

(2017) 12 DEL CK 0488

In the Delhi High Court

Case No : Civil Writ Petition No. 11539, 11568 Of 2017, Civil Miscellaneous No. 47005, 47006, 47143, 47144 Of 2017

Preeti Hiranwal

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 22-12-2017

Acts Referred:

Citation : (2017) 12 DEL CK 0488

Hon'ble Judges : Hima Kohli, J; Rekha Palli, J

Bench : Division Bench

Advocate : Dr. Surender Singh Hooda, Abha Malhotra

Final Decision : Disposed Of

Judgement

1. The petitioners in both the petitions seek quashing and setting aside of their respective posting/transfer orders dated 29.11.2017 and 30.11.2017 in

W.P.(C) No.11539/2017 and W.P.(C) No.11568/2017, respectively.

2. At the outset, we have asked learned counsel for the petitioners to explain the need to file the photographs collectively marked as Annexure P-5

(colly) in W.P.(C) No.11539/2017 and Annexure P-4 (colly) in W.P.(C) No.11568/2017. His submission is that the said photographs had to be filed to

establish that they do not pertain to either of the petitioners in the present petitions, but relate to third parties. We are not inclined to accept the said

submission. At best, the petitioners could have placed the said photographs, that are patently sleazy and scandalous, in a sealed cover for the perusal

of the Court. Similarly, the photographs sought to be handed over across the board by learned counsel for the petitioners for substantiating his

submission that some indecent video clips/whatsapp chats have been wrongly

attributed to the petitioners and have been made viral on the social media, ought to have also been filed in a sealed cover. No such procedure has been followed by learned counsel for the petitioners which, in our view, is most inappropriate.

3. At this stage, Dr.Hooda, learned counsel for the petitioners tenders an unqualified apology and assures us that he shall be more careful in the future. In view of the apology tendered by learned counsel for the petitioners, we shall let the matter rest here. However, directions are issued to the

Registry to place the above annexures in a sealed cover.

4. The petitioner in W.P.(C) No.11539/2017 who is a Mahila Constable in the BSF, was posted at Ajnala, District Amritsar while the petitioner in

W.P.(C) No.11568/2017 was working as the Commandant in the 70th Batallion, BSF, Ajnala, District Amritsar, Punjab. They have both prayed for

quashing of their respective transfer orders on the ground that the said orders are stigmatic in nature.

5. Learned counsel for the petitioner states that while the petitioner in W.P.(C) No.11539/2017 has been posted out to 110 Batallion, BSF, which is

presently at Gauhati, the petitioner in W.P.(C) No.11568/2017 has been posted to the Sector Headquarters, BSF, Aizwal. He further submits that on

30.11.2017, a Staff Court of Inquiry was initiated on the basis of a complaint dated 28.11.2017, alleging inter alia that the petitioners herein are

involved in a sex scandal and contemporaneously, both of them have been posted out of their present places of posting, which action according to him,

is punitive in nature.

6. We had passed over the matter on the first call to enable Ms.Malhotra, learned counsel for the respondents to obtain instructions from the

department. On pass over, she submits on instructions that the Court of inquiry on the basis of the complaint received by the respondent No.2/BSF,

shall be conducted at Ajnala, District Amritsar. She further states that the petitioner in W.P.(C) No.11568/2017 has remained posted with the same

battalion ever since the year 2005, though he had moved to different locations with the same battalion over the past few years and he was in any

event, due for a posting out of the said battalion. She submits that it is for this reason that he has been posted to the Sector Headquarters, BSF,

Aizwal.

7. As far as the petitioner in W.P.(C) No.11539/2017 is concerned, learned counsel for the respondent submits that by now she has completed a tenure of 2 ½ years at Ajnala, District Amritsar, Punjab and has been posted to Gauhati, in terms of the impugned transfer order.

8. Having regard to the fact that both the petitioners would be required to appear in the inquiry initiated by the department that shall be conducted at

Ajnala District, Amritsar, we have inquired from learned counsel for the respondents as to whether it is feasible to reconsider the transfer order

passed in respect of the petitioner in W.P.(C) No.11539/2017. In response to this Court's query, Ms.Malhotra states on instructions, that the

respondents shall issue a fresh posting order in respect of the said petitioner, by posting her at any place in the Western Theatre.

9. In response to the submission made by learned counsel for the petitioners that while the petitioners have been punitively transferred by the

respondent, no action has been taken against Shri Manoj Kumar, Second-in-Commandant, even though a complaint against him dated 04.12.2017, was

submitted by the petitioner in W.P.(C) No.11539/2017 to the Director General, BSF, learned counsel for the respondents states on instructions that

apart from an inquiry that has already been initiated against the said officer, in terms of the order dated 05.10.2017 (Annexure P-11 enclosed with

W.P.(C) No.11568/2017), a separate inquiry shall also be initiated against him with regard to his alleged complicity in the present case, in view of the

allegations levelled against him by the petitioners.

10. It is hoped and expected that if in the course of the inquiries that are being conducted/proposed to be conducted by the respondents, any more

leads showing the involvement of any other person(s) come to light, then the scope of the said inquiries shall be suitably expanded to include those

leads and further appropriate action taken in that regard.

11. In view of the submissions made on behalf of the respondents, we are of the opinion that no interference is called for in the transfer order passed

in respect of the petitioner in W.P.(C) No.11568/2017. However, the transfer order dated 29.11.2017, passed in respect of the petitioner in W.P.(C)

11539/2017 is quashed and set aside with directions issued to the respondents to issue a fresh transfer order, by posting her at any place in the

Western theatre. Till a fresh transfer order is passed, the petitioner in W.P.(C)

No.11539/2017 shall remain posted at Ajnala, District Amritsar,
Punjab.

12. Both the petitions are accordingly disposed of along with the pending applications.