

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

% **Date of decision: 13th October, 2020**

+ **W.P.(C) 6250/2019**

CONST. SATENDRA KUMAR AND ORS. Petitioners

Through: Mr. R.K. Singh, Mr. Kumar Gaurav
and Ms. Ritu Reniwal, Advs.

Versus

UNION OF INDIA AND ANR. Respondents

Through: Ms. Shipra Shukla, Adv.

AND

+ **W.P.(C) 2916/2020 & CMs No.10134/2020 (for stay) & 10376/2020
(for urgent listing of petition)**

AMRISH KUMAR AND ORS. Petitioners

Through: Mr. Amit Dubey, Adv.

Versus

UNION OF INDIA Respondent

Through: Mr. Rajan Sabharwal and Mr. Raghav
Sabharwal, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. W.P.(C) No.6250/2019 was filed, pleading (i) that the four petitioners, vide appointment letters dated 1st August, 2015 were recruited as Constables in Railway Protection Special Force (RPSF) and were serving in different battalions, all over India; (ii) that the four petitioners got married

and their wives are also working as Constables in RPSF; (iii) that the Railway Board, on 12th June, 2018 passed an order titled "Inter-Battalion Transfer of RPSF Personnel on Spouse Working Ground", wherein the names of the four petitioners were included and the petitioners got transferred from the respective places where they were earlier posted, to Delhi; (iv) that vide order dated 22nd May, 2019 titled as "Cancellation of Transfer Order", the transfer order dated 12th June, 2018 of the petitioners to Delhi was cancelled, thereby transferring the petitioners back from Delhi to their previous places where they were posted prior to being transferred to Delhi; and, (v) that though the petitioners represented but to no avail. Accordingly, the petitioners impugn the order dated 22nd May, 2019 *inter alia* on the grounds, (a) that the same is violative of Article 14 of the Constitution of India as the respondents Indian Railways has opted pick and choose method, to harass the petitioners; (b) that the said order dated 22nd May, 2019 is in violation of Circular titled "Posting of Husband and Wife at the Same Station" of the Ministry of Railways; (c) that the petitioners were transferred to Delhi on working spouse ground and sudden transfer out of Delhi, without giving any opportunity of being heard, is bad in law; and, (d) that the petitioners had been transferred to Delhi merely one year prior to 22nd May, 2019 and transfer from Delhi to where they were earlier posted, in such short span of time, is irrational and arbitrary.

2. W.P. (C) No.6250/2019 came up first before this Court on 29th May, 2019 when, while issuing notice thereof, the operation of the impugned order dated 22nd May, 2019, in so far as with respect to the four petitioners, was stayed, reasoning that the order dated 22nd May, 2019 of cancellation of

the earlier order dated 12th June, 2018 of transfer of the petitioners to Delhi, was without any reasons.

3. Thereafter W.P.(C) No.6250/2019 was adjourned from time to time and on 10th February, 2020 the interim order dated 29th May, 2019 was made absolute.

4. W.P.(C) No.2916/2020 was filed, pleading (i) that the five petitioners therein were working as Constables in Railway Protection Force (RPF); (ii) that their spouses were working in RPSF; (iii) that the wives of the petitioners as also other lady Constables in the RPSF, were asked for choice of the place where they would like to be posted permanently; (iv) that the wives of the petitioners submitted their choice and the lady Constables of RPSF were posted at the places opted for by them; (v) that the petitioners represented for inter-zonal/inter-divisional transfer, on working couple ground, and their inter-zonal/inter-divisional transfers were approved vide orders dated 21st April, 2018, 15th July, 2019 and 28th June, 2019 and since then the petitioners have been discharging their duties at the place of their posting on such inter-zonal/inter-divisional transfers; and, (vi) that suddenly, without any reason or cause, the respondents Indian Railways issued the impugned order dated 27th February, 2020 by which the orders by which the petitioners were transferred to their present place of posting were cancelled and the petitioners were repatriated to the zone/division from which they were transferred to the present place of posting. W.P.(C) No.2916/2020 has been filed impugning the order dated 27th February, 2020 *inter alia* on the same grounds as in W.P.(C) No.6250/2019.

