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

+ W.P.(C) 76/2017 & CM No.443/2017 (stay)

SGT SRINIVAS PRASAD Petitioner
Through Mr. Virender Singh Kadian, Advocate

versus

UNION OF INDIA & ORS Respondents
Through Mr. Vikas Mahajan, CGSC and
Mr. S.S.Rai, Advocate
Mr. Ashok Kumar Chauhan, Wg, Cdr,
Legal Cell, AFRO

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

% **09.01.2017**

In this writ petition, the petitioner, an airman serving in the Indian Air Force, has challenged an order of transfer, whereby he has been transferred out of Delhi. The petitioner has been directed to join 33 Wing AF at Jamnagar (Gujarat) w.e.f. 16.1.2017.

The petitioner is resisting the order of transfer inter-alia on the ground that is pursuing a five year LLB course. The petitioner has completed 3 years out of 5 years. The petitioner submits that pursuit of the course for 3 years will go waste, if the petitioner is now shifted

to Jamnagar, in Gujarat. The petitioner also contends that he has about 19 months of residual service for completion of regular engagement. The petitioner need not be transferred at this stage. The petitioner submits that if the petitioner is retained for about 6 months, the petitioner may opt for retirement. It is also pleaded that the petitioner's mother is suffering from Osteoarthritis/Osteoporosis for which she is undergoing treatment at the Safdarjung Hospital in New Delhi.

There can be no dispute that the services of the petitioner are transferable. It is submitted by the respondents that the petitioner has obtained admission without getting the approval of the AFRO. As such, any request for posting on the ground of his educational course cannot be considered. Counsel appearing on behalf of the respondent authorities has drawn our attention to the Air Headquarters Human Resource Policy, Part II/PA (Airmen)/PD/01/2013 which lays down the posting policy of Airmen.

As per the aforesaid policy, and in particular paragraph 25 thereof, Airmen desirous of doing any course/study from a recognised institute, while being posted at a specific unit are not to deposit

tuition/admission fees for such course/study before grant of sanction from the AFRO. Paragraph 25 makes it clear that grant of permission by the Commanding Officer or payment of fees without approval of AFRO would not be acceptable justification for consideration of application for posting/screening by AFRO.

In the absence of sanction of AFRO any request for posting/screening may not be considered. In case of transferable service, the High Court exercising power under Article 226 of the Constitution of India does not sit in appeal over orders of transfer. Orders of transfer are interfered with in the rarest of cases, where the order of transfer is patently mala fide, punitive or in blatant disregard of mandatory rules.

In the instant case, no case of mala fide has been made out. The transfer is not punitive. It is a routine transfer. The petitioner completes 5 years in New Delhi in January, 2017. The normal tenure of posting is 4-5 years. An officer/Airman may be transferred before completion of 4-5 years as stipulated in the policy for transfer. It is true that an officer/Airman can be retained beyond 4-5 years in a particular situation, if exigencies so require. However, it is for the

authorities concerned to decide whether the service of any particular officer and/or Airman is required in any particular station beyond the stipulated period of 4-5 years. No officer and/or employee can insist on being retained beyond the stipulated period of 4-5 years.

The services of the petitioner being transferable, this Court is not inclined to interfere with the order of transfer. However, this Court is of the view that issuance of show cause notice only for pursuing an educational course, and that too after obtaining the recommendation of the Commanding Officer, is totally arbitrary. In terms of the policy, failure to obtain sanction of the AFRO only entails the consequence of non-consideration of any request for posting and/or screening.

Learned counsel for respondent on instructions from Mr. Ashok Kumar Chauhan, Wing Commander, Legal Cell, AFRO, who is present in Court, undertakes that no further action shall be taken against the petitioner on the basis of the show cause notice. The writ petition may be disposed of by recording the undertaking given on behalf of the respondents that no further action shall be taken on the show cause notice issued to the petitioner. This order will not,

however, prevent the authorities from considering the representation of the petitioner in accordance.

The Assistant Chief of Air staff shall take a decision in accordance with law within 3 working days from the date of receipt of a copy of this order.

The writ petition is disposed of.

Dasti be given to counsel for both parties under the signatures of Court Master.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

JANUARY 09, 2017/mw