

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

% Date of Decision : February 09, 2015

+ **W.P.(C) 5250/2014**

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

versus

UNION OF INDIA & ORS. Respondents
Represented by: Mr.Arun Bhardwaj, CGSC with
Mr.Rishi Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. A Summer Chain Transfer – 2014, in respect of SI(Min) in Central Reserve Police Force came to impact the petitioner, who is a SI(Min) in the Central Reserve Police Force, when the transfer order was issued on June 14, 2014, for the reason name of the petitioner is at Serial No.71 of the list of 99 SI (Min) transferred . The petitioner, who was attached with the Group Centre, Delhi was transferred to Srinagar in the State of Jammu & Kashmir. The petitioner made a representation on June 19, 2014 by relying upon a Standing Order No.02/2011, dated May 12, 2011, on the subject of the transfer of ministerial staff, as per para 3(b) whereof ‘*The normal tenure of posting in all static offices and duty Battalions located in the area other than NE Region, J & K and LEW (Left Wing Extremism) affected field areas, will be numeral four years (including the period of attachment with such offices).*’ The same was rejected on July 11, 2004; and the reason was non-availabilities of vacancies at Delhi.

2. The petitioner went to Jammu and sought audience from the Inspector General, CRPF, Jammu Region on July 21, 2014 seeking his retention in the Group Centre, Delhi on medical grounds as also for the education of his children. As per the petitioner, the Standing Order No.02/2011 entitled him to remain at a static office, i.e. the Group Centre, Delhi where he was posted on January 11, 2012. As per the petitioner, in terms of para 3(b) of the Standing Order No.02/2011, he was entitled to remain at the Group Centre in Delhi till January 11, 2016. The petitioner pointed out to the Inspector General that it was not the case of the department that due to exigencies of service the petitioner was required to be transferred to Srinagar. The petitioner pointed out that at a general exercise for the Summer Chain Transfer – 2014, inadvertently name of the petitioner was included in the list notified on June 14, 2014.

3. The meeting with the Inspector General of CRPF at Jammu bore partial, not full, fruits of success, when a signal dated July 22, 2014 was issued, posting the petitioner to the CRPF Group Centre at Sonapat, which we are given to understand is about 40 Km from the city of Delhi.

4. The stand of the respondents is that on February 06, 2014, vide Standing Order No.02/2014, the Standing Order No.02/2011 has been superseded and replaced by the Standing Order No.02/2014, as per which for those holding the rank of SI(Min) the tenure in a Soft Area Posting is restricted to a duration of eight years, being a span of four years each in two different stations. As per the respondents, the petitioner had completed Sector tenure of ten years as on May 31, 2014 and had completed two terms of four years each Soft Area Posting and thus as per Standing Order No. 02/2014, the department became entitled to consider him for a posting in a Non-Soft Posting Area. It is pleaded that notwithstanding the petitioner having no right under the transfer posting order of 2011 which was superseded by the transfer

posting order issued in the year 2014, case of the petitioner was sympathetically considered. Taking note of the fact that the petitioner had suffered a fracture on the left ankle, he was posted at the Group Centre in Sonapat of the North-West Sector.

5. Learned counsel for the petitioner urged that under SO No.02/2011, a vested right had accrued in favour of the petitioner and as per para 3(b) thereof, the petitioner would be entitled to a static office posting for four years, which could not be curtailed. Learned senior counsel for the petitioner urged that SO No.02/2014 dated February 06, 2014 had to apply prospectively i.e. by not curtailing the rights accrued under SO No.02/2011.

6. The argument overlooks two things. Firstly, para 3(b) of the SO No.02/2011 does not stipulate four years as the mandatory tenure of posting in a static office. The use of the word '*Normal*' in said para cannot be glossed over. Textually as well as contextually read, the para simply indicates that normal tenure of posting will be four years; thereby meaning, that the tenure of posting could well be less. But more fundamentally, the argument overlooks the fact that right to work at a particular place is not a vested right and thus a transfer policy can always supersede a previous transfer policy. Since there is no vested right to serve at a particular place for a duration of time, the question of infringing any right of the petitioner does not arise. It is settled law that a transfer guideline does not create any right in favour of a person holding a rank or a post under the State.

7. It was lastly urged, and for which reliance was placed upon Annexures P-2, P-3 and P-4 filed along with the rejoinder affidavit by the petitioner, to urge that SI(Min) listed in said Annexures had been retained in the Northern Sector and posted at static locations for more than ten years - some upto as long as sixteen years.

8. No mala-fide has been alleged in the writ petition against any officer and it is not the case of the petitioner that he has been singled out for any hostile treatment. With reference to the persons whose names are listed in Annexures P-2, P-3 and P-4 filed along with the rejoinder affidavit by the petitioner, at best, the legal argument could be that if for said persons the transfer policy can be overlooked, why not for the petitioner.

9. The said argument ignores that equality recognized by law is in the positive and not the negative. There cannot be any equality for the wrong by extending a wrong benefit given to 'A' by giving it to even 'B'. Further, there could be wide and varied reasons to keep a person at a soft area for a longer period, and we would simply highlight that many persons' named in the annexures are females.

10. In matters of posting, law recognizes primacy of the executive, for the reason the executive is the best judge to decide as to where the employee should work. Judicial interference in posting matters is minimal and is restricted to ensuring that there is no malice or hostility actuating the transfer.

11. The writ petition is accordingly dismissed. Interim stay granted to the petitioner is vacated. The petitioner is given two weeks' time to complete the handing over of charge at the Group Centre in Delhi and then proceed to the Group Centre at Sonapat to take over the charge.

12. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 09, 2015

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