

(2020) 06 DEL CK 0104

In the Delhi High Court

Case No : Civil Writ Petition No. 3064 Of 2020, Civil Miscellaneous Application
No. 10663 Of 2020

Vikas Dhankhar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 12-06-2020

Acts Referred:

Constitution of India, 1950 — Article 226
Territorial Army Rules, 1948 — Rule 13(2)
Code Of Civil Procedure, 1908 — Section 151

Citation : (2020) 06 DEL CK 0104

Hon'ble Judges : Siddharth Mridul, J; Talwant Singh, J

Bench : Division Bench

Advocate : Sanjoy Ghose, Mrinalini Sen, Tanmay Yadav

Final Decision : Partly Allowed

Judgement

Siddharth Mridul, J

CM APPL.12439/2020 (Exemption)

The present application under Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the applicant/petitioner seeking exemption from filing duly attested affidavits in support of the accompanying petition and the application and also to pay the requisite court fees.

For the reasons stated in the application and in view of the present prevailing situation, the same is allowed. The applicant/petitioner is allowed to file the duly signed and attested affidavits within a period of one week from the date of resumption of regular functioning of the Court. Further, the applicant/petitioner is allowed to file the requisite court fee within a period of 72 hours from the date of resumption of regular functioning of the Court.

With the above directions, the present application is disposed of. W.P.(C) 3064/2020 & CM APPL.11856/2020

1. The present petition under Article 226 of the Constitution of India, essentially and substantially assails the issuance of the order dated 23.04.2020, by the official respondents, whereby the petitioner has been posted out to 159 Infantry Battalion (TA) (H&H) DOGRA, Jammu & Kashmir as part-time Company Commander, located at Doda, Jammu & Kashmir.

2. It is the petitioner's case that, the impugned order 23.04.2020, is contrary to the statutory rules.

3. The writ petition is listed for hearing on 23.07.2020.

4. In the meantime, the petitioner instituted CM APPL. No.11856/2020 praying as follows:

"A. Direct the Respondents to consider retaining the Applicant with his parent unit, i.e. 105 Bn, at Srinagar, Jammu and Kashmir, during the pendency of the present petition, while issuing the necessary Embodiment Order, as an interim measure; and,

B. Any other order or direction that this Hon'ble Court may deem fit in the interest of justice."

5. In the instant application, we issued notice to the official respondents, wherein they were directed to file a reply thereto, within three working days, with an advance copy to the learned counsel appearing on behalf of the petitioner, who was at liberty to file a rejoinder, if any, before the next date of hearing i.e. today, 12.06.2020.

6. Upon a perusal of the rejoinder affidavit, filed on behalf of the petitioner in the instant application, it emerges that, vide notification dated 11.08.2010, it has been stipulated that the Units of the Territorial Army are divided into five zones and further that whereas Delhi falls within Zone-I thereof, the state of Jammu and Kashmir falls in Zone-V.

7. This notification dated 11.08.2010 belies the stand hitherto taken by the official respondents including in their reply to the present application to the effect "that the applicant has only been transferred to another Infantry TA, Provincial Unit, as per Rule 13(2) [of the Territorial Army Rules, 1948] in the same zone".

8. In view of the foregoing and without expressing any opinion on the merits of the case and whilst reserving liberty to the petitioner to raise other issues articulated in the present writ petition, in an appropriate proceeding, at an appropriate stage; the only course of action that commends itself is to direct the official respondents to revisit and reconsider the impugned order dated 23.04.2020, whereby, the petitioner, as afore-stated, has been transferred to 159 Infantry Battalion (TA) (H&H) DOGRA, Jammu & Kashmir as a part-time Company Commander, located at Doda, Jammu and Kashmir, in the light of the said notification dated 11.08.2010, annexed by the petitioner to the rejoinder affidavit filed in the application being CM APPL. No.11856/2020.

9. The direction is being issued pursuant to the factual and legal position, that emerges from the foregoing discussion that, whilst transferring the petitioner to Doda, Jammu and Kashmir, which is in Zone-V, the official respondents omitted to consider that his present posting at 105 Infantry Battalion (TA) Rajputana Rifles is in Delhi, which falls in Zone-I. This axiomatically, is contrary to the stand taken by the official respondent that, although the petitioner has been transferred to a Unit in another State, but within Zone-I only. It would consequently become necessary for the official respondents to consider the posting of the petitioner afresh, in terms of the statutory rules and regulations, governing the transfer-posting, and in particular in terms of the stipulation provided vide the said notification dated 11.08.2010.

10. The present application and the writ petition are partly allowed and disposed of accordingly, whilst reserving liberty to the petitioner to approach this Court, if he is aggrieved by the outcome of the proposed reconsideration of transfer-posting by the official respondents, as directed.

11. No further directions are sought for or required, either in the application or the writ petition.

12. A copy of this order be uploaded on the website of this Court forthwith.