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14.12.2021
Ct. No.23
(NB)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 19983 of 2021

Bimalendu Mohapatra (Brigadier)

Vs.

Union of India & Ors.

Mr. Soumya Majumder,
Mr. Barun Chatterjee,
Mr. Abhik Sarkar.

... for the petitioner.

Mr. D. N. Ray,
Mr. Prithu Dudheria.

...for the UOI.

Affidavit of service filed in Court today is taken on record.

The petitioner is presently serving the Indian Army as a Brigadier. The petitioner received promotion as a Brigadier on 20th April, 2021. The petitioner has been transferred by an Order of Transfer dated 30th November, 2021 to Jabalpur from his present posting at Ichapur.

The petitioner says that he has served the Indian Army since 9th June, 1990 and never refused any transfer. The petitioner also says that under the extant rules, the petitioner is entitled to seek an exemption from transfer once in his entire service career/tenure. The petitioner had never exercised such option and is seeking that he be given the exemption so that the transfer order dated 30th November, 2021 is not made effective as against him. The petitioner has cited many reasons in support of his inconvenience to go to Jabalpur on being transferred. It is

also a fact that the petitioner immediately before serving at Ichapur was posted at Jabalpur. The petitioner had received the promotion at Ichapur after being transferred from Jabalpur and his re-transfer to Jabalpur is also not on being promoted. The petitioner has made a representation to the authority concern to consider granting him the exemption and thereby not effecting the transfer order.

Transfer orders are seldom interfered by the Court and that too if, interfered is in a very limited sphere. The transfer policy is left to the employer for the purpose of effective and smooth administration. In the aforesaid facts and circumstances, let the representation made by the petitioner dated 4th December, 2021 appearing at pages 53 and 54 of the writ petition be disposed of by 31st December, 2021 after affording the petitioner a reasonable opportunity of hearing following the prevalent Covid 19 protocol.

It is made clear that till a decision is taken on the petitioner's representation or 31st December, 2021 whichever is earlier, the transfer order dated 30th November, 2021 shall not be given effect to so far as the petitioner is concerned since he has been asked to join at the transferred place immediately. This interim protection is granted so that the whole exercise of considering the petitioner's representation does not amount to a fruitless venture, which otherwise will happen if the petitioner is directed to join at the transfer place keeping the representation pending for consideration. In any event to join at the transferred place some time is required and 15 days delay will not amount to gross

inconvenience to the employer. The inconvenience and hardship will be more to the petitioner and lies in favour of granting the petitioner this interim protection. Nothing further remains to be adjudicated in this writ petition.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Arindam Mukherjee, J.)