

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

% **Reserved on: January 31, 2023**

Pronounced on: March 28, 2023

+ **W.P.(C) 15859/2022 & CM APPL.49329/2022**

DR. PARAMJIT SINGH NAGI Petitioner

Through: **Mr.Ankur Chhibber &
Mr.Anshuman Mehrotra,
Advocates**

Versus

UNION OF INDIA AND ORS. Respondents

Through: **Mr.Anurag Ahluwalia, Central
Government Standing Counsel,
Mr.Tarun Singh Nanda,
Government Pleader, Dr. Anant
Kumar & Mr. M. Raja,
Commandants & Mr.Hemendra
Singh, DC (LAW) BSF**

CORAM:

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

JUDGMENT

SURESH KUMAR KAIT, J

1. The present petition has been preferred by the petitioner inter-alia praying for issuance of a writ of certiorari for quashing of the order dated 07.11.2022 and signal dated 11.11.2022 to the extent whereby the petitioner has been posted to Frontier Headquarter BSF Mizoram & Cachar, which is in violation of their own policies dated 07.12.2011,

29.02.2012 and 23.07.2021 whereunder petitioner can only be posted to a Composite Hospital. Further, issuance writ of mandamus is also sought for directing the respondents to issue a fresh posting order, posting the petitioner to any Composite Hospital in the Country.

2. Petitioner after completing his MBBS from Maulana Azad Medical College in the year 1989, was appointed as Medical Officer (Assistant Commandant) in the BSF Medical Cadre on 27.12.1990. During his service, petitioner was promoted to the rank of Deputy Commandant (Sr. Medical Officer) on 11.09.1996 and Chief Medical Officer (Selection Grade) on 27.12.2004.

3. According to petitioner, he applied for undergoing PG Diploma in Sports Medicine from Netaji Subhash National Institute of Sports in Patiala. The respondents, finding petitioner has completed five years' of service and APAR gradings well above the bench mark, found him eligible under Rule 50 (5) of CCS (Leave) Rules fulfilling the conditions laid down in MHA/Policy/ Guidelines for pursuing PG courses and requested the MHA to grant petitioner study leave for two years. Accordingly, petitioner was granted permission to pursue PG diploma in Sports Medicine, which he completed successfully in the year 2007.

4. Thereafter, vide order dated 31.08.2022 the respondents undertook cadre review exercise for the Medical Officers of the CAPFs, NSG and AR and a total number of 50 posts of CMO(SG) were upgraded to the DIG, Medical and added to the existing 36 posts of DIG-Med, thereby making the total count of DIGs-Medical posts to be 86 in number. These new posts are upgradation of the existing CMO (SGs) post to DIG (Med).

Pursuant thereto, the Border Security Force was allocated 14 more posts of DIG(Medical) in addition to the existing number of posts of DIG(Med) in BSF. As per the said Cadre Review exercise, the newly created 14 posts of DIG (Med) were to be filled by posting the said officers at Frontier Headquarters only. On 01.09.2022, respondents issued order dated 01.09.2022 inter alia promoting 52 other officers of CAPFs collectively from the rank of CMO-SG to the promotional rank of DIG (Med) towards the newly introduced vacancies as a consequence of Cadre Review Exercise. Thereafter, respondents vide order dated 07.11.2022 transferred the petitioner to Frontier Headquarters (Mizoram & Cachar), BSF at Silchar, Assam despite his being a GDMO with PG qualifications.

5. Aggrieved by the aforesaid transfer order dated 07.11.2022 passed by the respondents, the petitioner made a representation dated 11.11.2022 requesting the respondents to re-consider their arbitrary action and to post him with some Composite Hospital as per binding guidelines and instructions. However, the respondents issued signal dated 11.11.2022 directing the Authorities to relieve the petitioner immediately to join the posting at Frontier HQRs- Mizoram.

6. Thereafter, petitioner approached this Court by filing WP(C) No.15703/2022, however, the said petition was withdrawn vide order dated 15.11.2022 with liberty to petitioner to take appropriate steps pursuant to policy dated 23.07.2021.

