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

% **Date of Decision: 21st July, 2020**

+ **W.P. (C) 3697/2020**

RAJ KUMAR SINGHPetitioner

Through: Mr. K.B. Upadhyay & Mr.
Shailesh Tiwari, Advocates

versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Rishabh Sahu, Advocate.
Insp. Raja Kumar, CISF, FHQRS

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

ASHA MENON, J.

W.P. (C) 3697/2020 & C.M. Appl. No.13225/2020 (for stay)

1. This petition has been filed by the petitioner, who is employed as a Sub-Inspector in CISF, presently at NLC, Barsingsar, Bikaner, with the following prayers:

“a) Issue appropriate Writ, Rule, Order or Direction quashing/setting aside the transfer letter bearing No. E-38014/North Sector/Posting/Misc/Vol-1/2020-5306, North Sector HQrs Order No.36/2020 dated 12/06/2020 (ANNEXURE-P/1); and

b) Pass such other or further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the Petitioner and as against respondents."

2. The posting order has been challenged on the ground that it was vindictive as the petitioner had filed Writ Petition (C) No. 13074/2019 in the High Court praying for a direction to the respondents to pay Transportation Allowance (TPTA) which was pending and in which the Court had issued notice after which the respondents had started harassing and pressurizing the petitioner to withdraw it. It is also contended that a false F.I.R. No.42/2020 had been registered against the son of the petitioner on 15th May, 2020 once again to force him to withdraw W.P.(C)No. 13074/2019 and the transfer order in question was issued a month thereafter. Thus, the transfer was clearly *malafide* and liable to be set aside.

3. It is further submitted that as per the Posting Policy mentioned in Clause 25 of the Circular No.22/2017 dated 25th September, 2017 (placed as Annexure-P/7 to the petition) a person has to complete three years at a station before he could be transferred, but in the case of the petitioner, he was being transferred after completion of only two years without cogent reason and thus the transfer order smacked of *malafide* as also discrimination and was liable to be set aside. His representation dated 16th June, 2020 had not been considered or disposed of till the filing of the petition.

4. During the course of arguments, the learned counsel for the petitioner Sh. Upadhyay also relied upon the order dated 20th May, 2020

whereby all transfer cases were deferred in view of the Covid-19 scenario and budgetary restrictions and prayed that the same be applied to the transfer of the petitioner and the Court should direct deferment of his transfer till 31st March, 2021.

5. In the counter affidavit filed by the respondent/CISF, the filing of the writ petition by the petitioner for payment of TPTA is not denied but it is further submitted that transport allowances were being paid to the CISF personnel in accordance with the extant rules. As regards the lodging of the F.I.R., against the son of the petitioner, it is stated that the son had violated the quarantine rules by meeting a milkman without mask and when the Unit CHM HC/GD Ram Niwas objected to such conduct, the son of the petitioner had punched his nose causing him injury for which HC Ram Niwas had be taken to PBM Hospital Bikaner following which the F.I.R. No. 42/2020 was registered against him. The learned counsel for the respondent, Mr.Rishabh Sahu, thus submitted that there were no *malafides* in the transfer of the petitioner from Barsingsar to NTPC, Tapovan. According to Mr. Sahu, the transfer was based on administrative exigencies which were in any case excluded from the deferment order dated 20th May, 2020.

6. Mr. Upadhyay, the learned counsel for the petitioner, however, questioned this description of the transfer, pointing out that the Annexure R-6 to the counter-affidavit referred to the past conduct of the petitioner, which had no relevance to his tenure at Barsingsar, where he had been posted from 1st May, 2018 to till date. It was his contention that for whatever were his previous indiscretions, the petitioner had suffered penalties and this so-called history could not be used at this juncture to

justify the present decision to transfer him.

7. *Per contra*, Mr. Sahu pointed out to Annexure R-5 to the counter-affidavit detailing the counselling given to the petitioner at Barsingsar for misbehaviour and indiscipline.

