

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

**CWP NO. 9463 OF 2018
DATE OF DECISION : 10.07.2019**

Pawan Kumar

...Petitioner

versus

Union of India and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. S. K. Arya, Advocate,
for the petitioner.

Ms. Anita Balyan, Advocate,
for the respondents.

ARUN MONGA, J. (ORAL)

Petitioner herein seeks quashing of the impugned order dated 04.01.2018 (Annexure P-6), vide which he has been transferred from Pathankot to Amritsar, notwithstanding that he is slated to retire in July, 2020.

2. Learned counsel for the petitioner relies on the comprehensive Transfer Policy dated 08.01.2008 (Annexure P-7) and in particular Clause 1490 "last leg posting" contained therein. For ready reference, the same is reproduced hereunder :

"1490 Last Leg Posting : An individual on the verge of his retirement may be considered for last leg posting. Individual can apply for last leg posting with residual service of 2-½ years near to his home town or SPR so that on issue of posting, he can spend

minimum 2 years service at the new duty station. However, the condition will be as under :

(a) Individual should not have served in the same state in his last two tenure (i.e six years) posted on any ground.

(b) The last leg posting may be considered based on the merit/genuineness of the case and also previous services i.e Fd/HAA/CI Ops by OIC Records beyond restrictions mentioned at sub para (a) above in the interest of the organization.

(c) IF any JCOs/OR serving in GE asks for posting to a place where only GE est is loc, or he is not due for GE tenure. Back to back GE posting will not be considered.

(d) Final discretion with OIC Records keeping organizational interests in view."

3. Learned counsel further contends that none of the above clauses from (a) to (d) are applicable to the petitioner and in violation of the above Clause 1490, the petitioner has been transferred without properly considering his representation dated 27.11.2017 followed by another representation dated 09.02.2018 contained at Annexures P-5 and P-9 respectively. He further submits that the superiors of the petitioner also recommended his case vide recommendations dated 12.01.2018, 09.02.2018 and 15.03.2018 (Annexure P-8, P-9 and P-11 respectively). It is further submitted that while ignoring the said recommendations

vide order/letter dated 28.02.2018 (Annexure P-10), the request of the petitioner to give him the benefit of last leg posting or in the alternative, post him to Lucknow/ Delhi/Kanpur, was rejected on the ground that he has served three consecutive tenures in ERE/MES.

4. In return filed on behalf of the respondents, it has been stated that the representations of the petitioner were received through proper channel and officer of the rank of Major General dealt with them and replied the same in time.

5. Nothing has been stated in the return that as to why the petitioner has not been given the last leg posting in terms of sub-clauses (a) to (d) contained in Clause 1490, *ibid*. What has been stated in return is that the petitioner is serving in Military Engineering Services establishments and Extra Regimental Employment since last 11 years where service conditions are much more relaxed and not harsh as in combat role units where he has been currently posted. His transfer has been justified on the ground that he is overdue to be sent to a harsh posting or combat role units.

6. After hearing rival contentions of learned counsel for the parties, I am of the view that merely because the petitioner has been posted at more relaxed posting as stated in the reply, he is not entitled to be denied the benefit of Clause 1490 of the transfer policy, unless any other cogent reasons are given for denial of the same.

6. In view of my above discussion and reasoning contained therein, the impugned order 04.01.2018 (Annexure P-6) is hereby quashed. The writ petition is disposed of with a direction to the respondents to pass a fresh transfer order by objectively considering the representations of the petitioner and also by taking into account the contentions stated in the instant writ petition, by treating the same as supplementary representation.

6. Let the needful be done within 30 days from the date of receipt of certified copy of this order. Till passing of fresh orders, status-quo in respect of posting of the petitioner shall be maintained.

(ARUN MONGA)
JUDGE

JULY 10, 2019
shalini

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No