

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

% **Date of decision: 8th July, 2021.**

+ **W.P.(C) 6226/2021**

CT/GD VIPIN KUMAR

..... Petitioner

Through: Ms. Ria Gandhi, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM No.19720/2021(for exemption)

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

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3. The petitioner, a constable in the respondent No.3 Indo-Tibetan Border Police (ITBP) since 25th July, 2007, on 9th November, 2020 was deputed to the respondent No.2 National Investigation Agency (NIA) Headquarter at New Delhi. It is the case of the petitioner, that while on deputation in respondent No.2 NIA, he was made to serve as "Batman", at residence of senior officers and on protesting thereagainst, was coerced into making a request for premature repatriation to respondent No.3 ITBP and

was so repatriated with effect from 31st December, 2020. This petition has been filed, impugning the order dated 17th December, 2020 of repatriation and seeking a mandamus to the respondents, to restore the petitioner on deputation to NIA Headquarter at New Delhi and to utilise his services for his trade.

4. The petitioner, earlier also had filed W.P.(C) No.790/2021 on the same pleas and seeking the same relief and which writ petition was disposed of as withdrawn on 19th January, 2021, with liberty to the petitioner to file a representation before the respondents. However while permitting the said earlier writ petition to be so withdrawn, this Court in the order dated 19th January, 2021 observed, that the petitioner had made several allegations including of coercion and which could not be adjudicated in writ jurisdiction.

5. The counsel for the petitioner has argued, that though the petitioner on 29th January, 2021 made a representation to the respondent No.2 NIA, but no decision has been made thereon.

6. None appears for the respondents and we are thus unable to enquire, whether any decision has been taken on the representation made by the petitioner.

7. We may however notice that the petitioner made the representation dated 29th January, 2021 only to the respondent no.2 NIA and not to respondent No.3 ITBP. It was upto the respondent no.3 ITBP, with which the petitioner is employed, to decide whether the petitioner was to be restored on deputation or not and respondent No.2 NIA could not have unilaterally restored the deputation of the petitioner. Though the counsel for

the petitioner contends that a copy of the representation was forwarded to the Director General, ITBP also, but merely sending a copy to the Director General, ITBP is not the same as calling upon respondent No.3 ITBP to decide the representation or to take a decision.

8. Moreover, what was observed in the order disposing of the earlier writ petition, holds true today also. The factual allegations made in the petition cannot be conveniently decided in writ jurisdiction. Reference in this regard may be made to *State Bank of India Vs. State Bank of India Canteen Employees' Union* (1998) 5 SCC 74, *Chairman, Grid Corporation of Orissa Ltd. Vs. Sukamani Das* (1999) 7 SCC 298, *State of Bihar Vs. Jain Plastics and Chemicals Ltd.* (2002) 1 SCC 216, *U.P. State Bridge Corporation Ltd. Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh* (2004) 4 SCC 268, *Orissa Agro Industries Corpn. Ltd. Vs. Bharati Industries* (2005) 12 SCC 725, *New Okhla Industrial Development Authority Vs. Kendriya Karamchari Sahkari Grih Nirman Samiti* (2006) 9 SCC 524 and *Gujarat Maritime Board Vs. L&T Infrastructure Development Projects Ltd.* (2016) 10 SCC 46.

9. We have enquired from the counsel for the petitioner, whether the petitioner, while still on deputation, made any complaint in writing, of the services of the petitioner being availed of at the residence of the senior officers of NIA and as a Batman. No answer is forthcoming from the counsel for the petitioner. Similarly, the plea of the petitioner having been coerced to seek his repatriation from NIA to ITBP, is a bald one, without the necessary ingredients as required to be pleaded vide Section 15 of the Indian Contract Act, 1972, to constitute a plea of coercion. Though the petitioner

in the petition has not shied from naming the officers of respondent No.2 NIA at whose residences the petitioner was made to render services as a Batman, but has failed to give any particulars as to which officer coerced the petitioner and / or how or when, to apply/request for his premature repatriation to respondent No.3 ITBP.

10. In the absence of all the said particulars, we are of the view that the petitioner cannot be granted the relief as sought in this petition.

11. Be that as it may, vide the order in the earlier writ petition, the petitioner had been given an opportunity to make a representation and since the petitioner claims to have made such a representation, we dispose of this writ petition, observing that the respondents, if have not already taken a decision on the communication, if any dated 29th January, 2021 of the petitioner, to take a decision thereon and to communicate the same to the petitioner on or before 20th August, 2021. However, if the petitioner remains aggrieved therefrom, the petitioner to avail of legal remedy where contentious questions of facts can be adjudicated.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

JULY 8, 2021
'gsr'