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

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Reserved on: 29th October, 2018
Pronounced on: 1st November, 2018

W.P.(C) 6696/2018

WO UDAY CHANDRA SHEKHAR

..... Petitioner

Through: Mr. Virender Singh Kadian,
Advocate.

versus

UNION OF INDIA & ORS

.... Respondents

Through: Mr. Arun Bhardwaj, CGSC with
Mr. Nikhil Bhardwaj and
Mr. Shashwat Sharma, Advocates.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J

1. The Petitioner is presently serving as Warrant Officer ('WO') in the Indian Army Postal Service Corps ('APS') and is posted at Thimpu, Bhutan.
2. The Petitioner has approached this court seeking a writ of mandamus under article 226 of the Constitution of India aggrieved by the posting order No. 102/2018 dated 24th May 2018 and also the letter dated 5th June 2018 whereby HQ Chief Engineer, Project Dantak has been requested to move the Petitioner to other units.

Background

3. The Petitioner was selected for an incentive based posting to 503 Postal Unit (BR) under HQ Project Dantak, Thimpu, Bhutan on 25th April 2017. The consequential posting order No. 62/2017 was issued vide order dated 10th July 2017 along with the movement order dated 14th July 2017. As per the requirement of the posting, the Petitioner submitted a declaration dated 14th July 2017 to the effect that he would not request for premature reversion for the purpose of promotion before completion of his tenure of two years and agreed to loss in seniority or promotion that may result on account of the posting.

4. The Petitioner joined 503 Postal Unit (BR) under HQ Branch Thimpu, Bhutan on 27th July, 2017.

5. On 4th September 2017 the HQ Eastern Commandant referring to QMG's Branch communication of August 2017, informed Director General Army Rifles, Shillong that pursuant to recommendations of the committee of experts, it had been decided to downsize APS Corps. The downsizing plan of APS Corps, based on the recommendation of the experts, inter alia proposed as under:

"(d) The APS manpower currently comprises 75% volunteers from the DoP and 25 % regulars. As per the proposal, the regular component will be withdrawn and APS will be managed only by the non-regulars."

6. Based on the analysis of the recommendation made by the Committee of Experts (COE), Ministry of Defence (MoD) accorded sanction for downsizing/ closure of APS and accordingly implementation instructions

were issued by MoD.

7. Thereafter, vide letter dated 13th October 2017, the action plan for downsizing/ closure of APS was circulated to all units and accordingly an action plan was drawn up for closure of the unit of the Petitioner i.e. 503 Postal Units (BR).

8. The Petitioner made a representation to QMG Branch vide letter dated 14th November 2017, requesting them to reconsider the aforesaid decision of the closure of the unit of the Petitioner.

9. The Respondent then issued the impugned posting order No. 102/2018 and posted out the Petitioner to station HQ Panagarh. The Petitioner made another representation to the Respondent vide letter dated 28th May 2018 requesting for cancellation of the impugned posting order. However the request was rejected vide impugned letter dated 5th June 2018. The Petitioner, aggrieved by the aforesaid rejection of his representation and the posting order, has approached this Court.

Submissions of Parties

10. The learned counsel for the Petitioner has submitted that the decision of the Respondent, posting out the Petitioner is arbitrary. The Petitioner contends that as per the applicable policy, he could not have been posted out, prior to the completion of fixed tenure of two years. Learned counsel for the Petitioner argued that the normal postings are on “First-In-Last-Out” basis and not “First-In-First-Out”. Petitioner further contends that since he was top in the merit list of its course for selection to be posted in Bhutan,

and was the first person to be posted at Thimpu, Bhutan based on the available vacancies, he ought not to be posted out prior to the others, who were below to the Petitioner in the merit list and thus the posting order is liable to be set aside on this ground.

11. The learned counsel for the Respondents on the other hand has argued that the posting order has been issued to implement the directions of Military Operations Directorate, regarding downsizing of APS Corps. The learned counsel for the Respondents submit that as per the sanction accorded by the Director General of Staff duties, 503 Postal Unit (BR) that provided service to HQ Project Dantak was closed w.e.f 30th April 2018. In order to post out the surplus manpower held with 503 postal Units (BR), Army Postal Service Directorate referred the case to QMG's branch who in turn vide letter dated 3rd May 2018 accorded approval for repatriation of surplus manpower at HQ IMTRAT and project Dantak. Accordingly, the officers posted at branch Dantak were posted out.

