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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 4059/2020**

**JAYANT H. MESHRAM** ..... Petitioner  
 Through: **Mr. Vipin Kumar Yadav, Advocate.**

versus

**THE DIRECTOR GENERAL, INDO-TIBETAN  
 BORDER POLICE FORCE & ANR. .... Respondents**  
 Through: **Ms. Shiva Lakshmi, CGSC**

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Date of Decision: 13<sup>th</sup> July, 2020**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MR. JUSTICE SANJEEV NARULA****J U D G M E N T****MANMOHAN, J: (Oral)**

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed seeking a direction to the respondent not to transfer the petitioner before completion of his daughter's 10<sup>th</sup> standard exams or at least till the completion of statutory tenure of three years of his current posting at Central Frontier, Bhopal.
3. Learned counsel for the petitioner states that petitioner's representations dated 28<sup>th</sup> May, 2020 and 11<sup>th</sup> June, 2020 have been arbitrarily rejected by an unreasoned order by the respondent no.4 in violation of the Standing Order No. 02/2016 dated 14<sup>th</sup> September, 2016 – which regulates posting/transfer of Indo-Tibetan Border Police

Force (for short 'ITBP') personnel. He submits that the Standing Order No. 02/2016 dated 14<sup>th</sup> September, 2016 is mandatory and not directory in nature.

4. Learned counsel for the petitioner further states that petitioner's daughter is currently studying in 9<sup>th</sup> standard in a Bhopal school and setting up her educational basis for 10<sup>th</sup> standard examination. He points out that educational necessity of wards has been mentioned as one of the grounds for deferment of transfer in 2016 Guidelines governing posting/transfer, more specifically the wards studying in 9<sup>th</sup> and 11<sup>th</sup> standard at the time of transfer.

5. He lastly submits that the petitioner has been treated differently than other officers who are similarly situated. In this context, he refers to the case of Mr. Bhola Nath Sonawan who still continues to be posted in Northern Frontier, Dehradun against the post of Second-in-Command.

6. In pursuance to the notice issued by this Court, respondents have filed a short affidavit in which they have stated that the reason for petitioner's transfer-posting is due to abolition of the post held by the petitioner at the moment, i.e. Second-in-Command (Telecom) at Bhopal pursuant to Cadre Review vide order dated 17<sup>th</sup> May, 2019.

7. It has been clarified that while reshuffling existing and promoted Second-in-Command (Telecom), the petitioner had been transferred to Signal Training School, Shivpuri, Madhya Pradesh, which is also a soft area in accordance with the policy mentioned in the Standing Order No.02/2016.

8. Learned counsel for respondents contends that the petitioner has nowhere explained as to how his daughter's education will be disrupted particularly when the Headquarter Central Frontier Bhopal has confirmed

that the petitioner has been allotted Government accommodation (Type-V) at Bhopal and his wards are availing ITBP School bus to commute between residence and school.

9. Having heard learned counsel for parties, this Court is of the view that in accordance with Section 7 of the ITBPF Act, 1992 as well as in accordance with Para 1(b) of Standing Order No.02/2016, a member of this force is liable to serve at any place within and outside India.

10. In any event, transfer is an exigency of service. Further, the transfer in the present case is on account of Cadre Review and abolition of the post held by the petitioner at Bhopal. Consequently, there is no malice involved in the present transfer.

11. Admittedly, both Bhopal and Shivpuri are soft areas in accordance with the Standing Order No.02/2016.

12. As far as the instance of Mr. Bhola Nath Sonawan is concerned, this Court is of the view that Article 14 of the Constitution is a positive concept and cannot be enforced in a negative manner. Irregularity and illegality, if any, cannot be perpetuated on the ground that illegal benefits have been extended to others. [See *Union of India v. M.K. Sarkar*, (2010) 2 SCC 59 and *Basawaraj and Another Vs. Special Land Acquisition Officer*, (2013) 14 SCC 81].

13. Also in accordance with Para 7 of Standing Order No.02/2016, the request for deferment of transfer on account of education of children is generally not considered unless the officer is able to substantiate that the transfer would disrupt the further continuance of studies.

14. In the present case, the respondents have allowed the petitioner to continue to retain the Government accommodation in Bhopal and his

daughter is admittedly availing ITBP School bus to commute between residence and school.

15. Consequently, this Court is of the view that on account of transfer of the petitioner there shall be no disruption of education of his daughter.

16. Accordingly, the present writ petition, being bereft of merit, is dismissed.

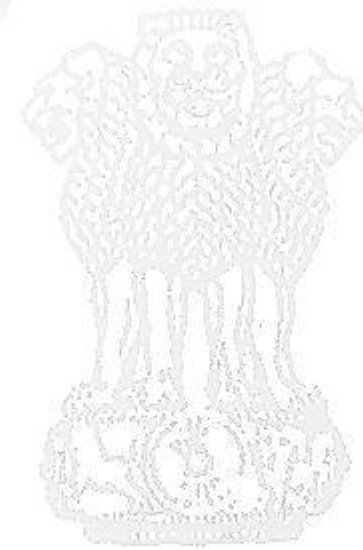
17. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

**MANMOHAN, J**

**SANJEEV NARULA, J**

**JULY 13, 2020**

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