

Sr. No.133

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.19234 of 2019 (O&M)
Date of Decision: 17.07.2019**

Hemant Kumar Tigga

... Petitioner

Versus

Union of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Rajeev Anand, Advocate,
for the petitioner.

Mr. Sunil Kumar Sharma, Advocate,
for the respondent-UI.

ARUN MONGA, J.(ORAL)

The grievance of the petitioner who is serving as 'Second in Command' is that he has not been accorded the benefit of Rule 5 of Border Security Force (Tenure of Posting and Deputation) Rules 2000. For ready reference, the same is reproduced hereinbelow:-

5. *“Contingencies for posting out of parent battalion-Save as contained in rule 4, the competent authority may consider inter battalion posting of the members of the Force on the following grounds:-*

i) Routine transfer to static formations due to turn over of the members of the Force on completion of field service. The posting to static formation shall be for a period of three years only and thereafter, the member of the Force shall revert to his parent Battalion provided that the cases of the members of the Force who belong to material cadre, their tenure with static formation shall be

four years.”

2. Learned counsel for the petitioner submits that vide transfer order dated 13.06.2019 (Annexure P-10), the petitioner has been transferred from SDG (West) BSF Western Command, Chandigarh to 146 BN Panjipara, North Bengal without letting him complete the static posting of 3 years at his current place of posting. That apart, learned counsel for the petitioner contends that the petitioner's wife is also serving in BSF and is currently posted at the same place where the petitioner is and, therefore, he is entitled to the benefit of Guidelines/Office Memorandum dated 30.09.2009 (Annexure P-13) which clearly envisage that if husband and wife are working in the same department and if the required number of post is available, they are invariably to be posted together in order to enable them to lead a normal family life to look after the welfare of their children.

3. Learned counsel for the petitioner submits that younger son of the petitioner is in the final year of Bachelor of Business Administration (BBA) at Chandigarh whereas the daughter is in first year of Master of Business Administration (MBA) at Chandigarh and it would be extremely difficult to make immediate arrangements for both the children. He further submits that even otherwise wife of the petitioner has been put in Low Medical Category of S1H1A2(S-L)P3E1, and as per the applicable Service Regulations, due to her medical category, she is entitled not to be posted to field location.

4. Learned counsel for the petitioner submits that

petitioner is willing to give an undertaking that on completion of static posting, he may be posted anywhere in India.

5. Learned counsel for the petitioner points out that the petitioner had submitted representation dated nil appended at Annexure P-6 to the Director General of BSF but the same was not adverted to despite the fact that vide recommendation of year 2018 (Annexure P-7) his case was recommended by the Inspector General for being considered on compassionate grounds.

6. Notice of motion.

7. On advance service of the petition, Mr. Sunil Kumar Sharma, Senior Panel Counsel appears and accepts notice on behalf of the respondent-Union of India.

8. Having heard learned counsel for both the parties and given the nature of order being passed, there is no necessity to seek any return by the respondents as no further proceedings and/or pleadings are required.

9. Writ petition is disposed of with a direction to the respondents to sympathetically consider the representation dated nil appended at Annexure P-11 and also objectively consider the contents of the present writ petition by treating the same as supplementary representation and pass a speaking order within a period of one month from the date of receipt of a certified copy of this order.

10. It would be appreciated if the contentions of the learned counsel for the petitioner as noted above are also considered before passing the speaking order.

11. Until the passing of fresh order as aforesaid, the impugned transfer order dated 13.06.2019 (Annexure P-10) shall be kept in abeyance qua the petitioner.

12. In case an adverse order is passed, it is expected of the respondents to give fair opportunity to the petitioner to seek appropriate remedy and until the same is done, such order would not be implemented for a period of 30 days with effect from the date of its passing.

13. Disposed of in above terms.

14. A copy of this order be given under the signatures of the Bench Secretary.

17.07.2019

vandana

**(ARUN MONGA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No