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

+ **W.P.(C) 3376/2017**

SERGEANT RAJESH KUMAR RANJAN Petitioner
Through **Mr. Virender Singh Kadian, Advocate**

versus

UNION OF INDIA & ORS Respondents
Through **Mr. Ravi Prakash, CGSC with**
Mr. Nitish Gupta & Mr. Farman Ali,
Advocates &
Mr. Chauhan (Wing Commander)

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

% 24.04.2017

CM No. 14761/2017 (Exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 3376/2017 & CM No. 14760/2017 (stay)

The writ petitioner Rajesh Kumar Ranjan had earlier filed Writ Petition (C) No. 1657/2017, which was disposed of vide order dated 22.2.2017. For the sake of convenience, this order is reproduced below:

“In this writ petition, the petitioner, an Airman has challenged transfer order No.RDC/681 dated 24.01.2017 whereby the petitioner has been transferred from Delhi to Chennai. The order of transfer has been challenged on different grounds. First of all, it is contended that the transfer is an outcome of an application made by him under the Right to Information Act seeking certain information

with regard to a Gas Supply Agency.

From the averments in the writ petition, it is apparent that the concerned Gas Supply Agency is an agent of Indian Oil Corporation. It is an independent agency that has nothing to do with the Indian Air Force except to supply gas to individual personnel of the Indian Air Force, residing within the area of operation of the Gas Agency. No case has been made out in the writ petition of any connection between the Gas Agency and any particular officer of the Indian Air Force which might have prompted the transfer.

There is a letter annexed to the writ petition indicating that the petitioner lodged a complaint against the Chief Administrative Officer and Security Officer of the Indian Air Force in the Delhi Cantonment Police Station. However, it does not appear that the Chief Administrative Officer and Security Officer are the Officers empowered to issue orders of transfer of Airmen.

It was next contended that the transfer was in contravention of Air Headquarters, Human Resource Policy, Part II/PA(Airmen)/PD/01/2013 issued by the Air Headquarters, Vayu Bhawan, New Delhi dated 21.11.2013. It however, appears that Paragraph 19 provides that considering the inconveniences caused to the Airmen on WIE (with immediate effect) movement, it would be endeavoured to ensure that posting orders were issued three months in advance, before completion of the tenure of the concerned Airmen. However, in the case of operational or administrative exigencies, Airmen might be shifted earlier than three months.

It is also contended that the normal tenure of Airmen is 4 to 5 years in a unit. However, from the Note 1 appended to Paragraph 6, it is clear that Airmen can be picked up for posting elsewhere before completion of the tenures mentioned in the Human Resource Policy depending on service exigencies. However, posting before completion of one year might only be done on clearance from Air Headquarters. In this case the petitioner is being posted after completion of almost three years.

A perusal of Note 1 and in particular, the use of the expression 'posting out before completion of the tenure', read with the object and intention of stipulation of normal tenure, reveals that the tenure of posting at a particular station and / or a particular place is directory and mandatory and may be demated from if exigencies so require. In this case the petitioner was earlier posted in Gwalior. By an order dated 19.06.2015, he was posted in Delhi after which he has been posted in different units in Delhi.

Posting before completion of one year in a station is to be done on clearance from Air Headquarters. In this case, the petitioner has been in Delhi for over one year. It is stated that

exigencies required the service of the petitioner in Chennai, in view of his specialisation in Information Technology.

It is not necessary for us to look into the reasons for the petitioner's transfer in the absence of any specific material showing that the transfer is either mala fide or contrary to any mandatory rules, and/or regulations. The policy guidelines referred to are only directory and clearly provide that Airmen can be picked up for posting out before completion of the tenure depending on service exigencies. It is for the concerned authorities to decide what are the service exigencies which are required for transfer of different personnel to different posts, individual officers and / or employees cannot have any say in this regard.

There can be no dispute that the services of Airmen serving the Indian Air Force are transferrable. Such officers may be appointed in any station where the Indian Air Force operates subject to availability of the post held by the concerned Airmen.

The petitioner has hopelessly failed to discharge his onus of substantiating that the transfer is either mala fide or vindictive or contrary to any mandatory rules.

However, there does not appear to be any such exigency for which the requirement of the respondents themselves of notice of three months should be dispensed with. The order of transfer dated 24.01.2017 shall be kept in abeyance. The petitioner shall not be disturbed till 24.04.2017 being three months from the date of his transfer order. It is also argued that the petitioner has personal difficulties. If the petitioner had personal difficulties, the petitioner should have approached the authorities concerned and made a representation instead of approaching this Court. Be that as it may, if any representation is made, the same may be considered and disposed of in accordance with law by the competent authorities within reasonable time.

The writ petition is disposed of accordingly.
DASTI.”

In the instant writ petition, the petitioner has referred to facts and taken identical pleas, which were raised and pleaded to in WP(C) No. 1657/2017. These pleas and contentions were rejected by the court observing that the petitioner was unable to discharge onus of substantiating that the transfer was either mala fide, vindictive or contrary to any mandatory rules. We would, therefore, not go into the

said question again in the present writ petition.

At this stage, counsel for the petitioner submits that he would either challenge the order dated 22.2.2017 or file a review application, in view of the fact that he has been able to obtain certain orders/papers. Counsel for the respondent, on the other hand, submits that the documents enclosed by the petitioner are confidential documents, which have been unauthorisedly obtained. These aspects and issues are not required, to be examined in the present writ petition, in view of the statement made.

Learned counsel for the petitioner submits that clearance certificate was issued on 20.4.2017 and the petitioner is to report to the Chennai office by 28.4.2017. In view of the fact that the representation of the petitioner was disposed of only on 21.4.2017, we extend the joining time till 2.5.2017. It is also open to the petitioner, if he so desires to challenge the order dated 21.04.2017. We clarify that we have not commented on merits.

The writ petition is disposed of.

Dasti.

SANJIV KHANNA, J

ANIL KUMAR CHAWLA, J

APRIL 24, 2017

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