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

+ W.P.(C) 5390/2021

TARUN KUMAR BANJAREE Petitioner

Through: Mr. Naushad Alam, Adv.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Vijay Joshi & Mr. Amit Gupta,
Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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20.05.2021

[VIA VIDEO CONFERENCING]

CM APPL. 16676/2021, CM APPL. 16677/2021 (both for exemption).

1. Allowed, subject to just exceptions and as per extant rules.
2. The applications are disposed of.

W.P.(C) 5390/2021 & CM APPL. 16678/2021(for interim relief).

3. This petition, under Article 226 of the Constitution of India, concerns the transfer vide order dated 31st March, 2021, of the petitioner, a second-in command (2IC) in the respondent Indo Tibetan Border Police (ITBP), from Patna to Leh.
4. The counsel for the petitioner has made two arguments. Firstly it is contended that the petitioner tested positive for COVID-19 on 16th April, 2021 and requires minimum three months' time to be able to shift along with his family comprising of old parents, wife and children; deferment of the transfer is thus sought. The second argument is that another officer has sought his transfer to Leh and the petitioner be allowed to change places

with him.

5. As far as the ground of medical condition of the petitioner owing to having tested positive for COVID-19 on 16th April, 2021 is concerned, if the petitioner is unable to move owing to medical condition, the proper course is to have himself examined at the concerned hospital of the respondent ITBP and if the doctors there certify that the petitioner is not in a position to move, certainly the respondent ITBP would consider the same.

6. We have in this regard enquired from the counsel for the petitioner, whether a movement order pursuant to the transfer order dated 31st March, 2021 has been issued.

7. The counsel for the petitioner states that “the order must have been issued” but he is not aware thereof.

8. Similarly, as far as the ground of the petitioner being unable to move along with his family in the prevalent pandemic times, is concerned, we have enquired from the counsel for the petitioner, whether not Leh, to which the petitioner has been transferred, is a non-family station.

9. The counsel for the respondent ITBP appearing on advance notice confirms that Leh is a non-family station and states that the petitioner is entitled to retain the accommodation presently in his occupation and his family can continue residing there.

10. The counsel for the petitioner does not controvert.

11. Even otherwise, it is always open to the petitioner to join at Leh immediately, to abide by the transfer/movement order, and the family of the petitioner, even if required to be shifted to any nearby family station, can always follow later.

12. As far as the second argument aforesaid of the counsel for the

petitioner, of the petitioner being permitted to change place with another officer who has expressed a desire to be posted at Leh, is concerned, the transfer/posting orders are issued by the respondent ITBP as employer, considering the administrative exigencies and it is not open to the officers of the ITBP to *inter se* decide their movement/posting orders or for this Court to interfere therewith. Reference in this regard may be made to ***Shilpi Bose Vs. State of Bihar*** 1991 Supp (2) SCC 659, ***Union of India Vs N.P. Thomas*** 1993 Supp (1) SCC 704, ***N.K. Singh Vs Union of India*** (1994) 6 SCC 98, ***National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan*** (2001) 8 SCC 574, ***Major General J.K. Bansal Vs. Union of India*** (2005) 7 SCC 227, ***Rajendra Singh Vs. State of U.P.*** (2009) 15 SCC 178, ***State of Haryana Vs. Kashmir Singh*** (2010) 13 SCC 306, ***Aadesh Kumar Vs. Union of India*** MANU/DE/1872/2020 (DB) and ***Baikuntha Nath Das Vs. Central Reserve Police Force*** MANU/DE/1708/2020 (DB).

13. We may record, that the counsel for the respondent ITBP has also stated that the petitioner, if unable to immediately move, can take leave.

14. Thus, no ground for interference is made out.

Dismissed.

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RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

MAY 20, 2021

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