

(2001) 04 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : SWP No 2456 of 2000 with CMP No. 2665 of 2000

Lt.Col.B.C.Choudhary

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 23-04-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2003) 2 SCT 877

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : Subash Bhat, B.S. Salathia, Advocates appearing for the Parties

Judgement

Arun Kumar Goel, J.—Admitted facts of this case are that petitioner is a serving army personnel in the rank of Lt. Col. and was

commanding 611(1) AD Brigade Signal Co. since December, 1999. His medical category is as under :

1. Med Cat SI, HI, A2, P2, E1.
 2. Med restriction :
 - (a) Not to be posted above 2000 mtr.
 - (b) Not to be posted in CI Ops Area.
 - (c) Not to drive Vehs.
 - (d) Not to Swim.
 - (e) Not to stand near open fire.
 - (f) Not to stand near moving machinery.
 - (g) Fit for duties not involving crawling/PT/ Parade/Games.
 - (h) Review by AMA every month.
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(i) Not to handle fire arms and live amn.

(Above details are extracted from the communication dated 13.11.2k, that was submitted by the petitioner).

2. It is further not in dispute that petitioner was posted as Officer Commanding of the said Brigade. Petitioner alleges harassment even in his

posting to the aforesaid 611(1) AD Brigade. According to him he had hardly come out from it, when another order has been issued by respondent

No. 2 on 6th October, 2000, whereby he has been transferred to Northern Command, Signal Regiment in the town of Udhampur itself and at a

distance of 8 kms from his present place of posting. Thus impugned order AnnexureC is issued for malafide consideration to achieve alien purpose.

It is this order that has been challenged in the writ petition. In the context of present case grounds on which this order is challenged need to be

briefly noted which are as under :

a) That the order impugned in the petition is against fundamental, legal and statutory rights of the petitioner.

b) That the order impugned has been passed with a view to cause harassment to the petitioner despite the fact that he is not medically fit to

perform the duties/functions of the post to which he is being transferred.

c) That the petitioner has already made representation to the competent authority for cancellation of his transfer and he is prepared to serve any

where in India in a plain area and perform the duties in consonance with the medical restrictions imposed by different Medical Officers in view of

disability suffered by him.

d) That the order impugned in the petition is illegal, arbitrary and an outcome of malafide exercise of authority to achieve the alien purposes, hence

is required to be quashed by the Hon'ble Court.

e) That the petitioner who is medically declared unfit to drive a vehicle is intentionally being deprived of the same knowing fully well that he is

incapable to move around on his own to perform his duties. This action on the part of respondents is sheer abuse of power to harass a disabled

person, as such he has approached this Hon'ble Court for seeking justice.

3. Respondents when put to notice on 15.12.2000 were required to put up their version before the court when no interim relief was granted.

Thereafter, when case came up before the Court on 21.12.2000 following order was passed :

Mr. B.S. Salathia, Advocate for the petitioner,

Mrs. Deepka Mahajan, Advocate vice Shri Subash Bhat, Sr. Central Govt. Standing counsel.

This case came up before the Court on 15.12.2000, when a prayer was made for the grant of interim order on behalf of the petitioner. With a view

to know the version of the respondents, no interim order was passed. Today when the case is taken up, learned counsel for the respondents stated

that despite order dated 15.12.2000 having been conveyed to the respondent authorities, no instructions have been imparted so as to inform the

court or to contest the claim of the petitioner for the grant of the interim relief. It is further requested that time may be allowed for filing objections

to the main writ petition as well as the CMP No. 2665/2000.

Prayer is granted and four weeks further time is allowed to the respondents for filing objections to the writ petition as well as to the CMP.

Subject to filing of the objections and opposite side being heard, operation of Order No. 391873/PO/MS13 dated 18th October, 2000 so far as

it concerns the petitioner sidestepping him from the post of OC. 611(1) AD Bde Sig Copy to Northern Command Sig. Regt. will remain in

abeyance till the next date of hearing. Incidentally, it may be observed here least that could be done by the respondents was to have atleast

produced the original record relating to the case in question. Again without saying anything further, it is left here only.

4. Thus it is by virtue of this order that petitioner continued to be Officer Commanding, 611(1) AD Bde. Sig. Co., Northern Command.

Thereafter, detailed objections have been filed. Allegations of malafide made by the petitioner are alleged to be baseless and vague and thus this

court cannot go into and make roving inquiry into such allegations. Besides this transfer is justified on the plea that it is for the respondents to

decide whom to post and where.

5. It is further case of the respondents that posting of the petitioner at Udhamur was in consonance with medical category and he was thus posted

in the aforesaid 611(1) AD Bde Sig Co. When it was felt that his sidestepping in the same unit was warranted, appropriate orders have been

passed. With reference to AnnexureD, it is stated that petitioner has shown his willingness to be posted to any independent Signal Company not involving additional movements, but he is not willing to move out to another unit in the same station which is less demanding, involving no additional movement. Regarding inconvenience to his family, allegations made in the writ petition are stated to be not correct and it is further pleaded by respondents that they were even prepared to consider his case for out of turn allotment of married accommodation keeping in view the circumstances of his posting to Northern Command Signal as allowed by his medical category. Merely because there is provision for vehicle cannot be reason not to effect his posting. Respondents have stated that in case petitioner needs the provisioning of a vehicle for duty, he can always approach the unit as per rules. Respondents have further pleaded that performance of the petitioner from December, 1999 to September, 2000 also necessitated reconsideration of his posting and at the same time he was taking heavy doses of medicines and was as such unable to attend to his office duty regularly. This badly effected operational preparedness and management of the Company. At the same time they claim that no other officer is posted in Signal Company who can visit these areas. Thus all these factors were adversely affecting the operational/administration efficiencies of the unit and therefore, a conscious decision was taken in organisational interest to sidestep the petitioner to Northern Command Signal Regiment.

