
(2011) 05 DEL CK 0442
In the Delhi High Court
Case No : Writ Petition (C) 2910 of 2011

Vineet Mehta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Citation : (2011) 05 DEL CK 0442

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Ritu Bhardwaj, for the Appellant; Ravinder Aggarwal and Manish Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Petitioner claims that after serving in Kupwara (J & K) he came on a normal posting to Delhi and that this was the first posting in Delhi after Petitioner put in 141/2 years" service.

2. As per the Petitioner his wife could not conceive due to some medical problems and for which IVF treatment was undertaken and that on medical grounds he was retained at Delhi after 2 years posting at Delhi came to an end.

3. Though the dates have not been mentioned in the writ petition we note that the Petitioner came by way of transfer to Delhi in December 2007 and completed 2 years" tenure in December 2009.

4. Petitioner claimed that on medical grounds so that IVF treatment could be undertaken to enable his wife to conceive, he was granted extension of tenure in Delhi on medical grounds for one year and which we note would come to an end by December 2010. Petitioner claims that he is entitled to the benefit of the transfer posting policy as per which, on compassionate grounds, he would be entitled to stay at Delhi for a further period of 2 years and compassion is sought on the ground that his wife gave birth to twins who were pre-mature and that his presence at Delhi to be with his wife is his necessity.

5. Petitioner urges discrimination and hostile treatment and for which Petitioner states that just to harass him, notwithstanding he being granted one year tenure extension on medical grounds requiring him to be posted at Delhi till the end of the year 2010, transfer posting orders were issued on 11.1.2010, 12.4.2010, 14.4.2010, 16.9.2010 and 22.9.2010 which we note are on pages 23, 29, 35 and 36 of the writ petition.

6. As per the counter affidavit filed the Petitioner is not entitled to any extension of service in Delhi on account of the fact that posting at Delhi is sought by virtually each and every officer and that the transfer posting policy dated 27.1.2009 (Annexure R-1) prohibits any tenure at Delhi for a period of more than 2 years with respect to 151 appointments. Relevant would it be to note that appointment of the Petitioner at Delhi is a post at Sl. No. 67 of the transfer posting policy pertaining to Delhi dated 27.1.2009.

7. As per the Respondents the Petitioner has been accommodated enough and that has whetted his appetite. Respondents allege that the Petitioner himself desired an extension for a period of 4 months in December 2010 and thus they extended his tenure at Delhi till 20.4.2011 and that now the Petitioner cannot claim anything more.

8. With respect to the grievance of the Petitioner that he has been posted to Tenga a place where his wife cannot accompany him, keeping in view the fact that pre-matured babies were born to the wife of the Petitioner, Respondents state they gave an option to the Petitioner to opt for a transfer in a non-metropolitan city i.e. a Class B-1 city which the Petitioner declined vide letter dated 11.4.2011.

9. Disputing any mala-fides with respect to the stated transfer orders dated 11.1.2010, 12.4.2010, 14.4.2010, 16.9.2010 and 22.9.2010 it is stated that the first order was issued keeping in view the fact that Petitioner's transfer posting at Delhi would have come to an end in December 2009.

10. The orders dated 12th and 14th April 2010 are stated not to be transfer orders but are orders requiring Petitioner to join the Senior Management Course which he had to undertake and this is the position with respect to the orders dated 16.9.2010 and 22.9.2010.

11. It is settled law that on an issue of transfer courts should be slow to interfere. However, if it is found that a transfer is mala-fide or that there are exceptional circumstances requiring a person not to be transferred out, courts can certainly interfere.

12. Admitted facts are that the Petitioner was commissioned in the Indian Army on 8.6.1996 and got married on 5.7.2006. He came on a transfer posting to Delhi on 24.12.2007 for a period of two years. As is known to one and all, Delhi is a pressure station where everybody desires to be posted.

13. Knowing fully well that virtually everybody would be pressurizing superior

officers for transfer to Delhi, the Delhi posting policy dated 27.10.2009 restricts tenure at Delhi for only 2 years listing 151 postings and suffice would it be to state that the post held by the Petitioner at Delhi is at Sl. No. 67. Since Petitioner was likely to be transferred out of Delhi and lest his promotion suffered, he was detailed to undertake an advance course which all senior officers have to undergo and for which intimation was given to him firstly on 16.10.2009 and thereafter on 11.1.2010. But detentions were cancelled.

14. On 1.12.2009 Petitioner requested that his tenure at Delhi be extended for a period of at least 9 months and preferably 1 years on the ground his wife was undergoing treatment for infertility at R & R Hospital, Delhi Cantt.

