

(2020) 06 DEL CK 0172

In the Delhi High Court

Case No : Civil Writ Petition No. 3696 Of 2020, Civil Miscellaneous Application
No. 13224 Of 2020

Kapil Kumar Raghav And Others

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 29-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2020) 06 DEL CK 0172

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Naushad Alam, Rishub Shau, Rishi Raj Meena

Final Decision : Dismissed

Judgement

Srl.,Rank,"Posted out from

Delhi",Posted to Delh,Others,Date of issue

1.,ASI (Min),50,51,107,17.03.2020

2.,HC (Min),11,2,17,16.03.2020

3.,CT (Dft),1,,,16.03.2020

,Total,62,53,124,

Therefore, ATO 2020 in respect of Insp (Min) and SI (Min) was not issued." ,,,,

6. The requests/representation submitted by some of the petitioners were examined in detail but could not be acceded to by the Competent ,,,,

Authority in view of the policy decision taken by FHQ that all such FHQ orders which were already issued are to be implemented as well as ,,,,

due to lack of merit/no vacancy. ,,,,

7. BSF is mainly deployed in field on Border Guarding duties in extreme hard/hard areas & very limited posts are available in Delhi. Very,,,,,

rarely, one gets a chance to serve in Delhi during his entire service.",,,,,

8. Since the transfer orders were issued way back in March, the replacements of persons posted out from Delhi have already planned to",,,,,

come to Delhi and settle their families as well as plan for academics of their children. Moreover, the persons coming to Delhi as",,,,,

replacements for the petitioners have already completed their tenure of four years in field i.e. extreme hard area/hard area/field area and,,,,,

will be at great disadvantage if they are denied their opportunities for posting to Delhi. Persons coming from field areas i.e. extreme,,,,,

hard/hard areas should be given preference as they are coming to soft area in Delhi after completion of their tenure.,

9. Deferment of the posting orders of petitioners at this stage is very difficult as more than three months period have passed after issuance,,,,,

of posting orders and it shall also have a chain effect upto field formations. If the posting orders in respect of the petitioners are deferred,,,,,

at this stage, it will deprive the personnel serving at extreme hard/hard areas (field formations) for one year who have got an opportunity to",,,,,

serve in Delhi during their entire service for which they have already planned in March, 2020. Many of them have already been relieved",

for joining at Delhi. It is pertinent to mention that the petitioners transferred out from Delhi are trying to avoid going to field/hard/extreme,,,,,

hard areas on some pretext or other whereas. Most of the officers and the large number of BSF personnel have already moved across the,,,,,

country after lifting of lockdown or annual transferred/return from leave/temporary duties.,

10. BSF always takes care of their brave man and families as such BSF has decided to allow all posted out persons to retain their present,,,,,

BSF accommodation wherever occupied by them and as per their request, till the end of the academic year. Moreover, CBSE and other",

boards have already postponed/deferred their academic session. Besides, the petitioners can also avail HRA (House Rent Allowance)",

facility as per Govt. of India orders.,

11. BSF being a Central Armed Police Force is exempted from restrictions of

lockdown and CAPF personnel have been functioning,,,,,

normally during the pandemic. Moreover on restoration of train/air service, a large number of BSF officers/personnel have already",,,,,

proceeded on transfer and return from leave. Transferred out officers have already joined at their new places of posting as per orders.,,,,,

Arrangements have been made to provide these personnel with 14 days quarantine facility at their places of joining as per BSF Medical,,,,,

Directorate orders. It is humbly submitted that the orders of posting/transfer have been issued without any discrimination in accordance,,,,,

with transfer rules. However, posting/transfer orders in respect of Inspr. (Min.) and SI (Min.) could not be issued earlier and it was decided",,,,,

to defer the same till next year in view of the spread of Covid 19 in April/May. Pretext of not complying with orders of FHQ which has been,,,,,

issued in March, 2020 by petitioners is not in good order and discipline of force whereas many officers have been posted out alongwith",,,,,

other cadres without any discrimination and officers have already complied with orders of FHQ on posting/transfer.,,,,,

13. It is further submitted that deferment of transfer order of the petitioners will not only put the other personnel who have been posted to,,,,,

Delhi as replacement for the petitioners at great disadvantage but also may lead them to seek legal remedies.â??,,,,,

3. We have heard the counsel for the petitioners, the counsel for the respondents as well as Mr. Rajesh Nirwan IG Prov/Pers, FHQ BSF, New Delhi,",,,,

who is present pursuant to the direction in the earlier order.,,,,,

4. The counsel for the petitioners has today raised the following concerns: (i) that the discrimination against the petitioners continues as Annual,,,,,

