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

Date of decision: 20th October, 2020

+ W.P. (C) 6408/2020, C.M. Appl. Nos.22687/2020 (of the petitioner for ad-interim relief) & 22689/2020 (of the petitioner for appearance of party in person)

COL. AMIT KUMAR

.....Petitioner

Through: Mr. Rana Mukherjee, Sr. Advocate
with Mr. Sunil J. Mathews, Mr.
Ashim Dua, Ms. Daisy Hannah &
Ms. Surabhi Guleria, Advocates

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Harish Vaidyanathan Shankar,
CGSC, Mr. Varun Kishore,
Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

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[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. On 15th September 2020, when the writ petition first came up before this Court, the following order was passed:

“3. The petitioner, a Colonel in the Army (JAG Branch), has filed this petition impugning the posting

order dated 15th May, 2020. Though certain grievances have also been made in the petition, of harassment of the petitioner at the hands of respondent No.3 Col. Anand Samantaray and respondent No.4 Col. S. Mukherjee, but we are presently not concerned therewith and the senior counsel for the petitioner has also fairly stated that for the purposes of the approach suggested by us, the said aspect, for the time being may be ignored.

4. It is the case of the petitioner, (i) that his wife is also a Colonel in the Army, in the JAG Branch and presently both of them are posted at Jodhpur; (ii) that the petitioner, on 16th December, 2019 had made a statutory complaint and as a consequence whereof, vide impugned posting orders dated 15th May, 2020, issued four months in advance instead of normal two months in advance, the petitioner has been posted at Andaman and Nicobar and his wife at Bathinda; (iii) that though the petitioner has represented against the posting orders, referring to the policy of making an endeavor for posting of spouses at the same station and pleading that the petitioner has a four years' old son and requires parenting by both parents and the other family circumstances of the petitioner also do not, for the time being permit the petitioner and his wife to be posted at separate places but there has been no outcome thereof; and, (iv) that the petitioner, under fear of being posted out at a different station than his wife, on 15th August, 2020 has also applied for voluntary retirement.

5. The petitioner having applied for voluntary retirement, we at the outset only enquired from the senior counsel for the petitioner, whether not, in view of the petitioner having so applied for voluntary retirement, there is no need for us to go into the challenge to the posting order and the only direction which needs to be issued is for expeditious

consideration of the application for voluntary retirement and for stay of the posting order, which in any case is to come into effect in November, 2020, till then.

6. *The matter was passed over to enable the senior counsel for the petitioner to take instructions.*

7. *On pass over, senior counsel for the petitioner states that the petitioner, being unable to, at this stage, afford separation from his spouse, has opted for voluntary retirement, though would very much want to continue in service.*

8. *In view of the above, we have enquired from the counsel for the respondents No. 1 & 2 appearing on advance notice, whether it is possible for the petition to be considered as a representation of the petitioner and the matter being examined by an officer at the appropriate level, in a position to take the call/decision thereon.*

9. *The senior counsel for the petitioner also, under instructions has stated that the petitioner is not looking for posting at the same station as his wife, for all times to come but only till the child is of young age.*

10. *We also recollect having come across a circular in another case providing for an endeavor to be made for the parents to be posted at the same place, till the child is 10 years of age.*

11. *The counsel for the respondents No. 1 & 2 though has drawn our attention to page 206 to contend that the petitioner, even in his application for voluntary retirement, against the column whether he was under posting order, concealed the posting order but we are of the view that if the matter is to be looked at as a representation, the need to go into other*

details does not arise.

12. It is also the contention of the counsel for the respondents No. 1 & 2 that the petitioner has not even applied for spousal posting.

13. We now direct the writ petition to be treated as a representation by the petitioner for posting of the petitioner and his wife at the same station, wherever it may be and the authorities entitled to deal therewith to, within four weeks herefrom as sought, and which time is granted considering that the impugned posting is not to come into effect by then, inform, whether the petitioner and his wife can be given the benefit of spousal postings at the same place wherever it may be and if not, the reasons therefor.

14. The counsel for the respondents No. 1 & 2, under instructions states that though the wife of the petitioner was required to leave for Bathinda tomorrow but till the decision on the spousal posting is taken, she is also not required to proceed to Bathinda.

