

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

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Reserved on: August 3, 2022

Pronounced on: August 22, 2022

+ W.P.(C) 11942/2021 & C.M.APPLN.17370/2022

SGT. NAVNEET KUMAR SINGH (977823-F) Petitioner

Through: Mr. C. Mohan Rao, Sr. Adv. with Mr.
A.K. Pandey, Mr. N. P. Singh and
Ms. Neha, Advs.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Rakesh Kumar, CGSC with Wg.
CDR Manoj Kumar Sharma, IAF,
Junior Warrant Officer, SMPAL, IAF

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SAURABH BANERJEE, J.

1. Petitioner claims he was enrolled in the Indian Air Force (hereinafter referred "**IAF**") as Outstanding Sportsman (Cricket) in Group 'Y' Adm. Astt. (GD) Trade in June 2016. After completing training, petitioner was posted to 3 Wg, IAF (Palam Station) for sports duties w.e.f. 31.12.2017 and went on to represent the IAF in Services Cricket Team in Ranji Trophy Matches between 2017 till 2020.

2. However, during this time, petitioner was unable to appear for examination in University, so the Air Force Sports Control Board (hereinafter referred as “**AFSCB**”) assisted him from time to time; on 09.03.2021 his Cricket Coach asked him to run, unable to do so due to knee injury, same was considered as indiscipline on his part and despite being best opener in 2018-19, he was not selected for 2019-20. Since selected as sportsman for Sports Duty, petitioner was never attached to any Trade Duty till 12.03.2021, however, he was sent on Trade Duty to HQTC(U), Bangalore vide first Posting Order by respondent no.2 (hereinafter referred “**first Posting Order**”) for around 4½ months and thereafter he joined back his parent 3 Wg, IAF (Palam Station) on 06.09.2021. On 07.09.2021 respondent no.2 again issued the second Posting Order to 4 Wing against the petitioner (hereinafter referred “**second Posting Order**”).

3. Thus the present writ petition has been filed by the petitioner seeking following reliefs for quashing the second Posting Order, without challenging the first Posting Order to Bangalore, which already stood complied, as under:-

“(a) Issue the writ of mandamus or any other appropriate writ, order or direction against the respondents to quash the posting order dated 7th September, 2021, issued by the respondent no. 2 for trade duty of petitioner at Agra.

(b) Issue the writ of mandamus or any other appropriate writ, order or direction to the respondent no. 2 to not to transfer the petitioner

from sports to general trade. duty and consequently direct thereof to the Respondent no. 3, secretary AFSCB (Air Force Sports Control Board) for inclusion of petitioner in Sport unit wing 3 Palam of IAF.

(c) Issue the writ of mandamus or any other appropriate writ, order or direction against the Respondent no. 3 to take appropriate measure for petitioner to take part in the schedule matches from "SERVICES" team in the Ranji Trophy and other Cricket matches."

4. Relying on various documents petitioner contends, being recruited by IAF as sportsman in Sports Category, respondents cannot attach him to General Trade Duty without assigning any reasons, memo or written charges and without giving opportunity to defend. Moreover, by attaching him to Bangalore his opportunity of playing cricket was taken away and he's not been allowed to participate in the inter-services tournament for selection in Ranji Team. He is an outstanding cricketer as per ESPN rating and assigning Trade Duty in Agra shall completely jeopardize his cricketing career. In rejoinder and during the course of final arguments, learned senior counsel for petitioner places reliance upon the "**Training and Career Progression Policy: Sportsmen**" dated 14.12.2014 and 30.10.2019, filed by respondents (hereinafter referred as "**Sports Policies**"), which stipulate the procedure for reversion of Sports Supernumerary (hereinafter referred to as "**SS**") and for

the first time submits that the recommendation for change of duty is a major penalty; and places reliance upon *Union of India v A.D. Nargolkar* (2019) 13 SCC 723 to contend that based upon admissions by petitioner the imposition of major penalty is harsh and wrong.

5. In response, respondents vide their common counter affidavit filed alongwith various documents, question the maintainability of the present writ petition contending that the petitioner, without exhausting the statutory remedy available for Redressal of Grievances under Section 26 of The Air Force Act, 1950 against the decision of the Competent Authority has directly approached this Court. Respondents further place reliance upon the 2 Sports Policies; and contend that the AFSCB, which rendered all possible support to petitioner, is a supreme body for planning and conducting sports activities at all levels with an aim to improve the standards of IAF, has been conferred various Awards. The said AFSCB recommended posting of petitioner for General Trade Duty based on critical evaluation by the Board of Officers (hereinafter referred as “**BOO**”) comprising of an Independent Presiding Officer and Representatives of Air HQ (DPA), which led to passing of the second Posting Order.

