



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

% *Date of decision: February 26, 2024*

+ W.P.(C) 15400/2023 & CM APPL. 61762/2023

(36) MANMOHAN SINGH MATHUR Petitioner

Through: Mr. Kaushal Yadav, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mrs. Amrita Prakash, CGSC with
Mr. Vishal Ashwani Mehta,
Advocate

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J. (ORAL)

1. We have been informed by the counsel for the respondents that counter-affidavit filed in the Registry, day before yesterday. The same is not on record. Registry is directed to update the same. In the meanwhile, we have been given one physical copy of the same.

2. The petitioner, after enrolling with Border Security Force¹ as Head Constable (Radio Operator) on 23.11.2013, sought transfer on 14.05.2022 from 183 Battalion², BSF to 36 Bn, BSF on 'compassionate medical ground' of his mother being seriously ill and as she suffered a heart attack.

3. Upon recommendation of the Medical Officer attached to the petitioner's unit, the Commandant, 183 Bn, BSF³, approved his transfer

¹ Hereinafter referred as "**BSF**"

² Hereinafter referred as "**Bn**"

³ respondent no.3



on a compassionate medical ground to 36 Bn. *vide* Signal No.C/2315 on 06.06.2023. Accordingly, the petitioner requested for release from 183 Bn., BSF to join his new post with 36 Bn, BSF.

4. However, *vide* Signal dated 03.07.2023⁴, the Force Head Quarters⁵, BSF-respondent no.2 cancelled the earlier Signal dated 06.06.2023 qua transfer of the petitioner on compassionate medical ground, whereafter, the petitioner sent a representation dated 22.07.2023 against it to the Director Inspector General, (Communication), BSF⁶, which was declined *vide* order dated 30.08.2023.

5. The petitioner then made another representation dated 01.09.2023 to the Director Inspector General (Communication) against the Impugned Signal, however, receiving no response thereto, he has now filed the present petition seeking quashing of the impugned signal passed by the FH as also for restoration of transfer order alongwith a direction to the respondents for transferring him in terms of the previous Signal No.C/2315 dated 06.06.2023.

6. Learned counsel for the petitioner submits that the Impugned Signal cancelling the transfer of the petitioner is arbitrary and discriminatory and has been passed in colourable exercise of power, since the Commandant of the 36 Bn, BSF⁷ had a personal grudge against him, moreover, all the other similar situated personnel who were posted at the same battalion as the petitioner have been transferred as per their request as per order dated 06.06.2023.

⁴ Hereinafter referred as "*Impugned Signal*"

⁵ Hereinafter referred as "*FH*"

⁶ Hereinafter referred as "*DIG*"

⁷ the respondent no.4



7. *Per-Contra* learned counsel for the respondents submits that transfer is exigency of service and such demands of all the personnel cannot be allowed/ considered and are only subject to operational demands and administrative feasibility, moreover, the conduct of the petitioner has not been satisfactory and being a member of the disciplined force, he ought to be vigilant.

8. We have heard the learned counsel for the parties and perused the documents on record.

9. As rightly contended by the learned counsel for the respondents, and as per well settled law, transfer is indeed an exigency of service and is subject to discretion exercised by the employer, the respondents herein, with the employee, the petitioner herein, having very little to say. It is only in sparring circumstances when there are allegations of *mala fide*, bias, arbitrariness, non-compliance of any statutory acts, provisions, rules, regulations or like that an order of transfer can be stalled, cancelled, altered or stayed and not otherwise.

10. Reliance in this regard is placed upon ***SK Nausad Rahaman & Ors. Vs Union of India & Ors.*** (2022) 12 SCC 1, wherein the Hon'ble Supreme Court has held as under:-

"45.7. Transfer is a condition of service and it is within the powers of the employer to take a policy decision either to grant or not to grant ICTs to employees.

45.8. The power of judicial review cannot be exercised to interfere with a policy decision of that nature."

11. It is also a trite law that in matters of judicial review under Article 226 of The Constitution of India, the scope of interference in issues regarding transfer, being a matter of public policy, especially in the case of Armed Forces is extremely miniscule and can be so done, if there is



something striking in the root of the matter. Doing so, under the present circumstances, when the petitioner has made no allegations of *mala fide*, bias, arbitrariness, non-following of the principles of natural justice or non-compliance of any statutory acts, provisions, rules, regulations or like against the respondents and where the petitioner is belonging to the Armed Forces, shall tantamount to this Court non-settling the present position wherein various personnel like the petitioner are serving all across the country.

12. The above will be against the public policy. Thus, when public welfare is of paramount importance and takes over personal gain/ right, we would refrain from allowing the present petition.

13. Reliance is further placed upon ***Union of India & Ors. vs. S.L. Abbas*** (1993) 4 SCC 357, wherein the Hon'ble Supreme Court has held as under:

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject... .."

14. In view thereof, allowing the request of the petitioner by way of the present petition shall be to the prejudice of other similarly situated personnel like him as it would be disturbing the list of transfer followed by the respondents and would be beyond the purview of Article 226 of The Constitution of India. Reliance is placed upon ***Amarjeet Singh Dagar vs Union of India & Ors.*** 2022:DHC:847-DB

"23... .. Interference under Article 226 of the Constitution of India is permitted only where the Court finds either the transfer order is mala fide or that the service rules prohibit such transfer or that the Authorities issuing the order were not competent to pass the same. It must be remembered that



2022:DHC:847-DB WP(C) No.6311/2020 Page 9 of 13 transfer ordinarily is an incidence of service and must be left to the discretion of the Authorities concerned, which are in the best position to assess the necessities of the administrative requirements of the situation. The Courts must maintain judicial restraint in such matters”

15. Furthermore, this Court is agreeable with the submissions of the learned counsel for the respondents that the conduct of the petitioner was unbecoming of a member of a disciplined force, like BSF, which is certainly one of the, if not, the most relevant factor while adjudicating concerning such personnel and the Armed Forces.

16. Incidentally, after having deliberated upon the facts and issues involved as also our findings rendered hereinabove, we find that Co-ordinate Benches of this Court in the past, while dealing with the same set of facts under similar circumstances, in *Shyam Sunder Tiwari vs. Union of India* 2020:DHC:2363-DB; *Rachpal Singh vs. Union of India*; *Kiran Pooja vs. Union of India* 2020:DHC:2290-DB; *Meena Matai vs. Union of India* and *Laxman Singh Rawat Vs. Union of India & Ors.* 2021:DHC:1995-DB, have also declined to interfere with matters relating to transfer.

17. As such, we find no ground for interference in the impugned signal transferring the petitioner under the present circumstances.

18. Accordingly, the present petition alongwith the application is thus dismissed with no order as to costs.

SAURABH BANERJEE, J.

V. KAMESWAR RAO, J.

FEBRUARY 26, 2024/So