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

+ **W.P.(C) 4407/2020**

VED PRAKASH

..... Petitioner

Through: Mr. Jaideep Singh, Mr. Kartik Dabas
and Ms. Disha Sachdeva, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Sunieta Ojha, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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22.07.2020

[VIA VIDEO CONFERENCING]

CM APPL. 15884/2020 (for exemption).

1. Allowed, subject to just exceptions and as per the extant rules.
2. The application is disposed of.

W.P.(C) 4407/2020 & CM APPL. 15883/2020 (for *ad interim ex parte* stay).

3. The petitioner, Assistant Commandant with the respondents Sashastra Seema Bal (SSB) and posted since the year 2016 at Ghitorni, Delhi, has filed this petition impugning the order dated 20th April, 2020 of his transfer to Barasat.
4. It is the contention of the petitioner, that the mother of the petitioner, aged 60 years, has been advised spine surgery and the father of the petitioner has undergone a kidney surgery last year and the petitioner himself has been diagnosed as suffering from depression.
5. It is further the case of the petitioner that the petitioner married on 16th May, 2017 and his wife is working as a Sub-Inspector in Central

Industrial Security Force (CISF) and since the year 2014 has been posted at Delhi; a child was born to the petitioner on 26th April, 2018 and on 6th July, 2018, a vigilance enquiry was initiated against the petitioner and on 22nd January, 2020 a record of evidence was ordered against the petitioner. The petitioner further pleads that the petitioner is to be relieved immediately after the record of evidence is concluded. The petitioner has further pleaded that he made representations dated 21st May, 2020 and 8th July, 2020 but the same have not been decided.

6. We find a large number of officers of services such as SSB filing petitions before this Court against the orders transferring them from one place to another. The counsel for the petitioner herein also argues that the petitioner, owing to suffering from depression, cannot be entrusted with an arm and ought not to be posted in active duty. It is argued that the petitioner, on account of the medical exigencies of his parents, is seeking deferment of the transfer by a period of one year only.

7. We have enquired from the counsel for the petitioner, whether not active duty is an incident of the service which the petitioner opted to join.

8. The counsel for the petitioner has contended that the petitioner since 2016 is posted at active duty in Delhi as security for Cabinet Secretariat and prior thereto also was posted at active duty and is required to be posted at a static location. We have however enquired from the counsel for the petitioner, whether not Delhi is a static location.

9. No answer has been forthcoming and nothing is relied upon in the petition also to show that the posting at Delhi has been classified as anything other than a static location.

10. A perusal of the representation dated 21st May, 2020 of the petitioner

also shows that the petitioner therein did not seek stay on transfer out of Delhi but on the contrary represented that since his wife was liable to be transferred out of Delhi, to Bhopal region, the petitioner should be transferred to Bhopal, to enable the petitioner and his wife to look after the parents of the petitioner and their child.

11. We may in this context notice that there are no pleadings in the petition with respect to the siblings of the petitioner or to show that there is nobody else who is able to look after the parents of the petitioner. The age of the parents of the petitioner also does not appear to be very much. If on such grounds we start interfering in all transfers, it will be the Courts which will have to do transfer/postings for all these services, without being administratively equipped to consider the need and requirement at different posts. Any interference by us in the postings will also lead to vacancies at certain posts, with none being willing to occupy the same and which may ultimately prove fatal to the security of the country.

12. The counsel for the respondents appearing on advance notice states that the petitioner has concealed from this Court that on the representation of the petitioner in 2016, for 'couple posting' on account of his wife being posted at Delhi, the petitioner even prior to the completion of the tenure of earlier posting, was transferred to Delhi. It is also contended that Barasat where the petitioner is now transferred, is within the Municipal limits of Kolkata and the Kolkata Airport is also secured by CISF personnel and it is not as if the petitioner's wife cannot seek transfer to the place where the petitioner has been transferred. It is also informed that the officer transferred to Delhi for security of the Cabinet Secretariat has already taken charge and the petitioner has already overstayed at Delhi for more than three years. On

specific enquiry, it is also stated that the representations of the petitioner have been rejected and the petitioner has been communicated the same.

13. The counsel for the petitioner now states that the representations have been rejected without reasons. He seeks adjournment to rely on judgments to the said effect.

14. We have enquired from the counsel for the petitioner, whether any of the judgments which he wants to cite, is relating to transfer orders and lays down the law that rejection of a representation against transfer has to be by a speaking order.

15. The counsel for the petitioner is unable to say.

16. The petitioner having concealed from this Court that he had already availed of posting at Delhi on the ground of his wife being posted at Delhi and that he had been communicated the rejection of his representations, is even otherwise not entitled to any discretionary relief.

17. The counsel for the petitioner has also argued that the depression from which the petitioner is suffering is on account of the vigilance inquiry ordered against him and which is baseless.

18. We ought not to say anything in this regard; all that can be said is that if initiation of any vigilance inquiry would lead to depression and become a ground for challenging the transfer, the same would also make the functioning of the services unworkable.

19. As far as the medical ground of the parents of the petitioner is concerned, the petitioner, in the representation dated 21st May, 2020 having shown willingness to be transferred to Bhopal, it is evident that the said ground is taken only to invoke sympathy and otherwise there is no real need therefor.

20. No ground for entertaining the petition is made out.
21. Dismissed.
22. The counsel for the petitioner states that he may be permitted to withdraw the petition with liberty to file again.
23. In the circumstances aforesaid though permission to withdraw the petition can be given but without any liberty.
24. The petition is dismissed as withdrawn.

RAJIV SAHAI ENDLAW, J

ASHA MENON, J

JULY 22, 2020
'pp'