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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10489/2016 & CM 41140/2016**
LT. COL. VR DESHMUKH Petitioner
Through: Ms.Archana Ramesh, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through: Ms.Bharathi Raju, CGSC for R-1 to 4.
Maj. Charul Bhatt, Maj. Vaibhav Kumar.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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12.09.2017

The respondents have produced before us the original record in the form of 'Officers Individual Folder'.

In particular, our attention has been drawn to page 107, which is a letter dated 28th June, 2016 written to Military Secretary's Branch. With the consent of the counsel for the respondents on instructions, we would record that the said letter records that the petitioner was obese and had lackadaisical attitude towards professional commitments. The petitioner posted at Rashtrapati Bhawan, Delhi in the ceremonial battalion, would perform at national importance events under the constant media glare. The petitioner could not be exempted from the said duties, which had caused embarrassment. Request was made that the petitioner may be transferred to another Unit/Establishment at the earliest.

There is an earlier letter written by another senior officer dated

5th February, 2016 which refers to defaults in payment of EMI's on loans obtained by the petitioner from different sources including financial institutions.

Pursuant to these letters, the file was processed as per notings at page 101 exploring different posting options. The matter was considered at different points of time before finally the transfer order dated 3rd October, 2016 was passed. There is no indication and reference in any of these notings to the complaint dated 29th August, 2016 made by the petitioner against Col. Amit Soni, Commanding Officer. The letters mentioned above were not written by the said Commanding Officer, but by senior officers, whose names and designations are not stated to maintain confidentiality.

The petitioner pursuant to the transfer order had joined the transfer post as no interim order was passed. The transfer policy dated 21st June, 2011 states that normally tenure of posting in Delhi would be restricted to two years. However, in the present case for administrative reasons and good grounds, the respondents have passed the transfer order. The petitioner was earlier posted in Delhi, from 1st February, 2009 till 30th June, 2009 for a period of five months. The second posting in Delhi was from 21st April, 2015 till 3rd October, 2016, i.e. date of the transfer order. In between the petitioner had also gone on an international posting to Congo from 1st July, 2009 to 20th September, 2010.

In terms of transfer policy, the petitioner would not be barred or prohibited from being re-posted in Delhi as the petitioner did not have tenure of more than 18 months in the last posting at Delhi/NCR.

In view of the aforesaid, we do not think, the order of transfer issued by signal dated 3rd October, 2016 requires interference.

The second issue raised in the present writ petition relates to allegations made by the petitioner against the Commanding Officer.

The respondents in the counter affidavit have stated that the petitioner had a right to make a statutory complaint under Section 27 of the Army Act. In case of grievance, the petitioner should approach the Tribunal under Armed Forces Tribunal Act, 2007. The petitioner has erroneously invoked the writ jurisdiction of this Court. Counsel for the respondents has furnished to us a copy of order dated 31st August, 2017 written to Col. Amit Soni.

The petitioner, if aggrieved by the non action or the complaints, can file appropriate proceeding in accordance with law.

With the aforesaid observations, the writ petition is disposed of.

SANJIV KHANNA, J

NAVIN CHAWLA, J

SEPTEMBER 12, 2017
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