Chandigarh from 19.04.2014 to 08.06.2014. He was relieved by the petitioner on 09.06.2014, but now he has been given additional charge of North West Sector, Chandigarh by uprooting the petitioner. This has been done only to facilitate his stay at Chandigarh although he is holding the charge of IG (Ops.) Kashmir.

In the written statement filed on behalf of the respondents, all the allegations have been denied. Detailing the previous posting particulars of the petitioner, it has been stated that he has enjoyed

static posting since 27.05.2010 namely at GC, CRPF, Sonapat from 27.05.2010 to 08.06.2014 and at NWS, Chandigarh from 09.06.2014 to the present. He has thereby completed his tenure in static establishment. It has been asserted that the order of his transfer has been issued purely on administrative grounds. The need of medical treatment of the petitioner's wife has been taken note of while transferring him to Eastern Sector HQ, Kolkata. In Kolkata, the officer can manage treatment of his wife as facilities of treatment of cancer are available there.

It has also been stated that while posted at Chandigarh in his capacity of Sector IG, the petitioner had issued transfer orders pertaining to Officers, M/Staff and Executive Staff, which were not in consonance with the transfer policy of the department. The orders issued by the petitioner are under review and directions have also been issued that he will not make any transfer till further orders from the Directorate. It is stated that the continuation of the petitioner at Chandigarh will affect the review of the transfer orders and dent the image of the Force. As such, his continuation at Chandigarh is not in the interest of the Force.

Repelling the contention of the petitioner that his transfer is in violation of the instructions contained in the Standing Order No.7/2014, it is stated that these are applicable for the Officers upto the rank of DIG only. It has been stated that transfer of IG level officers and above is done keeping in view overall operational/administrative requirement of the Force as well as on the

basis of suitability of the officer required in a specific place. While deciding posting/transfer of senior officer, the foremost factor, which is kept in mind is overall interest/better management of the Force. Requests from the officer are duly considered, but organizational interest cannot be compromised at the cost of domestic/ personal problem of an officer. It is stated that these parameters have been applied while transferring the petitioner to Eastern Sector, Kolkata, apart from adverse inputs received against him from various quarters.

Referring to the various treatment details annexed with the petition, it is stated that the certificate of the Medical Officer AIIMS stressing the desirability of the petitioner's stay in Delhi is dated 25.08.2008 and pertains to the period when the wife of the petitioner was undergoing treatment in AIIMS. There is no fresh certificate/letter from AIIMS produced by the petitioner. No document has been produced indicating that she is on active therapy for Acute Lymphoblastics Leukaemia since November, 2009 when her ALL therapy was completed. It is stated that Kolkata is a prime Metropolitan City of India and well connected by Air and Railways, as such Delhi is easily approachable by any mode of transport. Hence, the treatment of the wife of the petitioner can be managed by the petitioner from Kolkata.

Denying the allegations that the petitioner has been transferred in order to accommodate Sh. Nalin Prabhat, IPS, IG it is stated that additional charge of IG, NWS has been assigned to Sh.Nalin Prabhat based on his administrative as well as operational

qualities and to ensure smooth administrative and operational functioning of the Sector and its allied offices. It is also stated that though assigned additional charge of IG, NWS, Sh. Nalin Prabhat is to look after the primary responsibility of his permanent charge i.e. I.G. (Ops.) Kashmir for which he has to remain at Srinagar and not at Chandigarh.

The petitioner has filed replication to the written statement of the respondents in which he has placed on record an OPD slip of AIIMS, New Delhi dated 14.03.2014, whereby the wife of the petitioner was advised to take medical opinion on Rheumatolgy and Neurology for headache. She was further examined in AIIMS on 16.03.2015, when certain medicines were prescribed. On 22.04.2015, she got the Cranial CT (Plain Study) from Spiral CT and MRI Centre and an MRI was also got done from Organ Imaging Research Centre, New Delhi.

Relying on the these, it is sought to be demonstrated that the treatment of the petitioner's wife is of a critical nature and it is not medically advisable to shift her to Kolkata for her further treatment as it may prove detrimental to her life. It is also stated that as per the impugned transfer order, the petitioner's transfer to Eastern Sector is to supervise the Anti- Naxal Operations to be decided by Cespol CZ, which would mean that there would hardly be any chance for the petitioner to stay at Kolkata although his headquarter is at Kolkata. The petitioner is to supervise the naxal operations as area of responsibility of Central Zone headed by Special DG is Seven States i.e. Chhaittgarh (South Bastar the deadliest infested), Jharkhand, West

Bengal, Odisha, Bihar, Andhra Pradesh and Madhya Pradesh, which involves close vigil and supervision & physical and mental toughness and frequent movement in his last leg of service as past incident reveals that huge killing of security forces and civilians took place since 2010 to till date. The above States are badly affected by Naxals control. The petitioner would have to move to different places of above said States off and on under orders of special DG Central Zone to carry out large scale operations against Naxals. Therefore, he will not be in a position to take care of medical treatment of his wife at Kolkata and even at AIIMS at Delhi.

Refuting the operational requirements at the transferred place as projected by the petitioner, it has been asserted on behalf of the respondents in their rejoinder to the replication filed by the petitioner, that the petitioner has been posted to Eastern Sector at Kolkata and not to North East as projected by the petitioner. As per operational assignment allocated to various IGs, the IG in Eastern Sector has a specific area of responsibility restricted to West Bengal and not to the seven States as projected by the petitioner. Moreover, Sector IG is supported by DIGs and Commandants, which mobilize the troops in a systematic manner.

