

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

% **Date of decision: 27th July, 2021.**

+ **W.P.(C) 7024/2021**

AVANISH KUMAR **..... Petitioner**

Through: Mr. Pawan Kumar, Adv.

Versus

UNION OF INDIA & ORS. **..... Respondents**

Through: Mr. Farman Ali and Mr. Athar Raza,
Advts. with Mr. Vinod Kumar,
Law Officer, BSF.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

AMIT BANSAL, J.

CM No. 22184/2021 (for exemption)

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

W.P.(C) 7024/2021 and CM No. 22183/2021 (for stay)

3. The present petition has been filed by the petitioner, Second-in-Command with the respondents BSF impugning the transfer order dated 23rd June, 2021 passed by the respondents, transferring him from his present place of posting in Raiganj, West Bengal to Bhanupratappur, Chhattisgarh and subsequent order dated 29th June, 2021 for compliance with the transfer.

4. It is the case of the petitioner that he has been posted at the Sector Head Quarter, Board Security Force in Raiganj, West Bengal since 16th July, 2019. The petitioner, having sustained a back injury, was medically examined on 27th May, 2021 and once again on 29th May, 2021 and was advised to take rest and undergo physiotherapy. Vide order dated 23rd June, 2021 passed by the respondents BSF, the petitioner was transferred to 81 Bn. BSF in Bhanupratappur, Chhattisgarh against which the petitioner made a representation dated 24th June, 2021 and requested for cancellation of his aforesaid transfer.

5. It is contended by the petitioner that he has been medically unfit and on leave since 27th May, 2021 and has been undergoing treatment from the said date. The petitioner has filed various medical certificates to submit that he requires rest to fully recover and that he would be in a position to comply with the transfer order only after he has recovered. It is contended by the petitioner that as of today, he is not in a medically fit condition to move from West Bengal to Chhattisgarh and therefore, at the very least, his transfer should be deferred.

6. The counsel for the respondents appearing on advance notice submits that the petitioner does not suffer from any serious illness and can take rest if any required at the new place of posting as well. He further submits that twenty eight days' medical leave has been granted to the petitioner with effect from 24th July, 2021 in addition to twelve days joining leave that he would be entitled to for shifting to the new place of posting thereby giving the petitioner a period of forty days from 24th July, 2021 to join the new place of posting.

7. It is a settled principle of law that transfer is not only an incidence, but a condition of service and the petitioner cannot be aggrieved with such transfer. It is not for the Courts to interfere with the transfer of an employee, unless such transfer suffers from *mala fides* or is in violation of some statutory provisions. Reference in this regard may be made to the decisions in *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). In *Major General J.K. Bansal* (Supra) the Supreme Court further held/observed as under:

“12. It will be noticed that these decisions have been rendered in the case of civilian employees or those who are working in public sector undertakings. The scope of interference by the courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made.”

8. Therefore, no case is made out for interference with the transfer order. As far as the medical condition claimed by the petitioner is concerned, if the petitioner, after the leave aforesaid also is not medically fit to move to the

new post, the remedy of the petitioner is to seek further medical leave and which will be dealt with in accordance with law; the petitioner cannot impugn the transfer order on such ground, especially when the counsel for the petitioner himself during the hearing, on enquiry states that the inability of the petitioner to move is temporary and not permanent.

9. The counsel for the petitioner states that since the petitioner has already been transferred, to avail of medical leave, he will have to get himself medically examined at the transferred post and travel to the transferred post for the said purpose and which the petitioner is medically unable to.

10. The only limited relief that can be granted to the petitioner is, that if the petitioner, for the purposes of grant of medical leave is required to be medically examined, the said medical examination be conducted at his present place of posting. Needless to state, that if on such examination the petitioner is found to be medically unable to travel/move, medical leave in accordance with Rules shall be granted; however if the petitioner is found to be medically fit to travel/move and still does not report at the transferred post, consequences shall follow.

11. The petition is disposed of in the aforesaid terms.

AMIT BANSAL, J.

RAJIV SAHAI ENDLAW, J.

JULY 27, 2021
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