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

+ W.P.(C) 4541/2016 & CM Nos. 18930/2016 (for stay), CrI.M.A.No. 15798/2016 (u/S 340 read with Section 195 Cr.PC by petitioner)

ABHAY KUMAR BHARGAVA

..... Petitioner

Through Mr. Subhash Chander Vashishth,
Mr. Pankaj Sinha and Mr. Manish
Kumar, Advocates

versus

UNION OF INDIA & ORS

..... Respondent

Through Mr.Akshay Makhija, CGSC with
Mr. R.M.Tripathi,G.P, Ms. Shivi
Sanyam, Ms.Divya Kapur and
Ms. Mahipa Bahl, Advocates for
respondent No.1

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **21.12.2016**

This writ petition is directed against an order of transfer whereby the petitioner has been transferred to Silchar in the State of Assam.

The petitioner is a Head Constable in the Border Security Force and his wife is a Central Govt. Employee working as Junior Clerk in Lok Sabha Secretariat. It appears that the service of the petitioner's

wife is non-transferable.

In the writ petition, it is pleaded that the petitioner is entitled to protection of his fundamental right. However, from the petition, it does not appear how and in what manner the fundamental right of the petitioner has been breached.

The petitioner is a member of the Border Security Force and is governed by the Border Security Force Act, 1968. Section 7 of the said Act provides that every member of the Force shall be liable to serve in any part of India as well as outside India.

Our attention has been drawn to a Government circular dated 31.5.1999 with regard to posting/transfer attachment at Delhi.

However, paragraph 3 of the aforesaid circular reads:-

“notwithstanding anything contained in the guidelines as above, the DG/IG (Communication) would have all powers in the matter of issuing posting/transfer/deputation/attachment order in respect of all members of Force if such a transfer/attachment is considered necessary keeping in view the exigencies of service on the administrative/operational grounds and in public interest.”

The petitioner was apparently posted in Bhondsi which is only 40 km away from Delhi for about 3 years and thereafter in Delhi for about a year. It has now been decided to move the petitioner to Silchar.

It is not for this Court exercising jurisdiction under Article 226 of the Constitution of India to sit in appeal over administrative decisions, and particularly orders of transfer of Government servants who are admittedly in transferable service.

The scope of interference with orders of transfer under Article 226 of the Constitution of India is extremely limited. This Court does not ordinarily interfere with orders of transfer, unless such orders are patently mala fide, penal in nature and/or in patent contravention of the mandatory provision of any statute, statutory rules, regulations or Government orders.

There are allegations of arbitrariness and discrimination which are devoid of material particulars. It is the case of the petitioner, that his request for transfer to the station where his wife was posted had been rejected on the ground that the petitioner had not served the

minimum period of 10 years in service so as to be eligible for posting in Delhi. According to the petitioner minimum 10 years of service may be necessary for posting in Delhi in the ordinary course. The petitioner had requested posting in Delhi on the ground of his spouse being posted in Delhi and not in the ordinary course.

It is not necessary for us to go into the question of eligibility of the petitioner for posting in Delhi, in the ordinary course or otherwise, for every Constable/Head Constable of the Border Security Force, who is eligible for posting in Delhi, cannot claim posting in Delhi as a matter of right. As observed above, the petitioner has spent about 4 years of his service, if not in Delhi, within 40/50 kms from Delhi. Furthermore, as observed above, the petitioner's wife being a permanent employee stationed in Delhi whose service is non-transferable, the petitioner cannot be accommodated in Delhi for his entire service life.

The averments in the petition do not make out any clear case of mala fides, improper motive, penalization or breach of law. The writ petition cannot be entertained and the same is rejected. If there is

any incorrect averment made by the respondents in the pleadings, the petitioner might pursue his remedy including action for perjury in the appropriate criminal court.

The writ petition is dismissed.

INDIRA BANERJEE, J

JAYANT NATH, J

DECEMBER 21, 2016/mw

