

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14353 OF 2023**

Mrs. Ashwini Shailesh Ibhad

... **Petitioner**

V/s.

Union of India, through the
Director General of Border Roads
and Ors.

... **Respondents**

Mr. Rohit P. Bidwe a/w. Mr. Aniruddh V. Bhat, for the Petitioner.

Mr. Y.R. Mishra for the Respondents.

**CORAM : SANDEEP V. MARNE, &
DR. NEELA GOKHALE, JJ.**

Dated : 21 November 2023.

P.C. :

1. Petitioner is employed in the General Reserve Engineering Force (**GREF**), an armed force of the Union under overall control of Director General of Border Roads. She is aggrieved by her transfer effected vide Order dated 17 April 2023 transferring her from 1649 PNR COY HQ 758 TF SWASTIK (Assam) to 507 SS & TC HQ 38 TF DEEPAK (Chandigarh). The transfer is shown to have been effected as 'Second Compassionate

Ground Posting'. She is aggrieved, not on account of her movement from SWASTIK (Assam) to DEEPAK (Chandigarh), but by treatment of the impugned transfer as 'Second Compassionate Ground Posting' and has prayed that the same be treated as regular transfer. According to Petitioner, she had requested for 'Second Compassionate Ground Posting' at Pune to take care of her ailing mother and that since she is not posted at Pune, her posting at Chandigarh cannot be treated as compassionate ground posting. According to her, treatment of the impugned transfer as 'Second Compassionate Ground Posting' would exhaust her last option of compassionate ground posting thereby denying her any further option to seek posting at Pune to take care of her mother. It is with this limited grievance that she has filed the present petition. In pursuance of the impugned transfer order dated 17 April 2023, a Movement Order dated 19 June 2023 has also been issued relieving her from SWASTIK (Assam) with direction to report at DEEPAK (Chandigarh). She has therefore challenged the said Movement Order as well in the present Petition.

2. We have heard Mr. Bidwe, the learned counsel appearing for the Petitioner. He would submit that the very purpose behind seeking compassionate posting was to take care of Petitioner's mother who is suffering from cancer. That instead of transferring the Petitioner to Pune, as requested by her, the

Respondents have erroneously transferred her to Chandigarh. That such posting at Chandigarh is illegally treated as 'Second Compassionate Ground Posting'. That since only two compassionate ground postings are allowed in the entire career, treatment of transfer to Chandigarh would dis-entitle Petitioner from seeking any further posting on compassionate grounds to Pune to take care of her mother. He would submit that Petitioner has been appointed on compassionate grounds after death of her brother, that her father has also passed away in 2005 and that there is no other person in the family to take care of her ailing mother. That in such circumstances, Respondents ought to have transferred the Petitioner to Pune, and in any case, could not have treated the impugned transfer as compassionate ground posting. Relying in Para 4 of the transfer order dated 17 April 2023, he would submit that the transfer was required to be treated by routine/administrative transfer by not relieving Petitioner for a period of 3 months.

3. Mr. Bidwe would invite our attention to the order dated 30 October 2023 by which the Petitioner is treated as a 'deserter/absent without leave' with effect from 04 July 2023 with further directions to apprehend her till she is collected by GRPF's escort. He would submit that if the impugned transfer and movement orders are not stayed, Petitioner would be arrested in

pursuance of order dated 30 October 2023. He would blame erroneous advice given to Petitioner of approaching the Central Administrative Tribunal for challenging the transfer order and movement orders for delay in filing the present Petition. That the Original Application was required to be withdrawn on account of lack of jurisdiction of the Tribunal. Apprehending her arrest in pursuance of the Order dated 30 October 2023, the present petition is moved before the Vacation Court.

4. *Per-contra*, Mr. Mishra the learned counsel appearing for the Respondents would oppose the petition and submit that the impugned transfer of the Petitioner is effected as per her own request and therefore she cannot now estopped from contending that the posting cannot be treated as 'Second Compassionate Ground Posting'. He would submit that Petitioner has been unauthorisedly absent from duties after issuance of the Movement Order and considering such conduct of the Petitioner, this Court would be loath in granting any relief in her favour in exercise of jurisdiction under Article 226 of the Constitution of India.

5. We have considered the submissions canvassed by the learned counsel appearing for the rival parties.

6. Petitioner has been appointed on the post of Multi Skilled Worker on compassionate basis w.e.f. 30 May 2008 upon demise of her brother, who was working with the GREF. Her initial appointment was at Pune. On account of transfer liability attached to the post, Petitioner has been posted at various places such as Bikaner and Assam. It appears that the members of the Force are provided two compassionate ground postings at the choice stations in their careers. Petitioner has already exhausted one compassionate ground posting in the year 2015 for the reason of detection of cancer of her mother. While being posted at 1649 PNR COY HQ 758 TF SWASTIK (Assam), Petitioner submitted application dated 16 March 2022 seeking posting on compassionate ground for mother's treatment and gave following choices:

- (a) GREF Centre.
- (b) GREF Records.
- (c) HQ DGBR.

7. One of the choices given by Petitioner for compassionate ground posting vide letter dated 16 March 2022 was at HQ, DGBR, New Delhi. Thus, she was willing to be posted at New Delhi by exhausting her second compassionate posting option. It appears that by a Signal sent by the office of GREF-Records, she was called upon to give five wider choice stations in different projects in Eastern and Western Sectors for grant of compassionate ground posting, failing

which the posting order was to be issued to any other suitable place, where medical treatment is available. She however submitted letter dated 27 December 2022 reiterating her request for compassionate ground posting at Pune. It appears that the office of GREF-Records again issued Signal dated 13 January 2023, once again calling upon her to give wider choice of postings. Accordingly, by letter dated 22 February 2023, Petitioner gave following five choice stations for second compassionate ground posting:

- (i) GREF Centre/Records/FHE, Pune.
- (ii) HQ, DGBR, Delhi.
- (iii) ADGBR (NW)/507 SS & TC, Chandigarh.
- (iv) ADGBR (East).
- (v) 532 SS & TC, NJP.