5. W.P.(C) No.2916/2020 came up before this Court on 19th March, 2020 when it was found that the impugned order dated 27th February, 2020 reasoned that the wives of the petitioners were posted at the 16th battalion of the RPSF having Headquarter at Asansol, West Bengal and were temporarily deployed at Delhi and Agra and therefore the earlier transfer order of the petitioners to Delhi/Agra were not in accordance with law. It was the contention of the counsel for the respondents Indian Railways appearing on advance notice on that day that the petitioners, on the working couple ground, could only be transferred to the Headquarter of their spouses i.e. at Asansol and could not be transferred to Delhi where their wives were temporarily deployed. However, during the hearing, it was informed that W.P.(C) No.6250/2019 entailing the same challenge was pending before this Court. Vide subsequent order dated 24th April, 2020, on being informed of the interim stay in W.P.(C) No.6250/2019, the operation of the order dated 27th February, 2020 impugned in W.P.(C) No.2916/2020 was also stayed.

6. On 6th October, 2020, when both the writ petitions were listed together, it was the contention of the counsel for the petitioners, (a) that the Indian Railways encourages both spouses, if employed with the Indian Railways and if of the same seniority, to be posted at the same place; (b) that the petitioners in W.P.(C) No. 6250/2019 and their wives, both are employed in RPSF; (c) that the petitioners in W.P.(C) No. 2916/2020 and their wives, though are in different forces i.e. RPF and RPSF, but the petitioners in both the petitions and their respective wives, all are Constables, recruited in the same year and thus have the same seniority; (d) that the wives of the petitioners in both petitions, though headquartered at Asansol, are posted at Delhi; (e) that the contention of the respondents *W.P.(C) 6250/2019 & W.P.(C) 2916/2020*

Indian Railways that the petitioners were entitled to be posted at Asansol but not at Delhi is fallacious because if the wives of the petitioners were to be at Delhi, posting the petitioners to Asansol will not serve any purpose; and, (f) that though a common transfer order with respect to 18 personnel was issued, but cancellation has been effected of some only and the transfer of the remaining, though similarly placed, had not been cancelled.

7. The respondents Indian Railways, in their counter affidavit in W.P.(C) No.6250/2019 have pleaded, (a) that the Directive 32 (Revised), issued on 28th December, 2017, in exercise of powers under Rule 28 of the Railway Protection Force Rules, 1987 read with Section 8 of the Railway Protection Force Act, 1957, states that while transferring members of the force from one station to another, the fact that his/her spouse is posted at a particular station, should be duly taken into consideration and working couple should be posted at the same or nearest station, as far as possible, but within the constraints of administrative and operational feasibilities; (b) that Directive 32 (Revised) aforesaid also states that while considering transfer on working couple ground, preference should be given to those cases where both husband and wife are in RPF; in case one spouse is in RPSF, he/she shall be posted to the nearest battalion; (c) that the petitioners, on 12th June, 2018 were transferred/posted to Delhi but were later detected to be not fulfilling the criteria, because their wives were posted at Asansol; (d) that the petitioners are wrongly pleading that their wives are posted at Delhi; (e) that the truth is that the wives of the petitioners are temporarily deployed at Delhi but the place of their posting is at Asansol; and, (f) that the petitioners are entitled to seek transfer to the battalion nearest to the Asansol.

8. The respondents Indian Railways, in their counter affidavit in W.P.(C) No.2916/2020 have pleaded (i) that the petitioners had been transferred to the Zonal Railways nearest to the temporary deployment of their wives; (ii) that however the said transfer orders did not fulfill the condition laid down in Railway Protection Force Establishment Manual which was overlooked while passing the transfer orders; (iii) that when this mistake came to light, the earlier orders of transfer were cancelled and the petitioners transferred to their previous places of posting; (iv) that the permanent posting of the wives of the petitioners is at Asansol in West Bengal; (v) that RPSF is a striking force which supplements the efforts of RPF in crisis situations like strikes; (vi) that RPFS was established in battalion pattern; (vii) that battalion is divided in company and company is divided in platoons and sections; (viii) that as per the administrative requirement, RFSF established a female battalion Headquarter at Asansol, where suitable number of female Constables were posted; (ix) that after sometime a large number of representations were received from female Constables regarding their frequent change of deployment/posting near home State etc.; (x) that a Committee was constituted to examine and decide the issues of female Constables regarding deployment/posting on spouse grounds; (xi) that the Committee recommended that lady personnel of RPSF may be divided into four companies instead of twelve platoons and they be kept either at Asansol or at Delhi or at Secunderabad, for five years; (xii) that the aforesaid three locations were selected based on State-wise position of lady personnel of RPSF and to minimize their grievance to a large extent; (xiii) that the petitioners had been transferred on working couple ground as their wives were temporarily deployed at Delhi; (xiv) that however an issue

was raised that the transfer of the petitioners on working couple ground had been made to Delhi where the wives of the petitioners were temporarily deployed and which was not permissible; the petitioners, on working couple ground, could have been posted at Asansol, the Headquarter of their wives; (xv) that it was for this reason that the transfer on working couple ground was cancelled; and, (xvi) that it is the place of the posting which is the criteria for transfer on spouse ground instead of the place of deployment.

