

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

% *Date of Decision : April 22, 2015*

+ **W.P.(C) 2962/2015**

VIJAY PAL

..... Petitioner

Represented by: Ms.Jyoti Singh, Sr.Advocate instructed
by Ms.Tinu Bajwa, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Mr.Rakesh Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The writ petitioner questions the legality of the posting order dated February 07, 2015 under which the petitioner has been posted to the State of Jammu & Kashmir. The posting order is a routine posting order and embraces apart from the petitioner many other persons.

2. The petitioner has two strings in the bow.

3. The first string is the transfer policy dated May 12, 2011 under which the petitioner claims that he has a right to be in Delhi for a period of four years. We note that the current place of posting of the petitioner is at Delhi. The second string in the bow is the plea of equity based on family hardship.

4. Concededly, since May 11, 2007 the petitioner has been posted at places which can be called as a soft posting. From May 11, 2007 till December 31, 2009 the petitioner was posted at Delhi followed by a posting at Chandigarh till July 01, 2012 followed by a posting at Gurgaon till February 10, 2013 which endured till when the impugned transfer posting

order was issued on February 07, 2015. In other words, the petitioner has been at a soft posting for nearly eight years now.

5. The standing order No.2/2011 dated May 12, 2011 on which the petitioner places reliance upon, vide Clause 3 refers to the tenure of posting and Clause (b) thereof is relied upon by the petitioner. It reads as under:-

“The normal tenure of posting in all static offices and duty Battalions located in the areas other than NE Region, J&K and LWE (Left Wing Extremism) affected field areas, will be 4 years (including the period of attachment with such officers).”

6. The respondents have superseded the standing order No.2/2011 dated May 12, 2011 with a standing order dated February 06, 2014, as per which the tenure of posting has been stipulated in Clause 4. Vide para (b) of Clause 4 of the transfer policy dated February 06, 2014 it is stipulated as under:-

“In case, any officers/officials is transferred from one soft areas posting to another soft area posting or from one hard area posting, the tenure in such cases will be reckoned by clubbing such consecutive postings.”

7. If the transfer policy dated February 06, 2014 is to be followed the tenure of four years posting in a soft area has to be determined by clubbing consecutive soft area postings thereby entitling the department to post the person at a hard area.

8. This clubbing is not envisaged by standing order 2/2011.

9. For said reason the writ petitioner has prayed, vide prayer (ii), that a declaratory writ be issued to the effect that standing order dated February 06, 2014 shall operate prospectively.

10. Learned Senior Counsel for the petitioner urged that it is settled law that vested rights cannot be taken away by a policy having retrospective operation. It was urged that when the petitioner was posted at Gurgaon on

February 10, 2013 he got a vested right under the policy dated May 12, 2011 to remain at Gurgaon for a period of four years and that the computation of said four year period could not be by clubbing the previous consecutive postings in soft areas.

11. The proposition urged itself is doubtful for the reason a vested right is capable of being curtailed. The policy dated February 06, 2014 does not have any retrospective operation. It may be retroactive in its operation. Restrospectivity and retroactivity are known different concepts. But we need not quibble with the said proposition of law for the reason the moot question which arises in the instant petition is : Whether a right to stay at a place under a policy is a vested right?

12. If the service is an all india service, making liable the Government servant to be required to work at any place in India, the Government servant would be under an obligation to serve wherever the employer wants. After all, it is the power of the employer, and has to be the discretion of the employer, to decide who would be suitable to work at what place and this decision cannot be subjected to a judicial review. It is in this context that courts have repeatedly held that a policy envisaging a transfer posting is a mere guideline to be kept in view by the department and is not to be equated as a rule of law. In the exigencies of service any person can be required to work at any place *de-hors* a transfer policy, which as noted above, is a mere guideline.

13. Therefore, it would be open to the department to amend its transfer policy and since there is no vested right created under any transfer policy, the question of the amended policy taking away a vested right does not even arise.

14. Having dealt with the first contention urged, based on law, we proceed to deal with the second which is fact based.

15. The petitioner pleads that his wife is suffering from hypertension and he has an old mother to look after. That his daughter is facing matrimonial problems, having been thrown out of her matrimonial house by the husband within 11 months of the marriage are the facts pleaded. The petitioner pleads that he needs to be with his daughter, who is mentally traumatized, to help her in seeking legal redressal.

16. On March 24, 2015 when the writ petition came up for preliminary hearing we had requested learned counsel for the respondents to obtain instructions whether the department can stretch backwards to help the petitioner.

17. The Competent Authority has thereafter re-considered the matter and has passed an order on April 10, 2015 expressing inability to accommodate the petitioner at Delhi.

18. With respect to the order passed, it is brought to the notice of this Court that as represented by the petitioner, there indeed exists a vacancy in Gurgaon occasioned due to the retirements of Ms.Karki but the same has been kept vacant to accommodate an eligible person coming on ensuing transfer on promotion from a hard posting area.

19. Learned counsel for the respondents informs, a fact accepted by learned Senior Counsel for the petitioner, that the CRPF deployment in a Left Wing Extremists area in the State of Chhattisgarh is due for a soft posting and that process has been initiated to hold a DPC to empanel eligible candidates for promotion as an Assistant Commandant.

20. The petitioner has also referred to one Rameshwar Dayal, Assistant Commandant, who had served in Srinagar (hard area) for three years being due for superannuation on July 31, 2015. With reference to Rameshwar Dayal the petitioner had highlighted that the petitioner was taking over the post held by Rameshwar Dayal at Srinagar. In other words, what the

petitioner is trying to say is that Rameshwar Dayal who is due to superannuate on July 31, 2015 could be kept at Srinagar.

21. Learned counsel for the respondents urged that if the petitioner is to be posted at Gurgaon against the resultant vacancy which has ensued on account of retirement of Ms.Karki the department would have to find a replacement for the petitioner for being posted at Srinagar and this would open up a chain reaction. It is urged that Rameshwar Dayal is entitled to a last leg posting of his choice. Besides, counsel urged that it would be most unfair to said Assistant Commandant who would earn a promotion having worked in a Maoist infected area for over three years. Meaning thereby the administrative problem expressed by the respondents was that if the petitioner was accommodated against the vacancy occasioned due to retirement of Ms.Karki, the department would be hard pressed to locate a soft posting when the likely promotion would take place somewhere in September 2015.

22. It is trite that in matters relating to transfer and posting, judicial interference has to be minimal. As long as there is fairness in a transfer posting a court would not interfere.

23. It is not in the domain of the court to call upon the department to produce its entire record of requirement of persons at different places and question : What if you don't post 'A' at a particular place and instead post 'B' at the said place. What would happen? What would happen if this happens or that happens? This kind of an inquisitorial proceeding would create havoc in the administrative working of departments.

24. Hardships are faced by many. But all cannot be accommodated.

25. Those who join the armed forces know fully well that most of their tenure would be spent in the field. Soft postings are hardly available. Petitioner has been accommodated at soft posting areas for more than eight years.

26. Finding that the department has been more than fair to the petitioner, we dismiss the writ petition, granting the petitioner a week's time to be relieved from Delhi and proceed to take charge of the post as an Assistant Commandant in Srinagar.

27. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

APRIL 22, 2015

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