

\$~27

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

%

Date of decision: 23.01.2023

+ **W.P.(C) 16022/2022**

DEVI LAL CHAHAR

..... Petitioner

Through: Mr.Ashwini Kumar, Mr.Arup Sinha
& Ms.Arham Tanvir, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms.Pratima N. Lakra, CGSC with
Mr.Gokul Sharma (GP), Mr.Chandan
Prajapati, Mr.Apoorv Sharma, Advs.
with Mr.Govind Yadav, Asst. Comdt.
ITBP& Mr.Vibhor Dutt Kaushik SI,
ITBP.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 3213/2023

1. Present application has been filed on behalf of the respondents seeking recalling/modification of Order dated 21.11.2022.
2. We have heard learned counsel for the parties at length and with the consent of counsel for the parties, present writ petition is taken up today for consideration and the date already fixed i.e. 06.04.2023 stands cancelled.

W.P.(C) 16022/2022 & CM APPLs. 50000/2022 & 2856/2023

3. The present writ petition has been filed by the petitioner with the following prayers:

“1. Issue appropriate writ quashing the impugned order dated 16.11.2022 passed by the respondents.”

4. This Court vide Order dated 21.11.2022 stayed the operation of the Impugned Movement Order dated 16.11.2022 till further orders. It is stated that the petitioner has concealed material facts and has not placed correct facts on record. The impugned order is not a Transfer Order but a Movement order issued to the petitioner for consulting the psychologist at the Centre for Mental Health Care, Base Hospital, Delhi, ITBPF.

5. The petitioner is a Constable Driver posted in the Motor Transport Branch, Directorate General, ITBPF since 12.05.2021. On 07.09.2022, he made a complaint against respondent no. 3, Dy. Commandant (TPT). The respondents took note of the complaint and ordered an Inquiry vide order dated 21.09.2022, to check the veracity of the allegation made by the petitioner.

6. The Inquiry Board gave the following findings:

- i) *The allegations made by the petitioner against respondent no.3 are false.*
- ii) *In his complaint (Annexure- P/4 Colly) the petitioner has expressed that he may commit suicide.*

7. On the basis of the findings in the Inquiry, the (supra) Board made the following recommendations:

- i) *The petitioner may be subjected to examination/counselling by a Psychiatrist.*
- ii) *Thereafter, the petitioner may be transferred to any other*

formation so that the petitioner is not made to work under respondent no.3.

iii) Appropriate action may be taken against the petitioner for his undisciplined acts/omissions.

8. The respondents have stated that no disciplinary action has been initiated against the petitioner, since it is imperative to assess his psychiatric conditions in the first instance.

9. On the recommendations of the Inquiry Board, he was being sent for examination/counselling by a Psychiatrist at Centre for Mental Health Care, Base Hospital, Delhi, ITBPF in the best interest of the Respondent Force as well as the petitioner. The intention was to get the petitioner examined by the Psychiatrist, for the reasons as stated above so that any untoward incidents like suicide as had been mentioned by the petitioner in his complaint and other risks while performing his duties, i.e. while driving vehicles and handling firearms, could be avoided.

10. The Movement order for the petitioner to the hospital for a check-up, cannot be construed as a punitive action. Such routine/physical/mental check-ups are part of the conditions of service in the Armed Forces. If any Forced person is mentally disturbed, there is likelihood that he may inflict injury to himself and others.

11. Since the petitioner could not be sent for his Psychiatric opinion in view of the stay order dated 21.11.2022, the respondents are constrained to keep him idle and cannot employ him for duties till his clearance is obtained from the Psychiatrist. A prayer is therefore made that the Order dated 21.11.2022 whereby the operation of the Movement Order dated 16.11.2022 is stayed, may be re-called.

12. The learned counsel on behalf of the petitioner had submitted that the Transfer/Movement Order is wrong in the eyes of law as the petitioner is due for his transfer only in the year 2024, after completing his three years at this posting. It is claimed that respondent no.3 has been threatening the petitioner time and again to spoil his service record and also get him transferred. The petitioner has already apprised respondent no. 2 and made a complaint against respondent no.3 on 07.09.2022.

13. Learned counsel on behalf of the petitioner further submits that on his complaint dated 07.09.2022, an Inquiry Committee was constituted by the respondent no. 2 which has been concluded on 01.11.2022. However, the copy of the same has not been provided to him till date. Instead, the impugned order of transfer/movement has been made without any basis. The impugned order of transfer is mala-fide and is against the policy of the respondents.

14. Learned counsel on behalf of the respondents has clarified that the impugned order dated 16.11.2022 is not a Transfer order but is only a Movement Order for him to report to 22nd Battalion for his medical examination by the Psychiatrist in the Medical Health Care Base Hospital which is in Delhi itself.

15. Accordingly, no prejudice would be caused to the petitioner to get his medical examination conducted at the Base Hospital since he himself had stated in his complaint dated 07.09.2022, that *"I am disturbed a lot because of MTO sir. Because of which is feel like committing suicide. I have informed all these to my family members"*.

16. It is in the interest of the petitioner as well as the entire Force to get the medical check-up done of the petitioner from a Psychiatrist.

17. In view of the aforesaid facts, we hereby dispose of the present petition by vacating the interim order and giving liberty to the petitioner that if any cause of action arises, he may approach the appropriate Forum as per law.

18. Pending applications also stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 23, 2023/ab/PA

