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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9972/2021**

CORPORAL GAUTAM KARMAKAR Petitioner
Through: Mr. Ajeet Yadav, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through: Mr. Avnish Singh, Advocate with
Mr. Mohit and Ms. Pushplata Singh,
Advocates.

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Date of Decision: 10th September, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J (Oral):

CM Appls.30757-30758/2021 (exemption)

Allowed, subject to just exceptions.

Accordingly, present applications stand disposed of.

W.P.(C) 9972/2021 & CM Appl.30756/2021

1. Present writ petition has been filed challenging the impugned order dated 09th June, 2021 effectuating the posting / transfer of the petitioner.
2. Learned counsel for petitioner states that petitioner stands posted / transferred by the respondents from New Delhi to Amla (MP) on completion of merely one year against the normal tenure of five years at New Delhi [as per HRP 01/2020] and he is required to report at new unit at Amla (MP) on 13th September, 2021 on ground of Low Medical Category [obesity]. It is

pertinent to mention that the petitioner was declared in Low Medical Category vide medical board conducted on 07th March, 2018.

3. He states that as per the rejection letter dated 30th July, 2021, the respondent posted the petitioner to Amla (MP) as obese personnel are ineligible for posting to Class 'X' cities in accordance with Para 14(h) of AOP Directive 01/2017. The said para 14(h) is reproduced hereinbelow:-

“14. Disincentives for Obesity. Following steps will be implemented by the P branch to disincentivise obesity and personnel who are medically unfit.

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xxx

(h) Ineligible for posting to Class X cities.”

4. It is the contention of learned counsel for petitioner that HRP 01/2020 [Human Resource Policy] is the only policy that regulates the posting of petitioner and the said HRP puts no general bar on posting of Airmen on the basis of obesity and therefore, the application of AOP Directive 01/2017 in posting out the petitioner out of New Delhi to Amla (MP) is ultra-vires the respondents' own HRP 01/2020. The relevant portion of HRP 01/2020 dated 07th July, 2020 is reproduced hereinbelow:-

“Request Posting

22. The air warriors seeking posting on own request are to submit personal application to their AOC/Stn Cdr/CO along with the Proforma duly filled as per Appendix L to this HRP. All relevant documents in support of the grounds stated in the application should invariably be attached. The application should be thoroughly scrutinised before being recommended and forwarded to respective Command HQ, who along with their recommendation would forward the same to AFRO in single copy except in respect of Med Asst tradesmen which would

be in duplicate. Applications in respect of air warriors posted at Air HQ. Units under Air HQ and other miscellaneous Units are to be forwarded directly to AFRO with recommendation of concerned AOC/Stn Cdr. Application once turned down should not be forwarded again for reconsideration on similar grounds within a period of six months. Application on compassionate grounds stating medical reasons should have the remarks from SMO and PMO of parent unit/Command HQ. However, in case of Obesity cases/Red Ink entry for an offence involving Violation of AF good order & Discipline, Moral Turpitude, Financial misappropriation in last five years, following provisions shall be applied:-

- (a) Ineligible for choice posting related requests, except on completion of specified tenure at Category A & B Stns.*
- (b) Ineligible for posting to Class 'X' cities.*
- (c) Cases of unforeseen situation like life threatening disease or cases requiring medical attention only at class X cities may be considered on case to case basis.*
- (d) If an airman becomes obese after being earmarked for request posting, his earmarking is liable to be cancelled.*
- (e) If an airman becomes obese while being posted to Class X cities, he is liable to be posted out before completion of normal tenure.*

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xxx

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Supersession of Existing Policy

- 73. This policy supersedes all the previous instructions and amendments issued on the subject and will come into force from the date of issue of HRP 01/2020 ie 24 Feb 20."*

(emphasis supplied)

5. This Court is of the view that the Human Resource Policy being HRP 01/2020 does not supersede or overrule the AOP Directive 01/2017 whose main objective is to control obesity in the Indian Air Force.
6. This Court is of the opinion that with the same objective to promote fitness and to disincentivise obesity, the Indian Air Force has stipulated in paragraph 22 of HRP 01/2020 that obese officials are not entitled to request for posting to Class 'X' cities and if any officer while being posted to Class 'X' cities becomes obese, he shall be liable to be posted out even prior to completion of normal tenure. Consequently, though there may be some overlap between HRP 01/2020 and AOP Directive 01/2017, yet both can be reconciled and implemented as there is no contradiction between them.
7. This Court is further of the opinion that both the HRP 01/2020 and AOP Directive 01/2017 are fair, reasonable and have been issued for a salutary purpose.
8. It is settled law that heading of a statutory provision or Directive cannot control the language used. Accordingly, assuming without admitting that AOP Directive 01/2017 does not survive, this Court upon a holistic reading of para 22 of HRP 01/2020 is of the opinion that obese officials are not entitled to posting to Class 'X' cities.
9. In the present case, this Court is of the view that petitioner was not eligible for posting to Delhi, as he was admittedly obese (in accordance with the Medical Board conducted on 17th March, 2018) even on the date of his posting to Delhi.

10. Accordingly, present writ petition and application being bereft of merit are dismissed.

MANMOHAN, J

NAVIN CHAWLA, J

SEPTEMBER 10, 2021

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