12. Respondents also rely on the letter dated 8th May 2018 which directs that the "APS Records" to issue posting orders in respect of surplus manpower (including the Petitioner) as per their seniority i.e. "taken on strength" (TOS). Consequently, APS Records issued the impugned posting order dated 24th May 2018 to the Petitioner and other officers.

Analysis and findings

13. The Petitioner has been posted out, no doubt prior to the tenure of two years. However, the above fact cannot be the sole ground for any

interference by this Court. The Respondent's decision to issue the impugned posting order is justified, as the same has been issued to give effect to the decision of closure/ downsizing of Army Postal Service ('APS'). The manpower for each APS unit has been curtailed as per the revised authorization and therefore manpower over and above the authorized strength, has been withdrawn. Thus, as result of the action plan for closing/downsizing Petitioner's unit (APS), if the Petitioner has been posted out of his present location, the said decision cannot under any stretch of imagination be considered to be arbitrary.

14. The Petitioner cannot insist as a matter of right to continue to be posted at Thimpu, Bhutan for a minimum number of two years. The respondent's have justifiable reasons for moving out the Petitioner before the completion of the tenure of two years; and also earlier to the other selected candidates who were posted later than the Petitioner. This according to the Respondents was done to provide to all persons equal chance of work in Incentive Areas. Petitioner was posted out earlier than the persons posted later to him, as per their rank and trade. This was done as per seniority, based on first in first out principle i.e on the basis of the date "taken on strength". This decision also cannot be said to be arbitrary.

15. Even otherwise, the Petitioner cannot seek interference of this court with respect to posting order in absence of any vested right to work at a particular place. As noted above, the posting order has not singled out the Petitioner. There are other officers who have been posted out vide the impugned posting order. Moreover, the Respondents have in CM No. 35269/2018

while seeking vacation of stay, stated that the strength of virtually all the officers has been downsized and the surplus staff has been called back from Bhutan and repatriated and fresh postings have been given to them. The above fact has not been disputed by the Petitioner in the reply to the aforementioned Application.

16. The transfer/ posting orders have been the subject matter of challenge in several decisions, considered time and again by the Apex Court and the entire law has been settled by catena of decisions. It has been held that it is open to the competent authority to decide, when and where and at what point of time a public servant is to be posted or transferred from his present posting. The transfer/posting order made on administrative grounds cannot be interfered with unless the transfer/posting is in contravention to the statutory rules or is an outcome of a mala fide exercise of power. Further transfer/posting is not an incident but an essential condition of service.

17. In *State Bank of India v. Anjan Sanyal (2001) ILJ1687SC*, the Supreme Court held as under:-

"4. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or **that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order.**"

(emphasis supplied)

18. In *State of U.P. v. Gobardhan Lal AIR 2004 SC 2165*, the Supreme Court has held as under:

"7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

19. In *National Hydroelectric Power Corporation Ltd. v. Bhagwan AIR 2001 SC 3309*, the Supreme Court has held as under:

"5. On a careful consideration of the submissions of the learned counsel on either side and the relevant rules to which our attention has been invited to, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer. It is by now well-settled and often reiterated by

this Court that no Government servant or employee of public Undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine, as though they are the Appellate Authorities substituting their own decision for that of the Management, as against such orders passed in the interest of administrative exigencies of the service concerned."

20. In view of the settled legal position as explained by the Supreme Court in the above decisions, this Petition is without merit and is accordingly dismissed.

CM APPL. 25441/2018 (stay) & CM APPL. 35269/2018 (vacation of stay)

21. The interim order dated 25th June 2018 granting stay on the impugned order dated 5th June 2018 is hereby vacated. CM AAPL. 25441/2018 is dismissed. Consequently the CM APPL. 35269/2018, seeking vacation of stay, is allowed.

SANJEEN NARULA, J

S. MURALIDHAR, J

NOVEMBER 01, 2018

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