

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

% **Date of decision: 22nd September, 2020.**

+ **W.P.(C) 6755/2020**

SHRI BHAGWAN

..... Petitioner

Through: Mr. Onkar Roy, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Mrinalini Sen and Ms. Kritika Gupta, Advs. for R-1 to 3 with Mr. Dinesh Kumar, CO 177 Battalion, BSF and Mr. J.K. Verma, Deputy Commandant (Law), BSF.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM No.23453/2020 (for exemption from filing typed copy of documents)

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

W.P.(C) No.6755/2020

3. The petitioner, an Inspector (Ministerial) in the respondents Border Security Force (BSF) and posted at present at Punjab Frontier at Hisar, Haryana since 1st June, 2018, has filed this petition impugning the order dated 25th August, 2020 of his transfer to Aizawl, Mizoram as well as the movement order dated 1st September, 2020 directing the petitioner to move to Aizawl, Mizoram.

4. It is the contention of the counsel for the petitioner, (i) that the transfer order has been issued on "administrative grounds" and no reasons have been specified; (ii) that the annual transfers are normally done on 30th June each year and the subject transfer is not an annual transfer; (iii) that as per Rule 6 of the BSF (Posting & Deputation) Rules, 2000, the tenure at a frontier is maximum six years; the petitioner has been at the Punjab Frontier from 1st June, 2018 only and has not completed the maximum tenure of six years and ought not to have been disturbed; (iv) that the petitioner is a material witness in a complaint lodged by an Assistant Sub-Inspector (Ministerial) against the respondent No.3, Commandant of the Battalion, of corruption and the respondent No.3 Commandant wanted the petitioner to influence the Assistant Sub-Inspector (Ministerial) who has lodged the complaint, to withdraw the complaint but which the petitioner refused and the transfer is thus actuated by *mala fides*; (v) that as per the Circular dated 15th May, 1998 of the Directorate General BSF (Law Branch), Ministry of Home Affairs, Government of India, to avoid delay in disposal of enquiries/disciplinary proceedings, the personnel complained against and the witnesses concerned should not be sent out on posting/temporary duty till the enquiries/proceedings are finalised; (vi) that the petitioner has only three years and nine months of service left and as per the Rules, is entitled to a Home Town posting in the last two years; (vii) that the Assistant Sub-Inspector who has lodged the complaint, has also filed W.P.(C) No.6383/2020 in this Court; (viii) that the petitioner has been advised rest and is not in a position to travel; (ix) that the petitioner has not been issued any railway warrant or air voucher for travel; and, (x) that no opportunity of hearing has been given to the petitioner.

5. The counsel for the respondents BSF appearing on advance notice states that the ground of illness is falsified from the relief claimed by the petitioner in the petition in the alternative, of being transferred to any unit of Western Command of BSF; it is argued that the petitioner, by filing this petition is attempting to choose the place of his posting and which right does not vest in the petitioner. It is also contended that the petitioner has not reported at Aizawl, Mizoram and is in default and could have joined, without prejudice to his rights and contentions.

6. Deputy Commandant (Law) J.K. Verma of BSF has also joined the proceedings and has stated, (a) that the petitioner has already availed of leave from the new battalion at Aizawl, Mizoram to which he has been posted; (b) that owing to the nature of the enquiry/disciplinary proceedings underway, administrative decision has been taken to post all the persons concerned at different places, for the sake of maintaining discipline and it is for this reason that the petitioner has been issued the impugned posting order; and, (c) that all others are also being similarly posted out. With respect to the complaint, of non-issuance of railway warrant or air voucher for travel, it is stated that the petitioner has to apply therefor and subject to fulfilling the entitlement, will be issued the same.

7. The interference with the order of transfer, in exercise of supervisory jurisdiction under Article 226 of the Constitution of India is permissible only if the same is in violation the Rule or if the same is established to be *mala fide*. Reference in this regard may be made to ***Shilpi Bose Vs. State of Bihar*** 1991 Supp (2) SCC 659, ***N.K. Singh Vs. Union of India*** (1994) 6 SCC 98, ***State Bank of India Vs. Anjan Sanyal*** (2001) 5 SCC 508,

National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan (2001) 8 SCC 574, *Union of India Vs. Janardhan Debanath* (2004) 4 SCC 245, *State of U.P. Vs. Siya Ram* (2004) 7 SCC 405, *Government of Andhra Pradesh Vs. G. Venkata Ratnam* (2008) 9 SCC 345, *Rajendra Singh Vs. State of Uttar Pradesh* (2009) 15 SCC 178 and to our recent judgment dated 11th September, 2020 in W.P.(C) No.6331/2020 titled *Baikuntha Nath Das Vs. Central Reserve Police Force*. The petitioner herein has not been able to show any violation of the Rule. If the Rule provides for a maximum period of posting at a frontier, it implicitly admits that the term can be lesser than six years.

8. The petitioner still has sufficiently a long time before his superannuation and the Court cannot sanction a personnel to become redundant and go out of the normal day to day functioning of the force like BSF, so much in advance before his superannuation. No case of *mala fides* also is made out from the pleadings in the petition. Rather, the pleadings are vague and without giving any particulars and are also not affirmative of any *mala fides*. No *mala fides* to any particular person or the actual reason for transfer has even been imputed or pleaded.

9. Moreover, the Deputy Commandant (Law), BSF J.K. Verma has stated that all *personae dramatis* of the subject enquiry are being posted out at different places and it is also not as if the petitioner alone has been targeted.

10. Else, it is not for us to run the forces like BSF and/or to affect the transfers of personnel in the Forces or to judge the requirement at a particular place of posting and any undue interference with the decisions of

the authorities of the Forces who take decision regarding transfers etc. would result in loss of discipline in the Forces with the personnel under the said officials/authorities forming an opinion that the decision of the officials/authorities is not final and which may lead to the said personnel ceasing to obey the directions of the said officials/authorities.

11. At this stage, the cat is let out of the bag with the counsel for the petitioner stating that Aizawl, Mizoram is a very difficult location and the petitioner be not sent to such difficult location. Reference is also again made to the circular dated 15th May, 1998 of the Ministry of Home Affairs aforesaid.

12. The petitioner, three years and nine months before his retirement, cannot cease to perform his duties and refuse posting in hard areas and be permitted to select the place of his posting. As far as the circular dated 15th May, 1998 is concerned, the same is not in absolute terms and is intended to expedite the disposal of the disciplinary proceedings. However, if it is found that the disciplinary proceedings are affected by allowing the *personae dramatis* therein to remain at the same place, the authorities would certainly be entitled to post the said personnel at different places.

13. No ground for interference with the transfer order is made out.

14. Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

SEPTEMBER 22, 2020/‘bs’