

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11014 of 2017

Date of Decision: 22.05.2017

SGT Shobhanath Kumar

... Petitioner

Versus

Union of India & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Arihant Goyal, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

On the request of learned counsel for the petitioner, respondent No.2 is deleted from the array of parties.

This petition has been filed against a transfer order dated 30.3.2017 posting the petitioner to Trivandrum. The transfer is from Barwala, Distt. Panchkula. Pleads that he is going to complete 20 years of service in December, 2018, and has already submitted his unwillingness in further extension and consequently, the petitioner will superannuate in December, 2018. This is a contingent fact. He has narrated in the petition his medical condition which is not upto the mark.

Learned counsel appearing for the petitioner draws attention of the Court to the transfer policy and especially Clause 20 which reads as follows:-

“Posting on Superannuation Grounds

20. Individual may avail his facility within the last 10 years of service before SA. As far as possible, a posting to a requested place will be

given to a superannuating airman. The tenure of such postings will be for not more than two years. Once SA posting has been availed, the airman is obligated to continue in service till superannuation if otherwise eligible. If a request for posting has been availed in the last ten years of service, the airman will not be entitled for SA posting in the last two years of service. This will, however, be applicable prospectively.”

At this stage, Mr. Ajay Kumar Gupta, Advocate, has appeared. He informs Court that because the Chief of Air Staff has unnecessarily been made a party respondent, therefore, he has been especially deputed by the Indian Air Force to appear at the hearing. He explains that Clause 20 of the Transfer Policy deals with superannuation but not with requests made in advance short of completion of 20 years service. Such requests are based on personal choice if person wants not to serve in the Indian Air Force after completing 20 years. Therefore, Clause 20 of the Transfer Policy has no application to the case since it is not a case of requests made in advance of retirement on superannuation. The petitioner may have shown willingness to retire in 2018 but that is not the same thing as superannuating.

Besides, the petitioner has approached this Court directly without availing his administrative remedies before the authorities in the Indian Air Force. Refusal to entertain writs against transfer orders in the first instance has been commented upon by the Supreme Court in Shilpi Bose (Mrs.) v. State of Bihar, AIR 1991 SC 532. In the first instance, the person aggrieved would have to be approach the administrative authorities where the grievance can be ventilated. In that case, the petitioner can always plead his reasons for cancellation of the transfer order and retention due to family and medical

circumstances etc. He has appended some papers regarding his child studying in the tricity.

As a result, the petition is dismissed with liberty to the petitioner to make a representation to the authorities to take up the matter and take suitable action, if any, which may require to be taken.

22.05.2017
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(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>