
(2016) 02 DEL CK 0159
In the Delhi High Court
Case No : W.P. (C) 6889/2015

R.D. Thakur

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-02-2016

Acts Referred:

Citation : (2016) 02 DEL CK 0159

Hon'ble Judges : Hima Kohli and Sunil Gaur, JJ.

Bench : Division Bench

Advocate : Amit Kumar, Advocate, for the Appellant; Ripu Daman Bhardwaj, CGSC and T.P. Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. The present petition has been filed by the petitioner praying inter alia for issuing a writ of certiorari, for quashing his Posting Order dated 25.6.2015 whereunder, the respondent no.1/Directorate General, Border Roads Organisation (in short "BRO") has transferred him from Rongly, East Sikkim to Limking, Arunachal Pradesh.

2. In a nutshell, the facts of the case are that the petitioner who is presently working at the post of a Medical Officer, Grade-II, in General Reserve Engineering Force (in short "GREF"), had joined the services of the respondent no.1 on 26.5.2010. Initially, the petitioner was posted at Pithoragarh, Uttarakhand, a place identified as a "Soft Area" in terms of the Posting Policy in respect of GREF officers (Annexure P-7 colly). The petitioner had remained posted at the said place till the posting order dated 18.12.2013 was issued, transferring him to Rongly, East Sikkim. Effectively, the petitioner joined his next place of posting, as directed, on 6.9.2014. It is submitted by learned counsel for the petitioner that as per the Posting Policy, a posting at Rongly, East Sikkim is treated as a "Hard Area" (HA) and under Rule 15 of the Posting Policy which specifies the duration of tenure in various areas, the petitioner was expected to remain posted at Rongly, East Sikkim for a period of 3-3 1/2 years, which would have commenced

from 6.9.2014 and expired on 5.9.2017. However, much before the expiry of the said tenure, the petitioner had received the impugned order dated 25.6.2015, transferring him to Limking, Arunachal Pradesh, which is a "High Altitude Area" (HAA), where ordinarily, an officer is required to serve for a period of two years.

3. Aggrieved by the impugned transfer order dated 25.6.2015, the petitioner had submitted a representation dated 4.7.2015 to his superior officer (Annexure P-9). The said representation was recommended by the Commander and the Chief Engineer, but it remained pending before the DG, BRO. In view of lack of response from the competent authority, the petitioner approached this Court by filing the instant petition.

4. While issuing notice on the present petition on 20.7.2015, it was directed that the petitioner would not be forced to move till the next date of hearing. The said order is continuing to operate in favour of the petitioner and on the strength of the said order by now he has remained at Rongly, East Sikkim for a period of over one and a half years.

5. In his representation, the petitioner had explained his family circumstances i.e. the advanced age of his parents, the fact that his son is undergoing treatment at R&R Hospital for chronic Hepatitis-B disease and he had also relied on the Posting Policy dated 14.5.1999, which prescribes a duration of 3-3 1/2 years at a place of posting treated as a "Hard Area". The petitioner had stated that he had completed only a period of 10 months at Rongly, East Sikkim and had requested that his case may be considered sympathetically and he be allowed to complete the "Hard Area" tenure.

6. By the time the respondent had filed a counter affidavit in the case, it had proceeded to dispose of the petitioner's pending representation dated 4.7.2015, by passing an order dated 28.7.2015 (Annexure R-4), wherein it was stated that out of the total service of five years rendered by the petitioner, he had spent a period of four years and two months in a "Soft Area" and 10 months in a "Hard Area". It was clarified that majority stations of the BRO are in predominantly remote and difficult mountainous areas including "High Altitude Areas" and very few stations are available in "Soft Areas/Metros" and the respondents have to ensure that its serving personnel get an equal opportunity to serve in "Soft Areas/Metros", which provide adequate medical, educational and other administrative facilities with a good quality of life. The respondents highlighted the need to rotate the officers as per the organisation's demand. It was also noted that the petitioner had been posted to peace area at Pithoragarh, Uttarakhand in consideration of his previous service and in the light of his application dated 01.6.2010, wherein he had brought out the fact that his son was studying in class XII, which was a very critical period and had requested that he be posted in any place near Delhi and in view of the said request, the officer was posted at Pithoragarh, Uttarakhand, a "Soft Area", which is comparatively closer to Delhi.

