

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

% **Date of decision: 30th July, 2021**

+ **W.P.(C) 7299/2021 & CM 22979/2021 (for stay)**

SUJATA RATHORE Petitioner
Through: Mr. Asish Nischal, Advocate.

Versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. Neeraj, Mr. Sahaj Garg, Mr.
Vedansh Anand and Mr. Rudra
Paliwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

[VIA VIDEO CONFERENCING]

AMIT BANSAL, J.

1. This petition has been filed by the petitioner, being Mahila/Inspector (Ministerial Cadre) with respondents Central Reserve Police Force (CRPF) impugning the transfer orders/signals dated 12th July, 2021 and 26th July, 2021 transferring the petitioner from her present place of posting at Delhi to Udhampur.

2. The counsel for the petitioner contends that petitioner had a hard posting from 2014 to 2017 at Srinagar and thereafter on 29th March, 2017 was posted in Pinjore, Haryana. On 1st August, 2020, after completion of three years posting in Pinjore, the petitioner was transferred to Delhi and

therefore, the petitioner is being prematurely transferred out of Delhi to Udhampur only after a tenure of one year. It is further submitted that the petitioner has a school going child and the aforesaid transfer would disrupt the academic activities of her child.

3. The counsel for the respondents appearing on advance notice points out that as per order/signal dated 1st August, 2020 the petitioner was posted to Delhi only for one year and after completion of the said period of one year, she was to be posted in a hard area.

4. The counsel for the respondents has also drawn our attention to paragraphs 4 and 6 of the standing order dated 29th December, 2016 of the respondents CRPF, which details the transfer policy applicable to personnel in the Ministerial/Stenographic/Official Language cadre. The relevant portion of the standing order is set out below:

“4. TENURE OF POSTING.

a) With a view to maintain uniformity, the tenure of all officers/officials of Ministerial/ Stenographic/ Official Language cadre will be as under.-

- 1) Soft area -03*
- 2) Hard area-02*

b) Though the normal tenure of posting in Directorate will be 03 years, extension may be given in exceptional cases to the officer/official whose services are considered essential based on the recommendation of IsGP of the branch. In any case, the total tenure at Directorate General should not be more than 5 years at a stretch.

c) In case, any officers/officials is transferred from one soft area to another soft area or from one hard area to another hard area, the tenure in such cases will be reckoned by dubbing such consecutive postings. However, transfer should not ordinarily be issued of an officer/official who has recently reported in a particular office, on the plea of completion of Zonal/Sector tenure or completion of clubbed tenure of two consecutive offices. In such cases, change of Zone/sector or transfer of such official should only be issued after completion of at least half of the prescribed tenure at present office/place.

6. ROTATION

All officer/official will be rotated on transfer in such a way that after every soft area posting, he/she should be posted to a hard area and vice versa as per tenure policy except in the case of ASI (ST) and isolated posts.”

5. A reading of the above, clearly demonstrates that the policy of the respondents is that after every soft area posting, the personnel would be posted to a hard area and vice-versa. It is further provided that the tenure in a soft area posting would be of a period of three years whereas posting in a hard area would be for two years, which may be extended in exceptional cases.

6. In the present case, undoubtedly, the petitioner has enjoyed the soft posting at Pinjore, Haryana for a period of three years and therefore, in terms of the policy, has to be posted to a hard area thereafter. In fact, the petitioner has got an additional period of one year of soft posting in Delhi, from 2020 to 2021.

7. Moreover, the order/signal dated 1st August, 2020 posting the petitioner to Delhi for one year, after which she was to be given a hard posting, was never questioned or challenged by the petitioner and is also not

the subject matter of challenge in the present petition. Having accepted the said order and enjoyed the soft area posting at Delhi for one year, the petitioner cannot be heard to say that she should not be transferred out of Delhi to a hard area. The petitioner was well aware that her posting at Delhi was only for one year and after that, she was to be posted to a hard area. In fact, the petitioner was to straightaway be posted in a hard area after completion of her tenure at Pinjore, Haryana and the posting in Delhi was only like a bonus to her.

8. It is a settled principle of law that transfer is not just 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), *Baikuntha Nath Das Vs. Central Reserve Police Force* MANU/DE/1708/2020 (DB) and judgment dated 27th July, 2021 of this Bench in W.P.(C) No.7024 titled *Avanish Kumar Vs. Union of India & Ors.* 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.”

9. In view thereof, no case for interference is made out.

Dismissed.

AMIT BANSAL, J

RAJIV SAHAI ENDLAW, J

JULY 30, 2021

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