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

+ W.P.(C) 2629/2016 and CM 11150/2016

HAV RAM PARTAP

..... Petitioner

Through: Mr. S.M. Dalal, Advocate

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Rakesh Kumar, Advocate with
Mr. Siddharth Khatana, Advocate with Col.
Digvijay Singh, CW-1 and Col. Ashok Arora,
Rajputana Rifles Regimental Training Centre.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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23.03.2016

1. The present petition has been filed by the petitioner, who as per the averments made in the petition, was enrolled in the Rajputana Rifles as a Sepoy/Musician and was permanently posted with the Army Symphony Band w.e.f. 16.05.2000, praying *inter alia* for quashing the transfer orders dated 10.03.2016 and 14.03.2016.

2. The petitioner claims that in all these years, he has been performing his duties to the entire satisfaction of his superiors and was promoted as a Havaldar on 16.05.2010. On 07.9.2015, some altercation had taken place

between the petitioner and Havaladar Anil Kumar of the Army Band which had resulted in holding a Court of Enquiry. The said Court of Enquiry had recommended that the petitioner and Havaladar Anil Kumar be awarded seven days pay fine, a minor punishment. Subsequently, vide Signal dated 25.02.2016, the petitioner and Havaladar Anil Kumar were transferred to their parent Regiment on "Disciplinary Ground". This was followed by another transfer order dated 10.03.2016, whereunder the petitioner was posted to Bengal Engineer Group Centre at Kirkee. Lastly, the respondents had issued a Signal dated 14.03.2016, attaching the petitioner to NDA, Khadakwasla.

3. Counsel for the petitioner states that the petitioner originally belongs to Rajputana Rifles and there is no policy of transferring the incumbent from one Regiment to the other. He further states that aggrieved by the aforesaid transfer order, the petitioner had submitted a representation dated 16.03.2016 to the DDG, CW-1, which is still pending consideration and in the meantime, vide order dated 14.03.2016, he has been directed to vacate the family accommodation occupied by him at Delhi, by 31.03.2016.

4. Counsel for the respondents states that it is not as if the vacation order has been passed on 14.03.2016, rather, in the transfer order dated

25.02.2016, the petitioner was advised to vacate the family accommodation by 31.03.2016 and therefore he cannot claim that he was not given ample notice. He adds that the petitioner's performance has not been upto the mark for the past one year and he has been advised to improve his performance, but to no avail.

5. We are informed that the performance review for musical instruments of the members of the Army Band is due on 30/31.03.2016. The respondents have no objection if the petitioner's performance is reviewed on the said date. Further, counsel for the respondents states on instructions that the pending representation of the petitioner dated 16.03.2016 asking for cancellation of his transfer order shall be considered keeping in mind the rule position and a decision shall be communicated to him immediately after his performance is assessed at the end of March, 2016.

6. Having regard to the aforesaid submission, the present petition is disposed of alongwith the pending application, with directions issued to the respondents to permit the petitioner to participate in the performance review for musical instruments fixed on 30/31.03.2016 and thereafter decide his representation dated 16.03.2016 in accordance with law, under written intimation to him. Till 7.4.2016, the respondents are restrained from taking

any coercive action against the petitioner. If the petitioner applies for leave upto 07.04.2016, the same shall be considered by the respondents sympathetically.

7. The aforesaid order has been passed on the condition that on being directed, the petitioner shall ensure that he appears in the performance review for musical instruments to be held at the end of March, 2016.

DASTI to the counsel for the respondents under the signatures of the Court Master.

MARCH 23, 2016
rkb/ap

HIMA KOHLI, J

SUNIL GAUR, J