6. At the time of hearing of this writ petition Shri Salathia, learned counsel for petitioner stated that impugned order is purely aimed at causing harassment to his client and thus the same cannot be sustained. He further pointed that till and so long representation of the petitioner attached with AnnexureD was disposed of, in all fairness his client should not have been moved out. By referring to paras 6 and 7 of the writ petition he also stated that claim of his client has since been admitted, therefore, writ petition deserves to be allowed.

7. All these pleas have been controverted by Shri Bhat, learned counsel for respondents who stated that impugned order suffers from no infirmity either in law or in fact. Thus according to him in consonance with the requirement of the organisational set up order has been passed after taking

overall view of the whole case by his client. Regarding malafide and harassment, Shri Bhat pointed out that there is no foundation laid in the writ

petition to call for any interference in the present writ petition. Allegations made are vague and uncertain, therefore, those need to be simply

ignored without being referred to. He has disputed all the grounds.

8. After having heard learned counsel for the parties and after having gone through the writ petition, its objections as well as specific grounds

pleaded in support of this case (supra), it is felt that there is no merit in this writ petition. As already noted admittedly petitioner is suffering from

certain medical disability as per rules governing him. Thus keeping in view this fact, he was posted at Udhampur as Officer Commanding of 611(1)

AD Bde Sig. Company. Thereafter, for the reasons explained in their reply respondents have passed impugned order sidestepping him but in the

same station. When a reference is made to grounds (a) and (b) it is not understood as to how shifting the petitioner in the same station at a distance

of 8 kms without in any manner affecting him, results in causing harassment to him. He has not explained as to what was the nature of his duty in the

present and how and in what manner that he is required to be performed is harmful to him. It is at same town where he has been sidestepped. Thus

plea of harassment based on this ground has been raised simply to be rejected. In case petitioner was genuinely and in fact was not medically fit to

perform duties/functions of the post to which he is being transferred, he would have and in fact should have given details thereof. In the absence

thereof it can safely be inferred that there is no problem as pleaded by him, which requires to be mentioned by the petitioner in support of grounds

(a) and (b).

9. Similarly ground (d) is likewise without any foundation. Though in the matter of transfer, court will be loath and more reluctant to interfere, unless

it is shown to be either in violation of some conditions of service or statutory rules in addition to the fact that the order impugned is based on

bias/malafide. There is nothing either argued muchless pleaded that any condition of service or statutory rules has been violated. How the impugned

order is arbitrary and was malafide no facts have been pleaded in the writ petition. In case petitioner is prima facie able to demonstrate those, his

case can certainly be examined. When a reference is made to the writ petition,

there is no foundation laid on facts. In this context it may be noted that so far malafide in law is concerned nothing can be spelt out from the circumstances pleaded in the writ petition. Thus this ground is also not open to the petitioner.

10. Regarding ground (e) it is specifically stated by respondents that wherever provisioning of vehicle in connection with discharge of his duty is necessary, he can approach the authority under rules. Even otherwise whenever in connection with discharge of his official duty he requires provisioning of vehicle, respondents cannot say that though his duty requires such provisioning but they will not provide the same. Thus the allegation that impugned order is sheer abuse of power to harass a disabled person cannot be accepted. In this view of the matter on ground (e) also, the petitioner cannot maintain this writ petition. It deserves dismissal as already observed.

11. Another reason to take this view is that petitioner is not being posted out of Udampur. It is not understood as to why he should insist that he be posted to any Independent Signal Company not involving movements. This is no part of either petitioner or this court to direct where petitioner should be posted.

12. While opposing the writ petition respondents have referred numerous precedents in their objections with a view to say that transfer being an exigency of service, a person like petitioner cannot insist that he should be posted against a particular post or at a particular place. Even otherwise it is well known principle of service jurisprudence that who is suited where is to be decided by the employer and not by this court; unless of course order of transfer falls within any of the exceptions noted hereinabove on the basis whereof court can look into the same. It has been held that it is not the situation in the present case.

13. No other point is urged.

14. As a consequence of it this writ petition is dismissed being devoid of any merit. Consequently interim order dated 21.12.2000 shall stand vacated forthwith. However, before parting with this case it may be observed that respondents will be free to examine the representation of the petitioner submitted as Annexure D with the writ petition and in such a situation they will take an independent decision without being in any manner

influenced by the dismissal of this writ petition. And in case he is found entitled to any relief, the same shall be allowed to him.

CMP No. 2665/2k

14. No orders in view of the order passed in the main matter, stands finally disposed of