
(2018) 10 DEL CK 0459

In the Delhi High Court

Case No : Civil Writ Petition No.10617 Of 2018

Cdr Shruti Dhawan

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 15-10-2018

Acts Referred:

Citation : (2018) 10 DEL CK 0459

Hon'ble Judges : G.S.Sistani, J;Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : Angsuman Ojha, Rohit Pratap, Maninder Acharya, Vinod Diwakar, Harshul Choudhary, Sahil Sood, Viplav Acharya

Final Decision : Disposed Off

Judgement

G.S. SISTANI, J

1. Challenge in this writ petition is to the order of the transfer of the petitioner herein who was commissioned in the Indian Army on 05.07.1999. At

present, the petitioner is attached with the Headquarters Eastern Naval Command, Vishakhapatnam since 01.02.2018. It is strongly urged before us

that this order of transfer is punitive in nature as the petitioner has made several complaints alleging sexual harassment by the Commanding Officer

and Executive Officer, INS Circars. It is also contended that the Board of Enquiry conducted the proceedings in gross violation of the Vishakha

guidelines, principles of natural justice and due process of law was also not followed. It is also contended that the petitioner has made a statutory

representation to Raksha Mantri, which has not been decided. It is argued that son of the petitioner is in Class VII and in case transfer orders are not

deferred, the child would suffer on account of midsession transfer of the

petitioner.

2. The petition has been opposed by Ms.Maninder Acharya, learned Additional Solicitor General, who submits that the petitioner herein approached

the Armed Forces Tribunal by filing O.A.1618/2018 which was withdrawn on the ground that the Armed Forces Tribunal did not have the territorial

jurisdiction. Counsel for the petitioner, however, submits that the OA was withdrawn as the matters relating to the transfer are to be considered by the

High Court and not by the Tribunal. Ms.Acharya further submits that uniformly, almost all orders of transfer are issued by the Naval Headquarters at

Delhi but that would not give rise to a cause of action in favour of the petitioner, who is stationed at Vishakhapatnam; the enquiry was conducted at

Vishakhapatnam and the entire record is also available at Vishakhapatnam, thus, this Court does not have territorial jurisdiction to try and entertain this

writ petition. Additionally, it is contended that on the one hand, the order of 27.08.2018, by which the allegations of sexual harassment were examined

and found to be baseless and unsubstantiated, has not been challenged and on the other hand, it is contended that the order of transfer is punitive in

nature.

3. Learned ASG submits that it is a matter of coincidence that the order of transfer and order rejecting the allegations were passed on the same date

whereas the order of transfer is routine in nature and the petitioner has not been punished but the transfer is on account of exigencies of service.

Ms.Acharya further submits that the child would not suffer on account of transfer as the Kendriya Vidyalayas have been formed for the benefit of all

the families of the officers and the medium of education syllabus as also the method of teaching is uniform and identical and thus, there will be no

break in session as far as the child of the petitioner is concerned.

4. Counsel for the petitioner, at this stage, has prayed that till such time, the statutory representation is decided, the transfer order may be kept in

abeyance, to which Ms.Acharya submits that in case a representation has been made directly to the Raksha Mantri, it would be barred in view of

Regulation 239 while learned counsel for the petitioner submits that there is no bar in approaching Raksha Mantri directly.

5. Be that as it may. Since the order of transfer as stated by the respondent is not punitive in nature and the same is on account of exigencies of

service and the transfer order is routine in nature, we are unable to accede to the request of the petitioner for seeking stay of the order of transfer.

Additionally, we do not find any allegations of malafide against any particular officer in the writ petition except that since the petitioner had made

allegations of sexual harassment, the order is punitive in nature. As far as the plea of sexual harassment raised by the petitioner is concerned, the

same has been rejected by an order dated 27.08.2018 against which for the present no appeal has been filed although it is submitted by the counsel for

the petitioner that copies of Board of Enquiry proceedings have not been provided. As far as grievance of non-supply of Board of Enquiry proceedings

is concerned, learned ASG submits that the Board of Enquiry proceedings will be supplied to the petitioner within a week. Ms.Acharya further

clarifies that in case of filing of a representation, a three tier procedure is to be adopted i.e. a representation firstly is to be considered by the

Command Headquarters and in case, it is rejected it is to be then considered at the Naval Headquarters, New Delhi and in case the petitioner is still

aggrieved, it is then to be forwarded to the Central Government. Ms.Acharya submits that the respondent will ensure that the representation dated

14.09.2018 is considered and decided within a period of one week from today by the Command Headquarters and thereafter in case the same is

rejected, the same would be examined by the Naval Headquarters at New Delhi within 15 days and in case, the petitioner is still aggrieved, he may

then approach the Raksha Mantri. Counsel for the petitioner submits that besides the aforesaid procedure, he would still want his representation to be

decided by the Raksha Mantri. Accordingly, we request the Raksha Mantri to consider the representation of the petitioner dated 14.09.2018 in

accordance with law within a period of three months.

6. The petition stands disposed of with the above directions.

7. Dasti.