

Havildar Am Khan vs Union Of India & Ors on 13 October, 2020

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw, Asha Menon

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 7845/2020

HAVILDAR AM KHAN

..... Petitioner

Through:

Ms. Archana Ramesh, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rajesh Kumar, Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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13.10.2020

[VIA VIDEO CONFERENCING]

CM No.25672/2020 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.

2. The application is disposed of.

W.P.(C) 7845/2020 & CM No.25671/2020 (for ad-interim directions)

3. The petitioner, a Havildar in the respondents Indian Army and presently posted at Kirkee in Maharashtra, has filed this petition impugning the order dated 6th July, 2020 posting him to Sikkim.

4. It is the case of the petitioner that he, on 18th January, 2020, owing to his family circumstances, had applied for premature retirement but which was rejected on 27th January, 2020. It is further the case of the petitioner that on receipt of the posting order, for the same family circumstances for which he was seeking premature retirement, he sought posting at Pune, being his home town, or in the State of Maharashtra but which has also been declined. It is contended that as per the Office Memorandum (OM) of the Department of Personnel and Training (DOPT), a personnel is entitled to be posted at / near his home town, in two years preceding his superannuation. The petitioner is due to superannuate on 30th October, 2022.

5. The counsel for the respondents appears on advance notice and at the outset has contended that this Court does not have the territorial jurisdiction to entertain the petition. It is contended that the petitioner is posted at Maharashtra and the challenge is to the posting order to Sikkim and the petition filed at New Delhi, in this Court, is not maintainable. Reliance is placed on Sagarika Das Vs. Ministry of Health & Family Welfare 2016 SCC OnLine Del 6281 (DB) and which in turn relied upon the dicta of the five Judges bench of this Court in Sterling Agro Industries Ltd. Vs. Union of India (2011) 181 DLT 658 (LB).

6. We have enquired from the counsel for the respondents Indian Army, whether not the headquarters of the respondents Indian Army is at New Delhi.

7. The answer is in the affirmative.

8. As per the provisions of Code of Civil Procedure, 1908 (CPC) pertaining to territorial jurisdiction and principles whereof are applicable to petitions under Article 226 of the Constitution of India also, this Court would have territorial jurisdiction for the reason of the headquarters of the respondents Indian Army being at New Delhi. It thus cannot be said that this Court lacks territorial jurisdiction.

9. As far as reliance on Sterling Agro Industries Ltd. and Sagarika Das supra is concerned, the rule laid down therein is the rule of refusal to exercise discretion to entertain the petition and is not an absolute rule. We are of the considered view that particularly in the matter of service personnel, they should not be forced to travel from Court to Court for redressal of their grievances and once it is found that the Court, jurisdiction of which is invoked, has territorial jurisdiction, we would be loath to refuse to exercise discretion to entertain the petition in this Court, merely for the reason of the petitioner, for the time being posted at Maharashtra. It cannot be lost sight of that the petitioner is posted at Kirkee in Maharashtra and would have to travel far for approaching the appropriate bench of the High Court of Bombay. We, thus reject the preliminary objection of the counsel for the respondents Indian Army.

10. The counsel for the petitioner has in her arguments reiterated what is stated in the petition. Additionally it is argued that the mother of the petitioner is old and at Pune. It is further stated that premature retirement was refused to the petitioner for the reason of acute shortage of personnel in the respondents Indian Army and premature retirement being not possible to be considered till March, 2021. It is contended that once premature retirement is not granted, at least the petitioner, in accordance with the DOPT OM should have been posted in his home state, to alleviate his family inconveniences / difficulties.

11. Per contra, the counsel for the respondents Indian Army states that he has instructions, that (i) the petitioner was posted twice earlier in his home state i.e. Maharashtra, for 7 months from 16th November, 2006 to 7th June, 2007 and for 45 months from 7th August, 2007 to 1st May, 2011; (ii) the petitioner now, for the last 39 months since 28th July, 2017, is again posted in his home state; (iii) the DOPT OM referred to by the counsel for the petitioner does not create any right in favour of the petitioner and is subject to service exigencies; and, (iv) the request of the petitioner for being yet again posted in Maharashtra itself was considered by the appropriate authorities and has been

rejected vide communication dated 8th August, 2020, reasoning that there were no vacancies for the petitioner in the State of Maharashtra and that the services of the petitioner are required at Sikkim in view of the prevailing conditions at the borders.

12. The law with respect to interference by the Court in posting / movement orders particularly of the defence services, is clear. Reference in this regard can be made to Shilpi Bose Vs. State of Bihar (1991) Supp (2) SCC 659, N.K. Singh Vs. Union of India (1994) 6 SCC 98, State Bank of India Vs. Anjan Sanyal (2001) 5 SCC 508, National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan (2001) 8 SCC 574, Union of India Vs. Janardhan Debanath (2004) 4 SCC 245, State of U.P. Vs. Siya Ram (2004) 7 SCC 405, Government of Andhra Pradesh Vs. G. Venkata Ratnam (2008) 9 SCC 345, Rajendra Singh Vs. State of Uttar Pradesh (2009) 15 SCC 178 and to our recent judgments in W.P. (C) 6755/2020 dated 22nd September, 2020 titled Shri Bhagwan Vs Union of India and Baikuntha Nath Das Vs. Central Reserve Police Force MANU/DE/1708/2020 which lay down that the Courts ought not to interfere unless violation of any Rule / statute or mala fides is established. No such case is made out in the present case. The DOPT OM is subject to the service exigencies. Once the representation of the petitioner for posting in the home state in the two years preceding his superannuation has been considered by the appropriate authorities and found to be not grantable, there is nothing before this Court, for this Court to interfere therein.

13. Resultantly, the petition is dismissed.

RAJIV SAHAI ENDLAW, J ASHA MENON, J OCTOBER 13, 2020 'gsr'