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

+ **W.P.(C) 6909/2019 & CM Appl. No. 28723/2019 (stay)**

CT (BB) JAGBIR BENIWAL Petitioner
Through Mr. Randhir Singh Kalkal, Advocate

versus

UNION OF INDIA & ORS Respondents
Through Mr. Ashim Sood, CGSC &
Mr. Rhythm B, Advocates for
Respondents No.1 to 4

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

16.09.2019

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1. The prayer in the present petition by the Petitioner, who is a Constable (Barber) (General Duty) with the Border Security Force, is two-fold:

i) To quash the transfer order dated 29th March, 2019 and the movement order dated 14th June, 2019 whereby the Petitioner has been transferred from his present posting in New Delhi to the 199th Battalion of the BSF in West Bengal.

ii) To quash an order dated 13th June, 2019 whereby the Respondents recalled the earlier order dated 28th March, 2019 accepting the Petitioner's request for Voluntary Retirement from Service (VRS) with effect from 30th September, 2019.

2. The Petitioner's prayers were on the basis that his mother was seriously ill and required his attention. When the matter was listed before this Court on 28th June, 2019 in the Vacation Bench, the following order was passed:

“1. Learned counsel for the petitioner submits that the petitioner was enrolled in BSF in the year 1998. During his service, he remained posted at different places and till date he has never opposed any of his transfer orders.

2. The petitioner was sent on posting to SIW, MB Road, Tigri Camp, New Delhi in April, 2015. He came to know on 20.12.2018 that his posting order was being issued on his application for extension of one year for the treatment of his old age mother. An application dated 14.03.2019 seeking VRS was submitted by the petitioner which was accepted by the authority vide order dated 28.03.2019, but his request of extension of one year was rejected by the authority on 11.04.2019. Later, the VRS order of the petitioner has been cancelled by the authority without any reason and he has been advised to submit a new application at his new posting place.

3. Issue notice.

4. Learned counsel appearing on behalf of respondent Nos. 1 to 4, accepts notice.

5. Let a counter affidavit be filed within a period of two weeks.

6. List before the Roster Bench on 17th July, 2019.

7. In the meantime, operation of the posting order dated 29.03.2019 and the movement order dated 14.06.2019 shall remain stayed till the next date of hearing.

DASTI, under the Signatures of the Court Master.”

3. At the next date of hearing on 17th July, 2019 the Petitioner was permitted to amend the writ petition to challenge the cancellation of his application for

voluntary retirement. The interim orders were continued.

4. In response to the writ petition, a counter affidavit has been filed by Respondents No. 2 to 4 where it is pointed out that the Petitioner has already served at various locations throughout the country with his parent unit being the 199 Battalion. It is pointed out that the policy as expressed in the BSF (Tenure of Posting and Deputation) Rules, 2000 ('BSF Posting Rules') provides that an individual can have a maximum of three years of static posting at a time and where the circumstances so warrant a static posting may be extended for a fourth year.

5. It is pointed out by the Respondents that as a concession, the Petitioner was granted an additional static posting after his earlier static posting at Jodhpur, Rajasthan which was for a period of four years upto April 6, 2015. He was granted a static posting with the Special Instruments Workshop (SIW) located at MB Road, Tigri Camp, New Delhi for a period of four years from April 7, 2015 to 14th June, 2019. It is stated that the impugned movement order was passed transferring him to 199 Battalion, BSF North Bengal on account of his having completed two continuous static postings.

6. It is stated that it was within the powers and discretion of the Respondents to transfer the Petitioner to serve anywhere in India. Reference has been made to the decisions in *State of UP vs. Gobardhan Lal AIR 2004 SC 2166*. It is maintained that transfer is not vitiated by malafides. It is also submitted that personal hardship by itself is not a ground to interfere with the transfer for Government servants in public interest. Reliance is placed on the *Gujrat*

Electricity Board vs. Atmaram Sungomal Poshani AIR 1989 SC 1433.

7. The Respondents confirm that the application by the Petitioner for VRS was indeed accepted by them. It is however stated that “upon examination it was found that the Petitioner’s VRS application was accepted in error by the competent authorities and it was decided that the Petitioner be directed to join his parent unit in compliance with the impugned orders and re-apply for VRS therefrom. It is stated that on account of this the VRS acceptance was cancelled “and the Petitioner was directed to apply for VRS after joining 199 Battalion BSF, i.e. his new place of posting.”

8. Thus it is evident that the Respondents had indeed accepted the Petitioner’s application for VRS with effect from 30th September, 2019. The cancellation of the VRS appears to have come about only because his request for extension of his tenure at SIW was not acceded to and because he had continuously served in static locations for the last eight years. However, even in the order dated 10th June, 2019 by which the above decision was communicated to the Petitioner, it appears that while cancelling the earlier acceptance of his VRS he was permitted to again apply afresh for VRS from the new place of posting.

9. This only means that the Respondents in principle do not appear to have any problem in accepting the Petitioner’s request for VRS. Indeed the order dated 10th June, 2019 reiterates this.

10. The Court finds that as far as the order transferring the Petitioner is

concerned, since it has been stayed by this Court, the Petitioner has continued in the present posting. The fact that the mother of the Petitioner is seriously ill and the fact that his request for VRS has been accepted in principle is not even in dispute. The Petitioner was to be relieved on VRS on 30th September, 2019, which is just two weeks away.

11. In the circumstances, the Court sees no justification in the Respondents cancelling their acceptance of the Petitioner's request for VRS and deciding to transfer him at the last minute. There appears to be no reasonable explanation for this sudden move by the Respondents. In these circumstances, the Court quashes the decision dated 13th June, 2019 of the Respondents whereby the earlier order dated 28th March, 2019 accepting the Petitioner's VRS request was recalled. In other words, the earlier order of VRS dated 28th March, 2019 relieving the Petitioner on VRS with effect from 30th September, 2019 will stand revived. Till then the Petitioner will be permitted to continue at the present placing of posting at SIW, Tigri Camp.

12. The petition is disposed of in the above terms. The pending application is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 16, 2019

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