

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

% *Date of Decision : May 08, 2015*

+ **W.P.(C) 4081/2015**

COL.P.K.S.BHATTY .....Petitioner

Represented by: Mr.S.S.Pandey, Advocate with  
Mr.H.S.Tiwari, Advocate

versus

UOI & ORS. ....Respondents

Represented by: Mr.Kirtiman Singh, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE PRATIBHA RANI**

**PRADEEP NANDRAJOG, J.**

1. The writ petitioner would retire from service on May 31, 2016. As of today he is left with one year and twenty three days' service. Currently the petitioner is posted at Delhi and is aggrieved by the impugned order dated April 10, 2015 and the signal of even date posting the petitioner to HQ 31, Armoured Division, Jhansi.

2. The petitioner was earlier constrained to file W.P.(C) No.2188/2015 being aggrieved by a posting order requiring him to join the 8<sup>th</sup> Mountain Division posted in the State of Jammu & Kashmir. The said writ petition was disposed of by this Court on March 09, 2015, noting that as of said date the petitioner had 445 days' service left, out of which he would be entitled to proceed to undertake training at a resettlement course for 189 days. He could avail leave for 160 days and thus would be required to perform duties for only 96 days. It was

observed that the respondents ought to have kept said fact in mind while posting the petitioner to the 8<sup>th</sup> Mountain Division. It was noted in the order that though leave would not be a matter of right, but nonetheless petitioner's entitlement to the same was looming large in the realm of reality. The stand of the respondents was also noted that the petitioner had been retained at Delhi at his request and that as per the policy of the respondents the petitioner had to be given a last leg posting tenure called a viable tenure of 18 months. The Division Bench noted that the viable tenure of 18 months would have warranted the petitioner to be posted out from Delhi in November, 2014 so that commencing from December, 2014 the petitioner could have a viable tenure of 18 months at the place of posting. It was noted that notwithstanding an order being passed posting the petitioner out of Delhi in the month of November, 2014, the same was kept in abeyance due to exigencies of service by the Department and the petitioner was retained at Delhi till when the posting order dated January 30, 2015 was issued requiring the petitioner to join the 8<sup>th</sup> Mountain Division currently posted in the State of Jammu and Kashmir.

3. It was thus noted that the impasse between the minimum tenure of last leg posting and reality was not the fault of anybody. It was noted that the petitioner has a right to seek a last leg posting at a place of his choice as per the policy of the respondents, which policy was premised on justice and equity. A Government servant who has served the cause of the Nation and dedicated his youth, and especially in the Army, would be entitled to secure a residence for himself and his spouse before he superannuates from service and settle his affairs just before dusk sets in his life. It was thus directed that the representation of the petitioner for a

last leg posting at the place of his choice be considered and an appropriate order be passed.

4. The petitioner submitted a last leg posting request by indicating five places. The respondents could not accommodate the petitioner at any such place and we find that all places opted for by the petitioner are at Delhi. The underlying choice principle is that the choice must relate to five different cities and not five work places in the same city. To this extent the petitioner has suffered a self-inflicted injury.

5. The petitioner, as noted hereinabove, has been posted with the HQ 31, Armoured Division at Jhansi.

6. The reasoned decision on the file produced before us takes note of the fact that the petitioner has a right to undertake a resettlement course of 24 weeks and since the petitioner wants to undertake the said resettlement course in business management, he need not undertake the course between August 10, 2015 to January 22, 2015 at the Fore School of Management at Delhi and could well undertake the course from December 07, 2015 to May 20, 2016 at the Amity Institute of Education and Training. As per the respondents this would obviate the necessity of the petitioner being granted leave for the calendar year 2016 for the reason serving up to December 05, 2015, the petitioner would be treated on duty when released from the Armoured Division at Jhansi to study at Noida. The said period would be treated on duty and salary paid. In other words the leave entitlement of the petitioner would be restricted only for the remainder of the current calendar year.

7. Much was debated by learned counsel for the parties on the last leg tenure posting, the resettlement policy of the Indian Army and the entitlement of the petitioner to chose the place where he would like to serve during his last leg posting and the said rights being subject to

exigencies of service. We are not noting the rival points urged during the debate for the reason the facts noted hereinabove show that for fault of neither party, probably circumstances so emerged, that both parties find themselves in a peculiar situation. The peculiar situation being that the viable tenure also called the last leg tenure envisaged by the policy is of eighteen months, and as of today the remainder service of the petitioner is of one year and twenty three days. In other words the petitioner is left with only 2/3<sup>rd</sup> duration of the envisaged last leg viable posting tenure.

