

\$~VC-4

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

Date of decision: 29th June, 2020

+ **WP (C) No. 3696/2020, C.M. Appl. No. 13224/2020**

KAPIL KUMAR RAGHAV AND OTHERS

..... Petitioners

Through: Mr. Naushad Alam, Advocate

versus

UNION OF INDIA & OTHERS

..... Respondents

Through: Mr. Rishub Shau and Rishi Raj
Meena, Advocate for UOI with Sri
Rajesh Nirwan IG Prov/Pers, FHQ
BSF, New Delhi.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

%

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. On 23rd June, 2020, when this petition had first come up before us, the following order was passed:

“3. The 23 petitioners, posted at Delhi as Assistant Sub-Inspector (Ministerial), Head-Constable (Ministerial) and Constable (Dafatry), have filed this petition seeking deferment of annual transfer orders for the year 2020, to next year, in view of the prevalent Covid-19 situation. It is the case of the

petitioners that annual transfer orders for others similarly placed as the petitioners have been deferred vide Annexures P-11 to P-14 to the next year and there is no reason to discriminate the petitioners. It is stated during the hearing that vide the impugned order the petitioners have been posted outside Delhi and owing to Covid-19 situation, have difficulty in travelling with their family members, when movement throughout the country is restricted.

4. We have enquired from the counsel for the petitioners, how many people would be there in the cadres to which the petitioners belong.

5. The counsel for the petitioners states that there should be above 230 odd personnel in the said cadres.

6. We have next enquired from the counsel for the petitioners, whether not the petitioners, being only one-tenth of the total personnel in the cadre, are seeking to put on hold the annual transfer orders and which would affect other personnel in the said cadres, who may be in favour of their being posted out of where they are presently posted. It is not as if transfer of the 23 petitioners alone can be stayed, since the transfer of others would have a chain effect.

7. The counsel for the respondents appearing on advance notice states on enquiry that he will have to obtain instructions why transfers have been effected only with respect to the cadres to which the petitioners belong and annual transfers of other cadres have been deferred by a year owing to the prevalent Covid-19 situation.

8. We have also enquired from the counsels whether not transfer in the midst of the academic year is likely to adversely affect the families of all the personnel of the cadre.

9. *The petitioners have pleaded that the date of reporting at the place of new posting is till 30th June, 2020.*

10. *The counsel for the respondents says that he will obtain instructions before that date.*

11. *The respondents to, in the meanwhile, also consider afresh, the matter of transfer of the cadres to which the petitioners belong, particularly taking into account that the transfer during the academic year can be prejudicial to the school/college going children of the petitioners and others similarly placed.*

12. *List on 29th June, 2020. The officer of the respondents in a position to take decision to also remain present in that hearing. The respondents may also consider deferring the issuance of movement orders till then."*

2. The respondents Border Security Force (BSF) have circulated a brief note as under:-

"1. The petitioners have been serving in various Directorates/Sections of FHQ BSF New Delhi. They have been posted out to other locations during ATO-2020 (Annual Transfer Orders) after completion of 4 years of prescribed static tenure at BSF Head Quarters, New Delhi as per the Tenure Rules 2000 (Annexure A-1).

2. Pers Dte (Staff Sec), BSF Headquarters, New Delhi is responsible for issuing Annual Transfer Orders in respect of combatized Ministerial & Stenographic Staff in March/April every year for its implementation from April onwards. Accordingly, Annual Transfer orders for the year 2020 in respect of Ministerial cadres to which petitioners belong where issued as per table below: (Annexure – II):-

<i>Srl.</i>	<i>Rank</i>	<i>Posted out from Delhi</i>	<i>Posted to Delhi</i>	<i>Others</i>	<i>Date of issue</i>
1.	ASI (Min)	50	51	107	17.03.2020
2.	HC (Min)	11	2	17	16.03.2020
3.	CT (Dft)	1	-	-	16.03.2020
	<i>Total</i>	62	53	124	