15. List on 20th October, 2020.”

2. The respondents Indian Army, in compliance have filed a short affidavit alongwith a copy of a speaking order dated 30th September, 2020 passed on the representation of the petitioner as contained in the writ petition. In the said order it has *inter alia* been reasoned as under:

“2. Upon due consideration of case, the following facts have emerged:-

(a) The officer got married to Lt. Col Annu Dogra, JAG, on 06 Jul 2008. At the time of their

marriage, he was an Infantry Officer and was posted to his Unit 14 SIKH LI in field, and his wife was posted at HQ 33 Corps. After three months of their marriage, the officer's wife was posted to HQ 16 Corps, at Nagrota as AJAG. Thereafter, the officer was also posted as OIC Legal Cell, HQ 16 Corps at Nagrota, on spouse coordinated posting.

(b) From Nagrota, the officer's wife was posted to Delhi in Dec 2010. Therefore, immediately after completion of his tenure at Nagrota, the officer was posted to Jaipur, a Class-A city and within about 4-5 hours journey by road from Delhi and a short 40 minutes journey by air.

(c) In Nov 2013, based on the officer's request on compassionate grounds, he was also posted to Delhi, where his wife was already posted.

(d) In Mar 2014, based on request on compassionate grounds from the officer's wife, her tenure in Delhi was extended to five years, to enable both of them to stay together for a longer period.

(e) In Dec 2015, the officer's wife, who was on family way, was posted to Pune, her home station.

(f) In Apr 2016, after completion of his tenure at Delhi, the officer was posted to HQ 16 Corps as DJAG on promotion to the rank of Colonel.

(g) In Oct 2017, again a request for spouse co-ordinated posting was received from the officer's wife, with a request to also extend her

tenure at Pune so as to sync her posting with her husband on completion of his tenure at HQ 16 Corps. The said request was also accepted and her tenure at Pune was extended by eight months.

(h) In Aug 2018, based on spouse posting request, the officer's wife was posted to HQ 12 Corps at Jodhpur and in Sep 2018 the officer was also posted to HQ 12 Corps, on spouse posting. Since then, both of them are serving together at Jodhpur.

(i) Thus, in 12 years of marriage, the officer and his wife were given three spouse coordinated postings.

3. The officer's wife, Lt. Col Annu Dogra stands empanelled to the rank of Colonel and is due to assume her rank on 30 Sep 2020, on the retirement of Col Mukul Dev, DJAG, HQ 10 Corps.

*4. The request of the officer for posting him and his wife at the same station has been duly considered independent of the above facts. Since both the officer and his wife belong to JAG Department, as on now, the only place where both of them can be posted together is New Delhi. The same has been duly analysed by treating the writ petition *ibid*, as representation. All aspects of the representation have been duly examined and the request for posting the officer and his wife at the same station has been considered sympathetically. However, the same cannot be accepted due to the following reasons:*

(a) The JAG Department at present is holding only 23 Colonels out of its authorization of 40 Colonels. As a consequence, in addition to static HQs, selection grade Colonel Appointments at 06 Command/Corps are vacant

or being tenanted in officiating capacity by non selection grade rank officers.

(b) JAG Department at Army HQ, New Delhi at present is holding three Colonels out of five authorized. Col. (Litigation), AG/DV has never been posted due to the interse priority and critical deficiency of Colonels in JAG Department. Based on Operational requirements, both JAG Dept, AHQ, New Delhi and AG/DV Dte AHQ, New Delhi, are at lower priority than field formations. Therefore, due to overall paucity of Colonels in the JAG's department, posting both the officer and his wife to Delhi will be at the cost of maintaining voids at formation HQs, which is not in organisational interest.

(c) Diversion of posting of the officer and his wife to Delhi will lead to critical voids in HQ Andaman & Nicobar Command and HQ 10 Corps and is against the organizational interest, especially in view of the present operational situation along the borders. HQ Andaman & Nicobar Command is the only HQ where an Indian Army JAG Colonel is posted in a Tri Services Command DJAG, HQ Andaman & Nicobar Command is an independent and important appointment in the Tri Services Command, which is not under JAG and therefore demands posting of an experienced offr.

(d) It has been highlighted by the officer in Para 5 (i) of the Writ Petition that he has filed a statutory complaint against the JAG on 16 Dec 19 alleging harassment and biased evaluation. It has been specifically alleged that the officer and his wife had been harassed at the hands of

JAG and especially Dy JAG HQ Southern Command since their present appointment. Therefore, posting the officer and his wife at JAG Branch, New Delhi, where JAG will be in the direct reporting channel of one appointment and both the appointments are in the HQ headed by the JAG, is not in organisational interest as the same will vitiate the working environment in JAG Department.

