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

Decided on : 21.08.2015

+ W.P.(C) 2810/2015 and CM No. 12040/2015 and 12041/2015

GROUP CAPT (DR) B S NAYYAR Petitioner
Through: Petitioner in person.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr Sanjeev Narula, CGSC and
Mr Ajay Kalra, Adv. and Mr C.M. Rao, Wing
Commander for UOI

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner questions his posting order dated 22.01.2015, asking him to report to Allahabad. His contention is that the transfer order was unwarranted given the circumstances of his case and that the chronic illness suffered by his wife, i.e., serious spinal injury, which requires periodical monitoring and managing, is being undertaken by the Research and Referral Hospital in Delhi.

2. On the previous date of hearing, this Court had directed as follows:-

“The petitioner’s submission is that the rejection of the request for retention in Delhi is vitiated on two grounds. It is argued that the last posting choice exercised earlier cannot preclude the petitioner from seeking a posting as requested by him now, due to the changed circumstance

on account of the Supreme Court's judgment – as to age of retirement. It is argued in this context that out of similarly placed 12 other officers, second choice posting has been permitted to two officers. The second contention is that the petitioner's wife is suffering from a serious spinal injury which restricts her movement and that the posting of the petitioner to Allahabad would cause serious inconvenience. Learned counsel submits that the Base Hospital there does not have a neuro surgeon who can treat her. Counsel for the respondents submits that when the original request for extension was made, the reason cited was that the petitioner's son was yet to complete his 12th standard. Keeping in view this request, an extension to continue in the accommodation was granted till 31.07.2015. It is submitted that the contention vis-a-vis the petitioner's wife was neither urged nor was it the subject matter of any representation. We have considered the submissions. The representation of 17.02.2015 - placed on the record (Annexure P-8) - does refer to the petitioner's wife's spinal injury. In the circumstances, the respondents are hereby directed to consider the documents which have been placed on the record and indicate suitable response before the next date of hearing. The respondents shall not take any coercive step towards dispossessing the petitioner from the residential accommodation occupied by his wife till the next date of hearing."

3. Today, the petitioner—who appeared and argued himself—stated that in accordance with the Court's directions, the respondents have informed him of their inability to retain him in Delhi. The concerned letter dated

12.08.2015, rejecting the petitioner's representation is produced. The same *inter alia* reads as follows:-

“3. After due examination of the said documents, the medical authorities have inter alia intimated as follows:-

(a) MH Allahabad has a Specialist in General Surgery on posted strength. MH Allahabad also has a physiotherapy centre and a physiotherapist. The officer's wife has been prescribed medication which can be readily provided both at the Station Medicare Centre Air Force Station Bamrauli, Allahabad and at Military Hospital, Allahabad. The case can be reviewed by General Surgeon and there is no need for a Neurological Specialist for the following reasons:-

(i) The patient is subjectively better as per review by Senior Advisor (Neurosurgery) dated 06 Feb 15, 17 Mar 15, 09 Jun 15 and 10 Jul 15.

(ii) She has not been advised any Neurosurgery in past 6 months by the two Neurosurgeon at BHDC and Army Hospital (R&R) and maintained on conservative management on medication only.

(iii) There are no residual motor deficits on account of Sciatica.

(iv) Treatment facilities at MH Allahabad are hence adequate considering the documents placed on record.

(b) As per latest review dated 10 Jul 15 the patient has been advised conservative management with medication. She has also been advised to avoid lifting/pushing heavy weight, bending forward and long distance travelling for unspecified period.

(c) Medical treatment presently prescribed to the officer's wife on 10 Jul 15 is available at MH Allahabad."

4. The petitioner endeavoured to submit that the rejection letter has not taken into consideration the relevant factors in a proper perspective. He highlighted that at his place of posting, i.e., Allahabad, there are sufficient officers and he is, *in fact*, surplus. It is consequently urged that the transfer order dated (27th June, *in fact*, violated standing instructions that 24 chains were broken and 12 officers were transferred.) He also highlighted the fact that several officers, who likewise similarly situated and who had original retired in 2015, but were continued, pursuant to the directions of the AFT and subsequently of the Supreme Court, have not been shifted out.

5. The respondent submits that the petitioner has the availed of his last leg posting choice and also that he has remained in Delhi for about 4 ½ years. It is submitted that the circumstances, which resulted in his retention and residential accommodation being granted to him, i.e., continuing education of his son are possibly similar in other cases too and there cannot be any parity. Learned counsel has submitted that given the exigency of service, the petitioner cannot claim any favourable treatment and the submission that he is surplus, is not accurate. In this regard, it was submitted that one officer (Wing Commander S.S. Kiran) has, *in fact*, completed his tenure and he is likely to be shifted out any time from Allahabad. This fact, however, is disputed by the petitioner.

6. This Court has carefully considered the submissions. The Court was concerned at the initial stage, with the petitioner's submission with respect to his wife's ailment and consequently expressed whether petitioner would

be entitled to retain the flat being occupied by him for the present. At that stage, his son had not completed his class 12th. Now, he has completed school and has obtained admission in the college. Given the extremely limited nature of the Court's jurisdiction in such matters, i.e., examining whether *mala fides*, illegality or procedural irregularity vitiates a transfer order, this Court is of the opinion that no grounds have been made out for interference in the present case. The Court is conscious of the fact that the petitioner's wife is suffering from spinal injury which might require some monitoring. At the same time, respondents also assert that there are medical facilities in Allahabad and that the petitioner's wife has not currently been advised surgery.

7. Taking into account all these circumstances, we are of the opinion that no relief can be granted, since no grounds to vitiate the transfer are made out.

8. The writ petition along with the pending applications is dismissed. Interim orders are hereby vacated.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

**AUGUST 21, 2015
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