15. Acceding to the request Petitioner was granted extension of tenure at Delhi till November 2010.

16. Record of the Respondent shows that 7 applications from officers were pending for posting to Delhi on compassionate grounds on the post held by the Petitioner and these officers were kept on wait.

17. Since Petitioner's extended tenure was to come to an end in November 2010, two letters were written to him in September informing him that he was being detained for the AMM course but since the Petitioner gave his willingness said detention was cancelled.

18. Thus, the charge of any malice fails.

19. When Petitioner's extended tenure came to an end in November 2010 and by which time he was blessed with 2 children who happened to be pre-mature babies, Petitioner sought extension of his tenure firstly till February 2011 and thereafter for a period of 6 months. Petitioner was allowed to stay in Delhi till 20.4.2011 i.e. his tenure was extended till said date.

20. Petitioner availed the benefit and on 26.3.2011 applied for 60 days' annual leave to the Unit where he stood transferred. Petitioner was granted leave up to 18.6.2011. Thereafter, when leave was granted to the Petitioner and for the obvious reason he wanted to be with his wife at Delhi, his wife, a practicing lawyer, took up the matter with the Chief of the Army staff requesting that Petitioner's tenure be extended at Delhi till March 2012. Petitioner wrote a letter on 9.4.2011 requesting that his tenure be extended at Delhi by 4 to 8 months.

21. His request was premised on the ground that he was required to be with his wife and taking into consideration that the Petitioner had been granted enough accommodation on compassion and there were 7 other persons claiming compassionate posting at Delhi and that Petitioner should not be accommodated at Delhi the department found a mid-way solution by giving option to the Petitioner to be posted at a Class B-1 city which the Petitioner has declined.

22. We find that the Respondents have treated Petitioner fairly and justly. They have accommodated him at Delhi beyond the normal 2 years' tenure posting.

They extended compassion to him when his wife was undergoing infertility treatment. The pre-mature babies born to the Petitioner are now more than 7 months of age. Keeping in view that the infants born were pre-mature, the extended tenure at Delhi was further extended from November 2010 till April 2011. The Respondents have further shown compassion to the Petitioner and have tried to accommodate him by offering to withdraw his transfer to a non-family station and instead post the Petitioner in a family station, but not in a metropolitan city. In a B-1 city. Petitioner is insisting that he has a right to be kept posted at Delhi and unfortunately his wife being a lawyer is not understanding the fact that nobody has a vested right to seek a posting at a particular place. Of course, where discretion is vested in an authority to take into account special circumstances of a person, the person concerned has a right to ensure that the discretion is exercised with fairness.

23. In the instant case we find that the Respondents have been more than fair to the Petitioner. Hardships of life are faced by one and all. Those who join the armed forces do so knowing fully well that there would be long postings at non-family stations. It is true that sickness may strike a person unexpectedly. It is true that the Petitioner faced a problem of his wife not being able to conceive followed by his wife conceiving but delivering pre-mature babies. But we find that the department has stood by him. They extended his tenure at Delhi beyond the period of 2 years to facilitate his wife to deliver babies. As the babies born were pre-mature, the department further extended the extended tenure at Delhi to ensure Petitioner being with his wife till the children cross the age of 6 months i.e. the critical stage for infants born pre-mature. The Respondents are further willing to transfer the Petitioner to a B-1 city where his wife can join him but since the wife is a lawyer at Delhi we can understand her desire to be at Delhi. But, the Petitioner and his wife must understand that you cannot eat your cake and have it too.

24. We would be failing if we do not note that by seeking leave for 3 months till June 2011 from the Head of the Unit where the Petitioner has been transferred, is the recognition of the fact by the Petitioner that he has accepted the transfer posting order and we note that the Petitioner did so prior to 20.4.2011. The instant writ petition was listed for preliminary hearing on 3.5.2011 and we had granted a conditional stay inasmuch as the Petitioner was insisting that he has not joined at Tenga at Arunachal Pradesh a fact which was disputed by the Respondents. Now we find that by applying for leave at Tenga, though not physically reporting for duty there in law, Petitioner has to be treated as transferred to Tenga before the interim order was passed.

25. We dismiss the writ petition but observe that should the Petitioner make a representation and accept his posting in a B-1 city the Respondents would favourably consider the same notwithstanding the fact that the Respondents offered the said posting to the Petitioner and he declined the same at the first instance.

26. No costs.