8. Thus, by letter dated 22 February 2023, one of the choices of posting suggested by Petitioner was at Chandigarh. Acting on Petitioner's letter dated 22 February 2023, the Office of GREF-Records issued transfer order dated 17 April 2023 transferring Petitioner from 1649 PNR COY HQ 758 TF SWASTIK (Assam) to 507 SS & TC HQ 38 TF DEEPAK (Chandigarh) by way of 'Second Compassionate Ground Posting'. In pursuance of the transfer order dated 17 April 2023, Movement Order dated 19 June 2023 was issued directing Petitioner to move from SWASTIK (Assam) to DEEPAK (Chandigarh). The date of movement was indicated as 19

June 2023 with normal joining time and journey period. It appears that the Petitioner did not report in pursuance of the Movement Order dated 19 June 2023 and proceeded on medical leave. Respondents have accused her of remaining unauthorisedly absent since 4 July 2023 and have issued Order dated 30 October 2023 for her arrest.

9. Thus, the Petitioner herself has chosen Chandigarh as one of the choice postings vide letter dated 22 February 2023. Now, she apparently believes Chandigarh to be an inconvenient posting and therefore does not want the transfer at Chandigarh to be treated as 'Second Compassionate Ground Posting' so that she retains the option of seeking one more compassionate ground posting in future. Having chosen Chandigarh as one of the choice stations for compassionate ground posting, it is incomprehensible as to how Petitioner can be permitted to take a volte face and contend that the said posting should not be treated as one effected by way of 'Second Compassionate Ground Posting'. By her letter dated 22 February 2023, she specifically requested that she be posted to one of the five choice stations by way of 'Second Compassionate Ground Posting'. Respondents have acted on her request and have posted her at Chandigarh. If Petitioner was not willing to opt for any other posting except Pune, she ought not to have given the five choices indicated in the letter dated 22 February 2023. In that case, she

would have been transferred at any place as per the administrative convenience of GREF. Having indicated Chandigarh as one of the choice postings, Petitioner cannot now turn around and contend that the said posting should be treated as an administrative transfer, so as to enable her to claim one more choice posting in future.

10. Though the learned counsel for the Petitioner has contended that the Petitioner was erroneously advised to approach Central Administrative Tribunal for challenging the transfer and movement orders, we do not find any pleadings or documents in support of Petitioner having approached the Tribunal. Be that as it may, Petitioner did not file any proceedings immediately after issuance of the Transfer Order dated 7 April 2023. She waited for issuance of the Movement Order on 19 June 2023. Present petition is filed only after Respondents were required to issue order dated 30 October 2023 for arrest of the Petitioner on account of her unauthorized absence. The Apex Court has frowned upon such tendency of government servants in approaching the Courts/Tribunals without reporting at the transferred place and has held in *S.C. Saxena v. Union of India*, (2006) 9 SCC 583 as under:

6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. **In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may**

be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Apart therefrom, if the appellant really had some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted. We too decline to believe the story of his remaining sick. Assuming there was some sickness, we are not satisfied that it prevented him from joining duty either at Tezpur or at Amritsar. The medical certificate issued by Dr. Ram Manohar Lohia Hospital proves this point. In the circumstances, we too are of the opinion that the appellant was guilty of the misconduct of unauthorisedly remaining absent from duty.

(emphasis supplied)

11. The learned counsel for the Petitioner has drawn our attention to paragraph-4 of the Transfer Order dated 17 April 2023 which had directed that if Petitioner was not transferred within three months from the date of his operation, the compassionate transfer was to be cancelled and transfer was to be issued on the basis of normal service schedule. He would submit that Respondents did not wait for expiry of period of three months and issued Movement Order on 19 June 2023 itself. We do not find that paragraph-4 of the Transfer Order dated 17 April 2023 would be of any assistance to the Petitioner. The Transfer Order indicated the 'Arrival Date' as 'FORTHWITH (2nd CG) LADY'. Therefore, Petitioner was in fact required to be relieved immediately after issuance of order dated 17 April 2023. Para 4 of transfer order therefore cannot be read to mean that Petitioner was entitled to continue at SWASTIK (Assam) for three months or that on expiry of period of three months, the

nature of transfer would be changed from 'compassionate ground' to 'administrative ground'. In fact, if the Petitioner was to continue at SWASTIK (Assam) for a period of three months after 17 April 2023, her transfer at Chandigarh would have been cancelled and she would have been posted at any other place as per the normal service schedule. Therefore, paragraph-4 of the Order dated 17 April 2023 cannot be relied upon by the Petitioner for the purpose of treating the impugned transfer as the one not effected on compassionate ground.

12. We therefore do not find any merit in the petition. The same deserves rejection. The Petitioner shall however be at liberty to join the place of posting by 30 November 2023 till which time, the order dated 30 October 2023 shall remain under suspension. In the event, the Petitioner fails to join the transferred place by 30 November 2023, the Respondents would be at liberty to enforce the order dated 30 October 2023 to take steps as mandated by law. Beyond this, we are not inclined to grant any relief to Petitioner. The Writ Petition is accordingly **rejected**. There shall be no orders as to costs.

NEETA
SHAILESH
SAWANT

DR. NEELA GOKHALE, J.

SANDEEP V. MARNE, J.

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