

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 12th November, 2020**

+ **W.P.(C) 8982/2020 & CM No.28997/2020 (for interim direction)**

SANJAY KUMAR

... Petitioner

Through: Ms. Sriparna Chatterjee, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner, a Water Carrier in the respondents Railway Protection Force (RPF) and posted at Delhi since the year 2017, has filed this petition impugning the order dated 11th September, 2020 of his transfer to Srinagar as well as the order dated 18th September, 2020 modifying the earlier order and transferring the petitioner, instead of Srinagar, to Chandigarh. The challenge to the transfer is made on the ground of the same being *mala fide*.

2. It is the case of the petitioner, that (i) while posted at Delhi, the petitioner has been having strained relations with his immediate superior officer, which lead to issuance of charge memo dated 27th November, 2018; (ii) the Inquiry Officer (IO) found the charges to have been proved against the petitioner and the Disciplinary Authority, on 27th June, 2019 imposed penalty of stepping down the pay of the petitioner by three stages in the time scale of pay for a period of one year; (iii) the Departmental Appeal preferred by the petitioner was rejected vide order dated 21st July, 2020; (iv) the

petitioner continued to be harassed on the basis of false allegations; (v) one of the complainants whose complaint formed the basis of the charge memo dated 27th November, 2018, gave an affidavit dated 9th March, 2019 stating that his complaint against the petitioner was false and that he was tutored by the immediate superior of the petitioner with whom the petitioner had shared strained relations since beginning; (vi) the petitioner was / is being victimized on account of the personal bias of his immediate superior officer against him; (vii) the petitioner however accepted the penalty without any demur; (viii) however the immediate superior officer of the petitioner was still not satisfied and wanted to punish the petitioner further; (ix) vide order dated 11th September, 2020, the petitioner was transferred to Srinagar; though the order stated that the transfer was on administrative grounds, however perusal of the contents of the subsequent correspondence reflects that the said order was issued to punish the petitioner for the second time for the same wrong, owing to personal bias and vendetta; (x) the petitioner had already served at Srinagar, a hard area, from 2014 to 2017; (xi) vide order dated 14th September, 2020, the petitioner was relieved from Delhi and directed to join at Srinagar; (xii) the petitioner was in the midst of family problems because of his one child being two years old and the other child being just three months old; (xiii) the petitioner approached another senior officer, for cancellation of the transfer order but who told the petitioner that he had to suffer the consequences of his misbehaviour with his colleagues and superior officers; (xiv) the petitioner was compelled to submit a letter dated 14th September, 2020, seeking apology for the misbehaviour which had already culminated in the penalty and making a request for transfer to Ambala in lieu of Kashmir Valley; (xv) the said letter of the petitioner was

forwarded by the aforementioned senior officer approached by the petitioner, recommending the change of transfer sought by the petitioner; (xvi) the petitioner thereafter vide order dated 18th September, 2020, was relieved from joining at Srinagar and directed to join at Chandigarh; (xvii) the same immediate superior officer with whom the petitioner had strained relation, was otherwise also repeatedly failing the petitioner in the driving test and not forwarding the appeals against the failure preferred by the petitioner, compelling the petitioner to file W.P.(C) No.12520/2019 in this Court and of which notice was issued on 27th November, 2019 and which is still pending; and, (xviii) the said immediate superior officer with whom the petitioner had strained relation has also humiliated the petitioner and the petitioner was constrained to file a private complaint under Section 200 of the Code of Criminal Procedure, 1973 (Cr.P.C.) against him, of offenses under Sections 326, 341, 506 and 120B of the Indian Penal Code, 1860 alongwith Section 3 of The Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 and which complaint is also pending consideration.

3. The counsel for the petitioner has drawn our attention to Annexure-P5, being the letter dated 14th September, 2020 of the petitioner, apologizing for his earlier misconduct and requesting for transfer to Ambala instead of Kashmir Valley and has contended, that the petitioner was forced to write the same and the very fact that the petitioner apologized therein shows that the transfer was punitive.

4. The counsel for the petitioner has thereafter drawn our attention to the letter dated 14th September, 2020 of the senior officer approached by the petitioner for change of transfer and who recommended that the petitioner, instead of Kashmir Valley, may be posted to some other division, and has

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contended that the same also mentions the apology tendered by the petitioner and this again shows the initial transfer order to Kashmir to be vindictive.

5. Attention is lastly drawn to the orders issuing notice of the writ petition aforesaid preferred by the petitioner and the order of the Additional Sessions Judge posting the private complaint filed by the petitioner for pre-summoning evidence.

6. We are afraid, from none of the aforesaid documents, we are able to make out a case of the transfer being *mala fide*. It is not as if the petitioner has been transferred out, before the completion of normal tenure of posting at a particular station. The counsel for the petitioner does not dispute that the normal tenure at a particular station is of three years only and which the petitioner, with respect to his posting at Delhi, has completed. As far as the writ petition and the private complaint preferred by the petitioner are concerned, the same will be decided on their own merits and merely because the petitioner has preferred the same, does not mean that the transfer of the petitioner becomes vindictive.

7. Rather, from the very fact that on request, the place of posting of the petitioner has been changed from Kashmir Valley to Chandigarh, shows that there is no vindictiveness or *mala fides* in the transfer of the petitioner and that the transfer is not punitive.

8. As far as the plea of the petitioner, of the petitioner having been forced to write the letter dated 14th September, 2020 and of the affidavit given by the complainant, on whose complaint the petitioner was charged, are concerned, they are again not in the domain of this writ petition and entail disputed questions of fact which cannot be conveniently gone into in writ jurisdiction. We are also of the view that once the petitioner has completed

his normal tenure at Delhi and the relationship between the petitioner and his colleagues at Delhi has, according to the petitioner himself, been acrimonious, the same alone amounts to an administrative reason for transfer inasmuch as no organization can afford to have warring personnel in the same office and which situation brings the entire working of that particular office to a standstill. The situation is the same as quarrelling children, the only recourse whereagainst is to separate them.

9. The counsel for the petitioner at this stage states that she is not very sure that three years is the normal tenure.

10. No merit is found in the petition.

Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

NOVEMBER 12, 2020

‘gsr’..