



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

% Date of decision: January 03, 2024

+ W.P.(C) 16701/2023, CM APPLs. 67311/2023 & 172/2024

(1) **SURESH KUMAR DUBEY**

..... Petitioner

Through: Mr. Vivek Sheel, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vivek Sharma, SPC with
Mr. Kapil Dev Yadav, GP for UOI /
R-1 to 4

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 172/2024

This is an application filed by Mr. Vivek Sharma, Senior Panel
Counsel for Union of India with the following prayers:

“In the cause and interest of justice, it is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

(a) order for correction the aforesaid order dated 22.12.2023 by marking the presence of the applicant counsel for Respondents/UOI.

(b) pass any other appropriate order(s) as may be deemed fit and proper in the facts and circumstances of the case.”



The application is accompanied by the affidavit of Mr. Vivek Sharma. Mr. Sharma states that he appeared in the proceedings before this Court on December 22, 2023. The statement is taken on record and the application is disposed of.

W.P.(C) 16701/2023

1. This petition has been filed by the petitioner with the following prayers:

“It is, therefore, most respectfully prayed that your Lordships may graciously be pleased to issue directions or writ more than one in nature including Certiorari and Mandamus against the Respondents and that:-

(i) This Hon’ble Court may graciously be pleased call for the complete/ relevant records of the case and;

(ii) This Hon’ble Court may graciously be pleased to quash and set aside impugned movement order No. BSF/FH/HOSP-II/M.O/2023/2205-08 dated 28.11.2023 issued by the Respondent No. 4; and/or

(iii) This Hon’ble Court may further graciously be pleased to issue Writ of Mandamus to Respondent No. 1 to adjudicate the representation dated 21.11.2023 by passing a reasoned order in a time bound manner.

(iv) Award cost of litigation in favour of the Petitioners, and/or

(v) Pass such other or further order or orders as this Hon’ble Court may feel deem fit and proper in the facts and circumstances of the case.”

2. The submission of the learned counsel for the petitioner is that the petitioner is working as Head Constable / GD diverted as Nursing



Assistants (HC/NA) serving the Border Security Force (BSF) continuously since January 2000. His headquarters is BSF SHQ Siliguri and he was attached to BSF FHQ Delhi Hospital II in May 2023.

3. According to him, he has been directed to report to his headquarters at Siliguri. He pleads that his two children are studying in Kendriya Vidyalaya, Tuglakabad, Delhi and being in mid academic session it shall be difficult for him to leave Delhi and get his two children admitted in an appropriate School in Siliguri.

4. He also submits that the elder son of the petitioner is an old case of schizophrenia and depression and is under medication since 2017 and as such, his personal presence is required. His son requires the supervision of the petitioner as there is no male member to look after him.

5. He also submits that the petitioner undertakes to join the headquarters at Siliguri immediately after their examinations are over in the month of April 2024.

6. On the other hand, learned counsel for the respondents would submit that the petitioner's headquarters being at Siliguri, and also as he was temporarily attached at BSF FHQ Delhi Hospital II, he cannot continue in Delhi and need to report at Siliguri.

7. That apart, he submits that the representation made by the petitioner has been considered by the concerned Authority who rejected the same.

8. Having considered the submissions made by learned counsel for the parties, this Court is of the view that the repatriation / direction to



the petitioner to report to his headquarters in Siliguri being in mid academic session requires deliberation. Accordingly, we dispose of the writ petition by taking the submission made by the learned counsel for the petitioner on record that the petitioner shall report to the headquarters at Siliguri on or before April 30, 2024 immediately after completion of the examinations of his children.

9. The petitioner shall file an undertaking before this Court in terms of the aforesaid submission of his counsel that he shall report to headquarters at Siliguri on or before April 30, 2024 within one week after serving a copy of the same on the counsel for the respondents.

10. In view of the above, it is directed that the movement order issued on November 28, 2023, shall not be given effect to till April 30, 2024. It is made clear that any violation of the undertaking by the petitioner, to this Court shall be taken seriously which may include initiation of contempt proceedings against the petitioner.

CM APPL. 67311/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JANUARY 03, 2024/aky