3. *These orders were issued in March 2020 and the posted out personnel were required to be relieved between 01st April 2020 to 15th April 2020 and to join their new places of posting between 16th April 2020 to 30th April 2020, but due to spread of COVID-10 in April/May, relieving and joining were further postponed for another 2 months and date of relieving was fixed afresh between 01st June 2020 to 15th June 2020 and date of joining at their new places of posting was fixed between 16th June 2020 to 30th June 2020 vide FHQ Pers Dte (Staff) signal No. R/3125 dated 15.04.2020 (Copy attached Annexure-III).*

4. *In pursuance of the tenure rules, these orders were issued in March 2020 as part of regular annual exercise and when spread of COVID-19 was not much.*

5. *However, on spread of Covid-19 in Apr/May and considering the gravity of the situation, a proposal was put to DG BSF for decision whether Annual Transfer Order 2020 in respect of Insp (min) and SI (Min) may be issued at that stage or otherwise and DG BSF gave following orders:-*

Quote : Further transfers of left out Cadres may be deferred to next year” Unquote. (copy of approved note sheet is attached for ready reference (Annexure-IV))

Therefore, ATO 2020 in respect of Insp (Min) and SI (Min) was not issued.

6. The requests/representation submitted by some of the petitioners were examined in detail but could not be acceded to by the Competent Authority in view of the policy decision taken by FHQ that all such FHQ orders which were already issued are to be implemented as well as due to lack of merit/no vacancy.

7. BSF is mainly deployed in field on Border Guarding duties in extreme hard/hard areas & very limited posts are available in Delhi. Very rarely, one gets a chance to serve in Delhi during his entire service.

8. Since the transfer orders were issued way back in March, the replacements of persons posted out from Delhi have already planned to come to Delhi and settle their families as well as plan for academics of their children. Moreover, the persons coming to Delhi as replacements for the petitioners have already completed their tenure of four years in field i.e. extreme hard area/hard area/field area and will be at great disadvantage if they are denied their opportunities for posting to Delhi. Persons coming from field areas i.e. extreme hard/hard areas should be given preference as they are coming to soft area in Delhi after completion of their tenure.

9. Deferment of the posting orders of petitioners at this stage is very difficult as more than three months period have passed after issuance of posting orders and it shall also have a chain effect upto field formations. If the posting orders in respect of the petitioners are deferred at this stage, it will deprive

the personnel serving at extreme hard/hard areas (field formations) for one year who have got an opportunity to serve in Delhi during their entire service for which they have already planned in March, 2020. Many of them have already been relieved for joining at Delhi. It is pertinent to mention that the petitioners transferred out from Delhi are trying to avoid going to field/hard/extreme hard areas on some pretext or other whereas. Most of the officers and the large number of BSF personnel have already moved across the country after lifting of lockdown or annual transferred/return from leave/temporary duties.

10. BSF always takes care of their brave man and families as such BSF has decided to allow all posted out persons to retain their present BSF accommodation wherever occupied by them and as per their request, till the end of the academic year. Moreover, CBSE and other boards have already postponed/deferred their academic session. Besides, the petitioners can also avail HRA (House Rent Allowance) facility as per Govt. of India orders.

11. BSF being a Central Armed Police Force is exempted from restrictions of lockdown and CAPF personnel have been functioning normally during the pandemic. Moreover on restoration of train/air service, a large number of BSF officers/personnel have already proceeded on transfer and return from leave. Transferred out officers have already joined at their new places of posting as per orders. Arrangements have been made to provide these personnel with 14 days quarantine facility at their places of joining as per BSF Medical Directorate orders. It is humbly submitted that the orders of posting/transfer have been issued without any

discrimination in accordance with transfer rules. However, posting/transfer orders in respect of Inspr. (Min.) and SI (Min.) could not be issued earlier and it was decided to defer the same till next year in view of the spread of Covid 19 in April/May. Pretext of not complying with orders of FHQ which has been issued in March, 2020 by petitioners is not in good order and discipline of force whereas many officers have been posted out alongwith other cadres without any discrimination and officers have already complied with orders of FHQ on posting/transfer.

13. It is further submitted that deferment of transfer order of the petitioners will not only put the other personnel who have been posted to Delhi as replacement for the petitioners at great disadvantage but also may lead them to seek legal remedies.”

3. We have heard the counsel for the petitioners, the counsel for the respondents as well as Mr. Rajesh Nirwan IG Prov/Pers, FHQ BSF, New Delhi, who is present pursuant to the direction in the earlier order.

