



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: July 12, 2022**

Pronounced on: July 26, 2022

+ **W.P.(C) 12085/2021 & CM APPL. 37784/2021**

CPL DEEPAK KUMAR Petitioner

Through: **Mr. Ajit Kumar Kakkar, Advocate**

Versus

UNION OF INDIA & ORS. Respondents

Through: **Mr. Neeraj, Mr. Sahaj & Mr. Vedansh
Anand, Advocates**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SURESH KUMAR KAIT, J

1. The present petition has been preferred by the petitioner seeking a writ of mandamus directing the respondent to grant a posting to him at Delhi NCR on compassionate / co-location grounds.

2. Petitioner got married on 09.10.2019. Petitioner is posted at Shillong, while his wife is posted at New Delhi as TGT, Science at Kendriya Vidyalaya Snghthan, BSF Camp Chawla, New Delhi and, therefore, they have not been able to lead conjugal life ever since their marriage. Even since their marriage, petitioner's wife is residing at her parents' house. Petitioner

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has averred that owing to the conditions of his service, he is unable to take frequent leaves and is, therefore, able to meet his wife only once in 5-6 months. Further, due to family exigencies, petitioner's wife is unable to relocate herself from Delhi or resign from the job. In the afore-noted circumstances, the petitioner claims to have made an application dated 13.01.2020 to the respondents for posting in Delhi on co-location grounds after due recommendation from the Commanding Officer of his Unit, which was turned down by the respondents vide communication/ reply dated 24.04.2020. Thereafter, petitioner claims to have made another application date 06.07.2020 on the same grounds and prayed respondents to post him to Delhi-NCR, which again was rejected.

3. According to petitioner, he got married against the wishes of his parents and has been making efforts for reconciliation with them but is facing difficulties since he is not getting time to establish contact with them. His domestic life has further deteriorated as the relatives and parents of his wife are pressurizing her for obtaining divorce. The Petitioner and his wife have been facing tremendous mental agony due to fact that petitioner is unable to avail leave for a long period of time and his representations were rejected by the concerned authorities on the ground that they have no



children.

4. Petitioner further claims to have made another application dated 26.04.2021 requesting for reconsideration of posting on co-location grounds, however, again the same was rejected by the respondents vide order dated 05.08.2021. Over and above, respondents vide order dated 17.09.2021, has directed the petitioner to join duties at Thanjavur w.e.f. 22.11.2021, due to which the petitioner's personal life has suffered a major setback.

5. During the course of hearing, learned counsel for petitioner submitted that the reason put-forth by the authorities for declining his application is that he does not have any children. Attention of this Court is drawn to the conditions enumerated by the Government of India in Office Memorandum bearing No. F.NO.28034/9/2009-Estt.(A) dated 30.09.2009 as well as Air Headquarters Human Resource Policy Part III PA (Airmen) IPD/01/2013 for grant of posting on co-location ground, wherein no such condition is mentioned.

6. Learned counsel submitted that petitioner's wife also has approached the Air Force Wives Welfare Association as well as written a request/letter dated 13.08.2021 to the respondent submitting that they have not been able to lead a marital life and establish a family together, but to no avail.



7. Learned counsel next submitted that that petitioner has constantly served at critical areas with unparalleled dedication and despite his Low Medical Category, he has been performing his duties efficiently and to the complete satisfaction of his superiors. Petitioner has never requested the authorities for a choice posting or a posting at or near his home zone ever since his enrolment, whereas the requests of other similarly situated personnel have been allowed on more than one occasion. Learned counsel for petitioner submitted that petitioner's plea for co-location posting is based on undoubted material hardship but has not been considered by the respondents and vitiated by personal nepotism, which has led to victimization of petitioner. In support of above submission, reliance is placed upon Hon'ble Supreme Court's decision in *E.P Royappa Vs. State of Tamil Nadu And Another*, (1974) 4 SCC 3 and decision of High Court of Karnataka in W.P.No.29873/2016, titled as *Ramachandra Singh Vs. Union Of India*.

8. Learned counsel empathically submitted that the petitioner is placed in A4G4 (P) Medical category under the opinion of the Specialist, therefore, the reasons accorded by the respondent for refusal on petitioner's application is baseless and unreasonable.



9. The learned counsel appearing on behalf of respondents, on the other hand submitted that the posting / transfer policy of the Air Force is for best utilization of human resource and the Airmen such as petitioner are transferred from one place to another on service exigencies to balance their posting profiles. It was submitted by learned counsel that it may not always be feasible to post an airman to a particular place of request due to one or more reasons. Reliance is placed upon decision of Hon'ble Supreme Court in *Union of India & Ors. Vs. Cpl B.K. Verma* to submit that courts may not be satisfied with the policy but Courts ought not to substitute its opinion for that of the Air Force. Reliance was also placed upon a decision of this Court in *SGT Aadesh Kumar Vs. Union of India & Ors.* 2020 SCC OnLine Del 1967.

