

MAT 640 of 2021
With
CAN 1 of 2021

Ajay Singh

-Vs-

Union of India & Ors.

Mr. Ujjal Ray

... for the Appellant

Ms. Chandrayi Alam

Ms. Runu Mukherjee

... For the State

Under challenge in this appeal is the order dated 2nd July, 2021 in WPA 10919 of 2021 passed by the Hon'ble Single Bench. The Hon'ble Single Bench decided not to interfere with the transfer of the writ petitioner/the present appellant as a Deputy Commandant to the CoBRA Unit of the Central Reserve Police Force (CRPF).

Mr. Ray, Learned Counsel, appearing for the appellant submits that the appellant is presently working as a Deputy Commandant, 3rd Signal Battalion, CRPF, Kolkata.

This Court is taken to the transfer policy dated 16th December, 2020 covering the appellant along with the others from their existing place of postings to CoBRA Units. The policy, *inter alia*, states that the

relaxation of age limit for induction of Deputy Commandants to CoBRA Units has been increased from 38 years to 43 years.

Mr. Ray submits that the appellant is now aged 43 years 11 months. Therefore, the appellant is beyond the upper age limit of 43 years to be transferred to a CoBRA Unit.

Next, taking this Court further to the transfer policy/instruction dated 16th December, 2020 “at page 82 of the Stay application”, Mr. Ray points out that the relaxation of age for induction of officers of CoBRA Units was to be given wide publicity for the purpose of selecting *willing* and *eligible* Deputy Commandants/Assistant Commandants.

Taking this Court again by way of illustration to one of the representations of the appellant dated 25th May, 2021 signifying his unwillingness to join the CoBRA Unit on several grounds (at page 58 of the Stay Application), Mr. Ray submits that such representation has not been considered.

It is pointed out that the appellant has completed his posting at a ‘difficult area’ of Manipur prior to being transferred to Kolkata and, from the transfer policy of the CRPF dated 24th November, 2014 at Serial No. 2 (iii), it is incumbent to preserve a tenure for officers in the Signal Unit corresponding of four years. The appellant has only completed one and

a half year out of the four years.

Furthermore, the appellant takes this Court to the Gradation List of Deputy Commandants in CRPF as on the 1st of January, 2020 (corrected upto 31st October, 2020). The name of the appellant appears at serial no. 676 of the said Gradation List out of a total of 1005 officers, whose names also appear in the order of their seniority as Deputy Commandants.

Therefore, Mr. Ray submits that there are at least 500 and above officers junior to the appellant in the Gradation List who are also within the relevant age (for induction into the CoBRA Unit), who could have been considered for posting in place and stead of the appellant.

Ms. Alam, Learned Counsel appearing for the Union of India with Ms. Runu Mukherjee, Learned Advocate, submits that further instructions would be necessary for assisting this Court in the matter of selection upon obtaining willingness of a particular candidate such as the appellant for induction into the CoBRA Unit.

Similarly, on the availability of the officers as per the Gradation List who are junior to the appellant both in seniority and age, Learned Counsel for the Respondents/Union of India seeks the opportunity to assist this Court on the next date with further instructions.

Having heard the parties and considering the materials placed at this stage, as well as the fact that the training for the CoBRA Units is to begin tomorrow, i.e. the 20th of July, 2021, this Court is satisfied that the interim prayer of the appellant requires to be considered with the urgency it deserves.

This Court finds that the Hon'ble Single Bench decided to hear out the writ petition on Affidavits and refused the interim prayer only by taking into consideration the need for having trained Deputy Commandants in the CoBRA Units and, keeping in mind such exigencies as well as the operational needs of the CRPF, the Hon'ble Single Bench decided at the interim stage that the operational requirement of the CRPF requires that the transfer of the appellant should not be interfered with.

However, this Court finds on a closer look at all the points argued by Learned Counsel for the appellant relating to willingness; the position of the appellant in the Seniority List *qua* the Gradation List; the number of officers attached to the CRPF within the age of consideration for posting as Deputy Commandants to CoBRa Units; the appellant having crossed the age limit of 43 years; and finally the appellant having only completed one and half years in his present posting after completing a difficult posting at Manipur being entitled to continue for four years at

the least in his present posting in the Signal Unit, that, the exigencies perceived to be immutable by the Hon'ble Single Bench are ring-fenced by several pre-conditions.

Since the appellant is able to meet the tests of the pre-conditions to be applied before the exigency is invoked, the refusal of any interim protection at this stage would be prejudicial to the appellant.

Accordingly, there shall be a stay of the order impugned dated 2nd July, 2021 until further orders as well as the order of transfer of the appellant impugned in the writ petition.

The appellant shall, upon his recovery from Covid quarantine as informed to this Court today, rejoin his duties at the 3rd Signal Unit, Kolkata as before.

It is made clear that this order is passed only in the facts of this case.

Let the matter be now heard out by the Hon'ble Single Bench on merits after exchange of affidavits.

Accordingly, neither the appeal nor the application are detained further.

MAT 640 of 2021 with **CAN 1 of 2021** stand thus **disposed of**.

Affidavit-of-Service filed in Court today be retained with the record.

All parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

(Saugata Bhattacharyya,J.) (Subrata Talukdar,J.)