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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 9277 of 2022

Sub Ram Singh Yadav
Vs.
Union of India & Ors.

Mr. Aniruddha Datta
... For the petitioner.

Mr. Indrajeet Dasgupta,
Ms. Rima Biswas
... For the respondents.

The petitioner has sought for cancellation of the transfer order dated 15th February, 2022 on the ground that the petitioner belongs to Low Medical Category. His son presently 19 years of age is 100% disabled for which proper medical treatment on regular basis is necessary and that he is within one year of his retirement. The petitioner's son is now being treated at Eastern Command Hospital, Kolkata. The petitioner also says that the unit wherein he has been transferred is not a peace area having sheltered vacancies like that of his present posting and, as such, he should not be transferred. The petitioner is presently working as a Junior Commissioned Officer (in short, JCO) in Indian Army. On 20th February, 2018 the petitioner was transferred from Kirkee to SQAE (Vehs) Kolkata, for a term of 36 months. The petitioner also says that he is scheduled to retire on 28th February, 2023 and as such the transferred place is likely to be his last posting. The petitioner is entitled to a terminal posting of

his choice.

The petitioner had made a representation to the competent authority through proper channel. The representation made on 21st March, 2022 was strongly recommended for cancellation of posting by his superior officer. This representation along with endorsement appears at page 23 of the writ petition. However, the petitioner's representation has been ultimately rejected on 18th April, 2022. The petitioner has also joined his present posting.

On behalf of the respondents, it is submitted that admittedly the petitioner was posted on compassionate ground at his present posting for a period of three years. Three years period has already expired and as such, there is no obligation on the part of the employer in keeping the petitioner at his present place of posting. 36 months tenure is over and the petitioner had been transferred prior to expiry of one year from his retirement. The present place of posting has adequate medical facilities for the treatment of the petitioner's son. That apart the transfer has been made as per the policy to afford the JCO's to get necessary Regimental ACRs.

Transfer orders can be interfered with only on restricted grounds as it is left in the employer's domain for proper and smooth administration. In the instant case, after hearing the parties and considering the materials on

record, I am of the view that the petitioner has not been able to show anything which acts as a *mala fide* against him or that the transfer order actually victimises the petitioner. That apart and in any event, the issue of posting in the Army is a sensitive issue and should be avoided to brought in public domain. However, considering the recommendations made for cancelling the posting and that the petitioner has virtually no further scope of promotion as he scheduled to retire on 28th February, 2023 and that the petitioner's son is 100% disabled, I direct the Competent Authority to reconsider the petitioner's posting and if possible, permit the petitioner to remain in the place prior to the transfer vide order dated 15th February, 2022 or in a similar place till his retirement which is scheduled to be within 7 months from date.

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, allegation made in the writ petition are deemed to have not been admitted by the respondents.

Parties, including the Competent Authority shall act on the server copy of this order duly downloaded from the official website of this Court, without insisting upon production of certified copy thereof.

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

(Arindam Mukherjee, J.)