

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 14880 of 2022

Ravi Shankar Kumar
Vs.
Union of India & Ors.

Mr. Arunava Ghosh
Mr. Puspall Chakraborty
Ms. Prisanika Ganguly
... For the petitioner

Mr. Indrajeet Dasgupta
Ms. Rima Biswas
... For Union of India

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

The petitioner is presently officiating as the Commandant, 207-CoBRA Battalion of the Central Reserve Police Force under Central Zone, West Bengal Sector, Commando Battalion for Resolute Action (in short "CoBRA"). The petitioner was served with a transfer order on 15th June, 2020 by and under which he was transferred from 119 Battalion to 207 CoBRA wherein he is presently posted. The petitioner accepted such transfer order and is working thereat. The petitioner says that under the transfer policy dated 24th November, 2014, in case of officers serving as Assistant Commandant to DIG in CoBRA, the period after which one can be transferred is four years. The petitioner has been now served with a

transfer order dated 30th June, 2022 by which he has been transferred from 207 CoBRA to GC KKT. The petitioner says that this transfer order has been issued prior to expiry of four years period in his present posting wherein he joined in 2020. The petitioner further says that the transfer order is contrary to the provisions of Rule 109 of the Central Reserve Police Force Rules, 1955. The petitioner also alleges that as per the subsisting transfer policy, the time schedule for Summer Chain Transfer (in short "SCT") in case of officers in the rank of that of the petitioner is 1st March of a particular year. The transfer order dated 30th June, 2022 is, admittedly, much beyond 1st March, 2022. The petitioner also says that he has certain inconveniences in the family affairs for which it is not possible for him to accept the transfer order. Out of his two daughters, the elder daughter is presently pursuing MBBS (1st year) at Muzzafarpur (Bihar) and the younger daughter studying in 12th standard at Salboni, West Bengal. The younger daughter will appear at the 10+2 Board examination in March/April, 2023. It will be very inconvenient for the petitioner to move out of his present posting before March/April, 2023. The petitioner further says that he has no objection if he is transferred on or after March/April, 2023. The petitioner also says that by dint of the transfer, the petitioner will lose about Rs.25,000/- per month and relies upon a document annexed at page 42 of the writ petition for this purpose.

The intervention to transfer policy can be only on a limited ground as it pertains to smooth administration and is considered to be a policy matter left with the employer. However, in the instant case, I find that the petitioner has been able to make out a prima facie ground for scrutinising his transfer order.

After hearing the parties and considering the materials on record, I find that the matter can be disposed of by a final hearing after calling for affidavits or by directing the respondent no.2 to whom the petitioner has made a representation on 3rd July, 2022 to consider the same within a time frame.

Although the petitioner has relied upon an interim order passed by the High Court of Jammu & Kashmir and Ladakh at Srinagar in WP (C) No.1429 of 2022 with CM No.3443 of 2022 (Manoj Kumar v. Union of India & Ors.) dated 4th July, 2022 which the petitioner says to have been passed in a similar situation, but I find the judgment of this Court reported in 2018 SCC OnLine Cal 4765 (Sheel Nidhi Jha v. Union of India & Ors.) to be more acceptable.

Considering the ratio laid down in the judgment of Sheel Nidhi Jha (supra), I direct the respondent no.2, being the Director General, Central Reserve Police Force, to consider the petitioner's representation dated 3rd July, 2022 and pass a reasoned order after affording the petitioner a reasonable opportunity of hearing as expeditiously as possible but not beyond three months

from date. Till one month after disposal of the petitioner's representation, the transfer order dated 30th June, 2022 shall remain in abeyance so far it relates to the petitioner. The respondents shall make necessary arrangement to retain the petitioner at his present posting till the time as mentioned hereinabove.

The parties, including the respondent no.2, 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.

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 by the respondents.

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

(Arindam Mukherjee, J.)