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

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Date of Judgment: 15th October, 2018

+ **W.P.(C) 10617/2018**

CDR SHRUTI DHAWAN

..... Petitioner

Through: **Mr.Angsuman Ojha and Mr.Rohit
Pratap, Advocates**

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: **Ms.Maninder Acharya, ASG with
Mr.Vinod Diwakar, CGSC,
Mr.Harshul Choudhary, Mr.Sahil
Sood and Mr.Viplav Acharya,
Advocates.
Cdr. Varun Singh and Lt.Cdr.Chetan
Bagdi**

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S. SISTANI, J. (ORAL)

1. Challenge in this writ petition is to the order of the transfer of the petitioner herein who was commissioned in the Indian Army on 05.07.1999. At present, the petitioner is attached with the Headquarters Eastern Naval Command, Vishakhapatnam since 01.02.2018. It is strongly urged before us that this order of transfer is punitive in nature as the petitioner has made several complaints alleging sexual harassment by the Commanding Officer and Executive Officer, INS Circars. It is also contended that the Board of Enquiry conducted the proceedings in gross violation of the Vishakha guidelines, principles of natural justice and due process of law was

also not followed. It is also contended that the petitioner has made a statutory representation to Raksha Mantri, which has not been decided. It is argued that son of the petitioner is in Class VII and in case transfer orders are not deferred, the child would suffer on account of midsession transfer of the petitioner.

2. The petition has been opposed by Ms.Maninder Acharya, learned Additional Solicitor General, who submits that the petitioner herein approached the Armed Forces Tribunal by filing O.A.1618/2018 which was withdrawn on the ground that the Armed Forces Tribunal did not have the territorial jurisdiction. Counsel for the petitioner, however, submits that the OA was withdrawn as the matters relating to the transfer are to be considered by the High Court and not by the Tribunal. Ms.Acharya further submits that uniformly, almost all orders of transfer are issued by the Naval Headquarters at Delhi but that would not give rise to a cause of action in favour of the petitioner, who is stationed at Vishakhapatnam; the enquiry was conducted at Vishakhapatnam and the entire record is also available at Vishakhapatnam, thus, this Court does not have territorial jurisdiction to try and entertain this writ petition. Additionally, it is contended that on the one hand, the order of 27.08.2018, by which the allegations of sexual harassment were examined and found to be baseless and unsubstantiated, has not been challenged and on the other hand, it is contended that the order of transfer is punitive in nature.
3. Learned ASG submits that it is a matter of coincidence that the order of transfer and order rejecting the allegations were passed on the same date whereas the order of transfer is routine in nature and the

petitioner has not been punished but the transfer is on account of exigencies of service. Ms.Acharya further submits that the child would not suffer on account of transfer as the Kendriya Vidyalayas have been formed for the benefit of all the families of the officers and the medium of education syllabus as also the method of teaching is uniform and identical and thus, there will be no break in session as far as the child of the petitioner is concerned.

4. Counsel for the petitioner, at this stage, has prayed that till such time, the statutory representation is decided, the transfer order may be kept in abeyance, to which Ms.Acharya submits that in case a representation has been made directly to the Raksha Mantri, it would be barred in view of Regulation 239 while learned counsel for the petitioner submits that there is no bar in approaching Raksha Mantri directly.
5. Be that as it may. Since the order of transfer as stated by the respondent is not punitive in nature and the same is on account of exigencies of service and the transfer order is routine in nature, we are unable to accede to the request of the petitioner for seeking stay of the order of transfer. Additionally, we do not find any allegations of malafide against any particular officer in the writ petition except that since the petitioner had made allegations of sexual harassment, the order is punitive in nature. As far as the plea of sexual harassment raised by the petitioner is concerned, the same has been rejected by an order dated 27.08.2018 against which for the present no appeal has been filed although it is submitted by the counsel for the petitioner that copies of Board of Enquiry proceedings have not been provided. As

far as grievance of non-supply of Board of Enquiry proceedings is concerned, learned ASG submits that the Board of Enquiry proceedings will be supplied to the petitioner within a week. Ms.Acharya further clarifies that in case of filing of a representation, a three tier procedure is to be adopted i.e. a representation firstly is to be considered by the Command Headquarters and in case, it is rejected it is to be then considered at the Naval Headquarters, New Delhi and in case the petitioner is still aggrieved, it is then to be forwarded to the Central Government. Ms.Acharya submits that the respondent will ensure that the representation dated 14.09.2018 is considered and decided within a period of one week from today by the Command Headquarters and thereafter in case the same is rejected, the same would be examined by the Naval Headquarters at New Delhi within 15 days and in case, the petitioner is still aggrieved, he may then approach the Raksha Mantri. Counsel for the petitioner submits that besides the aforesaid procedure, he would still want his representation to be decided by the Raksha Mantri. Accordingly, we request the Raksha Mantri to consider the representation of the petitioner dated 14.09.2018 in accordance with law within a period of three months.

6. The petition stands disposed of with the above directions.
7. *Dasti.*

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

OCTOBER 15, 2018/rb