

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 9582 of 2021

DECIDED ON: 18th MAY, 2021

Lt. Col. Akns Swaminath

.....PETITIONER

VERSUS

Union of India and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Rajeev Anand, Advocate for petitioner.

Ms. Anita Balyan, Advocate for respondents.

AVNEESH JHINGAN, J (ORAL)

The matter is taken up for hearing through video conference due to COVID-19 situation.

This writ petition in the nature of certiorari has been filed seeking quashing of impugned order dated 22.4.2021 qua the petitioner wherein the petitioner has been placed on "Special unattached List" for three years.

On 10.5.2021, notice of motion was issued and following order was passed:-

"Case heard via video conferencing.

By this petition, the petitioner seeks quashing of the order/message dated 22.04.2021 (copy Annexure P-1) whereby the petitioner has been placed on the "Special Unattached List" (SUL), for three years, and has been further instructed to upgrade his present medical category during the aforesaid period, failing which his services may be terminated from the Territorial Army.

He further seeks quashing of paragraph 4 of Annexure 'A' of the letter dated 19.01.1985 issued by the Government of India, due to which he has been placed in the aforesaid list (declared to be in a low medical category), his prayer also being that he be upgraded from such category.

He next seeks directions to the respondents to stay the operation of the impugned message/order dated 22.04.2021 and to keep the petitioner posted at his present place of posting, in Shimla.

At the outset, on a query from this court as regards jurisdiction of this court, in view of the fact that the petitioner is posted and located at Shimla, Mr Anand submits that the impugned message has been sent to respondent no.6, i.e. the Territorial Army Group Head Quarters, Western Command, in Sector-8, Chandigarh, which would be the implementing authority qua the said order; and consequently this court would have jurisdiction to entertain this petition as regards the area concerned.

As regards the reason for not approaching the Armed Forces Tribunal, Regional Bench, Chandigarh, Mr. Anand points to the notification Annexure P-5, dated 02.05.2021, which states to the effect that since the Haryana Government has declared a complete lock-down in the entire State w.e.f. 03.05.2021, for a period of 7 days, due to the increase in 'corona virus' cases, the Armed Forces Tribunal Bench located at Chandigarh would also remain closed from 03.05.2021 to 07.05.2021, with learned counsel further submitting that thereafter in fact a notification dated 09.05.2021 has again been issued by the same Bench of the Tribunal, extending the non-working period of the Tribunal to May 17, 2021.

He has sent a copy of that notification to the Reader of this court since he could obtain it only after the filing of the petition.

On the merits of the case, learned counsel for the petitioner submits that the petitioner was actually declared to be in the low medical category in March 2014 while he was posted in Srinagar (J&K) as would be obvious from the communication dated 07.04.2021, Annexure P-6.

He submits that the reason for declaring him to be in that category is shown to be "Primary Hypertension", despite which he continued to work in Jammu & Kashmir first till 2015, and thereafter again from 2017 to 2020, in counter insurgency operations.

He submits that now with him having been posted to a peace station, the issue of his hypertension while working in Srinagar has been referred to, for no tangible reason.

He next submits that even the Chief of Staff, Western Command, vide his recommendation dated 04.05.2021, has described the petitioner to be an officer performing his duties in an exemplary manner despite his low medical category; and therefore the recommendation is that the competent authority may retain him in service under Rule 33 (of the Territorial Army Rules), as his low medical condition was aggravated due to the stress and strain of military service in counter insurgency operations in Jammu & Kashmir.

It has also been further stated in the said recommendation that his employability restrictions are limited to him not being posted to higher altitude areas, i.e. above 9000 feet above sea level.

(Mr. Anand submits that he obtained a copy of the recommendation made by the Chief of Staff, Western Command, only after filing of the petition and consequently it could not be actually annexed with the petition. He undertakes to annex the said document with the petition, by way of an appropriate application in the meanwhile.)

Notice of motion, returnable on 18.05.2021.

Ms. Anita Balyan, Advocate, appears and accepts notice on behalf of the respondents and submits that as per the instructions she has received so far, the officer being placed in the Special Unattached List is on account of him not being in a fit medical condition and therefore the impugned order/message need not be interfered with.

Having considered the aforesaid contentions, but also having considered especially the recommendation shown to have been made by the Chief of Staff, Western Command (a Lieutenant General), the operation of the impugned signal/message/order Annexure P-1 is stayed till the next date of hearing.

The matter be now listed before the learned Armed Forces Tribunal upon its re-opening for functioning on 18.05.2021, or, if does not start re-functioning from that date, then on the first day that it starts so re-functioning."

Learned counsel for the parties are *ad-idem* that Armed Forces Tribunal (AFT) has started virtual hearing of the matters.

Learned counsel appearing for UOI-respondents submits that the matter should be remanded to AFT.

Let this petition be transferred to AFT. The Court fee etc, as required, would be completed by the counsel for the petitioner immediately on opening of lockdown.

It is expected that Tribunal would take up the matter at the earliest.

In the meantime, the interim protection granted vide order dated 10.5.2021 shall continue till the matter is taken up by the Tribunal.

It is clarified that mere grant of interim protection shall not be construed as an opinion on the merits of the case by this Court.

The petition is disposed of.

(AVNEESH JHINGAN)
JUDGE

18th MAY, 2021

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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>