

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 10742 of 2021

Md. Jasim Khan
Vs.
Union of India & Ors.

Mr. Tanmoy Chattopadhyay
.... For the applicant/petitioner.

Mr. Debapriya Gupta,
Mr. Arijit Majumdar
... For the Union of India.

The petitioner has approached this Court by filing the instant writ petition primarily challenging the order of transfer dated 17th June, 2021. The petitioner had also an issue as to not granting him 'no objection certificate' for appearing in the 67th Combined (Preliminary) Competitive Examination to be conducted by Bihar Public Service Commission. A Court of Inquiry (in short, COI) was directed to be held against the petitioner by a memo dated 1st April, 2021. Dr. Kowsalya A CMO (SG) of CH, BSF, Kolkata was detailed to conduct one-man COI against the petitioner to investigate into the circumstances under which the alleged act of indiscipline had been done by the petitioner. The COI, however, did not commence. Subsequently, by an order dated 8th April, 2021 Shri TH Hareshwar Singh, 21C/CDS of CH BSF, Kolkata was detailed to prepare Record of Evidence (in short, ROE) against the petitioner with regard to charges levelled

against the petitioner.

On 17th June, 2021, a transfer order was issued against the petitioner transferring him from CH BSF, Kolkata to 85 BN BSF. Challenging this transfer order the instant writ petition was filed.

In the writ petition, by an order dated 23rd June, 2021, the petitioner was directed to join the transferred post within seven days without prejudice to his rights and contentions. The petitioner thereafter joined the transferred post. The petitioner says that the respondents had categorically submitted before the Court when the order dated 23rd June, 2021 was passed that the petitioner was transferred to facilitate the ROE proceedings. It has, however, later on transpired to the petitioner that his transfer was on permanent basis. The petitioner at the hearing on 23rd January, 2021 also expressed his apprehension that since he had lodged complaint against his superiors, the petitioner was likely to be transferred from battalion to battalion. In the interim order dated 23rd June, 2021, a direction was, therefor, given to the effect that till completion of the disciplinary proceedings, he should not be transferred from 85 Battalion.

The petitioner says that the ROE proceedings as part of the disciplinary proceedings initiated against the petitioner had culminated into an order dated 9th

February, 2022. By the said order the disciplinary proceedings was dropped by issuing an “advice” to the petitioner not to repeat the indiscipline act in future of which he was charged, otherwise disciplinary action will be initiated against the petitioner as per the rules. By an order dated 3rd November, 2021 the Commandant 85 BN BSF being the battalion wherein the petitioner was transferred had held that the allegations made against the petitioner do not warrant initiation of disciplinary proceedings. The petitioner’s request for issuance of ‘no objection certificate’ to appear in the examination was also recommended for consideration by the said Commandant to the higher authorities.

The petitioner says after the final order having been passed exonerating him, the petitioner should be brought back to the parent unit, i.e., CH BSF, Kolkata, wherein he was serving prior to his transfer. The petitioner says that having qualified for static posting, the petitioner was posted at CH BSF, Kolkata. He was supposed to be there for four years from the date when he was transferred to such unit. The respondents projecting that to facilitate the disciplinary proceedings the transfer was required had resisted the interim order. The transferred post is that of a battalion and not a static one. The petitioner, therefor, has lost the benefit of having been posted at a static unit for a period of four

years. The petitioner also admits to have been given the “no objection” and as such no dispute on such issue survives.

On behalf of the respondents, it is submitted that the petitioner was not exonerated but had been issued an “advice”. The transfer of the petitioner was on the basis of a voluntary action of the petitioner. Although no disciplinary proceedings is pending at the present against the petitioner but he cannot claim a posting of his choice and the same is not permissible under the applicable rules.

After hearing the parties and considering the materials on record, I find that the benefits of static posting for a period of four years in view of the provisions of Border Security Force (Tenure of Posting and Deputation) Rules, 2000 which was withdrawn from the petitioner was for the disciplinary proceedings. After the petitioner has been relieved of the disciplinary proceedings with an advice, the petitioner should be permitted to spend his residual period being the difference between four years and the tenure for which he served CH BSF, Kolkata prior to being transferred.

The respondents are, therefor, directed to provide a static posting at CH BSF, Kolkata. If such posting is not possible, then the respondents shall place the petitioner in another static unit in and around Kolkata

or very near to Kolkata.

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

The parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court without insisting upon production of a 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.)