10. Further submitted that in terms of Para-29 of HRP 01/2020 (revised) vide AIR HQ/S 40301/ PA-II dated 07.07.2020, husband and wife can be posted at the same station to enable them to lead a normal life and to look after their children, especially until the children are ten years of age depending upon the trade proficiency utilization, however, petitioner does not have any child and thus, his case is not covered under the said policy. It was next submitted that postings in the air force are governed by provisions



under the policy Air HQ/S 40301/PA-II dated 07 July 20 {HRP 01/2020 (revised)} and the petitioner stands transferred to through automated posting module on completion of stipulated tenure at the station, based upon his past posing profile and trade utilization.

11. With regard to the present petition, learned counsel appearing for respondents submitted that the petitioner is presently posted at Head Quarter Eastern Air Command (Unit) Shillong w.e.f. 27.11.2017 and he stands transferred/posted to 222 sqn, AF Thanjavur w.e.f. 22.11.2021. The petitioner's applications dated 13.01.2020 and 29.04.2020 seeking posting in New Delhi on co-location grounds, were considered and not found feasible due to HRP constraints, as the couple does not have a child. For the similar reasons, the request of petitioner's wife to Air Force Wife's Welfare Association was also rejected. Thereafter, another application dated 13.08.2021 of petitioner's wife was disposed of by the respondents vide order dated 02.12.2021 for the reasons of operational requirements and HRP constraints. Another request of petitioner dated 20.09.2021 has also been turned down on similar grounds.

12. With regard to the pleas that petitioner is able to meet his wife only once in 5-6 months, learned counsel for respondents submitted that



petitioner is entitled to avail 60 days annual leaves and 30 days casual leaves every year. Petitioner got married in the October, 2019 and thereafter, in the year 2020 he availed all 60 days earned leaves and 03 casual leaves and in the year 2021 petitioner has taken 56 days earned leave and 19 days casual leave. Moreover, petitioner's wife is also entitled to various leaves according to her entitlement under the Central Government rules.

13. On the plea of petitioner that parents of his wife are in need of medical help of petitioner's wife, learned counsel for respondents submitted that no documents in support thereof has been placed. Learned counsel next submitted that the issues raised in the present petition are petitioner's family issues, which are to be managed by the petitioner. Thus, dismissal of present petition is sought by the respondents.

14. In rebuttal, our attention is drawn to Para-3 of the rejoinder to show the names of the personnel whose request for co-location has been acceded to by the respondents. Attention of this Court is also drawn to Para-4 of the rejoinder to show the names of the personnel who have been posted in Delhi, away from their home zone and native places. In response to this, learned counsel for the respondents submits that petitioner cannot claim parity with them and each case is individually considered on its own merits.



15. The submissions of learned counsel for the parties were heard and the material placed on record has been perused by this Court.

16. Relevantly, the petitioner has filed several applications/representations to the respondents since the year 2019 till 2021 praying for his posting in Delhi area, which have been rejected by the competent authority with the observation *“that his case for posting in Delhi on co-location grounds was examined and not found reasonable feasible due to HRP constraints”*. Even respondent’s wife has also made written requests to the authorities for transfer of her husband i.e. petitioner, which stood rejected citing similar reasons. In the additional affidavit dated 09.03.2022 filed on behalf of the petitioner, it is averred that by denying transfer, the respondents have violated basic fundamental rights of the petitioner. Petitioner has averred that it is Air Force’s own policy to prefer Airmen to undergo a specific course and gain specialized training for his trade, however, the petitioner herein has not undergone any specialized course due to his Low Medical Category and, thereby, he is not performing the work under the Trade for which he was inducted and instead, he is assigned the work in Administrative Office as a clerical staff. Petitioner has also placed before this Court names and details of officers who have been posted in



Delhi and who belong to the similar trade. However, the respondents in their affidavit dated 30.05.2022 have pleaded that those officials were posted away from their homezone and their native places, as per their previous posting profiles, courses, specialization and vacancies existed in the particular time.

17. Pertinently, the posting of Airmen is governed by *Air Headquarter Human Resource Policy PART II/PA (AIRMEN)/ PD/01/2020 vide Air HQ/ S 40301/PA II dated 07.07.2020 (revised)*, Paras-29 and 30 whereof enumerate terms of co-location posting for Airmen, which read as under:-

“29. Co-location Posting- (Spouse Employed in Central/ State Govt. / Public Sector Undertakings) As per the GOI policy as amended from time-to-time on the subject, as far as possible within the constraints of administrative feasibility., husband and wife should be posted at the same Station to enable them to lead a normal family life and look after welfare of their children, especially until the children are ten years of age depending on TPU. Airman will be posted to requested place as far as possible on TPU and tenure will be depending on utilization driven by organizational requirement Airmen whose spouse is a permanent employee of Central/State Govt./Public Sector Undertakings only are eligible for consideration for co-location posting. However, this privilege is not applicable for the airmen whose wife is working in Central/ State Govt. aided institutions. Appointment letter and latest serving certificate (certifying permanent employability) from the employer/ head of the organization should be attached with the application.

