

28.03.2022
Sl. No.28
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 4174 of 2022

Sri Sudarshan Nag
Vs.
Union of India & Ors.

Mr. Anjan Bhattacharyya,
Mr. Kuntalendu Mandal,
Ms. Monalisa Das

....for the petitioner.

Mr. Imran Siddiqui

...for Union of India.

Affidavit of service filed in Court today is taken on record.

The petitioner is a Constable, General Duty (GD) in Border Security Force (in short BSF). The petitioner was posted on deputation with effect from 12th June, 2014 in the National Disaster Response Force (in short NDRF), F-Coy, 2BN at Kolkata. The petitioner has been issued a transfer order dated 7th May, 2021. The transfer order dated 7th May, 2021, however, shows that the petitioner has been directed to join his parent unit from his place on deputation. The petitioner says that his wife is working as Assistant Teacher of Bengali in Fulia Vidyamandir (H.S.), Santipur, Nadia. The petitioner, therefor, had applied to his employer for reconsideration of his order of transfer so that he can be posted in a place

near about his wife's working place at Santipur. The petitioner relies upon a memo dated 30th September, 2009, and in particular clause 4(vii) thereof in support of his contention.

The transfer policy is left to the employer as it falls under administration domain connected with smooth management and operation in the employer concerned unless it victimises the employee concerned. Interference into such orders of transfer is often deprecated as it amounts to transgressing into the administrative domain left to the employer. The scope of interference is very limited, which is prima facie not apparent in the instant case.

In the instant case, the petitioner is serving the BSF. It cannot be said that for the whole service tenure he should be placed near about Santipur or close to the working place of his wife. This is more so because BSF does not have establishments in all places and it will be an unfair demand if every employee of BSF, on one ground or the other, asks for reviewing an transfer order.

Admittedly, the petitioner was on deputation in Kolkata, and as such, he has served between 2014 to 2021 at a place near about the working place of his wife. However, considering the practical difficulties that may be encountered by an employee, if he is

posted in a distant place from the family during the hours of need, which is likely to cause hardship to any employee. The petitioner's case is sent for reconsideration provided he joins the transferred place, if not already within two weeks from date without prejudice to his rights and contention. This is also done to afford the petitioner another opportunity to demonstrate any practical difficulty for serving at the transferred place.

In the light of the observation as aforesaid, the respondent no.3 is directed to consider the petitioner's representation dated 26th March, 2021 and dispose of the same by a reasoned order within a period of 12 weeks from date after affording the petitioner a reasonable opportunity of hearing. The reasoned that may be passed shall be communicated to the petitioner within 15 days from the date of passing of the same.

Parties, including the respondent no.3, are directed to act on the basis of a server copy of this order without insisting upon production of a certified copy thereof.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)