

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 9404 OF 2023

Devendra Prasad Sharma

... Petitioner

V/s.

Union of India and Ors.

... Respondents

with

INTERIM APPLICATION NO. 17552 OF 2023

in

WRIT PETITION NO. 9404 OF 2023

Union of India through Senior Divisional
Security Commissioner (Co)/RPF/Central
Railway, Mumbai Divison, Mumbai

... Applicants

In the matter between

Devendra Prasad Sharma

... Petitioner

V/s.

Union of India and Ors.

... Respondents

Mr. A.S. Peerzada with Iqbal Shaikh for the Petitioner

Mr. T.J. Pandian with Gautam M. for the Applicants/Respondents

***CORAM : NITIN JAMDAR &
M.M. SATHAYE, JJ.***

DATE : 01 APRIL 2024

P.C. :-

By this Petition the Petitioner has challenged the order dated 21 July 2023 issued by the Inspector General of Railway Protection Force transferring the Petitioner out of Mumbai. This order is a general order encompassing around 60 employees.

2. The contention of the Petitioner is that the transfer of the Petitioner out of Mumbai Division would be contrary to the circular issued by the Ministry of Railways, Railway Board, Government of India on 14 July 2023 on the ground of keeping the working couple in the division covering maximum areas of probable postings so that they could stay together.

3. In this situation the conduct of any normal employee in this regard would be to make the representation to the employer recalling the order of transfer drawing their attention to the policy. The Petitioner did not even join on the transferred post. The Petitioner has rushed to this Court without making any representation and it is in December 2023 that the Petitioner made a representation. Therefore, since the ad-interim order is continuing, the Respondent – Railway Board has moved an application for vacating the order.

4. The Respondents point out orders passed by the Nagpur Bench of this Court in *Shailesh Pralhad Bhaskar vs. Union of India and Ors.* (WP No. 4616/2023 dated 25 July 2023) and various other cases arising on the same impugned order, where the challenge on the ground of couple posting was rejected giving the parties liberty to make a representation.

5. Apart from the policy of the Railway Protection Force and the above order, it would be also a matter of discipline. The jurisdiction of this Court is equity jurisdiction where the rights of the employee and the employer's need to inculcate the discipline will have to be balanced.

6. According to us, now one year has lapsed that the Petitioner has not joined on the transferred post, we dispose of the Petition permitting the Petitioner to make an application to the Respondent – employer relying on the policy and on such other ground and leaving it to the Respondent – employer to adopt such course of action. Interim Application is disposed of.

M.M. SATHAYE, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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