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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13922-2023 (O&M)

Date of Decision:12.07.2023

BHAVESH KUMAR

..... Petitioner

Versus

UNION OF INDIA AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Gurmohan Singh Bedi, Advocate with
Mr. Pawandeep Singh, Advocate and
Mr. Maj. Sushana Puri, Advocate
for the petitioner.

Ms. Anita Balyan, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

CM-10872-CWP-2023

Application for placing on record Annexures P-11 to P-14, is allowed, in view of the averments made in the application, duly supported by affidavit. Said documents are taken on record. Office to append the same at appropriate place.

CM stands disposed of.

CWP-13922-2023

1. Short reply by way of affidavit dated 12.07.2023 of Capt. Antriksh Bhatnagar filed by respondent, is taken on record. Registry is directed to tag the same at the appropriate place.

2. On 05.07.2023, the following order was passed:

*“The petitioner, through instant petition under
Articles 226/227 of the Constitution of India is seeking*

setting aside of order dated 09.06.2023 (Annexure P-5) passed by respondent No.3 whereby petitioner has been transferred from Station Headquarter, Kapurthala to Station Headquarter Jalandhar even though petitioner is under suspension.

Learned counsel for the respondents, at the outset, submits that petitioner was posted with Selection Centre North which was located at Kapurthala and now it has been shifted to Station Headquarter Jalandhar, thus, petitioner cannot be kept posted at Kapurthala which necessitated transfer of petitioner despite Policy on DV Ban. She further submits that she would seek clear instructions qua CTG payable to the petitioner on account of his transfer.

The respondent is directed to file an affidavit in support of its contentions.

Adjourned to 12.07.2023.”

3. Learned counsel for the petitioner *inter alia* contends that petitioner is not part of Selection Centre North, Kapurthala, thus, shifting of Centre from Kapurthala to Jalandhar does not effect his place of posting. The respondent contrary to policy of DV Ban has transferred the petitioner from Kapurthala to Jalandhar. There is no specific reason to unsettle the petitioner from Kapurthala to Jalandhar. The petitioner is under suspension and shifting would cause undue harassment.

4. Learned counsel for the respondents submits that respondent has principally agreed and clarified that petitioner would be paid Composite Transfer Grant (CTG) as payable to others on transfer, thus, no loss is going to cause to petitioner. The petitioner was part of Selection Centre North, Kapurthala which has been relocated from Kapurthala to Jalandhar. CBI investigation is going on and petitioner is

under suspension on account of his *prima facie* involvement in the alleged offence. It is a policy matter and it is settled proposition of law that Court in case of transfer of officers of armed forces should not interfere.

5. I have heard the arguments and perused the record.

6. From the perusal of record, it comes out that petitioner was put under suspension on 25.03.2021 and suspension order was extended from time to time and last time it was extended vide order dated 06.06.2023. The petitioner vide order dated 24.12.2021 was sidestepped from Selection Centre North, Kapurthala and was posted as Additional Officer, Station Headquarter, Kapurthala against temporary suspension of non-select non-criterion appointment of TP CDR, 1872 RKT REGT (S). The respondent has transferred petitioner from Kapurthala to Jalandhar on the ground that Selection Centre of which petitioner was part has been relocated, thus, administratively, it is necessary to transfer petitioner from Kapurthala to Jalandhar. There is policy of DV Ban which prohibits transfer of officers under suspension, however, there is no absolute bar and an officer in special circumstances may be transferred. Para 15 of the policy permits the said arrangement. Para 15 of the policy reads as:

“While DV Ban when once imposed, covers all matters mentioned in Para 09, the concerned sections of MS Branch/DGMS (Army) may refer individual cases to DV Dte (DV-2) to allow partial relaxation of the DV Ban as may be necessary depending upon the circumstances and merits of a case. Such cases shall be decided with the approval of the AG”

7. The respondent in compliance of order dated 05.07.2023 of this Court has agreed to pay CTG to petitioner on account of his transfer

like other employees, thus, no financial loss is going to cause to the petitioner. It is hereby made clear that respondent without any lapse shall pay CTG (all emoluments) to the petitioner.

8. A three Judge Bench of Hon'ble Supreme Court in '**Major General J.K. Bansal Vs. Union of India and others**' (2005) 7 SCC 227 has held that scope of interference by the courts in regard to transfer of members of armed forces is far more limited and narrow than transfer of civilian employees or those who are working in public sector undertakings. The relevant extract of the judgment reads as:

"11. Similar view has been taken in National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan and another (2001) 8 SCC 574, wherein it has been held that no Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders, as though they were the appellate authorities substituting their own decision for that of the management.

12. It will be noticed that these decisions have been rendered in the case of civilian employees or those who are working in Public Sector Undertakings. The scope of interference by courts in regard to members of armed forces is far more limited and

narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The Courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made.”

9. Considering the facts of present case especially statement of respondent that petitioner would be paid all emoluments on account of transfer and judgment of Hon’ble Supreme Court in **Major General J.K. Bansal** (supra), this Court does not find any merit to interfere in the order dated 09.06.2023 (Annexure P-5) passed by respondent No.3.

10. Dismissed.

(JAGMOHAN BANSAL)
JUDGE

12.07.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>