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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5162/2020 & CM No.18573/2020 (for stay)

CNST GD VIKAS YADAV

..... Petitioner

Through: Mr. Ajit Kakkar & Mr. Puru Mudgal,
Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Avnish Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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19.08.2020

[VIA VIDEO CONFERENCING]

1. On 10th August, 2020, when this petition had first come before us, the following order was passed:

“3. The petitioner, a Constable (General Duty) in the respondents Central Reserve Police Force (CRPF), having been enrolled on 21st May, 2012 only, has filed this petition impugning the orders dated 2nd July, 2020 and 3rd August, 2020 of his transfer / movement from Delhi. On enquiry, the counsel for the respondents CRPF appearing on advance notice, states that the petitioner has been transferred to ‘Line of Control’.

4. It is the case of the petitioner that after joining the respondents CRPF, he served in Tinsukia, Assam between 2012 and 2018 and was on 9th January, 2019 transferred to Parliament Duty Group (PDG), Delhi; that the petitioner pursuant to the said transfer, was harassed by two Inspectors posted at PDG, Delhi, who also illegally imposed punishments of 25 days confinement in three months and of deduction of salary of Rs.45,000/- on the petitioner. This petition challenging the transfer has been filed alleging the transfer to be vindictive.

5. *The counsel for the respondents CRPF, appearing on advance notice, has drawn attention to the message dated 13th February, 2020 at page 24 of the paper book to contend that the petitioner at Delhi was trained as Lab Technician (ECG) and now his services are required at 'Line of Control'. It is argued that the transfer is not vindictive but in the normal course for utilizing the services of the petitioner in what he has been trained for.*

6. *It is the contention of the counsel for the petitioner that two other Constables (GD), also trained as Technicians viz. Suhel Ahmed and Mohd. Imran have been posted at PDG, Delhi for the last three years and still it is the petitioner who has been vindictively ordered to be transferred and has not been allowed to complete three years of his posting at PDG, Delhi.*

7. *Finding the petitioner to be only 29 years of age, as per his affidavit, we have enquired from the counsel for the petitioner, the hardship if any to the petitioner.*

8. *It is stated that the petitioner is married and has a small child.*

9. *It is also the case of the petitioner that the petitioner has sent a legal notice dated 30th July, 2020 against his transfer and no decision has been taken thereon.*

10. *The counsel for the respondents CRPF on enquiry states that the legal notice aforesaid is to be considered by the Director General, CRPF.*

11. *It is deemed appropriate that the representation of the petitioner contained in legal notice is considered by the appropriate authority and the decision thereon with reasons be communicated to us on the next date of hearing. For the purposes of such consideration, this writ petition be also treated as a representation.*

12. *List on 19th August, 2020.*

13. *We clarify that there is no stay of the transfer / movement orders."*

2. The respondents Central Reserve Police Force (CRPF) have filed before this Court, the order dated 18th August, 2020 of the Directorate

General, CRPF, New Delhi and the relevant part whereof is as under:

**“DIRECTORATE GENERAL, CENTRAL RESERVE POLICE FORCE,
CGO COMPLEX, LODHI ROAD, NEW DELHI-110003
(MINISTRY OF HOME AFFIARS)**

No.T-IX-35/2020-Estt-DA-8

Dated, the 18th August, 2020

ORDER

Whereas, No.125302856 CT/GD Vikash Yadav was inducted into PDG on 09/01/2019 on selection basis for Parliament duty. On the basis of recommendation of IG NS Bn vide Dte order No.T-IX-36/2020-Estt-DA-5 dated 10/01/2020 on **disciplinary ground**.

02. And whereas, the petitioner indulged in a misconduct and quarrelled with No.155390048 CT/NA Deepak Kumar Rajak of GC LKW undergoing Lab. Tech and ECG course at Institute of Public Health and hygiene, New Delhi. A P.E. was initiated to find out the facts and said CT/GD was found guilty. Enquiry Officer has recommended for taking disciplinary action against him and also recommended for de-induction/transfer out from PDG. He was awarded 25 days line confinement from 13/11/2019 to 07/12/2019 with forfeiture of pay and allowances under section 11(1) and 13(d) of CRPF Act 1949 read with Rule 27 of CRPF Rules 1955. Since, PDG is a specialized Group which is entrusted with duties to provide security to the Parliament, hence indisciplined personnel are not retained in PDG, keeping in view of the sensitive duties and in accordance with the provisions of the transfer policy as enumerated in para 7(x) of the CRPF Standing Order – 07/2015. Accordingly he was transferred out from the PDG and allotted to Central Zone for further posting vide this Dte Sig dated 10/1/2020. He was further posted to 84 Bn by concerned Zone/Sector.

03. And whereas, on the recommendation of IG/Director (Med) vide ION No.T-IX-2/19-Med-3 dated 10/12/2019, he was retained in PDG alongwith transfer of 74 Lab. Technician course trained personnel vide Dte. Signal No.T-IX-35/2020-DA-8 dated 13/02/2020. On receipt of this order i.e. retention in PDG of above person, IG NS (i.e. controlling Adm Authority of PDG) vide signal No.O-IV-1/2020-NS-EC-3 dated 16/03/2020 has intimated that due to indiscipline ground as stated above he has been transferred to 84 Bn. Moreover, IG NS further recommended that posting of said CT/GD ordered from PDG to PDG as Lab. Technician vide Estt Dte Singal dated 13/02/2020 may be cancelled and he may be posted out from PDG. On the recommendation of IG NS, retention in PDG in respect of above individual as Lab. Technician has been cancelled vide Estt Dte Signal No.T-IX-35/2020-DA-8 dated 02/07/2020 as he has already been under order transfer to 84 Bn on indiscipline grounds.