6. Respondents also contend that petitioner cannot compromise the Military Code of Conduct and is bound by service requirements and move to posting for Trade Duty; and that transfer is a service exigency; and in IAF discipline and morals of Air Warriors is the primary epitome regardless of performance, thus IAF cannot conceptualize with it adversely affecting and disseminating wrong message. Respondents have filed relevant documents to show that petitioner was a non-performer and that the selection of Services Cricket Team comprising of representatives from Army, Navy and

Air is based on merit and performance; Respondents further contend that petitioner has a history of indiscipline; it was after counselling on 03.03.2021 and based on the report and steps by higher authorities that a decision was taken on 08.03.2021; respondents filed relevant medical records of the Sick Bay to show that there exist no sick records/ reports in respect of any knee injury for the period claimed; petitioner, despite being given sufficient chances and warning letters, failed to improve; and petitioner in his own handwriting accepted his mistakes.

7. Lastly learned counsel for respondents places reliance upon *Cpl. Sandeep Krishnan UK v Union of India & Ors.* 2021 SCC Online Del 5028; *SGT Aadesh Kumar v Union of India & Ors.* 2020 SCC Online Del 1967; *Amresh Kumar Yadav v UOI & Ors.* 2010 SCC Online Del 3917; and *Major General J.K. Bansal v Union of India* (2005) 7 SCC 227 contending that posting in Armed Forces, including of Airman, is within the exclusive purview of Air Force and Courts are reluctant to interfere with them as transfer is an incident of service.

8. Having heard the learned senior counsel for appellant and the learned counsel for respondents and after going through the documents on record we now proceed, albeit after addressing with the issue of maintainability of this petition before us, as under.

9. Vide the averments in petition, the petitioner has been unable to show that respondents have violated his fundamental rights at any stage whatsoever and if so, in what manner. On the contrary it is the case of the petitioner that the AFSCB assisted him from time to time when he was unable to appear for examination; he was given counselling by respondents; and he had himself accepted his mistakes. The only act of malafide, a vague

reference, canvassed by petitioner is against his Cricket Coach, who attributed a wrongful act of indiscipline on 09.03.2021, when petitioner was unable to run due to knee injury despite his asking. In view of the above, the proper remedy for redressal of any such grievance(s) against respondents, it was for petitioner to avail the statutory remedy under Section 26 of The Air Force Act, 1950 before the appropriate forum instead of directly approaching this Court.

10. Be that as it may, since the petitioner has raised other grounds also, we will now proceed to deal with them in the foregoing paragraphs.

11. The petitioner, once enrolled in IAF as Outstanding Sportsman (Cricket) in Group 'Y' Adm. Astt. (GD) Trade, is governed by 2 Sports Policies, which mention as under:-

*“In order to make cutting edge to IAF teams in the Inter Services Championships and to make IAF into a formidable sporting force a policy for **“Recruitment of outstanding sportsmen in IAFB”** was formulated vide AirHQ/C 40901/1/3/PA-I dated 24 May 2005.*
..... Barring a few, these sportsmen would invariably on sports duties for most part of their service career, initially as players and later as Coaches and Physical Conditioners for Command/ Air Force teams subject to medical fitness and efficiency in sports discipline. Hence, their utility in IAF would mainly be in the field of sports throughout their services career rather than in their allotted trades.”

So the underlying purpose of both policies dated 14.12.2014 and 30.10.2019 is for IAF to recruit sportsman like petitioner in Group 'Y' Adm. Astd. (GD) Trade in various Sports for providing enhancement to the IAF teams to make them more powerful and capable. As mentioned therein, except few selected ones, though such sportsmen like petitioner would be on sports duties, retention and continuing utility of such sportsmen like petitioner in IAF, mainly in the field of sports, very much depends upon the medical fitness and performance efficiency in the respective sports, Cricket herein. Thus, to remain on Sports Duty, petitioner was/ is bound to maintain medical fitness and perform efficiently at all stages of his service career in complete adherence to the 2 Sports Policies, for which petitioner is required to maintain discipline at all times, more so whence it is not a matter of right to continue on Sports Duty throughout career.

12. We may note again that admittedly prior to issuing the second Posting Order, respondents had earlier issued the *unchallenged* first Posting Order, in compliance whereof petitioner proceeded to Bangalore. Having accepted and abided by the said Posting Order, petitioner is estopped from challenging such other subsequent alike Posting Order(s) issued by respondents for similar reasons, much less the second Posting Order by way of the present writ petition.

13. The second Posting Order transferring the petitioner, as he was repeatedly acting in defiance of the 2 Sports Policies, does not involve imposition of a 'major penalty' as *wrongly* claimed by petitioner before us. Having held so, we need not dwell, factually or legally, upon the issue, any further. Reliance upon *Nargolkar* (supra) which is a case dealing with an apology letter and a Court of Enquiry, is not applicable to the facts of this

case because in the present case petitioner has himself accepted his mistakes on more than one occasion and as there was no Court of Enquiry involved here.

14. The petitioner has not alleged any sort of bias or malafide or vindictiveness to show any negative act on the part of respondents which prompted them to issue the second Posting Order. Having said that, we cannot skip to note, once again, that though there is a vague reference of malafide on the part of his Cricket Coach but the petitioner has neither arrayed him as a party in this writ petition nor filed any particulars of any kind in support of any malafides nor argued anything before us. Thus, malafides though alleged have not been proved.

