

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22278 of 2016(O&M)

Date of Decision: 20.02.2017

Sub Maj/Skt Ashok Kumar

... Petitioner

Vs.

Union of India & others

...Respondents

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

Present: Mr. Gaurav Mohunta, Advocate
for the petitioner.

Mr. Vivek Singla, Advocate
for the respondents-UOI.

RAJIV NARAIN RAINA, J. (Oral)

CM No. 2373 of 2017

Application is allowed as prayed for. Replication to w/s is taken on record.

CWP No.22278 of 2016

Heard at considerable length. Examined the issues with the help of counsel. Detailed judgment is not required as I am of the confirmed view that the transfer order is not illegal or arbitrary. There is also no need to enter debate on the provisions of regulation para 1445 cited by the petitioner and the regulation No. 1474 appended with the written statement at Annex R-I/1, since issue is rendered academic in view of the proposed order.

Accordingly, the petition is disposed of with the following directions.

The petitioner relents in the larger interests of the Indian Army and will abide by the transfer signal although he is short of retirement on

superannuation. After the debate on the several issues involved in restricted writ jurisdiction and having elicited responses directly from the petitioner, who is present in Court and his learned counsel Mr. Mohunta and Mr. Singla for the respondents and the officers from Bombay Sappers of the Army in attendance, there appears to be broadly a reconciliation and understanding that this order is the best course to adopt. But the petitioner needs some protections so as not to disrupt his family and children studying in Chandigarh [Chandimandir] residing in Army accommodation and to avoid sudden undue hardship since the posting is in non-family station in high altitude Kargil area and keeping in mind the balance period of service being short and will not disturb the rights of others seriously. Therefore, it is directed as follows:-

(i) The accommodation allotted to the petitioner will be allowed to be retained by the family till his impending retirement from service on 30.11.2017. This would be after receiving a formal application from the petitioner making such request for continued use of family quarters allotted in Chandigarh to avoid disruption of wife and children. For this usual house rent will be charged. There will be charged no penal rent etc. This part of the order will not be treated as precedent as it has been passed on equitable considerations to resolve the *lis* in the special facts and circumstances.

(ii) The period from the date of original transfer till the passing of this order will not be read or be adversely used against the petitioner for all intents and purposes from the date of impugned posting order because the petitioner was legitimately pressing his rights in the constitutional Court to vindicate his grievance, which was his right and he was secured by an ad

interim stay order passed in November 2016.

(iii) The petitioner is allowed his usual joining time starting from the date of receipt of certified copy of this order and the petitioner will report to transferred destination within the joining time allowed.

(iv) The Army authorities will actively assist the petitioner in completing his paper-work and necessary formalities towards pension etc. during the posting at Kumbathang, Kargil as assured by the Col. Birender Singh, Additional Chief Engineer, HQ Chief Engineer, Chandigarh zone, who present in Court.

(v) Adverse steps, if any, taken by the respondents against the petitioner during the interregnum and before the stay order will be recalled. No coercive action will be resorted to. There will be no disciplinary action taken on account of the transfer so that the petitioner retires peacefully after rendering 31 years of service in the Army.

The above measures of protection will hold good and will be given effect to forthwith by the respondents.

(RAJIV NARAIN RAINA)
JUDGE

20.02.2017
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Whether speaking/reasoned
Whether reportable

Yes
No