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

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Date of Decision : July 27, 2016

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W.P.(C) 1133/2016

MUKESH KUMAR Petitioner

Represented by: Mr.Ankur Chibber, Advocate

versus

UOI AND ORS Respondents

Represented by: Mr.Kirtiman Singh, Advocate
with Mr.Waize Ali Noor, Mr.Pranav
Agarwal and Mr.Prateek Dhanda,
Advocates
Mr.S.S.Sejwal, Law Officer with
Mr.B.K.Rout, Pairvi Officer, CRPF

W.P.(C) 1134/2016

ANIL KUMAR Petitioner

Represented by: Mr.Ankur Chibber, Advocate

versus

UOI AND ORS Respondents

Represented by: Mr.Kirtiman Singh, Advocate
with Mr.Waize Ali Noor, Mr.Pranav
Agarwal and Mr.Prateek Dhanda,
Advocates
Mr.S.S.Sejwal, Law Officer with
Mr.B.K.Rout, Pairvi Officer, CRPF

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. It is not in dispute that the minor daughter aged 3 years and 7 months as of today of petitioner Mukesh Kumar was born with 100% profound development delayed since birth. The unfortunate child continues to have microcephaly with seizures. She is under constant medication and treatment. As per Mukesh Kumar his wife cannot look after the unfortunate child for 24 hours a day and 365 days in a year. After performing his duties he relieves his wife by looking after the child. He has to take the child to the hospital for treatment when she suffers a seizure as also the weekly medical check-up. Therefore, he prays that his transfer to Chattisgarh be cancelled. The respondents have cancelled the movement order which was challenged in the writ petition but have replaced it with an order transferring him to Jammu, where admittedly Mukesh cannot take his family with him.

2. Anil Kumar has a son who since birth suffers from 90% mental retardation. The child is 10 years old as of today. The child is under treatment at AIIMS. A brain surgery has to be performed, but when the child is medically stabilized. He challenges his posting to Srinagar where he cannot take his family. Even he claims that his wife cannot manage the child 24 hours a day and that after performing his duties he helps his wife in looking after the child, whom he takes to the hospital for check-ups at regular intervals. For the reason the doctor at AIIMS had given a date for the brain surgery of the child in July, 2016, the transfer order was kept into abeyance. But the looming cloud of transfer looms large over Anil's head because the period for which the transfer order was suspended is over. Unfortunately, the medical condition of the child has not improved and the

surgery cannot be performed. Medical documents filed by him shows that, upon the child stabilizing, surgery could be performed in January, 2017.

3. The petitioners rely upon an OM dated June 06, 2014 issued by DoPT on the subject of Posting of Government Employees who had differently abled dependents. It reads as under:-

“1. There has been demand that a Government employee who is a care giver of the disabled child may not have to suffer due to displacement by means of routine transfer/rotational transfers. This demand has been made on the ground that a Government employee raises a kind of support system for his/her disabled child over a period of time in the locality where he/she resides which helps them in the rehabilitation.

2. The matter has been examined. Rehabilitation is a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, and psychiatric or a social functional level. The support system comprises of preferred linguistic zone, school/academic level, administration, neighbours, tutors/special educators, friends, medical care including hospitals, therapists and doctors, etc. Thus, rehabilitation is a continuous process and creation of such support system takes years together.

3. Considering that the Government employee has disabled child serve as the main care giver of such child, any displacement of such Government employee will have a bearing on the systemic rehabilitation of the disabled child since the new environment/set up could prove to be a hindrance for the rehabilitation process of the child. Therefore, a Government servant who is also a care giver of disabled child may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints. The word ‘disabled’ includes (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or Cerebral Palsy (iv) leprosy cured (v) mental retardation (vi) mental illness and (vii) multiple disabilities.

4. *Upbringing and rehabilitation of disabled child requires financial support. Making the Government employee to choose voluntary retirement on the pretext of routine transfer/rotation transfer would have adverse impact on the rehabilitation process of the disabled child.*

5. *This issued with the approval of MoS(PP).*

6. *All the Ministries/Departments etc. are requested to bring these instructions to the notice of all concerned under their control.”*

4. The respondents respond by urging that the Central Para-Military Forces are under the control of the Ministry of Home Affairs and any guidelines framed by DoPT does not apply to the Central Para-Military Forces, a contention which we accept, but with the caveat that this does not mean that the writ petitions have to be dismissed for the reason the Ministry of Home Affairs has issued a Standing Order No.7/2015 dated August 04, 2015 which inter alia, vide clause (xiii) stipulates as under:-

“(xiii) Parents of specially abled children may be considered for static posting or Bns in peace areas to facilitate specialized treatment to such children. After completion of tenure they can be posted to nearby units.”

5. The underlying policy to accord a special treatment to parents of differently abled children has succinctly been brought out in paragraph 2 to 4 of the OM dated June 06, 2014 issued by DoPT and these reasons would be equally applicable to the directive contained in clause (xiii) of Standing Order No. 7/2015 dated August 04, 2015 issued by the Ministry of Home Affairs.

6. Notwithstanding the settled legal position that a policy guideline

would be subject to exigencies of service, we note that as per an affidavit filed by the respondents 275 force personnel of CRPF seek the benefit of Standing Order No.7/2015. The respondents claim that it would not be possible to accommodate such large number of CRPF personnel in and around Delhi.

7. Now, the CRPF locations in Delhi, Gurgaon and Noida, with the strength of the personnel require are concededly as under:-

Location	Strength
Group Centre, Jharoda Kalan	Strength of about 3000
HQ at directorate	Strength of about 1800
Group Centre, Gurgaon	Strength of about 1000
Training Institute, Gurgaon	Strength of about 2000
Group Centre, Noida	Strength of about 3000
IG Office, Northern Sector	Strength of about 200-300
DIG Office, New Delhi	Strength of about 300
DIG, RAF	Strength of about 300
Training Directorate, R.K.Puram	Strength of about 100-150

8. The petitioner Mukesh Kumar is currently posted at the Group Centre, Gurgaon and Anil Kumar is also posted there.

9. Conscious of the fact that both of them are at the Group Centre, Gurgaon for more than the duration of the tenure peace station posting contemplated by the posting rules, we find it to be not a case of exigency of service over riding the interest of their minor children who are differently abled and thus keeping in view the facts of the two writ petitions we hold

that both petitioners would be entitled to the benefit of the respective transfer/posting order issued to them being cancelled with a direction that for a period of at least one year from today both would be retained at the Group Centre, Gurgaon and that in the future the two would be posted at a place where they would be entitled to family accommodation so that they can stay with their wife and their differently abled child because the differently abled child of both petitioners require the company of the father and the need of the father to look after the unfortunate child.

10. The writ petitions are disposed of issuing a direction in terms of paragraph 9 above without there being any order as to costs.

CM No.4982/2016 in WP(C) 1133/2016

CM No.4984/2016 in WP(C) 1134/2016

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JULY 27, 2016

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