

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

123

CWP-26650-2023

Date of Decision : 29.11.2023

Kamaldeep

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Jasbir Mor, Advocate
for the petitioner.

Mr. Sunil K. Sharma, Sr. Panel Counsel
for the respondents-UOI.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of order dated 21.04.2023 (Annexure P/4) whereby he has been transferred from Chandigarh to Uttarlai (Rajasthan). The petitioner is further seeking setting aside of orders dated 18.08.2023 (Annexure P/6), 22.09.2023 (Annexure P/10) and 07.11.2023 (Annexure P/14) whereby his request for cancellation of posting at Uttarlai (Rajasthan) has been declined.

2. Learned counsel for the petitioner *inter alia* contends that brother of the petitioner is a 100% disabled person. He met with a road accident in 2018 and there is no male member except petitioner to look after him. The father of the petitioner is a heart patient and no treatment is available nearby Uttarlai (Rajasthan), thus, place of posting of the petitioner

needs to be re-considered. The respondents have not taken sympathetic

view and ignoring family conditions of the petitioner, he has been transferred to Uttarlai (Rajasthan).

3. Learned counsel for the respondents-UOI, who on advance notice is present in the Court, submits that the petitioner, on his request was posted at Delhi in April' 2016 for two years, however, on his request, he was granted two extensions entailing his stay from two years to five years. The petitioner in 2021 was transferred to Bangluru, however, on his request, he was posted at Chandigarh for 02 years. The services of the petitioner are required at Uttarlai (Rajasthan), thus, he cannot be posted at Jaipur and he cannot be posted at Delhi or Chandigarh in view of his long stay of 07 years in this region. The brother of the petitioner actually met with an accident in 2015 and thereafter, he was blessed with a child. He has an independent family, thus, the petitioner is wrongly taking excuse of his brother. The father of the petitioner is an ex-serviceman and he is entitled to treatment at all military hospitals without attendant.

4. I have heard the arguments of learned counsel for the parties and perused the record.

5. The petitioner through the instant petition is seeking cancellation of his transfer from Chandigarh to Uttarlai (Rajasthan). The sole contention of the petitioner is that respondents are not taking sympathetic view and they have ignored condition of his family members. It is undisputed fact that respondent has cooperated petitioner for 07 years. The respondent is claiming that brother of the petitioner is not dependent upon him and father of petitioner is an Ex-serviceman, thus, he is entitled to treatment at all military hospitals. It is settled proposition of law that writ Court cannot interfere in the transfer matters specially postings related to

Armed Forces.

6. 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.”

7. Considering that there is no allegation of malafide against the respondents; the petitioner has been accommodated for 07 years and judgment of Hon'ble Supreme Court in **Major General J.K. Bansal's case (supra)**, this Court does not find any ground to interfere with the impugned order. The petition sans merit and deserves to be dismissed and accordingly dismissed.

8. It is made clear that dismissal of this petition would not inhibit the respondents from considering claim of the petitioner at subsequent stage.

(JAGMOHAN BANSAL)
JUDGE

29.11.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>