

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

% *Date of Decision : July 13, 2016*

+ **W.P.(C) 5697/2016**

LT.COL VIBHAV Petitioner

Represented by: Mr.S.S.Pandey, Advocate

versus

UNION OF INDIA & ORS Respondents

Represented by: Mr.B.S.Shukla, CGSC with
Mr.Ankur Chhibber, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The petitioner has filed the present petition challenging the posting order dated May 16, 2016 under which the petitioner has been posted to 811 ONGC TA Vadodhara (Gujarat) as also the movement order dated June 13, 2016 by which the petitioner has been ordered to move from Delhi to Vadodhara in compliance with the posting order.

2. It is the case of the petitioner that he was posted in Delhi on February 26, 2013 and was directed by an order dated September 16, 2013 to report at Borjihar (Assam) as attachment for certain disciplinary case. Pursuant to the said attachment the petitioner reported at Borjihar on December 10, 2013 and since then he had remained at Borjihar on attachment and has only returned back on June 01, 2016 when he was asked to report back to his unit i.e. the AGs branch at Delhi.

3. It is the contention of the petitioner that the policy framed by the

Indian Army warrants three years' posting at a place. As per the petitioner the period of his attachment at Borjahaar has to be excluded while reckoning his service in Delhi. As per the petitioner, so excluded, out of the three years period at Delhi he had remained for 2 years and 3 months at Borjahaar and therefore prays that he would be entitled to a complete three year tenure at Delhi.

4. Concerning petitioner's attachment at Borjahaar after he was posted in the AGs office at Delhi on February 26, 2013, the record shows that the CBI had registered a PE and the Army Authorities were looking into certain allegations against the petitioner. Petitioner's presence at Borjahaar was necessitated on said account and this was the reason why the attachment order, requiring petitioner to be on the strength in the AGs branch at Delhi but as a matter of fact work at Borjahaar, was issued. The proceedings have resulted in an administrative censure.

5. Contention of learned counsel for the petitioner is that Regulation 453B of the Regulations for the Army contemplates an attachment after the competent authority satisfies itself and forms a prima-facie opinion of case existing that a disciplinary action is definitely possible. As per learned counsel for the petitioner said opinion was not formed. Thus the attachment is illegal.

6. This contention is noted and rejected for the reason the petitioner did not challenge in Court the attachment order.

7. We also find, with reference to the record, that the petitioner has concealed a fact and has falsely pleaded that it was only in May of 2016 that he came to know about his transfer.

8. It has been specifically averred in the counter affidavit that the petitioner was informed as early as on August 2015 that his tenure at Delhi

was coming to an end and therefore he should indicate his choice of place of posting. The petitioner denies said information being conveyed to him and we find from the record that the petitioner never made any request indicating the choice of place where he desired a posting.

9. But the record shows that the Commanding Officer drew up minutes on April 29, 2016 and this was because the petitioner had not given any choice of posting and thus the Commanding Officer called the petitioner for interaction and asked his choice for posting. During the interaction the petitioner again reiterated that he wanted to be in Delhi and if he cannot be accommodated in Delhi then he should be posted to field unit so that the children of the petitioner could continue education at Delhi. Based on the said request made by the petitioner, as recorded by the Commanding Officer on April 29, 2016 itself, the Competent Authority looked into the matter and decided that petitioner's retention in Delhi is not possible and recommended that the petitioner be posted to a suitable field appointment. While the said request of the petitioner was being considered for being posted to a field appointment the petitioner again requested the respondents to consider his posting to a peace station. This is recorded in the minutes dated May 13, 2016. Accepting the request of the petitioner he was accordingly posted to the present place.

10. Contention of learned counsel for the petitioner that no such interactions took place is not accepted by us because we see no reason why the Commanding Officer should fabricate the minutes.

11. Another important fact to be noted is that pursuant to the posting order the petitioner himself had written a letter dated June 06, 2016 wherein he had requested the respondents to grant 30 days' extra joining time and 30 days extension of due date for reporting. Considering the said request of the

petitioner he was granted 20 days' extra joining time. Once the petitioner had accepted the posting order and vide letter dated June 06, 2016 sought extra joining time to join the petitioner is estopped from challenging the posting order now.

12. The petitioner's letter dated June 06, 2016 is also indicative of the fact that he had talks with his Commanding Officer concerning his posting.

13. Before bringing the curtains down we record that learned counsel for the parties were ad-idem that an attachment to a different unit does not curtail the tenure period where the force personnel is posted.

14. Accordingly we dismiss the writ petition but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JULY 13, 2016
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