7. Learned counsel appearing on behalf of petitioner submitted during the arguments that while issuing the impugned transfer order dated 07.11.2022 the respondents failed to appreciate their own policy dated

7.12.2011, which has been reiterated in their policy guidelines dated 29.02.2012 and again in order dated 30.10.2015 stating that to provide better health care services to the Central Armed Police Force personnel and their family members and for proper and optimum utilization of services of the Specialists and GDMO with PG qualifications, they shall be posted at the Composite Hospitals only. Even by virtue of guidelines issued on 23.07.2021 by the respondents which is in continuation of the earlier policy decision dated 07.11.2011, the petitioner is entitled to be posted at Composite Hospitals only.

8. Learned counsel for petitioner next submitted that in terms of Clause-4 of the Cadre Review Order dated 31.08.2022, the newly created IGs (Medical) and DIGs (Medical) are to perform clinical duties at the place of posting in addition to the already assigned duties and the newly created DIG (Medical) are to be accommodated in GC Hospital in CRPF and at Ftr HQrs of BSF/TBP/SSB & Hqr IG AR. Further submitted that the respondents have failed to appreciate that the petitioner was promoted to the rank of DIG (Med) against the available positions/vacancies as per the pre-existing sanctioned strength as on July 2022. However, the juniors of the petitioner were accommodated in the newly created posts of DIG (Med) pursuant to cadre review exercise; and so, respondents were duty bound to post the petitioner in terms of the existing policy to the Composite Hospitals. However, the respondents have issued a common order/ posting order whereunder he has been posted to Frontier HQ, where he will not be able to impart his service to the patients but only conduct medical boards.

9. Reliance was placed upon decision of this Court in W.P.(C) No. 4151/2018, titled as ***Dr. Sachin Kumar Dixit v Union of India & Ors.*** and another decision of this Court in W.P.(C) No. 4160/2018 titled ***as Dr. Vishal Kumar Vs. UoI*** in support of petitioner's case.

10. To the contrary, learned Central Government Standing Counsel ('CGSC') appearing on behalf of respondents submitted that petitioner was posted in 25 Bn BSF, Chawla on 21.09.2015, where he physically joined on 08.10.2015 and he remained posted there for more than 5 ½ years i.e. over and above 03 years' tenure and he was thereafter posted to Ftr HQ BSF (Spl Ops) Chhattisgarh as Commandant (Medical) on 31.05.2019. Against his aforesaid posting order, the petitioner submitted a representation and since the same was considered and rejected, the petitioner was relieved from his posting on 19.08.2019. In the meantime, petitioner preferred a writ petition being W.P.(C) No. 9290/2019 before this Court seeking quashing of his posting order dated 31.05.2019 and Movement Order dated 19.08.2019, which was dismissed on 27.08.2019. In the Special Leave Petition (Civil) No.21477/2019 preferred against the order dated 27.08.2019, operation of the impugned order was stayed by the Hon'ble Supreme Court vide order dated 13.09.2019. However, without any directions from FHQ, petitioner joined his duty at 25 Bn BSF on his own on 01.10.2019 (FN), whereas pursuant to directions of the Supreme Court vide order dated 13.09.2019, the posting order of the petitioner from 25 Bn BSF to Ftr HQ BSF (Spl Ops) Chhattisgarh was cancelled on 24.10.2019. The Special Leave Petition (Civil) No.21477/2019 was disposed of with direction to the respondents to issue

a fresh posting order and giving four weeks time to petitioner to join new posting and the interim order dated 13.09.2019 was vacated.

