

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 18109 of 2022

Dr. Biswanath Das
Vs.
Union of India & Ors.

Ms. Sonam Basu
... For the petitioner

Mr. D.N. Ray
... For Union of India

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

The subject matter of challenge in this writ petition is an order of transfer dated 22nd June, 2022, by which the petitioner – a Chief Medical Officer, Senior Grade [in short “CMO (SG)”] – has been transferred from 153 Bn. Border Security Force (in short “BSF”) to the 34 Bn. BSF. The order of transfer is a composite order which includes 41 CMO (SG) posted at different battalions in the BSF. The petitioner says that his daughter is seriously ill and is partially disabled. The petitioner is the only caregiver. In this situation, if the petitioner is transferred at Raisingh Nagar, Sri Ganganagar, Rajasthan, then his daughter’s treatment and medical care will be seriously hampered.

The petitioner had made a representation to the Director General of BSF for reconsidering his transfer

order on the grounds cited therein. The Competent Authority, by a composite rejection memo, has turned down the petitioner's prayer. The rejection memo has been received by the petitioner subsequent to filing of the writ petition and has been brought on record by way of a supplementary affidavit affirmed on 16th August, 2022. The said supplementary affidavit is taken on record. The petitioner says that the rejection memo is not only cryptic but devoid of any reasons. It is apparent that the grounds cited by the petitioner against the transfer order have not been considered at all.

On behalf of the respondents, it is submitted that as an employer they are sympathetic to the petitioner and his family members. However, the nature of job in BSF is transferable and, as such, on annual basis the CMO (SG) are transferred from one place to another. The transfer order dated 22nd June, 2022 is one of such annual transfer order for the purpose of smooth administration. It is also submitted that there are adequate medical facilities at Raisingh Nagar, Sri Ganganagar, Rajasthan, wherein the petitioner's daughter can be treated.

After hearing the parties and considering the materials on record, I find that the representation made by the petitioner on 22nd June, 2022 contains elaborate grounds to reconsider the transfer. The rejection memo, however, does not refer to any of such grounds. It is absolutely cryptic and mechanical.

Considering the nature of the rejection even being alive to the limited scope in interfering with a transfer order, I am inclined to set aside the same so far as it relates to the rejection of petitioner's prayer to reconsider the transfer.

The Director General, Border Security Force, being the respondent no.2, is directed to consider afresh the petitioner's representation dated 22nd June, 2022, appearing at pages 53 to 54 of the writ petition along with supporting documents, and dispose of the same by a reasoned order by 15th September, 2022. The reasoned order should be communicated immediately to the petitioner.

Till the petitioner's representation is not disposed of by the respondent no.2, the transfer order dated 22nd June, 2022 so far as it relates to the petitioner shall be kept in abeyance.

It is also made clear that if the petitioner has been released from his present posting in terms of the transfer order dated 22nd June, 2022 read with the rejection memo, he is not required to join at the transferred place till the petitioner's representation is disposed of by the respondent no.2 and shall be permitted to continue thereat.

All 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.)