Transfer Orders of other cadres have been deferred for a year owing to prevalent Covid-19 situation; (ii) that with the restricted functioning of trains,",,,,

there is no provision for movement and the petitioners, even if were to apply for train reservation today, would get it for after one/one and a half",,,,,

month and during all which time, they will be treated to be on leave for no fault of theirs; (iii) since the last date of hearing, relieving order of only of",,,,,

one of the petitioners has been issued and the relieving orders even of the other petitioners have not been issued; (iv) that none of the personnel from,,,,,

outside Delhi who are to relieve the petitioners at Delhi, have reported at Delhi

as yet; (v) that the individual problems of each of the petitioners",,,,,
highlighted in the petition have not been considered; (vi) that only 55 persons
have been transferred to Delhi and they too have not joined at Delhi as,,,,,
yet; and, (vii) that travel allowance applied for by one of the petitioners was also
not released on the ground of there being no budgetary sanction",,,,,
therefor.,,,,,

5. Sri Rajesh Nirwan IG Prov/Pers, FHQ BSF, New Delhi, assures that all proper
arrangements for movement of the transferred petitioners, as also",,,,,
of others, from one place in the country to the other, will be made and travel
allowance as applicable would be released. He also explains that out of",,,,,
10 cadres, Annual Transfer Orders with respect to 06 had been issued prior to
the prevalent disturbances on account of Covid-19 and the Annual",,,,,
Transfer Orders for the remaining 04 cadres remained to be issued on account of
administrative disturbance. He has also explained that the personnel,,,,,
posted at far off places, having difficult postings, on receipt in March 2020, of
transfer order to Delhi, have already made plans for being at Delhi for",,,,,
the next four years and if the transfer orders of the petitioners are interfered
with, as a natural corollary thereto, those happy with the posting to Delhi,",,,,
would not be able to come to Delhi, causing heart burn, loss of morale and
resultantly affecting their performance and which can be critical at difficult",,,,,
postings. It is also informed that there was/is no intent to discriminate those
whose annual transfer orders were issued before the pandemic or to,,,,,
confer any benefit to those whose annual transfer orders had not been issued till
then.,,,,,

6. The apprehensions expressed by us in the order dated 23rd June 2020
reproduced above, of interference with the transfer orders of the petitioners",,,,,
having a cascading effect and prejudicing others not before us, as per the
response of the respondents, are true. We can well understand the",,,,,
expectations of those posted at borders or in conflict striven areas and their
family members, to posting in the capital city of the country, where they",,,,,
can also have the comfort and company of their families. We would be loathe to
disappoint such other members of the force, while showing sympathy",,,,,
to the petitioners before us. Expression of such sympathy to petitioners on the
one hand, while closing our eyes to others, would not augur well for",,,,,
judicial propriety. We would refrain from doing so at the cost of appearing

harsh to the petitioners.,,,,,,

7. All the other concerns expressed on behalf of the petitioners, as per the response of the respondents, stand addressed. The benefit, of retaining" ,,,,,

official accommodation by the families of the petitioners, till the next Academic Year, has already been granted. It is also informed that such of the" ,,,,,

petitioners who are not residing in official accommodation, would also have the benefit of HRA, till the next Academic Year, if their families continue" ,,,,,

to reside at Delhi.,,,,,,

8. Else the petitioners have not shown any right to remain at Delhi. Merely because Annual Transfer Orders for some others have not been issued," ,,,,,

would not entitle the petitioners also to object to their Annual Transfer Orders and to object whereto they have no right. The arguments of,,,,,

discrimination are misplaced. Article 14 or any other provision of the Constitution of India or any law do not confer any right to equality with those,,,,,

who may have been mistakenly or due to any oversight or for any other justifiable reason conferred any benefit to which they are not entitled in law.,,,,,,

As is often said, there is no concept of negative equality. We are satisfied with the reasons disclosed by the respondents for Annual Transfer Orders" ,,,,,

of some cadres remaining to be issued and merely because the said transfer orders have not been issued, would not confer any right on the petitioners" ,,,,,

to have their own Annual Transfer Orders interfered with by the court.,,,,,,

9. Though we are satisfied that the other inconveniences/ hardships, pointed out by the counsel for the petitioners on account of the prevalent" ,,,,,

circumstances have been taken care of by the respondents, we once again implore the respondents to, even while issuing the relieving orders," ,,,,,

sympathetically deal with individual requests of the petitioners, in accordance with Rules." ,,,,,

10. Hence, no ground for interfering with the Annual Transfer Orders is made out." ,,,,,

11. The petition is dismissed.,,,,,,