

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

CWP-8572-2020(O&M)
Date of decision:-1.7.2020

Rajinder Singh Hundal

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Pardeep Sharma, Advocate
for the petitioner.

Mr.Satya Pal Jain, Additional Solicitor General of India
for respondent No.1 – Union of India.

H.S. MADAAN, J.

Case taken up through video conferencing.

Petitioner – Rajinder Singh Hundal, aged about 58 years, posted as Deputy Commandant at Headquarters, SDG BSF, Western Command, Chandigarh has brought the present civil writ petition against respondents – Union of India through its Secretary, Department of Home Affairs, New Delhi as well as against Directorate General, Border Security Force, Ministry of Home Affairs, New Delhi and Additional Director General, BSF, Western Command, U.T. Chandigarh seeking quashing/setting aside of impugned Transfer/Posting Order dated 24.3.2020 (Annexure P-3), issued by respondent No.2 vide which the petitioner had been transferred from Chandigarh to Anupgarh (Rajasthan), allegedly in violation of letter dated 6.5.2020 since the same was issued particularly keeping in mind the present scenario of pandemic Covid-19

as well as in violation of the Border Security Force (Tenure of Posting and Deputation) Rules, 2000.

According to the petitioner, he is due to retire on 31.12.2022 and before retiring on attaining the age of superannuation, it is not in the interest of administration (involving unnecessary burden on the public exchequer) to transfer the petitioner to a far away place; there is no administrative exigency to effect transfer of the petitioner; the petitioner was posted as Deputy Commandant in the Border Security Forces at Headquarters SDG(WC), Chandigarh on May, 2017 and now he has been transferred to Anupgarh (Rajasthan) vide order dated 24.3.2020, when he is at the fag end of his retirement; the petitioner has two children i.e. a son studying in 10+2 class and a daughter doing Master of Arts; there is nobody to look after the children except the petitioner, who is their father and natural guardian and in case the transfer order is implemented, the family affairs of the petitioner would be adversely affected; that the petitioner had submitted a representation dated 16.1.2020 to the concerned authorities; his representation was considered but the same did not invite the desired action. Therefore, the petitioner has approached this Court.

On being put to notice, the respondents have appeared through counsel and filed short reply by way of affidavit of DIG(Estt.) HQ HDG(WC), BSF, Chandigarh contending that petitioner had submitted an application dated 16.1.2020 for extension of tenure at the present place of his posting for one year on the ground of education of his son, who is student of 10+1(non-medical) and preparing for Engineering Career and a daughter, who is student of MA Final preparing for NET

exam; the case of the petitioner was forwarded to Headquarters DG BSF, New Delhi for consideration, however during annual posting/transfer of Deputy Commandants issued by Headquarters DG BSF, New Delhi vide signal No.R/3235 dated 19.3.2020, the petitioner was placed at the disposal of Western Command for further posting/adjustment in the Unit; that in December, 2019, the petitioner had submitted his choices for posting/transfer at 98 Bn BSF, Paloura (Jammu)(1st choice) or any Unit deployed at Neeru Location (Kashmir) (2nd choice) or any Unit under Sector Headquarter Sri Ganganagar (Rajasthan Ftr) (3rd choice) and STC BSF Udampur (4th choice); that the first choice was not entertained for the reason that the petitioner had already served at that location w.e.f. 17.8.2015 to 2.5.2017; the second choice at Neeru Location, Kashmir, which is a high altitude area was not considered due to his age; the third choice was at any battalion deployed under Sri Ganganagar Sector but there was no vacancy in that Battalions, therefore he was asked for his consent for a posting to nearest Battalion to Sri Ganganagar, Sector i.e. 104 Bn BSF (Anupgarh, Rajasthan); he gave oral consent and had never represented against it; therefore his posting orders at that place were issued and he was relieved to join duty at his place of posting on 12.6.2020; that the transfer and posting of the petitioner has been done strictly as per rules in terms of which, posting to static formation shall be for a period of three years only and thereafter the member of the force is to be reverted back to his present Battalion and no person from one static formation shall be posted to another static formation immediately after completion of one tenure.

According to the respondents, the case of the petitioner is not of terminal posting since he does not fulfil the criteria in accordance with Rule 10 of BSF (Tenure of posting and deputation) Rules, 2020 since he is due for superannuation on 31.12.2022 and left with 2.6 years of service till then. Furthermore, the petitioner had not applied for terminal posting during annual posting/transfer of Deputy Commandants for the year 2020. As a matter of fact, the petitioner had served for last three years in Spl DG Headquarters, Chandigarh and is asking benefit of terminal posting thereby trying to extend his tenure at this location for more than five years. Moreover, during the period w.e.f. 17.8.2015 to 2.5.2017, he remained at Battalion Headquarters Lakhnaur, District SAS Nagar (Mohali for 165 days, which is located near Chandigarh. Though movements of officers had been stopped due to Covid – 19 but the order was only for the NGOs of the force. The movement of the officers was deferred temporarily due to COVID pandemic situation. Now there is no restriction on movement. A prayer for dismissal of the petition has been made.

I have heard learned counsel for the parties besides going through the record.

The petitioner is a member of a paramilitary force, which is an all India service. The petitioner has been unable to point out any element of mala-fide in his transfer, which comes out to be for administrative reason. The transfer is an incidence of service and cannot be taken to be an act of punishment. It is for an employer to see where he requires services of the employee and an employee especially member of

a paramilitary force supposed to maintain strict discipline cannot dictate terms in that regard keeping his personal interest in view rather than showing willingness to serve, where he is posted, especially at this juncture when the country is facing hostilities by the neighbouring countries at border. The instructions/guidelines relied upon by the petitioner do not come to his rescue since those are for administrative convenience and cannot be taken to have statutory force. His conduct of not asking for terminal posting when options for transfer were taken travels against his case. It seems that the petitioner wants to avoid going away from Chandigarh. The family circumstances explained by him are not that compelling requiring his immediate presence with the family for most of the time. The plea of the petitioner for staying his transfer cannot be accepted when as per specific case of the respondents, he stands already relieved from his present station of posting on 12.6.2020 to join at the new station of posting.

Thus no violation of fundamental rights of petitioner is found to be there, which might have called for interference by this Court invoking the writ jurisdiction.

Finding no merit in the civil writ petition, the same stands dismissed.

1.7.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No