11. Learned CGSC submitted on behalf of the respondents that the petitioner was promoted to the rank of DIG (Med) on 20.07.2022 vide Order dated 03.08.2022 and was posted to Ftr I-IQ M&C vide ADG (Medical) CAPFs, NSG & AR vide Order dated 07.11.2022 and FHQ BSF (Pers Dte) Signal No. R/3216 dated 11.11.2022. He was relieved for new place of posting vide Movement Order dated 07.12.2022 and he joined on 19.12.2022. His representations dated 11.11.2022 and 14.11.2022 have already been forwarded to ADG (Medical) for consideration. The petitioner also preferred a writ petition being W.P.(C) No. 15703/2022 for quashing of his posting order dated 07.11.2022 before this Court, which was disposed of on 15.11.2022 with liberty to the petitioner to take steps pursuant to policy dated 23.07.2021 issued by Government of India, Ministry of Home Affairs, Police-II, Division/Pers.I Section vide MHA ID No.45025/06/2018-Pers.I.

12. Learned CGSC next submitted that in CAPFs, General Duty Medical Officers (GDMO) are appointed in the rank of Assistant Commandant (Medical Officer), whereas, Specialists are appointed in the rank of Deputy Commandant (Specialists). Further, in terms of MHA (Police –II Division) vide F.No. I-45024/2/2011-Pers.II dated 29.02.2012, certain disciplines have been considered for post graduate courses/ short term courses and fellowships/ super specially courses by General Duty Medical Officers/ Dental Surgeons/ Specialist Doctors of CAPFs & ARs and granted study leave and their services are utilized by the Forces in

their Composite Hospitals/ Referral Hospitals (RH)/ Research & Referral (R&R) Hospital.

13. Further submitted that the medical officers in CAPFs are given time scale promotions under Dynamic Assured Career Progression Scheme (DACP) up to the rank of CMO (SG) and GDMO & Specialists maintain a common seniority in the rank of CMO (SG) for promotion to the rank of DIG (Medical). Learned CGSC next submitted that with the intent to provide better health care services to CAPF personnel and their family members, the Ministry of Home Affairs (MHA), Government of India vide order dated 07.12.2011, the GDMOs with PG qualifications have been directed to be posted in Composite Hospitals only. However, their postings shall be governed by the Ministry of Home Affairs for which Director (Med) of the CAPF concerned or ARs, with the approval of DG of concerned CAPF/ARs, are required to send a proposal to the Police-II Division of MHA.

14. The aforesaid order dated 07.12.2011 was reconsidered by the MHA vide O.M dated 30.10.2015, where-under besides other guidelines, it was notified that the DG of the Force concerned will be the Competent Authority to decide the transfer/ posting of Specialists and GDMOs with PG qualification, within their Force. Thereafter, another order dated 23.07.2021 was issued by the MHA whereunder it was notified that the MHA's policy dated 07.12.2011 and 30.10.2015 shall be applicable only for the posting of Specialists Medical Officers and General Duty Medical Officers (GDMOs) with Post Graduate (PG) qualifications and since the petitioner was already promoted to the rank of DIG (Medical), hence, it

will not be applicable to the case of petitioner. The transfer and posting orders of DIGs (Med) & IG (Med) of CAPF and NSG and ARs are governed by the MHA's order dated 23.03.2011 and by virtue of MHA's order dated 02.09.2004, promotions to the level of DIG and above shall be based upon combined gradation of the medical officers.

15. Learned CGSC submitted that vide letter dated 23.06.2022 of the MHA, the post of DIG (Medical) was sanctioned for all IG HQrs in BSF after abolition of post of CMO (SG) and upon this cadre review, 50 posts of DIG (Medical) were created and increased from 36 to 86. A few posts of DIG (Medical) were created for Frontier Headquarters, where they are to perform clinical duties as member of Units/SHQrs/Establishments, whereas DIG (Medical) in composite hospital is an administrative post by nature.

16. Further submitted that in terms of Para- 3 (ii) & 3 of MHA order No. 27012/33/2003-PF.III dated 02.09.2004 with regard to restructuring of medical cadre to the post of DIG (Med), the promotions to all the forces to the rank of DIG and above, will be common based upon the combined gradation of the medical officers; and there will be mobility amongst one Force to another and official can be posted against a vacancy in any Force.

