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

% **Date of Decision : 4th November, 2020**

+ W.P. (C) 8656/2020, C.M. Appl. No.27858/2020 (of the petitioner for stay)

COMMANDER ASHLEY DERRICKPetitioner

Through: Mr. Shakti Chand Jaidwal,
Advocate

versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Naginder Beniwal, Senior
Panel Counsel for R-1, R-3 and R-4

Mr. Harish Vaidyanathan Shankar,
CGSC for R-2, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner, a Commander in the respondents Indian Navy, has filed this petition impugning the order dated 10th February, 2020 of his transfer from Goa to Kochi and seeking mandamus to the respondents Indian Navy to allow the petitioner to remain in Goa till his daughter completes her 11th and 12th standard from the same school and to consider the request of the petitioner for premature retirement from service, keeping in view his domestic compulsion.

2. The counsel for the respondents Indian Navy appears on advance notice and having *prima facie* not found any merit in the petition on going through the same, we have heard the counsel for the petitioner at length at this stage only.

3. It is the case of the petitioner, (i) that he was commissioned in the Indian Navy on 1st July, 1999 and trained as a helicopter pilot; (ii) in the year 2013, he was posted to Goa; (iii) he remained posted in Goa for 7 years, contrary to the normal tenure of three to five years, for reasons not attributable to the petitioner himself but on account of exigencies of the respondents Indian Navy; (iv) ultimately, vide impugned order dated 10th February, 2020, the petitioner was transferred to Kochi with effect from April, 2020; (v) that the petitioner was happy on being transferred to Kochi, being his hometown; (vi) that the petitioner has two daughters and one son and one of the daughters was to join Class XI and the petitioner requested the respondents Indian Navy to retain him in Kochi for two years, intending that his daughter would complete Class XII from Kochi; (vii) however the transfer order which was to come into effect in April, 2020 could not come into effect on account of the prevalent Covid-19 pandemic; (viii) the petitioner, in July, 2020 was informed that his reliever in Goa will report only in August, 2020; (ix) since the petitioner, on not being relieved from Goa, had admitted his daughter to Class XI in the school in Goa, the petitioner on 10th July, 2020, applied for cancellation of his transfer, which was rejected, and also applied

for premature retirement with effect from 31st December, 2021; (x) that the reliever of the petitioner joined on 24th August, 2020 and vide movement order dated 28th October, 2020, the petitioner has been asked to proceed to Kochi; (xi) that the daughter of the petitioner is under stress, on account of instability of the transfer and is under treatment therefor; (xii) that if the petitioner is compelled to leave his daughter in Goa, she would suffer more; and, (xiii) that the daughter of the petitioner cannot join in Class XI in the school in Kochi at this stage.

4. We have enquired from the counsel for the petitioner that once the petitioner knew of his transfer to Kochi as far back as on 10th February, 2020, even if had not been relieved from Goa, why did he not make provision for admission of his daughter in the intended school at Kochi in Class XI; the petitioner could have then joined his family at Kochi on being relieved.

5. The only answer which is forthcoming is that since the petitioner did not know till when he will have to continue at Goa, he did not do the same.

6. The counsel for the respondents Indian Navy appearing on advance notice states that the Indian Navy has a navy school at Kochi and the children of the petitioner will be granted admission therein.

7. The counsel for the petitioner states that the petitioner did not intend his daughter to join the navy school and wanted her to

join a convent school in Kochi since she is studying in a convent school in Goa.

8. What we have been reading about school education till now appears to indicate that the convent school in Kochi is unlikely to have any difficulty in admitting the daughter of the petitioner at this stage even, since all the classes are being held online.

9. Moreover, on a perusal of the medical certificates of the daughter filed, we find her to be under treatment since 13th July, 2019. Though in earlier times we did not hear of children suffering from examinations stress but of late the newspaper and magazines are full of write-ups about children facing examinations suffering from stress and since the daughter of the petitioner had to take Class X examination and has been suffering from stress since then, it cannot be said that the stress from which the daughter is said to be suffering from is attributable to the service of the petitioner. Even otherwise, considering the nature of the service of the petitioner, the petitioner and his family must be used to living apart from time to time and we are unable to accept the only reason given for impugning the transfer.

10. Else, interference with transfer can only be on the grounds of violation of the rules or malafides and none of which ground is invoked. Reference in this regard can 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 our recent judgments in W.P. (C) 6755/2020 dated 22nd September, 2020 titled *Shri Bhagwan Vs Union of India*, *Aadesh Kumar Vs Union of India* MANU/DE/1872/2020 and *Baikuntha Nath Das Vs. Central Reserve Police Force* MANU/DE/1708/2020. It has been held in *Major General J.K. Bansal Vs. Union of India* (2005) 7 SCC 227 that the scope of interference by the Courts with reference to members of the Armed Forces is even more limited and narrow and unless an exceptionally strong case is made out, no interference should be made.

11. We may record that we were wanting to desist from making observations with respect to the daughter of the petitioner or recording about her medical treatment and had, after the hearing informed the counsel for the petitioner that if he confines the relief only to a short time being granted to move, we may allow that but it is on the insistence of counsel for the petitioner that we have been constrained to make observations about children who are not before the Court and whose father, unfortunately has not shied from using them for the purpose of approaching the Court to avoid his transfer.

12. The counsel for the petitioner states in reply to the question recorded in para 4 above, that the petitioner had made arrangement in March, 2020 to transfer the school of his children but did not implement the same because of Covid-19.

13. Dismissed.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

NOVEMBER 04, 2020

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