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

Date of decision: 14th October, 2020

+ **W.P. (C) 7953/2020**

SGT AADESH KUMARPetitioner

Through: Mr. Ajit Kakkar, Advocate

versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Vijay Joshi, Advocate along
with Wg. Cdr. S.H. HAQ

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

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[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

C.M. Appln. No.25992/2020 (for exemption from filing of true typed copy or certified copy or legible copies of the annexures with full left side margin as per rules.)

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

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3. The petitioner, a sergeant in the respondents Indian Air Force (IAF), and with effect from 14th June, 2018, posted at Hashimara, West Bengal, has filed this petition (i) impugning the orders dated 5th August, 2020 and 8th November, 2019; (ii) seeking

mandamus directing the respondents IAF to post the petitioner to Delhi area, on compassionate ground; and, (iii) seeking mandamus directing the respondents to issue discharge from service to the petitioner.

4. The counsel for the petitioner on it being pointed out, fairly agrees that as far as the reliefs of challenge to the order dated 5th August, 2020 rejecting the prayer of the petitioner from discharge from service and the mandamus sought against the respondents IAF to discharge the petitioner from service are concerned, the jurisdiction thereof is of Armed Forces Tribunal (AFT). Once it is so, the said reliefs are not to be considered and the hearing of the petition is confined to the challenge to the order dated 8th November, 2019 rejecting the request of the petitioner for posting to Bagdogra on compassionate grounds and to mandamus directing the respondents to post the petitioner to Hindon.

5. The case of the petitioner, as also argued by the counsel for the petitioner, is (i) that the petitioner enrolled in the respondents IAF on 28th March, 2006; (ii) that in the year 2012, he was diagnosed as suffering from 'Lower Back Ache' and in the year 2015, as suffering from '*Sensory Neural Hearing Loss*'; (iii) owing thereto, the medical category of the petitioner has been lowered and the petitioner, who has been trained as a fitter of structure of Chetak and Cheetah Helicopters, is no longer able to perform the said task; (iv) that the petitioner is being used at the place of present posting, to run the Unit Food Joint, to earn profit for the Unit; (v) that the wife of the petitioner, on 20th May, 2019, was

granted Junior Research Fellowship for a period of 5 years, at Bagdogra and is at Bagdogra since July, 2019; (vi) that the petitioner, to be with his wife, had applied for posting at Bagdogra but which was rejected vide impugned order dated 8th November, 2019 on the ground that there was no post at Bagdogra for a fitter of structure of Chetak and Cheetah Helicopters, when the petitioner owing to his low medical category is not even acting as a fitter of structure of Chetak and Cheetah Helicopters; moreover other fitters of structure of the said helicopters are posted at Bagdogra; and, (vii) that the father of the petitioner went missing in May, 2018 and the petitioner has a 29 years old sister and the family of the petitioner is residing at Hindon; the petitioner is however not able to look for his father and to marry his sister and thus is seeking posting at Hindon Air Base.

6. We are afraid, we cannot, sitting in Delhi and otherwise also without the the entire picture before us, interfere with the reasons given by the authorities of the Air Force for refusing a posting or can post defence personnel as per their demands/requirements. It is not as if the authorities concerned of the Air Force have not had an occasion to consider the request of the petitioner. The request has been considered and has been rejected. No case of violation of any Rule or of any *mala fide* in refusing the posting sought by the petitioner, on which ground alone the court can interfere with the posting orders as per the dicta of the Supreme Court in ***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 our recent judgments dated 11th September, 2020 in WP(C) 6331/2020 titled *Baikuntha Nath Das Vs. Central Reserve Police Force* and dated 22nd September, 2020 in WP(C) 6755/2020 titled *Shri Bhagwan Vs. Union of India*, is even whispered. As far as the compassion, as sought by the petitioner, is concerned, we are afraid that the facts as pleaded by the petitioner do not also require us to interfere with the posting orders of the defence personnel. Such family problems, as cited by the petitioner, will be found in each and every household and personnel of defence, before joining, ought to have been aware of the same. If we start exercising our compassionate jurisdiction on such grounds, each and every posting order will be challenged before the courts.

7. The counsel for the petitioner has contended that the petitioner is not even being utilized for the trade in which he has been trained i.e. as Structural Fitter of Chetak and Cheetah helicopters. However, the counsel for the petitioner, at the same time, states that the petitioner is unable to perform the said task owing to his hearing loss.

8. Once it is so, whether the petitioner is posted at Hashimara or Hindon or Bagdogra, he would be unable to perform the said

task.

9. The counsel for the petitioner has lastly contended that the respondents are unnecessarily paying the petitioner salary of Rs.60,000/- when a food joint of the Unit, called by the counsel as 'Dhaba', can be run by any other.

10. We are sure that if the respondents Air Force are utilizing the services of the petitioner to run a food joint, the essentiality whereof for the Unit cannot be denied, the respondents Air Force must have found some talent in the petitioner to do the same.

11. Be that as it may, all that can be done is to request the authorities to utilize the emoluments paid to the petitioner for some better task, if available. Save as otherwise, no merit is found in the petition and is dismissed.

12. The counsel for the petitioner seeks liberty to make a representation to the Air Force Headquarters for his transfer.

13. The petitioner shall have liberty to do so and the said representation shall be dealt with as per law.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

OCTOBER 14, 2020
pkb/s