9. Though the petitioners have filed rejoinders to the counter affidavits aforesaid and an additional affidavit is also found to have been filed by the petitioners in W.P.(C) No.6250/2019 but the need to advert thereto is not felt.

10. The counsel for the respondents Indian Railways has today stated that the respondents Indian Railways, after the hearing on 6th October, 2020, has reconsidered the matter and informs, (a) that the wives of the petitioners in both the petitions, while exercising choice given to them, had opted for Asansol and were posted to Asansol; (b) they were temporarily deployed at Delhi/Agra; (c) that the said deployment at Delhi/Agra though intended to be temporary, stretched for long owing to the requisite infrastructure being not available at Asansol; (d) that however now the requisite infrastructure is available at Asansol and the wives of the petitioners are being sent back to Asansol; (e) that the transfers of the petitioners to Delhi/Agra were cancelled, finding that the petitioners had been erroneously transferred, not to the place of posting of their wives but to the place of deployment of the wives of the petitioners and which is not permissible in law; (f) that it is proposed to post the petitioners in both petitions also, to Asansol or in

vicinity thereof, so that the petitioners can cohabit with their spouses; and, (g) that RPSF personnel are required to be deployed at different places, as per exigency from time to time and the wives of the petitioners in both petitions, who are in RPSF, may be required to be temporarily deployed at other places; however such deployment will be for short period and not for as long as they remained deployed at Delhi/Agra.

11. On enquiry, the counsel for the respondents Indian Railways states that if at any time in future, the wives of the petitioners are posted, as distinct from deployed, out of Asansol, endeavour shall be made to transfer the petitioners also to/near the place of posting of their wives.

12. Though the aforesaid suggestion/proposal of the counsel for the respondents Indian Railways satisfied us but the counsels for the petitioners vehemently oppose, contending that the wives of the petitioners remained at Delhi/Agra for years and which cannot be a temporary deployment. It is argued that thus the petitioners are entitled to continue at Delhi/Agra and the order of cancellation of their transfer out of Delhi/Agra is liable to be struck down.

13. We do not find any merit in the opposition of the counsel for the petitioners to the proposal aforesaid of the counsel for the respondents Indian Railways and are of the view that the petitioners are thereby only wanting to remain at Delhi/Agra and avoiding going to Asansol and/or nearabouts thereto. Needless to state, the petitioners have no right to be at Delhi/Agra.

14. Though the counsels for the petitioners have sought to contend that the wives of the petitioners are posted at Delhi/Agra and are not merely

deployed at Delhi/Agra but the documents/certificates filed by the petitioners themselves falsify the said argument and unequally show the place of posting of the wives of the petitioners as Asansol and mere deployment at Delhi/Agra. Once according to the respondents Indian Railways, there is no need for continuing deployment of the wives of the petitioners at Delhi/Agra and the wives of the petitioners are being sent back to their Headquarter at Asansol, the petitioners, if want to reside with their wives, cannot be permitted to continue at Delhi/Agra and will have to necessarily be posted at Asansol or nearabouts, where their wives are posted.

15. Spouse postings are matters of policy and are not to be interfered with, unless the policy is challenged and which is not so in the present case. The policy undoubtedly is with reference to the place of posting and not with reference to the place of deployment. It is significant that the wives of the petitioners are not before this Court and this Court is not concerned with the decision informed to have been taken by the respondents Indian Railways, to end the deployment of the wives of the petitioners at Delhi/Agra and to return them to Asansol, where they are headquartered.

16. The counsel for the petitioners have not been able to show any violation of the Rules in the decision aforesaid.

17. As far as the ground alleged of pick and choose, is concerned, the counsel for the respondents Indian Railways has informed reasons therefor and we are satisfied therewith.

18. Thus, while dismissing the writ petitions, we order the respondents Indian Railways to remain bound with their statements made before this Court and as recorded hereinabove.

19. The petitions are disposed of.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

OCTOBER 13, 2020
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