

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

% *Date of Decision : March 09, 2015*

+ **W.P.(C) 2188/2015**

P K S BHATTYPetitioner
Represented by: Mr.S.S.Pandey, Advocate

versus

UOI & ORS.Respondents
Represented by: Ms.Ripu Daman Bhardwaj, CGSC
with Mr.T.P.Singh and Ms.Saahila
Lamba, Advocates for UOI with
Col.N.K.Ohri

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The petitioner who is due to superannuate on May 31, 2016, has as of today, one year, two months and twenty days service left.
2. It is not disputed by the respondents that during this period the petitioner can avail leave for 160 days and would have a right to be sent to a place of his choice for 189 days where he would be receiving training of a kind he desires to enable him to find an avocation when he retires; for the Armed Forces have a benevolent policy under which its members are given training at resettlement courses so that they can gain employment post-superannuation. The purpose of the policy is keeping in view that enrolled and commissioned officers in the Armed Forces superannuate at a fairly young age and are productive assets for the

society. Their skills need to be sharpened, and the purpose of the resettlement courses is to sharpen their skills.

3. $160 + 189 = 349$. In other words, out of 445 days service left, the actual duties performed by the petitioner would be for 96 days i.e. 03 months.

4. Would it serve any purpose to require the petitioner to perform operational duties with the 8th Mountain Division, currently posted in the State of Jammu and Kashmir.

5. Apart from bringing out aforesaid admitted facts noted in paras 1 to 4 above, the petitioner places reliance upon a policy of the Indian Army as per which he would be entitled to a last leg tenure posting at a place of his choice, for the reason the policy envisages that the last leg viable tenure of eighteenth months should be at a place of the choice of the person; of course subject to availability of a job at the place of choice. The policy requires the person concerned to give options so that if it is not possible to post the person at the place of the first choice the second option, followed by the third option can be looked into.

6. The petitioner argues: I have given my option for last leg posting at Delhi and thus without deciding whether I can be continued to be accommodated at Delhi, I should not be posted with the 8th Mountain Division, which the impugned order dated January 30, 2015 does.

7. While conceding that the petitioner is entitled and thus the respondents would be obliged to send the petitioner for training for 24 weeks at the resettlement course and that till he superannuated the petitioner can avail leave for 160 days; but with the caveat that if operational requirements would justify the leave not to be sanctioned or curtailed, the Competent Authority may do so, entitlement of the petitioner for being consider for last leg tenure posting is questioned by

the respondents, and for which stand, the relevant facts would be, that the petitioner was posted at Delhi in May 2012 and was attached to the Regional Centre ECHS, as a Director. On May 28, 2013, the Military Secretary Branch took note that the petitioner was due to superannuate on May 2016 and thus would have a right of last leg posting for eighteen months at a place of his choice. Realizing that it may create a problem if the petitioner was kept at Delhi till when his right to seek last leg posting enured, it was indicated that posting of the petitioner at Delhi should be restricted.

8. Though not expressly stated in the communication dated October 28, 2013, it is implicit that that desirability of posting the petitioner out of Delhi was envisaged, for if the petitioner was kept at Delhi and became entitled to ask for a last leg posting at Delhi, the department would be faced with the problem of retaining the petitioner at Delhi for over four years.

9. Postings at Delhi are privileged and are thus sought by all and sundry. The Indian Army cannot satisfy the request of all because jobs at Delhi are a few.

10. Realizing that the petitioner was required to be moved away from Delhi, the department followed a course of action which would have satisfied the desire of the petitioner and at the same time would have not created any administrative problems for the department. The case was processed to depute the petitioner with the National Cadet Corps. This did not materialize. The petitioner continued to serve at Delhi and January 2015 came into being. The impugned order was passed, as noted above, on January 30, 2015.

11. Instant case brings out the conflict between the letter of the law and the spirit of justice.

12. Whilst it may be true that to satisfy the spirit of justice, the letter of the law cannot be broken by a Court, but it certainly can be bent.

13. Justice has dwelt in the spirit and the body of service law jurisprudence. Equity, justice and good conscience pervades the judicial process. The power of a Court to mould relief, according to the demands of a situation, is well recognize and is available to a writ court to do complete justice between the parties, as was opined in paragraph 16 of the decision reported as (2013) 4 SCC 690 Rajesh Kumar & Ors. Vs. State of Bihar & Ors.

14. It is not the case of the respondents that the petitioner manipulated the system. The facts noted above show that the respondents were aware that on being posted at Delhi in May 2012, if the petitioner was continued for the normal tenure of three years it may create a problem for the department, if the petitioner sought last leg posting at Delhi. This explains the noting dated October 28, 2013, to which we have made a brief reference above. Things did not materialize the way the department had wanted. Time kept on taking, because time never stops. January 2015 came into being.

15. Neither the petitioner nor the respondent is at fault. But, the right of the petitioner to seek a last leg tenure posting cannot be denied to him not only because of the legal compulsion but also because of justice. The policy of last leg tenure posting is a recognition that a member of an Armed Force who has served the country well and has spent more than 50% of the tenure in non-family stations is entitled to settle his personal affairs before he retires so that post retirement he can live in peace. The purpose behind last leg posting at a place of choice is that the member of the force can find an accommodation where he can live peacefully in the twilight of his life.

16. We cannot overlook the fact that it would be useless to compel the petitioner to join 8th Mountain Division because his actual working with the division would be for about 3½ months because of the facts which we have noted in paragraph 2 above.

17. Accordingly, in view of the peculiar facts of the instant case, we dispose of the petition quashing the order dated January 30, 2015, simultaneously issuing a direction to the respondents that petitioner's request for last leg posting at a place of his choice be considered and an order be passed in said regard.

18. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 09, 2015

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