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

+ **W.P.(C) 3601/2021 & C.M.Nos.10947-10948/2021**

MAHENDRA RANA

..... Petitioner

Through

Mr.Manoj V.George with Ms.Shilpa
Liza George, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through

Ms.Nidhi Banga, Advocate for UOI.

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Date of Decision: 25th March, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. On the last date of hearing, this Court had passed the following order:-

“C.M. Appl. No. 10948/2021 (Exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P. (C) No. 3601/2021 & C.M. Appl. No. 10947/2021 (Stay)

The petitioner, who is a Constable in ITBP, has filed the present writ petition challenging his transfer order dated 04th February 2021 relying upon the Office Memorandum dated 08th October 2018, which deals with the posting of government employees who have differently abled dependents.

Learned counsel for the petitioner states that a son was born to the Petitioner on 04th January, 2020 and immediately thereafter

the Petitioner's wife started showing symptoms of depression. He points out that the Petitioner's wife was diagnosed with Post Partum Depression Personality disorder and today he is the primary care giver of his one year old infant son.

He states that Respondent No. 2 had issued the impugned transfer order directing the Petitioner to move to 37 Bn Leh, Ladakh wherein the date of joining given was 17th March 2021.

He states that the Petitioner addressed a letter to Respondent No 2, requesting for stay of transfer and to allow him to continue in and around his present posting because of the mental health of his wife and the need to take care of the infant child. He, however, states that no reply has been received from the Respondent No.2 till date.

Issue notice. Ms. Nidhi Bansal, CGSC accepts notice on behalf of the respondents. She states that it is only after the transfer order had been issued that the respondents came to know of the fact that the petitioner's wife is suffering from depression. She also states that the medical record produced by the petitioner in support of his averments in the petition has been issued by the Private Hospital(s) and not by the Base Hospital.

Consequently, this Court directs that a medical assessment of the petitioner's wife be carried out by a Medical Board to be constituted by Commandant Dr. Prashant Mishra, Psychiatrist, CMO (SG), ITBP Base Hospital, Tigri Camp, Delhi, on 23rd March 2021. Let the medical report be placed on record on or before the next date of hearing.

List on 25th March 2021.

Till the next date of hearing, the petitioner's transfer order dated 04th February, 2021 is stayed."

2. In pursuance the aforesaid order, the respondents had set up a Medical Board comprising two Psychiatrists and a Gynaecologist at Base Hospital, ITB Police, Tigri Camp, New Delhi. The medical opinion of the aforesaid Board, handed over today in Court, reads as under:-

“Smt. Neha Devi w/o No-136100146 CT/GD Manendra Rana of 39th Bn reported to Base Hospital Delhi on 23.03.2021 at 1225 hrs for medical assessment in pursuance to Hon’ble High Court of Delhi’s directions in writ petition (C) No-3601/2021 titled Manendra Rana V/s UOI & Ors filed before the at New Del hi 9CT/GD Tfr Matter) vide Order dated 19.03.2021.

The board examined all the available documents regarding the assessment of Smt. Neha Devi. According to medical document (WPC Page No-51) and Kailash Hospital OPD UHID No-1318647 dated 17.01.2021 she was seen by Neuro Surgeon Dr. Alok Kumar Dubey for complaint of insomnia. Her vitals were stable and specialist also mentioned NFD (No features of Depression). She was advised NCCT Head and medicine accordingly.

Next review was done on 24.01.2021 (WPC Page No-50) where said specialist mentioned in OPD card that she has improved and NFD (No features of Depression) and again advised to continue medicine. She was again reviewed on 31.01.2021 (WPC Page No-48) and specialist again mentioned in OPD card that she has improvement and NFD (No features of Depression). She was advised for MRI Brain and further advised to continue same medicines. Subsequently MRI Brain was done on 05.02.2021 and report shows within normal limit.

As per OPD card dated 08.02.2021 (WPC Page No-46) patient did not come for review, it was a proxy review.

Again reviewed on dated-23.02.2021 (WPC Page No-44) where Neuro Surgeon mentioned that she has improved, sleep is better and has emotional liability. On examination vitals were stable, NFD (No features of Depression) and advised medicines accordingly.

