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

\+ W.P.(C) 9655/2015

HC PALTU SINGH ..... Petitioner
Through: Mr. Rakesh Dahiya, Advocate

versus

UNION OF INDIA & ORS .....Respondents
Through: Ms. Shiva Lakshmi, CGSC, with Mr. Sree Ram Krishna and Mr. Udit Grover, Advocates with Asstt. Comdt. Arvind Sharma

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R

% 29.02.2016

CM APPLN.23027/2016 (Exemption)

Allowed subject to all just exceptions.

W.P.(C) 9655/2015 & C.M.23026/2015 (Stay)

1. Present petition has been filed by the petitioner praying *inter alia* for issuance of a writ of certiorari, for quashing the Movement Order dated 16th August, 2015 passed by the respondent No.3/The Commandant, 25 Bn., BSF, Chhawla, transferring him from Chhawla to 44 Bn. Mowpat, Shillong (Meghalaya).

2. Learned counsel for the petitioner submits that the petitioner was enrolled as a Constable in BSF on 25th May, 1986 and during his tenure,

he has served at various places of posting. The petitioner and his wife had contracted HIV and so had their son, who was born in the year 2006, which fact came to their knowledge only in the year 2009, when the petitioner was posted in Malda, West Bengal.

3. Considering the health condition of the petitioner and his family members, in October, 2010, he was transferred to 25 Battalion in Delhi and was referred to ART Centre, AIIMS, where he and his family have been undergoing treatment. The petitioner was placed in a Low Medical Category (Permanent) by the Medical Board held on 3rd November, 2009 and subsequently, on 5th July, 2013.

4. The grievance raised in the petition is that despite the medical condition of the petitioner and his family members being known to the respondents, the impugned Movement Order dated 16th August, 2015 has been issued directing him to join 44 Bn., Shillong, Meghalaya, by 15th October, 2015.

5. At the time of issuing notice in the present petition on 12th October, 2015, the respondent No.3 was directed not to give effect to the posting order. As a result, the petitioner remains posted at Chhawla till date.

6. Learned counsel for the respondents confirms the fact that the petitioner and his family members are patients of HIV for the last six years and are under treatment at AIIMS, Delhi. She states that the medical facilities for treatment of HIV positive patients is available in ART Centres at every Medical College and Hospitals and if the petitioner joins his place of posting at 44 Bn. Mowpat, Shillong (Meghalaya), such facilities would be available to him and his family at the National Indira Gandhi Research & Institute of Medical Science Mawpat, Shillong

(Meghalaya). She assures the Court that the petitioner having been placed in a low medical category, he shall be assigned lighter duties, which will be suitable as per his medical condition.

7. Since the petitioner has already remained at a soft posting for almost five years and there are other similarly situated personnel, who also need to be accommodated at soft postings on account of health conditions and humanitarian grounds, learned counsel for the respondents states that the Movement Order dated 16th August, 2015, may be permitted to be given effect to at the earliest and the petitioner be directed to join his place of posting.

8. Learned counsel for the petitioner rejoins by stating that the petitioner has four years of service left before he superannuates in the year 2020 and this aspect should also have been considered by the respondents while passing the impugned Movement Order.

9. Had it been a case where a year or less than two years of service would have remained for the petitioner to have superannuated, we would have been inclined to direct the respondents to re-consider his case. However, the petitioner has remained posted at a soft area for almost five years and he still has a period of four years left before retirement. Therefore, we are not inclined to stay the impugned Movement Order. Having regard to the fact that the petitioner's son is in Class-IV and his current Academic Year shall conclude in the month of March, 2016, the respondents are directed to stay their hands in respect of the petitioner's transfer order till the conclusion of the said Academic Year that is till 31st March, 2016.

10. The present petition is disposed of along with pending application

with no orders as to costs. The interim order stands modified as noted above.

HIMA KOHLI, J

SUNIL GAUR, J

FEBRUARY 29, 2016
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