04. And whereas, CT/GD has also requested for his transfer to 139 Bn, 194 RAF and GC Delhi due to pre-mature transfer from PDG on disciplinary grounds within one year due to his wife's treatment. His case examined in this Dte. and due to ineligibility for transfer to choice places i.e. 139 Bn, 194 RAF and GC Delhi (all units/GC are deployed/located in Delhi) in accordance with SO-07/2015 his case not acceded to by the competent authority due to devoid of merit and decision was conveyed to PDG along with all concerned vide this Dte Signal dated 04/08/2020 for further informing to the applicant.

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07. And whereas transfer from PDG to CZ/JKD/84 of said CT/GD was made vide Estt Dte order dated 10/01/2020 on disciplinary ground. Further, his retention in PDG cancelled vide Signal dated 02/07/2020 is correct on the basis of disciplinary ground as per para 7(x) of CRPF Standing Order – 07/2015. Further, Standing Order No.03/2016 bearing No.T-IX-Instn/2016-Min-DA-2 dated 29/12/2016 as quoted in para 8 of the WP(C) 5162/2020 pertains to transfer policy of Ministerial / Stenographic / Official Language Cadre. Therefore this Standing order is not relevant in this case as he is CT/GD (Executive Cadre) and provisions of transfer policy issued vide Standing Order N.07/2015 are applicable in his case. Accordingly, as directed by Hon'ble High Court of Delhi representation of the petitioner contained in legal notice as well as writ petition has been considered. The same has been examined in the light of transfer policy issued vide SO-07/2015. Since, no new facts have been brought out, hence legal notice as well as writ petition is treated as representation and same is rejected being devoid of merits and his transfer to 84 Bn stands.

08.

Sd/-
18.08.2020
(P.K. Sharma)
DIG (Estt) Dte”

3. The counsel for the petitioner has argued that, (i) the petitioner has a young child and an elderly mother; (ii) the petitioner is undergoing treatment at Delhi for his eyesight; (iii) the order of transfer of the petitioner, within one year, is against policy; (iv) after the last date of hearing, the petitioner was called and asked, why he had filed the petition and informed that

W.P.(C) No.5162/2020 Page 4 of 6

instead he should have made a request to the authorities for being posted in Delhi; (v) the petitioner is a Lab Technician but has been posted at Jammu as a general duty constable; (vi) the disciplinary action against the petitioner is illegal; and, (vii) the deduction of the salary of the petitioner should be stayed and the respondents should be asked to issue a notice to show cause to the petitioner before imposing disciplinary action and the transfer of the petitioner from Delhi should be stayed till the pendency of the said action.

4. The counsel for the respondents CRPF has contended that Jammu, where the petitioner has been posted, is a soft station.

5. On going through the reasons given in the order of rejection of the representation of the petitioner against his transfer, we are satisfied that no case for interference with the transfer has been made out. The petitioner was posted in Delhi not as per policy but owing to his selection in the Parliament Duty Group (PDG) and once the petitioner has been deemed unfit from the PDG, no error can be found in his transfer out of Delhi. Significantly, there is no challenge to transfer out of the petitioner from the PDG. The order of transfer out of the petitioner from Delhi is only a consequence thereof.

6. With respect to the submissions made today by the counsel for the petitioner, we may state that the petitioner did not approach this Court with medical or other family grounds for remaining at Delhi. In fact, there is no plea whatsoever to the said effect in the petition. It was only on our asking on the last date of hearing that it was stated that the petitioner has been recently married and has a young child and which was recorded in the order. Thus the argument, of the petitioner being permitted to remain at Delhi, does not have any basis.

7. As far as the contention of the petitioner having been called and told that if he had not filed the petition, a sympathetic view could have been taken is concerned, no reliance can be placed thereon and it seems to be an attempt by the petitioner to somehow or the other remain at Delhi. We may in this regard state that it is also the say of the counsel for the petitioner that the respondents CRPF should be directed to decide the case of the petitioner *dehors* this petition. However when we asked the counsel for the petitioner, whether he is willing to withdraw the petition, he states that he has instructions to argue.

8. As far as the argument urged with respect to departmental proceedings is concerned, the pleading in the petition with respect to departmental proceedings is by way of narrative and not by way of any ground. In fact, no relief even in the petition with respect to the departmental enquiry, save of direction to the respondents CRPF to release the arrears of salary unlawfully deducted, is sought. No challenge is made to the order of deduction of salary and no copy thereof even has been filed. Be that as it may, if the petitioner has any grievance with respect to the disciplinary proceedings against him, the remedy therefor is in accordance with the Rules, by way of departmental challenge and not by way of this writ petition.

9. There is no merit in the petition.

10. Dismissed.

RAJIV SAHAI ENDLAW, J

ASHA MENON, J

AUGUST 19, 2020/‘gsr’..