As per medical documents she was next seen in OPD of district hospital, Baghpat on 04.03.2021 (WPC Page No-43)

vide registration no-26127 whereby the depression was reported for the first time but name and specially of examining Doctor has not been mentioned in OPD slip also no other findings of Mental State examination has been mentioned nor she has been advised referral to Psychiatrist but medicines for the report ailment have been advised.

After going through the medical documents available on record, the Board of Doctors proceeded for further evaluation of the individual in person. According to the history given by the individual and medical document (WPC Page No-42) she had delivered a male baby by LSCS on 04.01.2020 at 3:48 PM. There is no history suggestive of any complaint or any complication in postpartum period and neither there is any document on record supporting any complaint in postpartum period. According to her she was leading a normal healthy life, having regular periods, breast feeding her child.

In the month of January 2021, she had complaint of disturbed sleep for which she took treatment from Neuro Surgeon of Kailash Hospital as has been mentioned above. At present she has no fresh complaint and according to her she was taking medicines off and on. On further questioning on about her ailment she replied “लद्दाख नहीं जाना, अभी बच्चा है ना साथ में, नोएडा में ही रहने दो ”.

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After history taking board advised admission in the Base Hospital, ITBP for further evaluation and assessment. But her husband refused in front of the Board for getting his wife admitted in Base hospital, ITBP. Moreover, her husband, No-136100146 CT/GD Manendra Rana of 39th Bn, insisted that she may be admitted in private hospital as he does not have faith in ITBP Hospital and said that, “इसका इलाज तो प्राइवेट अस्पताल में ही चलेगा”.

After this he was advised to report back along with his wife at 4:00 PM. He reported alone at around 4:15 PM. As he had not brought his wife along, he was asked to report with his wife in room no-17 of Base Hospital ITBP where the Board of Doctors had assembled. But he did not report back to Base Hospital, ITBP. Board of Doctors kept on waiting for him and his wife till 1800 hrs but none of them reported.

FINAL OPINION OF THE BOARD

Whatever general/physical examination and mental state assessment could be done while history taking by Board of Doctors comprising of two senior Psychiatrists is of the inference that she entered room voluntarily and took her seat comfortably. She was kempt & tidy, moderately built and nourished, conscious, cooperative, well oriented to time, place and person, eye to eye contact maintained, rapport established easily, memory intact, no formal thought disorders, speech coherent, relevant, volume and tone were normal.

In view of above Board is of the opinion that Smt. Neha Devi w/o No-136100146 CT/GD Manendra Rana of 39th Bn currently she is maintaining well and on current mental status examination no depressive feature noted.”

(emphasis supplied)

3. From the aforesaid report, it is apparent that the petitioner's wife is leading a normal healthy life.
4. At this stage, learned counsel for the petitioner states that the opinion of the private Doctors consulted by the petitioner is to the contrary. In support of his contention, he relies upon the prescriptions issued by the private Doctors.
5. However, we find that the Medical Board has given its opinion after taking into account the prescriptions issued by the private Doctors.

6. Consequently, keeping in view the clear and categorical opinion of the Medical Board constituted by this Court and that too with the consent of the petitioner, this Court is of the opinion that the wife of the petitioner is neither depressed nor suffering from any mental health issue.

7. In fact, the conclusion of the Medical Board as well as petitioner's wife's conduct of not reporting back to the Medical Board and her candid statement "लददाख नहीं जाना, अभी बच्चा है ना साथ में, नोएडा में ही रहने दो" leaves us in no doubt that the petitioner just to stall his posting/transfer had gone to the extent of contending on the last date of hearing that his wife is suffering from postpartum depression and 'is a threat to her infant son'.

8. Accordingly, the present writ petition and applications, being bereft of merits, are dismissed and the interim order dated 19th March, 2021 is vacated.

9. The petitioner is directed to join his new place of posting as expeditiously as possible but not later than one week. In the event, the petitioner does not join the said posting, the respondents shall be at liberty to take appropriate action against the petitioner in accordance with law.

10. Accordingly, the present writ petition along with pending applications is dismissed.

MANMOHAN, J

ASHA MENON, J

MARCH 25, 2021
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