

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

**CWP-959-2018(O&M)
Date of Decision: 03.12.2020**

Subedar Munesh Kumar

..... Petitioner

versus

Union of India and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Col. N.K.Kohli (Retd.) Advocate for the petitioner.

Mr.Satya Pal Jain, Additional Solicitor General with
Mr.Piyush Khanna, Senior Panel Counsel UOI
for the respondents.

TEJINDER SINGH DHINDSA, J. (ORAL)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

Petitioner who at the stage of filing the instant petition was holding the post of Subedar under the Corps of Engineers, Indian Army raised a challenge to the order dated 12.12.2017 (Annexure P-4) and whereby he had been transferred from Garrison Engineer (GE) Hisar to 111 Engineer Regiment C/o 56 APO.

The writ petition came up for preliminary hearing on 19.01.2018 and contention made by counsel was noticed that a representation seeking extension of tenure at GE, Hisar had been submitted and the same was still under consideration. While issuing notice of motion the operation of the impugned order at Annexure P-4 was stayed.

Counsel for the petitioner as also for UOI have been heard at

length and pleadings on record have been perused.

It has gone uncontroverted that during the pendency of the instant writ petition a speaking order dated 19.07.2018 has been passed on the request of the petitioner seeking extension of his tenure at GE, Hisar. Petitioner's request to be retained at Hisar stands declined.

Essentially it is the validity of the speaking order dated 19.07.2018 that falls for consideration.

Counsel for the petitioner has vehemently argued that petitioner was not opposed to his transfer to 111 Engineer Regiment located at Udhampur (J&K). It was only on account of the serious health ailment of his wife who is suffering from rheumatoid arthritis that he had forwarded a request that since 111, Engineer Regiment was to be relocated having completed its normal tenure by May-June, 2018 as such he may be accommodated and posted at a place where a Command Hospital is located so that necessary medical attention is afforded to his wife. In support of such request counsel has even adverted to a medical certificate placed on record at Annexure P-9 dated 07.09.2018 whereby a recommendation has been made that the petitioner be posted to any station nearby a Command Hospital keeping in view the medical condition of his wife.

In the speaking order that has been placed on record dated 19.07.2018 the place of movement of 111, Engineer Regiment has been disclosed to be at Bareilly, State of Uttar Pradesh.

On a specific query having been put, Counsel for the petitioner has apprised the Court that there is a recruitment centre at Bareilly and there

is a Military Hospital. The nearest Command Hospital is at Lucknow which is at a distance of 250 Kilometers approximately.

The normal tenure of service at a particular place of posting is concededly 36 months. Petitioner has served far in excess of 36 months at Hisar. He has enjoyed this place of posting by virtue of the continuation of the interim order passed by this Court on 19.01.2018.

It is well settled that transfer is an incidence of service. The medical certificate relied upon by the petitioner is in the form of a recommendation for the petitioner to be accommodated at a place of posting where there is a Command Hospital. The same cannot be read to mean that the petitioner can only be accommodated at such places of posting. On account of a Military Hospital available at Bareilly, necessary medical facilities would certainly be available and it goes without saying that if the situation so warrants the doctors concerned would then refer wife of the petitioner to the Command Hospital at Lucknow.

It would also be apposite to take note that in the reply placed on record on behalf of the respondents it has been categorically submitted that since July, 1999 the petitioner has served primarily in peace stations and Military Engineer Services Establishment and has not served in any unit for Combat Role. The details of such postings have been furnished in a tabulation contained in para 3 of the reply.

To such factual assertion there is no rebuttal on the part of the petitioner.

In view of the facts and circumstances noticed herein above, this Court would not be inclined to interfere in a posting order pertaining to

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Army Personnel in exercise of its extra ordinary writ jurisdiction.

The speaking order dated 19.07.2018 does not suffer from any infirmity or perversity.

At this stage counsel for the petitioner submits that during pendency of the instant writ petition petitioner was promoted from the rank of Subedar to that of Subedar Major and had already joined the substantive promoted rank on 01.07.2020. An apprehension is raised that by virtue of the posting order the petitioner may be called upon to join on the lower post of Subedar and as such the same would amount to a demotion.

Such apprehension is allayed by learned counsel representing UOI who makes a statement that the petitioner would upon transfer join on the promoted rank of Subedar Major.

Petition is accordingly dismissed.

Pending applications, if any, shall also stand disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

03.12. 2020
sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No