5. *It may be appreciated that despite organisational constraints, all requests of the officer and his wife for posting since marriage have been duly acceded to and all out efforts were made to post both of them in the same station. Presently, we have an Operational situation, which includes high security at all levels including HQ Andaman & Nicobar Command. At this crucial stage, it is the duty of all of us who have been nurtured by our organisation, to strengthen the hands of our officers and men along the borders.*

6. *After duly examining all aspects of the officer's representation and sympathetically considering his request for posting him and his wife at the same station, the Competent Authority has not accepted the said request due to organizational interest and exigencies of service."*

3. The petitioner has filed a detailed rejoinder to the affidavit aforesaid.

4. After the last date of hearing we came across prominent newspaper reports of the hearing before this court, containing the version of the petitioner and obviously at the instance of the petitioner. It appears that the said reports would not have appeared

in the media without the petitioner feeding the same. In the said media reports, the petitioner while highlighting his requirements/needs has painted the Army Authorities as insensitive. We have brought the said fact to the notice of the senior counsel for the petitioner and informed him that such conduct, when the matter was subjudice, cannot be appreciated.

5. The senior counsel for the petitioner states that he or his briefing counsel have no knowledge of the same and will convey what we have observed, to the petitioner and will ensure that the same, if attributable to the petitioner, is not repeated.

6. We have heard the senior counsel for the petitioner as well as the counsel for the respondents Indian Army.

7. The senior counsel for the petitioner has contended that the aspect highlighted in our order dated 15th September 2020, of requirements of the small child of the petitioner and the National Policy for Children, 2013, has not been dealt with in the consideration afforded to the representation of the petitioner.

8. Once we had mentioned all the facts in our order and pursuant whereto the matter has been considered, faults cannot be found with the speaking order, on the ground of one or the other aspects having not been expressly mentioned. The Officers of the Armed Forces are not trained to write orders/judgments, as of the Court, and which are required to deal with each and every contention. It is otherwise clear from a reading of the order dated

30th September 2020, that all aspects as required to be considered, have been considered.

9. The law laid down in *Shilpi Bose Vs. State of Bihar* (1991) Supp (2) SCC 659, *N.K. Singh Vs. Union of India* (1994) 6 SCC 98, *State Bank of India Vs. Anjan Sanyal* (2001) 5 SCC 508, *National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan* (2001) 8 SCC 574, *Union of India Vs. Janardhan Debanath* (2004) 4 SCC 245, *State of U.P. Vs. Siya Ram* (2004) 7 SCC 405, *Government of Andhra Pradesh Vs. G. Venkata Ratnam* (2008) 9 SCC 345, *Rajendra Singh Vs. State of Uttar Pradesh* (2009) 15 SCC 178 and our recent judgments in W.P. (C) 6755/2020 dated 22nd September, 2020 titled *Shri Bhagwan Vs Union of India* and *Baikuntha Nath Das Vs. Central Reserve Police Force* MANU/DE/1708/2020 is that the courts can interfere with orders of transfer, only on the grounds of violation of any Rule and/or on the ground of *mala fide*. No such ground is made out in the present case. The Rule requiring endeavor to be made to post both spouses, especially with young children, at the same station, is not mandatory and is subject to availability of vacancies for both spouses at the same station. The speaking order dated 30th September 2020 has given reasons, why for the time being it is not possible to post the petitioner as well as his wife at the same place.

10. On request, we have also heard the petitioner Col. Amit Kumar. He has stated that he had not leaked any news to the media and has not spoken to the media.

11. The senior counsel for the petitioner states that the application dated 15th August 2020 of the petitioner for pre-mature retirement be considered.

12. The counsel for the respondents Indian Army states that though the petitioner has withdrawn the said application but if desires the said application to be considered, the same shall be considered and orders in a time bound manner passed thereon and communicated to the petitioner.

13. The senior counsel for the petitioner states (i) that the petitioner and his wife be granted movement time, to join at the transferred post; and, (ii) the reliefs also claimed in the petition, of mandamus directing the Union of India to formulate a policy for spouse coordination and same place of posting for the spouses serving in the Indian Army, especially those who have no operational role such as JAG and AEC, and of following a transparent and unbiased coding system fed by the qualification requirements, not revealing the identity of officers, in matters of place of postings, be left open for consideration in an appropriate case.

14. The aforesaid requests are found to be reasonable.

15. The petition is dismissed, (a) granting 15 days time from today to the petitioner and his wife to join at their transferred places; (b) directing the Respondent Indian Army to decide the application of the petitioner for voluntary retirement within 45 days

of today and with liberty to the petitioner to pursue appropriate remedies if remains dissatisfied therewith; and, (c) leaving the reliefs aforesaid, of mandamus to Union of India, to be urged in an appropriate case.

16. The petition is disposed of.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

OCTOBER 20, 2020
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