7. In the reply dated 28.7.2015, issued by the office of DG, BRO, it was also highlighted that the place of posting of the petitioner at Limking, Arunachal Pradesh, where he was to render service, was in respect of a project named "Arunank", which is one of the most important projects of the BRO tasked for construction of strategically and operationally important road infrastructure along under developed regions of Arunachal Pradesh. In view of very limited inhabitation and extremely limited Civil Medical facilities in its area of operation, BRO units had to depend on integral medical cover and the posting order had been issued to the petitioner, who belongs to the medical cadre, due to urgent organisational requirements at the captioned project.

8. Learned counsel for the petitioner intervenes and vehemently denies the submissions made by the other side that the petitioner had ever submitted any representation dated 01.6.2010 to the respondent. Instead, he asserts that no such representation had ever been submitted by the petitioner and the said fact has been categorically stated in para-3 on merits of the rejoinder to the counter affidavit. The said aspect shall be considered a little later.

9. Learned counsel for the respondents particularly draws our attention to the provisions of Clause 15 of the Posting Policy, which relates to the duration of tenures and states that the period of posting has been classified into separate areas with specified tenures but always subject to organizational interest, which shall have to be treated as an overriding factor. He concludes that having accommodated the petitioner to the best possible extent, they are obliged to accommodate other similarly placed officers by posting them by turns to "Soft Areas/Hard Areas". He also states that though the petitioner had highlighted his family circumstances in his representation, but fact of the matter is that his aged parents and family are residing in Delhi and not at his place of posting and whenever required, he can take leave and other benefits for attending to his family matters. Further, his wife, who is a teacher in the Army School, is also available to attend to the family requirements.

10. In his rejoinder, learned counsel for the petitioner refers to Clause 39 of the Posting Policy to contend that amendments to posting orders can be considered in most exceptional cases, where the Chief Engineer is fully aware about the genuineness of the case, based on supporting data and in the instant case, the Chief Engineer had recommended the petitioner's case for reconsideration of his posting orders which has not been factored in while considering the petitioner's representation. He also questions the place of posting of the petitioner by stating that the proposed place is not available in the BRO inasmuch as same has been mentioned at Annexure P-8, as a place of posting available to the Army alone.

11. We have heard the arguments advanced by learned counsel for the parties, examined the averments made in the pleadings and considered the Posting Policy governing the GREF officers. As the entire dispute raised by the petitioner hinges on the Posting Policy, we may note the relevant clauses first, which are as follows:-

"8. Individual Posting Orders. Individual posting orders may be issued any time during the year, to cater for the following:-

- (a) Place of officers on promotion.
- (b) Place of officers in command of units, other than functional platoons.
- (c) Filling of vacancies arising due to resignation, retirement, or death of present incumbent.
- (d) Turning over of officers deployed in High Altitude Areas (HAAs), or in Bhutan/ Myanmar Compensatory Allowance (BCA/MCA) areas.
- (e) In Organizational interest.

15. Duration of Tenures. The Western and Eastern regions of the country in which the Organisation is required to operate, have been classified in to separate areas depending on altitude, type of terrain, availability / lack of facilities, extent of hostilities, allowances permissible etc. In order to provide flexibility and cater for time taken for execution of posting orders, as well as to increase the satisfaction level of those officers serving in difficult places, the duration of tenure in various areas was reviewed vide HQ DGBR letter No. 13001/POL/POS/DGBR/E1A dated 13 Nov., 97. The same are outlined as follows, with the stipulation that the organizational interest will always be the overriding factor:-

24. Miscellaneous Aspects Related to Posting Tenure

- (a) XXX
- (b) XXX
- (c) Premature Lifting of Officers for posting to HAA / EHA In the eventuality of suitable officers not being available, newly enrolled UPSC entry officers serving in HA/SA/MAS may be prematurely lifted from present unit on completion of a two year tenure, for posting to HAA/EHA in organisational interest.

