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

+ W.P.(C) 6073/2018 with CM Nos.23495-96/2018

CDR ROHIT MEHRA (0369W) Petitioner

Through: Ms.Arunima Dwivedi,
Advocate with
petitioner in person

versus

UNION OF INDIA & ORS Respondents

Through: Ms.Shiva Lakshmi, CGSC for
UOI with Mr.Ruchir Ranjan
Rai & Mr.Siddharth Singh,
Advocates with Lt Cdr. Chetan
Bagdi, Surg. Cdr Anand M,
DGMS (N) & Cdr. Shailesh M,
DOP

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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30.05.2018

1. The present petition has been filed by the petitioner praying *inter alia* for quashing his posting order dated 26.09.2017, whereunder he has been posted to Mumbai. The petitioner also seeks revocation of the movement order dated 01.05.2018, calling upon him to proceed on transfer to Mumbai latest by 04.05.2018. Lastly, the petitioner has prayed for issuance of directions to the respondents to permit him to continue serving in Delhi till July, 2019, to enable his specially-abled

son to complete his class-XII examination and to facilitate his own surgical procedures.

2. We may note that this is the second petition that has been filed by the petitioner in a short span of three months. Earlier, in March, 2018 he had filed W.P.(C) 448/2018, for seeking quashing of the transfer order dated 26.09.2017. Vide order dated 06.03.2018, the said petition was disposed of while granting liberty to the petitioner to approach the respondents by filing a representation before the Competent Authority, along with the relevant documents, for assignment of a specific station where the medical treatment relating to his son with special needs would be readily available. Further, the respondents were directed to consider the said representation and pass a speaking order, under written intimation to the petitioner, within two weeks.

3. Thereafter, the petitioner had submitted a representation to the respondents which was considered and a letter dated 22.03.2018 was issued stating as follows:

“1. Refer to the following:-

- (a) INS India letter 235/3 dated 14 Mar 18.*
- (b) Court Order, High Court of Delhi dated 06 Mar 18. (copy enclosed)*
- (c) IHQ MoD(N) letter NA/0301/70/07 dated 22 Aug 13. (copy enclosed)*

2. The case of retention in station iro the officer has been examined at IHQ MoD(N). The officer was required to submit Medical Certificate from Service hospital as per the directives of the Hon'ble High Court of Delhi and policy letter ibid. However, the officer has only

submitted Medical Case Sheet of Base Hospital, Delhi Cantt (BHDC) where the child has been referred for further tests at AIIMS, Safdarganj to investigate the case of Autism. Presently, the medical clinical specialist has not prescribed the son to be a case of Autism as claimed by the officer and the officer has not approached the Service hospital with test results for arriving at the final diagnosis.

3. In view of the aforementioned, the request for retention in station iro Cdr Rohit Mehra (03694W) is not approved. It is therefore requested that the officer be transferred as promulgated.”

4. Immediately on receipt of the aforesaid letter, the petitioner wrote to the respondents on 23.03.2018, stating that he may be provided time till 03.04.2018, to get his son's Medical Certificate and thereafter, if it is still desired, he shall proceed on transfer within a fortnight of such an order being passed.

5. This was followed by a letter dated 26.03.2018, addressed by the petitioner to the respondents, but served on 28.03.2018, enclosing therewith the Medical Certificate of disability in respect of his son, for retention in station. The said Medical Certificate dated 27.03.2018 is placed at page 42 of the paper book. Vide letter dated 02.04.2018, the petitioner had submitted the CARS/IQ Psycho Diagnostic Report, assessed on 21.03.2018, to the respondents.

6. The grievance of the petitioner is that without considering the aforesaid reports, the respondents have issued the impugned transfer order dated 01.05.2018, calling upon him to proceed to Mumbai.

7. Ms.Shiva Lakshmi, learned counsel for the respondents states on instructions that after examining the medical documents of the petitioner's son, an evaluation was conducted by the Medical Officer, DGMS, who opined that the adolescent who is 17 years old and studying in Class-XII has '*superior intellectual functioning*' and he has advised behaviour therapy and counselling management for Autism Spectrum Disorder and social skill training facilities which would be available in the INS Stations at Mumbai, New Delhi, Varanasi, Bangalore & Cochin. Learned counsel submits that since the petitioner has been posted to Mumbai, the said facilities would be available for his son.

8. We are of the opinion that the petitioner's son is at a critical stage where he has to take the Class-XII examination in March-April, 2019 and any change in his present environment or school, would be detrimental to him.

9. Learned counsel for the respondents states on instructions that the respondents are ready and willing to permit the petitioner's family to retain the government accommodation occupied by them presently till the petitioner's son completes his Class-XII examinations next year. But in the meantime, the petitioner ought to report for duty at Mumbai, in terms of the impugned order, particularly when there is no interim order operating in his favour. She states that the petitioner has neither reported at INS India, New Delhi nor has he sought leave of any sort and the respondents are in the process of declaring him as an absconder. He has already been marked as a '*run over*'.

10. We have asked learned counsel for the petitioner to explain as to why has the petitioner not bothered to report either at INS India, New Delhi or sought leave from the competent authority. Learned counsel states on instructions that he has been visiting INS India, New Delhi but has not been permitted to mark his attendance.

11. We have serious reservations on the submission made by learned counsel for the petitioner. The petitioner is a part of the disciplined force and knows the serious consequences of remaining absent without leave. Such a flimsy explanation is unacceptable from him. In the interest of justice, last opportunity is granted to the petitioner to report for duty at Mumbai on or before 10.06.2018. We however decline to make any observations with regard to his period of absence from duty w.e.f. 04.05.2018, till date which shall be examined by the Competent Authority, in accordance with law.

12. It is further directed that the respondents shall not displace the petitioner's family from the government accommodation allotted to him till 30.06.2019, so that his son can complete his Class-XII examination by then.

13. The present petition is disposed of, along with the pending applications.

HIMA KOHLI, J.

REKHA PALLI, J.

MAY 30, 2018

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