17. Also submitted that in terms of Para- 2 (A) (n) of MHA's order dated 29.02.2012, the PG qualified General Duty Medical Officers/Dental Surgeons can be utilized by the Forces at different levels in their Composite Hospitals/Referral Hospitals(RH)/Research & Referral. Besides, PG qualified Medical Officers in sports medicine can also be

utilized at Academies/Training centers as well as to accompany the teams for important sporting and adventurous event.

18. Lastly, it was submitted that the petitioner has served in the central as well as Western zone of the country only and never served in the Eastern Zone and in view of his past deployment and all other factors, he has been posted as per merit and governing rule. It was submitted that the policy in the subject matter has been prepared in consultation with ADG (Medical), CAPFs, NSG & AR in terms of order dated 07.04.2021 passed by the High Court of Meghalaya at Shillong in WP (C) No. 344 of 2018. Thus, the claim of petitioner to post him to Composite Hospital only is not tenable and without any basis and so, this petition deserves to be dismissed.

19. The arguments advanced by learned counsel representing both the sides were heard at length and the material placed on record as well as decisions cited have been gone through by this Court.

20. This Court finds that petitioner seeks quashing of orders dated 07.11.2022 and Signal dated 11.11.2022, whereby petitioner has been posted at Frontier Headquarter BSF Mizoram and Cacher. The petitioner has primarily relied upon guidelines dated 07.12.2011, which has further been notified vide orders dated 29.02.2012 and 30.10.2015 passed by the respondents, whereby it has been notified that to provide better Health Care services to the Central Armed Police Force personnel and their family members and for proper and optimum utilization of services of the Specialists and GDMO with PG qualifications, they shall be posted at the Composite Hospitals only. The petitioner has also claimed that he was

promoted to the post of DIG (Med) against the available positions/vacancies and so, he should have been given posting in the Composite Hospital over and above those candidates who have been appointed to the post of DIG (Med) pursuant to accrual of vacancies in the cadre review exercise i.e. restructuring of the medical cadre and his posting should have been governed by the existing policies and not under the common posting order. Reliance was also placed upon Clause-4 of the Cadre Review Order dated 31.08.2022, whereunder the newly created IGs (Medical) and DIGs (Medical) are to perform clinical duties at the place of posting in addition to the already assigned duties and the newly created DIG (Medical) are to be accommodated in GC Hospital in CRPF and at Ftr HQrs of BSF/TBP/SSB & Hqr IG AR.

21. On the other hand, the stand of respondents is that vide order dated 07.12.2011 passed by the Ministry of Home Affairs (MHA), Government of India, the GDMOs with PG qualifications have been directed to be posted in Composite Hospitals and their postings shall be governed by the Ministry of Home Affairs. The said order dated 07.12.2011 was reconsidered by the MHA vide O.M dated 30.10.2015 and it was notified that the DG of the Force concerned will be the Competent Authority for posting of Specialists and GDMOs with PG qualification. Again, vide order dated 23.07.2021, it was notified that the earlier orders dated 07.12.2011 and 30.10.2015 shall be applicable to the case of Specialists Medical Officers and General Duty Medical Officers (GDMOs). Also, by virtue of MHA's order dated 02.09.2004 promotions to the level of DIG and above shall be based upon combined gradation of the medical

officers.

22. Pertinently, petitioner has been promoted to the rank of DIG (Med) on 20.07.2022, vide Order dated 03.08.2022 and he has been posted to Ftr I-IQ M&C vide ADG (Medical) CAPFs, NSG & AR vide Order dated 07.11.2022 and FHQ BSF (Pers Dte) Signal No. R/3216 dated 11.11.2022 after completing more than seven years of posting, as against the stipulated maximum period of three years, at 25 B. BSF. The question is whether subsequent to his Post Graduation and promotion to the rank of DIG (Med), petitioner deserves to be compulsorily posted in Composite Hospital, over and above those who have been promoted to the rank of DIG (Med), upon accrual of vacancies during the restructuring or the policy of combined gradation of the medical officers has to be adopted. What is also required to be determined is whether promotion and posting of petitioner shall be governed by the orders dated 07.12.2011; 30.10.2015 or in consonance with orders dated 23.07.2021 and 31.08.2022.