30. It may not be always to post an airman to a particular



place of request due to one or more of the following reasons:-

- (a) Manning Constraints*
- (b) Non availability of AF Stns/ Units at the place requested*
- (c) Past Posting Profile of the airman e.g. if an airman had a posting at the place of request or to nearby area in the past ten years.*
- (d) Non utilization of TPU in the place of request/ Home Zone.*
- (e) In case spouse is on compassionate grounds posting.*
- (f) If an airman has availed a posting to his home zone, irrespective of the grounds (Hard Area Choice/ compassionate), then he will not be considered for a posting again to his home zone, whether it is co-location/ compassionate grounds before completing a gap of 10 years.”*

18. In the present case, the petitioner who is posted at Head Quarter Eastern Air Command (Unit) Shillong w.e.f. 27.11.2017, stands transferred/posted to 222 sqn, AF Thanjavur w.e.f. 22.11.2021, and by the present petition he is seeking posting in Delhi on co-location grounds.

19. Pertinently, the petitioner is seeking his transfer to New Delhi on the ground that his case is covered under the afore-noted policy and in terms of Para-29 thereof, he has a right to live in Delhi with his wife to lead a normal married life. Besides, petitioner has also claimed that for last 10 years he has never claimed posting in his home zone on any ground. Also that since his marriage in the year 2019, he has been able to meet his wife only once in 5-6



months and that his wife is unable to re-locate to his place of posting due to her job requirements and family commitments. In support of his case, petitioner has relied upon Hon'ble Supreme Court's decisions in ***E.P Royappa (Supra)*** and ***Ramachandra Singh (Supra)***.

20. In ***E.P Royappa (Supra)***, the Hon'ble Supreme Court had determined the issue whether a new post in the same cadre would involve same status and responsibility and also whether right of challenge is limited to those who have a right to post. The issues raised therein were factually different and therefore, reliance placed upon decision in ***E.P Royappa (Supra)*** by the petitioner is of no assistance..

21. In ***Ramachandra Singh (Supra)***, the petitioner had challenged his transfer order on the ground that he was left with only 15 months service and the High Court of Karnataka had in the facts of the said case had considered that the petitioner had already filed a representation before the competent authority when he had 19 months to retire i.e. much prior to receipt of his transfer/movement order; the court had directed the respondent- Union of India to decide petitioner's representation in view of the fact that no guidelines were placed before the court to determine as to whether the option to request for last leg posting was not available to



petitioner, who was a Subedar Major and completed two years in one place and also, as to whether he was mandatorily required to serve the rest of his period in another unit regardless of the fact he was retiring within few months. The facts of the said case are different from the one in hand and as such no help to the case of petitioner.

22. A perusal of the Policy governing posting of Airmen, as noted in Para-17 above, shows that it notes that the administrative possibilities to post husband and wife at the same station for leading a normal family life should be ensured by the authorities, subject to fulfilling the criteria laid down in Para-30 thereof. However, an order of transfer or posting is an incident of Government and a Government servant has no vested right to claim his choice of posting. On this aspect, the Hon'ble Supreme Court in ***Bank of India Vs. Jagjit Singh Mehta***, (1992) 1 SCC 306 has held as under:-

“5. There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India services, the hardship resulting from the two being posted at different



stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all-India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of all-India service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. In addition, in the present case, the respondent voluntarily gave an undertaking that he was prepared to be posted at any place in India and on that basis got promotion from the clerical cadre to the officers' grade and thereafter he seeks to be relieved of that necessary incident of all-India service on the ground that his wife has to remain at Chandigarh. No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees.”

23. Further, the Supreme Court in ***Union of India Vs. S.L. Abbas*** (1993) 4 SCC 357 has observed and held as under:-

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“7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.”

24. In view of the dictum of Hon'ble Supreme Court in ***Bank of India (Supra)*** and ***Union of India (Supra)***, this Court is of the opinion that the petitioner cannot be permitted to raise the claim of posting to Delhi on the ground to live with his wife.

25. Now coming to the other pleas urged by the petitioner that he is able to meet his wife only once in 5-6 months as he is unable to avail frequent leaves, respondents have stated that petitioner is entitled to avail 60 days annual leaves and 30 days casual leaves every year. In the year 2020, petitioner had availed all 60 days earned leaves and 03 casual leaves; and in the year 2021 petitioner had taken 56 days earned leaves and 19 days casual leaves. Moreover, petitioner's wife is also entitled to various leaves



according to her entitlement under the Central Government rules. In this background, this Court finds that there is no hindrance to petitioner in meeting his wife, as he has claimed.

26. During pendency of the present petition, the petitioner stood transferred to 222 sqn, AF Thanjavur w.e.f. 22.11.2021. The Hon'ble Supreme Court has made it clear that a "*transfer order can only be interfered with if it runs contrary to any statutory provision (not policy guidelines), issued by an incompetent authority, changes the service condition of an employee to his detriment or proved to be mala fide*". Applying the ratio of law laid down by the Supreme Court to the present case, we refrain to interfere in the transfer of petitioner.

27. Finding no merit in the present petition, it is dismissed. Pending application is disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

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