

\$~A-5

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

%

Date of decision: 23.12.2020

+ W.P.(C) 9609/2020 & CM 30803/2020

NAFEES AHMAD

..... Petitioner

Through: Mr. Amit Swami, Advocate

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Bhagvan Swarup Shukla,
CGSC with Mr. Sarvan Kumar,
Advocate for R-1/UOI.
Mr. Tushar Mehta, Solicitor
General of India with Mr. Pratap
Venugopal, Ms. Surekha Raman
and Mr. Purushottam Kr. Jha,
Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. Present petition has been filed by the Petitioner assailing the Transfer Order dated 24.11.2020 whereby he has been transferred to Visakhapatnam. The principal contention of the Petitioner is that his son is suffering from autism and is under treatment with the doctors at Delhi and it would not be advisable to transfer the Petitioner at the stage. It is also contended by counsel for the Petitioner that it is the Policy of the Government that employees whose dependent is suffering from such like

diseases should not be subjected to routine transfers. Additionally, it is contended that the Petitioner was transferred to Delhi earlier on account of his son's ill health whereby he had lost five years of his seniority and thus the Transfer Order be quashed.

2. Mr. Tushar Mehta learned Solicitor General of India appearing on behalf of Respondent No.2 submits that Petitioner is required to join at Visakhapatnam as his Transfer Order has been issued on account of the exigencies of service. He submits that the two-fold principles for interference in a transfer matter by a Court in exercise of judicial review are that the transfer is violative of the Transfer Policy and / or is *mala fide*. It is contended that neither of the two grounds have been alleged. In so far as the medical condition of the son of the Petitioner is concerned, Mr. Mehta submits that the Organization is sensitized to the issue and which is why the Petitioner was earlier posted to Delhi at his request. The Petitioner is not being subjected to routine transfer as he has been posted in Delhi for over a decade. Mr. Mehta also submits, on instructions, that adequate medical facilities are available for the treatment of the child of the Petitioner at Visakhapatnam.

3. I have heard the learned counsel for the Petitioner and the learned Solicitor General of India.

4. It is well settled that the scope of interference under Article 226 of the Constitution of India in matters relating to transfers and postings is extremely limited and circumscribed by the two principles as rightly argued by Mr. Mehta and none of the two grounds have admittedly been urged in the present petition.

5. It is no doubt true that the son of the Petitioner is suffering from autism but Mr. Mehta has, on instructions, assured the Court that adequate medical facilities are available at Visakhapatnam and the child would not have to suffer on that count. It is also significant to note that the disease with which the child is suffering requires prolonged treatment and care and permitting the Petitioner to stay in Delhi for a certain period, as prayed, will not serve the purpose. Petitioner has an All India Transfer Liability as per the terms of his appointment and cannot resist the transfer order once the same has been issued in the exigency of service. It is settled law that it is for the employer to decide the place of posting of his employee keeping in mind the requirement of the job and is not in the domain of the Court to interfere in such decision unless it violates a statutory Policy or is *mala fide*. Once the Court is assured that all the required medical treatment will be available to the child of the Petitioner, the Court finds no reason to interfere with the impugned Transfer Order. Needless to state that in case the Petitioner faces any medical issue at his new place of posting, it would be open to the Petitioner to make a representation to the Respondents for their consideration.

6. Petition is accordingly dismissed alongwith the pending application.

JYOTI SINGH, J

DECEMBER 23, 2020

yg