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Shailendra Singh Vs. The Union of India and Ors

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Court : Jharkhand

Decided On : Aug-25-2015

Appellant : Shailendra Singh

Respondent : The Union of India and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S). No. 31 of 2015 Shailendra Singh .... Petitioner Versus

1. The Union of India

2. The Inspector General of B.S.F, Meru Camp, Training Centre and School at Hazaribag

3. Assistant Commandant(dis.), B.S.F., Meru Camp, Training Centre and School at Hazaribag ..... Respondents .... CORAM: HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioner : Mr. Pawan Kr. Pathak, Advocate For the Respondents : M/s Rajiv Sinha, ASGI & B.K.Prasad, J.C to ASGI0625.08.2015 Heard learned counsel for the parties. Challenge has been made to the letter dated 26.11.2014 issued by the Assistant Commandant (Dis.) on behalf of the Inspector General, Training Centre and School, Hazaribag, whereby he has been informed that the Force Headquarter after sympathetic consideration of his representation made against his transfer to 44 Battalion, B.S.F., Silong Region has been inclined to revoke the same and post him at 03 Battalion Shishubal, Kolkata

(near South Bengal). Petitioner has challenged the same on the ground that he has been declared as 100% disabled person on account of injury sustained on 10.9.1992 in a militant action while deployed in Jammu and Kashmir. The Medical Board declared him 100% disabled on 11.6.1999. He has been posted at Training Center and School, Hazaribag since 16.1.1996 where he reported on 6.2.1996. In the service career of the petitioner, thereafter, there has been a chequered history as he was removed on medical ground w.e.f 17.2.2000. Pursuant to the decision of the Patna High Court on 4.3.2002, remitting the matter to the respondents to take a decision in accordance with the provision of Persons with Disabilities(Equal Opportunities, Protection of Rights and Full Participation), Act 1995, the respondents reinstated him in service with retrospective effect. He was again subjected to -2- Medical Board on 9.11.2004, which declared him unfit for further service of any kind on account of his suffering from 'Traumatic Paraplegia with weakness of both lower limbs' leading to 100% disability. He was again retired from Government service w.e.f. 31.1.2005. Petitioner being aggrieved challenged the order of his retirement before this Court and finally he was again taken back in service. Learned Division Bench of this Court in the judgment passed on 28.8.2014 in L.P.A. No.415 of 2008 directed the respondents to grant him all consequential benefits. It is submitted that petitioner despite having faced 100% disability is being victimized again and again on the part of the respondent after any order passed by this Court in his favour, such as in L.P.A. No. 415 of 2008. The impugned transfer is only an incidence of such victimization. It is submitted that sympathetic consideration ought to have been accorded to the case of the petitioner who has also been issued the impugned movement order on 28.1.2015, which is at Annexure-5 to the writ petition. According to the respondents, petitioner has remained at same place at Hazaribag from 1996 for 18 years. He made a request for sympathetic consideration against the previous order of his transfer to 44 Batalion at Shilong before the respondent authorities. Only upon sympathetic consideration of his case and taking into account the fact that he is 100% disabled, his transfer to 44th Batalion Shilong by Annexure-2 , movement order dated 21.7.2014 has been cancelled and he has been posted at 03 Batalion Shishubal, Kolkata (near South Bengal), which is close to Hazaribag and does have all the medical facilities there. It is submitted that any employee under the Force even on

the ground of medical disability cannot claim a -3- legal right to remain at the same place for such a long period. It is further submitted that the impugned orders have been passed after a decision on his representation by the Headquarter, which is a competent authority. Learned counsel for the respondent- Union of India has relied upon a judgment rendered by this Court in W.P.S. No. 1794 of 2005 dated 17.12.2012 in the case of Upendra Kumar Vrs. The Union of India & others, where after considering a similar grievance relating to a person suffering from 75% disability and placed in low medical category, this Court was pleased to hold that even a disabled person in low medical category cannot claim a legal right to continue at a particular place permanently under the B.S.F. It is submitted that petitioner has not proceeded to submit his joining despite the movement order issued in January, 2015 itself and continued to defy the order though there is no stay on it. Therefore, no interference should be made in the instant matter as the petitioner can very well serve on the same post of typist on which post he was working at Hazaribag at his transferred place of posting at 03 Battalion, Kolkata(near south Bengal). I have considered the rival submissions of the parties in the background of the facts pleaded on their behalf. As the facts of the case disclose, petitioner being declared 100% disabled has been posted at Hazaribag for 18 years since 1996. The relevant rules of B.S.F i.e. B.S.F.(Tenure of posting and Deputation)Rules, 2000 do not conceive of any such provision that even a person suffering from low medical category can claim posting at a particular place only. The aforesaid rule indicate that such member of the Force placed in low medical category may be considered for posting from a Battalion -4- deployed in extreme hard or hard area to a Battalion deployed in a normal area or a static formation keeping in view the recommendation of the Medical Board whose tenure of posting in a normal area or static formation may exceed 3 years on account of injury suffered in operations or on duty. The relevant provisions of the rule have been quoted in the judgment rendered by this Court in the case of Upendra Kumar(Supra). The relevant extracts of the judgment are being reproduced herein under:-