23. The order dated 07.12.2011 issued by the Ministry of Home Affairs, Government of India, reads as under:-

*“F.No.1-45024/05/2010 Pers-II
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya*

*North Block, New Delhi
Dated the 7th Dec., 2011*

ORDER

Subject:- Posting of specialists and GDMOs

with

*PG qualification in CAPFs and ARs
in Composite Hospitals – regarding.*

For proper and optimum utilization of services of the Specialists and GDMOs with P.G. qualifications in Central Armed Police Force (CAPFs) and Assam rifles (ARs) and to provide better health care services to CAPF personnel and their family members, it has been decided that Specialists and GDMOs with P.G. qualifications will be posted at the Composite Hospitals only.

2. Furthermore all the postings of such Specialists and GDMOs with P.G. qualifications will be decided by the Ministry of Home Affairs for which Director (Med) of the CAPF concerned or ARs shall send a proposal to the Police-II Division of MHA with the approval of DG of concerned CAPF/ARs.

3. All the CAPFs and ARs are requested to take immediate steps for compliance and necessary action.”

24. Thereafter, the order dated 30.10.2015 was issued by the Ministry of Home Affairs, Government of India, which reads as under:-

*e-45024/05/2011-Pers.II (Pers.I)
Government of India
Ministry of Home Affairs
Police-II Division/Pers.I Section*

*North Block, New Delhi
Dated the 30th Oct., 2015*

ORDER

*Subject:- Posting of Specialists and GDMOs
with PG qualification in CAPFs and
AR in Composite Hospitals – reg.*

*The undersigned is directed to refer to this
Ministry's Order No.I-45024/05/2011-Pers.II
dated 07.12.2011 on the subject cited above
and to say that the matter has been
reconsidered in this Ministry and the
following have been decided:-*

- i. DG of the Force concerned will be the
Competent Authority to decide the
transfer/posting of Specialists and GDMOs
with PG qualification, within their Force.*
- ii. However, before taking a final decision,
DG of the Force concerned will send the
transfer/posting proposal of Specialists and
GDMOs with PG qualification to ADG(Med),
CAPFs, NSG & AR for Comments.*
- iii. ADG(Med) shall send his views/comments
directly to the DG of the Force concerned,
Transfer/positing orders will be issued by the
DG of the Force concerned after taking into
consideration the comments of ADG(Med).*
- iv. Inter-Force transfer/deputation of all
doctors will continue to be decided by the
MHA on the proposals of the DG of the Force
concerned and recommendations of
ADG(Medical).*

*2. This issues with the approval of the
Hon'ble Home Minister. “*

25. Upon perusal of order dated 07.12.2011 we find that it clearly stipulates that *“the Specialists and GDMOs with P.G. qualifications will be posted at the Composite Hospital only and their postings shall be*

decided by the Ministry of Home Affairs, for which a proposal shall be sent by Director (Med) of the CAPF concerned or ARs, with the approval of the DG of concerned CAPF/ARs.” The order dated 30.10.2015 is in furtherance of the order dated 07.12.2011 which speaks only about the competent authority to decide the transfer and posting of the Specialists and GDMOs and stipulates that the *DG of the Force concerned shall be the competent authority*. Pertinently, the order dated 30.10.2015 does not touch upon the criteria for posting laid down vide order dated 07.12.2011 that the *Specialists and GDMOs with P.G. qualifications will be posted in Composite Hospital only*.