27. It is prudent to post the right person with the right qualifications, for the right job, at the right time. As such, postings of post graduate (PG) officers will be rationalized, whereby they are best utilized in Organisational interest. This would involve premature posting out of an officer on completing two years in a particular area, or extending his tenure beyond that which is laid down for a particular area. Newly enrolled PG officers will however, first be posted to a functional platoon for a minimum period of two years, to gain necessary experience for use in future service when commanding an RCC, or a Task Force."

12. The contention of the learned counsel for the petitioner that the petitioner could not have been posted to another "Hard Area" without completing his tenure at the present place of posting which is for a period of 3-3 1/2 years, is found to be untenable for the reason that the petitioner has already completed posting for a period of three and a half years at Pithoragarh prior to the present place of posting at Rongly, East Sikkim, which is a "Hard Area". Further on the

strength of the interim order dated 20.7.2015 operating in his favour, by now the petitioner has completed a substantial period of one and a half years at Rongly, East Sikkim. This would mean that as of date, the petitioner has collectively completed a period of five years at a "Soft Area" and a "Hard Area", which are relatively easier places of posting as per the hierarchy laid down in Clause 15 of the posting policy.

13. Reliance placed by learned counsel for the petitioner on Clause 39 of the Posting Policy would not be of any assistance, for the reason that the petitioner is aware of the fact that Clause 24 (c) prescribes that in the event, suitable officers are unavailable, newly enrolled UPSC entry officers serving in Hard Area, Soft Area, Most Attractive Stations can be prematurely lifted from their present unit on completion of a two year tenure, for posting to HAA/EHA in organisational interest. Going by the fact that the petitioner has remained posted for one and a half years in a "Hard Area", a substantial period of his tenure stands exhausted by now.

14. Further, we cannot overlook the fact that the respondents have specifically stated that there is an acute shortage of officers in the medical cadre which has necessitated rotation of officers to various units within the organisation and it is in this background that the respondent have prematurely moved the petitioner in line with the provisions of Clause 15 and Clause 27 of the Posting Policy.

15. The submission made by counsel for the petitioner that Limking, Arunachal Pradesh is not a place available to the respondents for posting the petitioner is unfounded and appears to be contrary to the document filed with the petition as Annexure-P-8, wherein at Sr. No. 13-14 "Arunank" has been identified as the place of posting not only for the Indian Army, but also for GREF. The said submission is therefore turned down as being devoid of merits.

16. In the aforesaid facts and circumstances, we are not inclined to exercise our power of judicial review by questioning the Posting Policy of the respondents which has necessitated rotation of officer to various units within the organisation in the interest of smooth administration of its affairs, which is well within its domain, as an employer. At the end of the day, it is for the employer to decide as to how it proposes to arrange its affairs and deploy its staff and decide the duration of their tenure in various areas.

17. Accordingly, we decline to interfere with the impugned order as the same does not suffer from any perversity, arbitrariness or illegality. The writ petition is dismissed and the interim order dated 20.7.2015 stands vacated. The parties are left to bear their own costs.

18. Before parting with the case, we may note that learned counsel for the respondent has referred to the petitioner's hand written representation dated 01.6.2010, a typed copy whereof has been filed along with the counter affidavit, to urge that the petitioner had requested for a soft posting on an earlier occasion and the said request was duly considered and acceded to. However, learned

counsel for petitioner on instructions from his client has disputed that the petitioner had ever written any such letter to the respondent and states that such an assertion has been made in the rejoinder.

19. Learned counsel for the respondents has handed over a photocopy of the said document which is a hand written document, bearing signatures at the bottom that appear to be that of the petitioner. The said letter was received by the respondent by fax on 10.6.2010, at 2.23 pm. When confronted with the handwritten document, learned counsel for the petitioner has shown the same to his client who again denies having executed the same.

20. To take the matter to its logical conclusion, it is deemed appropriate to direct the respondents to conduct an inquiry with regard to the genuineness of the aforesaid document and take appropriate action, if considered necessary. A photocopy of the said handwritten document has been taken on record. A copy thereof shall also be provided to the counsel for the petitioner.