5. I have heard learned counsel for the parties at length and gone through the relevant materials on record. The petitioner admittedly has suffered 75% disability and is placed in low medical category. On the basis of the opinion of the Medical

Board, he was given sedentary job by order dated 31 st January 2001 and posted at Training Centre at Meru Campt, Hazaribagh. From perusal of the Rules of BSF (Tenure of posting and Deputation) Rules, 2000, it does not appear that there is any concept of permanent posting in the organization. Perusal of Rule 2 (g), 5, 6, 11 & 18 would indicate that there is tenure attached to the posting of BSF personnel depending upon the area in which he is posted. As per Rule 6, tenure is two years in extreme hard area, three years in hard area and maximum of six years in frontier. The case of the personnel in low medical category is guided by Rule 5

(3) read with Rule 11 of the BSF (Tenure of posting and Deputation) Rules, 2000. Rule 11 is quoted herein below:

11. Posting and Transfer of Low Medical Category Personnel_ A member of the Force who is placed in low medical category by duly constituted medical board may be considered for posting from a Battalion deployed in extreme hard or hard area to a Battalion deployed in a normal area or a static formation keeping in view the recommendations of the medical board; Provided that the tenure of posting in a normal area or static formation under the provisions of this rule shall not exceed three years except in case of the members of the force who are placed in low medical category due to injuries suffered in operations or on duty: Provided further that the competent authority shall take necessary steps to process the cases of members of the Force who are placed in low medical category due to reasons other than operational or on duty and whose medical category is not improved and do not become fit enough for posting to parent units after completion of a tenure of three years, for retirement on grounds of -5- physical unfitness under the provisions of rules 18 and 25 of the BSF Rules, 1969; Provided further that personnel having less than 10 years of service shall be allowed to complete 10 years of service and those having more than 10 years of service shall be allowed to complete 20 years of service before initiating action for retirement on grounds of physical unfitness and the tenure rules shall not apply to such personnel.

6. As per provision of Rule 11, in case of personnel who suffer injuries in operations and are placed in low medical category as determined on the basis of

the recommendation of the duly constituted medical Board, case be considered for posting from extreme hard area or hard area to a posting in normal area or static formation, which ordinarily will not exceed three years. However, an exception can be made in case of member of the Force who are placed in low medical category due to such injury suffered in combat operations. Under the provisions of Rule 18(2) of the BSF Rules 2000, cases of transfer of all personnel anywhere in the Force including turnover from / to static formation and on extreme compassionate grounds shall be approved by the Director General or the officer as may be empowered by him. From perusal of Rules which have been referred to by the respondents, it appears that even a person placed in low medical category, cannot legally claim to be posted permanently at a particular place only under the BSF. The aforesaid rules indicates that such member of the Force placed in low medical category may be considered for posting from battalion deployed in extreme hard or hard area to battalion deployed in normal area or static formation keeping in view the recommendation of the Medical Board whose tenure may exceed three years on account of the injuries suffered in operations or on duty. The legal position that emerges on being applied in the context of the present case leads to the inference that after having served for 18 years in the same place at Hazaribag, petitioner cannot insist to continue on the same place as a matter of legal right under the provision of B.S.F Rules, 2000 referred to herein above as well. In fact on the representation of the petitioner against his transfer to Shilong at 44 th Battalion, the Force Headquarter in a sympathetic manner has posted the -6- petitioner at 03 Battalion Shishubal, Kolkata(near south Bengal), which could not effect much displacement and is a normal area or a static posting. Petitioner has been serving as typist at the present place of posting and would not be subjected to any other strenuous duty at his transferred place of posting as he would continue to remain on sedentary duty. In such circumstances, though sympathies may arise while considering such case, but this Court should not be persuaded by sympathetic consideration alone as petitioner has remained for 18 years at the same place of posting and has now been shifted to another formation where he would be serving in same capacity. The impugned transfer cannot be said to be an act of victimization on the part of the respondents nor any specific allegation has been made against any Officer. The previous order of transfer to Shilong was made on

21.7.2014 (Annexure-2) before the judgment rendered on 28.8.2014 in L.P.A. No.415 of 2008. It appears that petitioner has not proceeded to join at his transferred place despite their being no stay on his movement order of transfer. However considering the chequered career of the petitioner and the suffering that he has undergone on account of disability inflicted during course of duty, respondents would take a sympathetic view so far as his non joining is concerned. Petitioner should report joining at his transferred place at 03 Battalion Shishubal, Kolkata (near South Bengal) forthwith. In view of the discussions made and the reasons recorded herein above, no interference is required in the impugned orders of transfer. The writ petition is dismissed accordingly. (Aparesh Kumar Singh, J.) A. Mohanty

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