26. Relevantly, the order dated 07.12.2011, is premised upon Communication dated 23.03.2011 whereby policy regarding posting and transfer of DIG (Med) and IG (Med) in the Central Armed Forces, NSG and ARs has been codetermined. In reference to the aforesaid policy guidelines, the orders dated 07.12.2011 and 30.10.2015 were passed and further, order dated 23.07.2021 was passed which reads as under:-

“
Government of India
Ministry of Home Affairs
Police-II Division/Pers.I Section
North Block, New Delhi

*Subject:- Policy regarding Posting/Transfer of
Specialist Medical Officers and
General Duty Medical Officers
(GDMOs) with Post Graduate (PG)
qualifications in CAPFs, NSG & AR.
– reg.*

*The undersigned is directed to refer to this
Ministry’s Orders No.I-45024/05/2011-Pers.II*

dated 07.12.2011 and No.I-45024/05/2011-Pers.II (Pers.I) dated 30.10.2015 regarding policy guidelines relating to posting of Specialists and GDMOs with PG qualification in CAPFs and AR and to say that the matter has been reconsidered in this Ministry in compliance of the Court Order dated 07.04.2021 of the Hon'ble High Court of Meghalaya at Shillong passed in WP(C) No.344 of 2018, in consultation with ADG(Medical), CaPFs, NSG & AR and a policy on the above mentioned subject has been framed with the approval of the Competent Authority. The same is forwarded herewith for implementation by CAPFs, NSG & AR and ADG (Med). “

27. In the aforesaid order dated 23.07.2021 while framing the policy with regard to posting and transfer of Specialist Medical Officers and General Duty Medical Officers with Post Graduate qualifications, the Ministry of Home Affairs has relied upon decision of High Court Meghalaya at Shillong [dated 23.07.2021 in W.P.(C) No. 344/2018, titled as “Dr. Shailendra Kumar and Others Vs. Union of India and Others”; 2021 SCC OnLine Megh 169]. The order passed by the High Court Meghalaya at Shillong reads as under:-

“Pursuant to the order dated 07.04.2021 passed by this Court, the respondent No.1 has issued policy guidelines relating to posting of Specialist and GDMOs with PG qualifications in CAPfs and Assam Rifles and the same is contained in communication NO. MHA ID No. 45025/006/2018-Pers. I dated 23rd July, 2021 a copy whereof has been submitted to this Court and is accordingly treated as part of the

record and marked as 'X'.

28. It is pertinent to note that the respondents have taken the plea that while passing the order dated 23.07.2021 with regard to transfer and posting policy of Specialist Medical Officers and General Duty Medical Officers with Post Graduate qualifications, the respondents relied upon decision dated 07.04.2021 passed by the High Court of Meghalaya in W.P.(C) No. 344/2018, whereas in subsequent order noted above, the High Court of Meghalaya has relied upon policy guidelines dated 23.07.2021 passed by the respondents. The policy guidelines mentioned in the order 23.07.2021 read as under:-

*“Government of India
Ministry of Home Affairs
Police-II Division/Pers.I Section
North Block, New Delhi*

Subject:- Policy regarding Posting/Transfer of Specialist Medical Officers and General Duty Medical Officers(GDMOs) with Post Graduate (PG) qualifications in CAPFs, NSG & AR.

12. Keeping in view the constant deficiency of Specialists in the medical cadre of CAPFs, it has been decided that GDMOs with PG qualification will be treated at par with Specialists for the purpose of their posting. While the Specialists shall invariably be posted in Composite Hospitals only, the GDMOs with PG qualification shall preferably and as far as possible, be posted in Composite Hospitals in order to enhance their efficiency. This would ensure maximum utilization of their

specialization. However, posting of GDMOs with PG qualification to a Composite Hospital will be subject to their satisfactory performance and professional competence in their particular specialty.”

29. The afore-noted guidelines mentioned in the order dated 23.07.2021 mention that GDMOs with PG qualification shall preferably and as far as possible be posted in Composite Hospitals.

30. The respondents on the other hand, to submit that pursuant to restricting of the cadres and accrual of new vacancies the manner in which postings and transfers have to be carried out, have relied upon order dated 02.09.2004 issued by the Ministry of Home Affairs, Government of India wherein it is mentioned that:-

“3(ii) At the level of the DIG and above, the promotions will be common to all forces based on combined gradation of the medical officers and other norms and through a selection process as prescribed by the Government.”