8. We have heard the learned counsel for both sides and have perused the record. No doubt, the 'Guidelines for Posting/Transfer of CISF Personnel' being Circular No.22 of 2017 dated 25th September, 2017, recommends the tenure of posting in a Unit/Station of three years. But these are only guidelines intended to "serve as broad parameters for posting the personnel" and the final decision to transfer them have been left even under this circular to the discretion of the competent authorities of the CISF. They would be best placed to determine operational and/or administrative necessities of the Force so that personnel can be optimally deployed. The 'Guidelines' cannot be read as 'mandatory Rules' to be adhered to in all circumstances or held to take away all discretionary powers of transfer from the competent authorities. In our view, the petitioner has no vested right to continue to remain at Barsingsar till he completes three years, having been posted there in 2018. In fact, the posting details of the petitioner (Annexure R-1 to the counter-affidavit) reflects this fact that it is not mandatory that the person has to remain at a station for three years before he is transferred out.

9. As regards the order dated 20th May, 2020, no doubt, transfer cases have been deferred in view of the Covid Pandemic. However, cases of personnel, who need to be relieved by Units on administrative requirements/operational grounds, were to be taken up individually. The transfer order dated 12th June, 2020 being after the order dated 20th May,

2020 is clearly in furtherance of it. The respondents have justified it on administrative grounds. While it is true that Annexure R-6 to the counter-affidavit sets out the long list of misdemeanours of the petitioner and the punishment he was consequently awarded, but it would be incorrect to say that it is this past conduct that has been the foundation for the posting orders dated 12th June, 2020.

10. Even otherwise, there is sufficient administrative reason for justifying the transfer of the petitioner from NLC, Barsingsar to NTPC, Tapovan. Annexure R-5 to the counter-affidavit records multiple times that the petitioner was counselled by the Asst. Commandant for his misbehaviour and indiscipline at NLC, Barsingsar. The learned counsel for the respondents also submitted that having travelled to Delhi and back, the petitioner and his family were required to maintain strict quarantine, but instead of doing so they violated the quarantine rules and which resulted in the son of the petitioner causing injuries to HC Ram Niwas and the lodging of the F.I.R. Further, the petitioner though was declared fit to join duty w.e.f. 28th June, 2020 (Annexure R-8 dated 27.06.2020) apparently obtained another medical certificate of sickness recommending absence from duty w.e.f. 28th June, 2020 to 4th July, 2020 (Annexure R-8 dated 28.06.2020) which also reflected indiscipline.

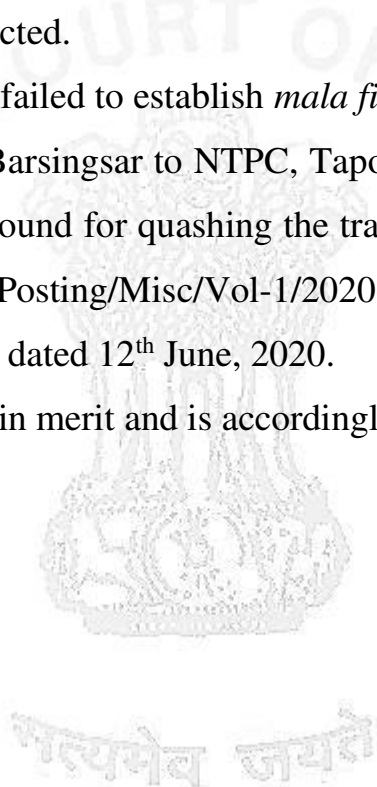
11. The petitioner belongs to a disciplined Force and is expected to conduct himself in an appropriate manner at all times. The history of the petitioner reflects his belligerent and temperamental attitude towards others. The petitioner has repeatedly faced adverse remarks and penalties on account of his indiscipline and bad behaviour. It is clear that the authorities in the Force are entitled to take such administrative action as

are required to remove such negative influences and to enhance the discipline and the spirit of personnel in the camp. One person cannot be seen to be repeatedly getting away with conduct that is not conducive either to the discharge of duties or to the peaceful residential environment of the camp. Seen from this angle too, the transfer order seems justified.

12. The claim that the petitioner is being targeted for approaching the High Court for the grant of TPTA, is farcical to say the very least and deserves to be and is rejected.

13. The petitioner has failed to establish *mala fides* or discrimination in his transfer from NLC, Barsingsar to NTPC, Tapovan. The petitioner has failed to establish any ground for quashing the transfer order bearing No. E-38014/North Sector/Posting/Misc/Vol-1/2020-5306, North Sector HQrs Order No. 36/2020 dated 12th June, 2020.

14. The petition lacks in merit and is accordingly dismissed.



ASHA MENON, J.

RAJIV SAHAI ENDLAW, J.

JULY 21, 2020
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