I have heard the Ld. Counsel for the parties and perused the records.

Two, out of the three grounds for assailing the transfer namely that it is in violation of the Standing Order (Annexure P-8), and has been effected only to accommodate Sh.Nalin Parbhat, IG at

Chandigarh, are clearly un-sustainable in view of the stand of the respondents as has been referred to above.

The only issue that has caused me considerable concern is the stated requirement of the petitioner on the basis of his wife's medical condition. It is true that the prescription slips annexed with the petition as Annexure P-2 (Colly.) do not show that in the recent past the petitioner's wife has been undergoing any active therapy from AIIMS, New Delhi. But the petitioner has with his replication annexed OPD slip of AIIMS, New Delhi dated 14.03.2014, whereby the wife of the petitioner was advised to take medical opinion on Rheumatology and Neurology for headache. She was further examined in AIIMS on 16.03.2015, when certain medicines were prescribed. On 22.04.2015, she got the Cranial CT (Plain Study) from Spiral CT and MRI Centre and an MRI was also got done from Organ Imaging Research Centre, New Delhi, based on which the Ld. Counsel for the petitioner states that her condition is indeed critical.

It is difficult for the Court to opine one way or the other regarding the present condition of the wife of the petitioner or make a prognosis for the future. But it would be safe to proceed on the assumption that the petitioner's wife is in need of constant care and attention of a family member. The question is whether on that ground, the impugned transfer order can be quashed?

The respondents have stated that the retention of the petitioner at Chandigarh is not desirable in the interest of the Force in view of certain allegations against him which are under review. They

have also stated that his wife's medical condition has been taken note of while making his transfer. Besides, the best medical facilities being available at Kolkatta, treatment of the petitioner's wife at Delhi can also be managed by the petitioner because of the excellent Air and Railway connectivity with Delhi. Additionally, the petitioner has already availed of the permissible posting in static establishment.

The scope of interference by the Courts in transfer matters is extremely limited. It has been so settled by the Hon'ble Supreme Court through a long line of cases.

In **Shilpi Bose (Mrs) v. State of Bihar, 1991 Supp (2)**

SCC 659, the Hon'ble Supreme Court held as under:

“4. In our opinion, the 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 statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.”

The extent and scope of interference in transfers was explained in

State of U.P. v. Gobardhan Lal, (2004) 11 SCC 402 as follows:

“7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such

place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

The Hon'ble Supreme Court reviewed the case law in

Major General J.K. Bansal v. Union of India, (2005) 7 SCC 227 :

“8. Before we advert to the submissions made by the

learned counsel for the appellant, it will be useful to take notice of the law regarding the scope of interference in a writ petition filed under Article 226 of the Constitution assailing an order of transfer.

9. *In Shilpi Bose v. State of Bihar the appellants, who were lady teachers in primary schools, were transferred on their requests to places where their husbands were posted. The contesting respondents, who were displaced by the appellants, challenged the validity of the transfer orders before the High Court by filing a writ petition under Article 226 of the Constitution, which was allowed and the transfer orders were quashed. This Court allowed the appeal and set aside the judgment of the High Court by observing as under: (SCC p. 661, para 4)*

“4. In our opinion, the 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 statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department.”

10. *In Union of India v. S.L. Abbas the respondent was working at Shillong in the office of the Botanical Survey of India and his wife was also working there in a Central Government office. He was transferred from Shillong to Pauri in the hills of U.P. (now in Uttaranchal). He challenged the transfer order before the Central Administrative Tribunal on medical ground and also on the ground of violation of guidelines contained in the Government of India OM dated 3-4-1986. The Tribunal allowed the petition and quashed the transfer order. In appeal this Court set aside the order of the Tribunal and observed as under: (SCC p. 359, para 7)*

“7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with

respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right.”

11. Similar view has been taken in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan wherein it has been held that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders, as though they were the Appellate Authorities substituting their own decision for that of the management.

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.”

In this case, the Hon'ble Supreme Court stressed that the scope of interference by the Courts in regard to transfer of members of the armed forces is even more limited and narrow than that in the case of civilian employees. It has been stressed that in respect of the armed forces the courts should be extremely slow in interfering with the transfer orders unless an exceptionally strong case is made out.

Evidently the same parameters as apply to the armed forces would be applicable to the case of para military forces.

Personal hardship of the employee is not a matter on the basis of which the Court can interfere in a transfer matter. That is a matter for the authorities concerned to consider. The respondents state that they have taken note of the medical condition of the petitioner's wife while making the transfer.

What also cannot be lost sight of is that the petitioner is a senior officer in the CRPF. Senior officers can be expected to shoulder and bear greater hardships in response to the call of duty. If the petitioner could manage the treatment of his wife while being posted at Chandigarh, he being a senior officer can be presumed to have the means and resources to manage the treatment of his wife even being stationed at Kolkata. Different considerations may have weighed with the Court if a similar situation were faced by a junior officer or jawan.

Accordingly, in the light of the settled judicial precedents, I do not find any reason or justification to quash the impugned transfer order. The writ petition is accordingly dismissed.

It is, however, made clear that the dismissal of this petition will not preclude the petitioner from making any fresh representation to the department, with or without there being a change in the circumstances. If such representation is made, it would be open to the respondents to reconsider the impugned transfer order.

September 22, 2015
Atul

(HARINDER SINGH SIDHU)
JUDGE