31. The petitioners had drawn our attention to Order dated 31.08.2022 passed by the Ministry of Home Affairs, whereunder pursuant to Cadre Review in respect of Medical Cadre in CAPF, NSG & Assam Rifles, additional vacancies were created. With regard to posts of DIG (Medical), the Order dated 31.08.2022 notes as under:-

“3. The details of locations/ place-wise post created on cadre review with duties are as under:-

A

XXX

B
Present Posts-36
& 50 posts

DIG (Medical)
(1 at ADG (Med) office, 02 at Medical Directorate at CISF & AR and 33 at 50 bed Composite Hospitals (18 in CRPF & 08 in BSF, 03 SSB, 02 ITBP, 01AR and 01 at NSG {with Director (med) NSG}
(AR-03, BSF-14, SSB-06, ITBP-05, CRPF-22) new creation at follocations:-

XXXXXX

4. All newly created IsG (Medical) and DIsG (Medical) will also perform clinical duties at their place of posting in addition to the above assigned duties. The newly created DIG (Medical) will be accommodated in the GC Hospital in CRPF and at Ftr Hqrs of BSF/ITBP/SSB & Hqr IG AR.”

32. Subsequent upon issuance of aforesaid order dated 31.08.2022, the respondents issued order dated 07.11.2022, whereby transfer in respect of CMO (SG)/ Spl/ GDMO, on promotion as DIG (Medical) CAPFs & AR was issued. In the said order dated 07.11.2022 the name of petitioner appears at Serial No. 7, whereunder while being posted at 25 Bn BSF, Chhawla, New Delhi he has been transferred to Frontier HQ BSF Mizoram Chachar at Silchar Assam. This Court finds that by this order, transfer of total 64 candidates has been directed. The petitioner has raised the grievance that while issuing transfer directions, the respondents in terms of order dated 31.08.2022 have not differentiated the posting

against 36 already existing vacancies and 50 newly created vacancies and has arbitrarily issued common transfer order. This Court also finds that as per Clause-4 of the order dated 31.08.2022, the officers who have been promoted to the post of DIG (Med) were to be posted to GC and Frontier Headquarters. However, on what premise the combined transfer list of already existing 36 vacancies and newly created additional vacancies has been directed by the respondents, is not mentioned in the order dated 07.08.2022. We find that as per policies dated 07.12.2011; 30.10.2015 and ID dated 23.07.2021, the GDMOs with PG qualifications have to be preferably posted at the Composite Hospitals only and petitioner is well within his rights to claim his transfer and posting against the 36 already existing vacancies. It is not the case of respondents that while issuing the transfer order dated 07.11.2022, the aforesaid policies dated 07.12.2011; 30.10.2015 and ID dated 23.07.2021 were not in force. It is also not the case of respondents that all the Officers who have been transferred to Composite Hospitals were Post Graduate. It is also not the case of respondents that the officers who have been transferred to Composite Hospital were senior to petitioner in merit against the already existing 36 vacancies. It is also not the case of respondents that there being no vacancy in the rank of DIG, CAPF cadre does not become common. As is apparent from the order dated 07.11.2022, Dr. Shambu Kumar Jha, appearing at Serial No. 41 has been transferred from CH BSF Kolkatta to CH CRPF Muzzafarpur Bihar. Hence, the plea of respondents that only sanctioned category of PG can be posted to a Composite Hospital, is misplaced and is thus, rejected.

33. In the light of aforesaid observations, this Court finds that transfer and posting of petitioner has to be governed by policy dated 07.12.2011; followed by orders dated 29.02.2012 and 23.07.2021 passed by the respondents. Accordingly, the transfer order dated 07.11.2022 in respect of petitioner is set aside and respondents are directed post the petitioner in any Composite Hospital of the CAPF in accordance with his seniority and merit against 36 already existing vacancies, within four weeks.

34. With directions as aforesaid, the present petition and pending application(s) are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 28, 2023

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