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

% **Date of Decision: 11th August, 2020**

+ **W.P. (C) 4410/2020**

VIJAY PAL SINGH **.....Petitioner**

Through: Mr. Ankur Chhibber, Advocate

versus

UNION OF INDIA & ORS. **.....Respondents**

Through: Mr. Vivek Goyal, CGSC

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

W.P.(C) 4410/2020 & CM APPL. 15886/2020 (for stay)

1. On 22nd July, 2020, when this petition had come up first before us, the following order was passed:-

“3. The petitioner, an Inspector (GD) with the respondents Border Security Force (BSF), has filed this petition impugning the Signal dated 1st May, 2019 and Movement Order dated 13th July, 2020, whereby the petitioner has been posted out from Information Technology Wing, Frontier Headquarters, Delhi, to 171 Battalion of the respondents BSF.

4. The petitioner has been posted at Information Technology Wing, Frontier Headquarters, Delhi since 31st May, 2016 and joined at Information Technology Wing, Frontier Headquarters, Delhi on 17th June, 2016. He was, on 3rd April, 2019 posted to Eastern Command and vide signal dated 25th April, 2019 directed to report to North Bengal Frontier and finally vide impugned order dated 1st May, 2019 posted to 171 Battalion at the India-Bangladesh border. Upon the representation of the petitioner against the said order/posting being rejected vide order dated 6th June, 2019, the petitioner earlier filed W.P.(C) No.6917/2019 in this Court and vide order dated 28th June, 2019 wherein, on the statement of the counsel for the petitioner that the petitioner was seeking deferment for one year only on account of his elder son then studying in 12th class in a school in NCR region, the posting orders dated 1st May, 2019 and 6th June, 2019 were deferred for a period of one year only.

5. The petitioner now, after availing of the aforesaid deferment for one year, has filed this petition contending that he, on account of train accident suffered on 21st October, 2016 and found attributable to government duty, suffers from 75% disability and cannot perform any duty in an active area. It is argued that even otherwise the petitioner is the main caregiver of his children, the wife of the petitioner having died on 12th April, 2016, and cannot be posted at a non-family station, as the place where the petitioner has now been posted, is.

6. We have however enquired from the counsel for the petitioner, how the said grounds are available to the petitioner. The petitioner in the earlier writ petition filed, having confined the relief to deferment of transfer for one year only, cannot successively urge additional grounds thereby perpetuating his posting at the place of his liking. If none of the officials/personnel of armed police forces like BSF are willing to be posted in active areas, it is not understandable who will man the said areas and secure the borders.

7. The counsel for the petitioner states that the petitioner has also invoked the ground of the respondents, vide Annexures P-1 & P-11, in the wake of COVID-19, having deferred all transfers.

8. The counsel for the respondents BSF, appearing on advance notice, to obtain instructions, whether the respondents BSF have considered the duties which the petitioner, as per his medical category, can undertake at the place of his posting and whether Annexures P-1 & P-11 qua the deferment of transfers ordered prior to COVID-19, have been considered with respect to the posting of the petitioner also, which though was ordered prior to COVID-19, under Court orders was deferred for one year.

9. On enquiry, it is informed that the petitioner, vide Relieving Order dated 13th July, 2020 was also sanctioned two months leave and thus is now required to join at the post by 12th September, 2020.

10. List on 11th August, 2020

11. The counsel for the petitioner also states that the petitioner, in the alternative, seeks posting at any static station.

12. The said aspect be also considered by the respondents and instructions obtained with respect thereto.”

2. The counsel for the respondents Border Security Force (BSF) states that he has obtained instructions. It is stated, (i) that the respondents BSF have considered the duties which the petitioner, as per his medical category, can undertake at the place of his impugned posting; (ii) that Annexures P-1 and P-11 qua deferment of transfer orders owing to prevalent pandemic pertain only to annual transfer orders of year 2020 and not to the annual transfer orders of the year 2019; (iii) the order of transfer of the petitioner was of 2019 and was deferred for one year on the petitioner filing the writ petition being W.P.(C) No.6917/2019 and order therein and thus the petitioner is not entitled to the benefit of Annexures P-1 and P-11; (iv) the petitioner has been at the static posting since three years and is now not entitled for posting to a static station; and, (v) that the petitioner can keep his family at the place of his impugned posting and all kind of facilities are available at the said place, including medical and educational.

3. The counsel for the petitioner states that the respondents BSF may be directed to consider posting the petitioner at Jammu Headquarter or Gujarat Headquarter or even at Tekanpur.

4. With the response given by the counsel for the respondents BSF, no ground for entertaining the petition is made out, which is dismissed. However it will be open to the petitioner to represent to the respondents BSF to post him to any of the aforesaid stations and dismissal of the petition will not come in the way of the respondents BSF considering the said request of the petitioner on merits.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

AUGUST 11, 2020
ak/s