8. We proceed on the basis that the respondents have a right to deny the writ petitioner the choice of an institute to undergo the business management course and that the petitioner is not entitled to opt for the business management course at the Fore School of Management which commences on August 10, 2015 and comes to an end on January 22, 2016 and that the respondents have a right to insist that the petitioner undergoes the course at the Amity Institute of Education and Training which commences on December 07, 2015 and ends on May 20, 2016, for the reason the latter would not truncate the remaining service into three parts. The first up to August 10, 2015 when the petitioner works. Thereafter from said date to January 22, 2016 when the petitioner would be technically on duty but actually at Noida as a student undertaking the course and thereafter from January 23, 2016 till May 31, 2016 when petitioner superannuates. But that would mean that commencing from today the petitioner would be working at Jhansi till December 05, 2015 because he has to be reporting in Noida on December 07, 2015, meaning thereby that the actual working period would be of seven months precise, and during this period the petitioner would be entitled to leave as well and discounting at least one month leave period the petitioner would actually be serving for six months.

9. The petitioner was given permanent commission in the Indian Army on June 08, 1985 and has served well for thirty years and during this period has spent nearly 50% of his tenure in non-family stations. Thus, as far as possible, exigencies of service must lean towards accommodating the petitioner i.e. a strict regimented approach to solve the problem should be avoided.

10. Learned counsel for the respondents relied upon the decisions reported as (1993) 4 SCC 357 Union of India & Ors. Vs. S.L.Abbas, (2005) 7 SCC 227 Major General J.K.Bansal Vs. Union of India & Ors. and (2009) 15 SCC 178 Rajendra Singh & Ors. Vs. State of Uttar Pradesh & Ors. to urge that judicial interference in matters of transfer is minimal and that instructions/guidelines concerning transfer posting are not edicts. They are subject to exigencies of service and that unless shown to be manifestly mala-fide, a Court would not substitute its decision with that of the executive on a matter of transfer/posting, for the reason the executive is the best Judge of the place where a Government servant should work. The decisions hold that scope of judicial interference is narrower when issues of transfer relate to members of Armed Forces and that unless an exceptionally strong case is made out, the Court would not interfere.

11. There can be no quarrel with the proposition of law urged by learned counsel for the respondents because governed by the Fundamental Rules, vide FR 11 an order of transfer has to be treated as an incident of Government service since the Rule mandates that '*the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority*'. FR 15 says that '*the President may transfer a Government servant from one post to another*'.

12. It is trite that who should be transferred where is a matter for the Appropriate Authority to decide. In transfers/postings concerning Armed Forces, judicial interference is minimal, but not absolutely excluded. In Major General J.K.Bansal's case (supra) it was observed in paragraph 12 as under:-

*“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.”*

13. The phrase ‘*and unless an exceptionally strong case is made out*’ is the catchment area.

14. The facts noted hereinabove, which are peculiar to the instant case, certainly make out an exceptionally strong case in favour of the petitioner even keeping in view the exigencies of service.

15. The counter affidavit filed by the respondents does not bring out any urgent public need to post the petitioner with the HQ 31, Armoured Division at Jhansi. We repeatedly ask learned counsel for the respondents as to what useful work the petitioner would do at Jhansi where he would be working only till December 05, 2015 i.e. for just about seven months and ordinarily would be entitled to leave of a month. It takes a month or two for a transferred employee to familiarize himself with a new place and its work environment. There was no convincing answer except that the petitioner had indicated on May 19, 2014 that his

tenure at Delhi be extended to three years i.e. up to May, 2015, with an assurance that beyond that the petitioner would not request to be at Delhi.

16. Now, if while accepting the request the respondents had retained the petitioner at Delhi up to May, 2015, the decision ought to have kept in mind that this would result in the petitioner being left with a service of one year during which period the petitioner would be entitled to proceed, as a matter of right, to undergo a training course of his choice for the reason for the rank held by the petitioner he would be retiring fairly young and the policy of the Indian Army is to equip its young officers with skills of a kind which empower them to find suitable jobs post retirement. The respondents ought to have kept in mind that accepting said request would mean that the actual working tenure left would be of seven months and even this would be curtailed by the leave period due to the petitioner.

17. Though it is not a case of any mala-fide, and indeed none was alleged by the petitioner, but certainly is a peculiar case where probably the interest of the organization would be better served by retaining the petitioner at Delhi to serve the nation till the first week of December, 2015, and thereafter the petitioner proceeds for his course at Noida, which period would be treated as on duty.

18. Commonsense which is a cluster of life's experiences is often more dependable than the rival facts presented by the warring litigants, and in the instant case we would prefer to take the decision based on the cluster of life's experiences.

19. We are conscious of the fact, evidenced by the record produced, that the respondents have been more than fair to the petitioner and his representations have received due attention at the highest level and to said extent the argument of the petitioner that his superior officers are

antagonistic towards him because they feel that he has cleverly manipulated his posting at Delhi is sans any factual foundation, but would be still constrained to grant relief to the petitioner because of the extremely peculiar facts of the instant case noted by us hereinabove.

20. Exceptions never make the rule, and thus our present opinion which is based entirely on the peculiar facts of the instant case would have no precedentiary value.

21. We dispose of the writ petition quashing the impugned transfer order dated April 20, 2015 and the movement order of even date. We direct the respondents to post the petitioner anywhere in the city of Delhi till the petitioner superannuates.

22. No costs.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(PRATIBHA RANI)**  
**JUDGE**

**MAY 08, 2015**  
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