4. The counsel for the petitioners has today raised the following concerns: (i) that the discrimination against the petitioners continues as Annual Transfer Orders of other cadres have been deferred for a year owing to prevalent Covid-19 situation; (ii) that with the restricted functioning of trains, there is no provision for movement and the petitioners, even if were to apply for train reservation today, would get it for after one/one and a half month and during all which time, they will be treated to be on leave for no fault of theirs; (iii) since the last date of hearing, relieving order of

only of one of the petitioners has been issued and the relieving orders even of the other petitioners have not been issued; (iv) that none of the personnel from outside Delhi who are to relieve the petitioners at Delhi, have reported at Delhi as yet; (v) that the individual problems of each of the petitioners highlighted in the petition have not been considered; (vi) that only 55 persons have been transferred to Delhi and they too have not joined at Delhi as yet; and, (vii) that travel allowance applied for by one of the petitioners was also not released on the ground of there being no budgetary sanction therefor.

5. Sri Rajesh Nirwan IG Prov/Pers, FHQ BSF, New Delhi, assures that all proper arrangements for movement of the transferred petitioners, as also of others, from one place in the country to the other, will be made and travel allowance as applicable would be released. He also explains that out of 10 cadres, Annual Transfer Orders with respect to 06 had been issued prior to the prevalent disturbances on account of Covid-19 and the Annual Transfer Orders for the remaining 04 cadres remained to be issued on account of administrative disturbance. He has also explained that the personnel posted at far off places, having difficult postings, on receipt in March 2020, of transfer order to Delhi, have already made plans for being at Delhi for the next four years and if the transfer orders of the petitioners are interfered with, as a natural corollary thereto, those happy with the posting to Delhi, would not be able to come to Delhi, causing heart burn, loss

of morale and resultantly affecting their performance and which can be critical at difficult postings. It is also informed that there was/is no intent to discriminate those whose annual transfer orders were issued before the pandemic or to confer any benefit to those whose annual transfer orders had not been issued till then.

6. The apprehensions expressed by us in the order dated 23rd June 2020 reproduced above, of interference with the transfer orders of the petitioners having a cascading effect and prejudicing others not before us, as per the response of the respondents, are true. We can well understand the expectations of those posted at borders or in conflict striven areas and their family members, to posting in the capital city of the country, where they can also have the comfort and company of their families. We would be loathe to disappoint such other members of the force, while showing sympathy to the petitioners before us. Expression of such sympathy to petitioners on the one hand, while closing our eyes to others, would not augur well for judicial propriety. We would refrain from doing so at the cost of appearing harsh to the petitioners.

7. All the other concerns expressed on behalf of the petitioners, as per the response of the respondents, stand addressed. The benefit, of retaining official accommodation by the families of the petitioners, till the next Academic Year, has already been granted. It is also informed that such of the petitioners who are not residing in official accommodation, would also have the benefit of HRA,

till the next Academic Year, if their families continue to reside at Delhi.

8. Else the petitioners have not shown any right to remain at Delhi. Merely because Annual Transfer Orders for some others have not been issued, would not entitle the petitioners also to object to their Annual Transfer Orders and to object whereto they have no right. The arguments of discrimination are misplaced. Article 14 or any other provision of the Constitution of India or any law do not confer any right to equality with those who may have been mistakenly or due to any oversight or for any other justifiable reason conferred any benefit to which they are not entitled in law. As is often said, there is no concept of negative equality. We are satisfied with the reasons disclosed by the respondents for Annual Transfer Orders of some cadres remaining to be issued and merely because the said transfer orders have not been issued, would not confer any right on the petitioners to have their own Annual Transfer Orders interfered with by the court.

9. Though we are satisfied that the other inconveniences/hardships, pointed out by the counsel for the petitioners on account of the prevalent circumstances have been taken care of by the respondents, we once again implore the respondents to, even while issuing the relieving orders, sympathetically deal with individual requests of the petitioners, in accordance with Rules.

10. Hence, no ground for interfering with the Annual Transfer

Orders is made out.

11. The petition is dismissed.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

JUNE 29, 2020
pkb

