

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.244 of 2016
Date of Decision:-3.3.2016.

Kawaljit Singh

.....Appellant

Versus

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Rajeev Anand, Advocate for the appellant.

Mr. Alok Kumar Jain, Senior Panel Counsel for
Union of India.

SURYA KANT, J. (ORAL)

- 1.) The appellant is aggrieved by the order dated 22.1.2016 whereby learned Single Judge has dismissed his writ petition in which he challenged the order of his transfer from Hisar to Bhopal.
- 2.) The appellant is a Colonel in the Indian Army. He was posted at Hisar Cantt. on 3.6.2013 and vide the impugned order he has been transferred to Bhopal.
- 3.) The aforesaid order was challenged by him primarily on the ground that (i) he is due for retirement in July, 2017; (ii) his 77 years old mother is bed-ridden due to knee dislocation; (iii) his 57

years old brother is a special child and is dependent on him as his father passed away in March, 2008; (iv) he is getting treatment of Neutropenia Hypoplastic Anaemia at Research and Referral Hospital, Delhi and (v) his son is studying in 10+2 class.

4.) The learned Single Judge has declined to interfere with the impugned order observing that transfer is an incident of service and the appellant had joined the Indian Army knowing fully that he could be transferred anywhere throughout the country.

5.) When this appeal came up for hearing, we were informed that the appellant is hospitalized in Base Hospital, Delhi due to some heart ailment. The respondent-Authorities who are on caveat, sought time to reconsider the matter keeping in view the opinion that was to be given by the Medical Board.

6.) The Base Hospital Authorities have now vide memo dated 27.2.2016 informed that the appellant was hospitalized on 15.2.2016 as a case of chest pain and on evaluation, he is *“found to have no abnormality detected in CARDIOVASCULAR SYSTEM (CVS).”* The appellant was discharged on 19.2.2016.

7.) It is informed by counsel for the respondents that since the appellant has not been found suffering with any heart ailment, the Authorities have on re-consideration declined to cancel or modify their decision to transfer the appellant to Bhopal.

8.) We have heard learned counsel for the parties at considerable length and gone through the record.

9.) Learned counsel for the appellant has highlighted various mitigating circumstances, as also the alleged lack of objectivity in transferring him to Bhopal as according to him, the duties proposed to be assigned at Bhopal would firstly require the appellant to undertake the training for about 3 - 4 months. Owing to the total duration of service with which the appellant is now left, it is urged that no useful purpose shall be served.

10.) In our considered view, the mitigating circumstances or administrative factors like optimum utilization of the appellant's services at the fag end of his career, is a matter of consideration or re-consideration by the Authorities as the substitution of opinion by this Court may not be expedient or desirable. It may be true that the appellant need not to be transferred out when he is left with a short duration only because of egoistic considerations nor the public funds can be wasted if the administrative decision does not serve any public purpose. We have no reason to doubt that even at this stage, if the appellant's submits a representation highlighting the peculiar facts and circumstances, the Competent Authority shall reconsider the whole issue and shall especially re-visit as to whether the appellant's service can be availed at a nearby place. The appellant may move such representation within three days and the Competent Authority shall reconsider the same within one week.

11.) The joining of the appellant at Bhopal be deferred and kept in abeyance for ten days i.e. till the fresh decision on

representation is taken.

12.) The appeal is disposed of in above terms.

**(SURYA KANT)
JUDGE**

**(P.B. BAJANTHRI)
JUDGE**

March 3, 2016.

sandeep sethi