15. The repeated acts of indiscipline by petitioner were in complete defiance of the 2 Sports Policies. Being mindful that the same would be detrimental to the Cricket Team and IAF, to safeguard their interest respondents issued the second Posting Order, more so, whence despite being given repeated opportunities, i.e. warnings, counseling and like, petitioner was unable to rectify them and whence he himself admitted to few such acts of indiscipline. In view thereof and coupled with the fact that petitioner was also unfit, a non-performer and as the respondents are not bound to continue him on Sports Duty, respondents rightly issued the second Posting Order for General Duty elsewhere after taking all care and precautions and following due procedure.

16. Further the second Posting Order issued by respondents is in accordance with the 2 afore-noted Sports Policies and thus not violative of any rules, regulations, circulars, instructions or like. The petitioner has been unable to show otherwise or that the respondents are barred from issuing

Posting Orders like the one under challenge before us or that by virtue thereof he is being wrongly transferred to Agra.

17. Issuance of such Posting Order resulting in transfer, especially for all those pertaining to Armed Forces, is a necessary exigency of service which cannot be, and in fact as held by various pronouncements, should not be interfered by Court as the Armed Forces are the best judges to exercise their own discretion. Posting Order resulting in transfer, which is in the absence of a violation of any statutory requirements, rules, regulations or like and/ or which is unless vitiated by some sort of bias or malafide or vindictiveness further do not call for any interference from Courts. Reliance is placed upon *Major General J.K. Bansal v Union of India* (2005) 7 SCC 227 wherein the Hon'ble Supreme Court has held:-

“12. It will be noticed that these decisions have been rendered in the case of civilian employees or those who are working in Public Sector Undertakings. The scope of interference by courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The Courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made.”

18. Reliance is also placed upon *Param Hansh Mishra v Union of India & Ors.* (2007) 143 DLT 302 (DB) wherein a Division Bench of this Court has held:-

“2. Transfer of a public servant from one place to another is made in the exigencies of service and are not interfered with by the Courts unless they are shown to be incompetent in the sense that the authority issuing the order has no jurisdiction to do so or found to be vitiated by mala fides or extraneous considerations. This is particularly so in the case of Armed Forces, BSF, CRPF and ITBP, whose personnel are duty-bound to serve at any place to which they may be transferred. The legal position on the subject is settled by a long line of decisions of the Supreme Court. Reference to some of those decisions should in our view suffice.”

19. Similar view has been taken in ***CT/GD Jagat Ram & Ors. v Union of India & Ors.*** 2017 SCC OnLine Del 7882 wherein once again a Division Bench of this Court has held:-

“10. It is well settled that orders of transfer are not ordinarily interfered with by the Court exercising jurisdiction under Article 226 of the Constitution of India. In Shilpi Bose Vs. State of Bihar reported in AIR 1991 SC 532, the Supreme Court held:

"Courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A

Government servant holding a transferable post has not vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department."

14. *This Court exercising jurisdiction under Article 226 of the Constitution of India does not sit in appeal over orders of transfer. Orders of transfer cannot be interfered with even if the same are in violation of guidelines or executive instructions, in the absence of malafides as held by the Supreme Court in Shilpi Bose (supra)."*

20. Reliance is also placed upon ***Cpl. Sandeep Krishnan UK v Union of India & Ors.*** 2021 SCC Online Del 5028; ***SGT Aadesh Kumar v Union of India & Ors.*** 2020 SCC Online Del 1967; ***Amresh Kumar Yadav v UOI & Ors.*** 2010 SCC Online Del 3917 wherein also it has been held that matters of transfer do not warrant interference by Courts.

21. That officers like petitioner recruited by IAF are to perform all kinds of duties, including General Duty, for their entire service career is *primary*,

and that such officers like petitioner being recruited as sportsmen under Sports Category for Sports Duty is *secondary*. Once recruited for Sports Duty, sportsmen like petitioner shall remain governed by the 2 Sports Policies till their entire service career and shall always be subject to medical fitness and performance efficiency. Failure on the part of sportsmen, like petitioner, would entail posting/ transfer for General Duty and it will be inevitable. Else the whole purpose for recruitment of sportsmen, like petitioner, for Sports Duty by IAF will be defeated, more so whence such recruitment is for a particular reason and for a particular period.

22. Petitioner cannot loose sight of the age-old saying, “*Once a Sportsman always a Sportsman*”, which though true is always with many riders as it depends upon focus, discipline, devotion, dedication, fitness and ability amongst many others.

23. Petitioner, even if recruited for Sports Duty will always be subject to posting/ transfer. Being a Cricketer himself, petitioner ought to be aware that though not the National Sport yet ‘Cricket’ is by far the most popular Sport played all across our Country. “*True Sportsmen never give up.*”, so his posting/ transfer or the nature of duties assigned would not be an impediment and irrespective of such place of posting/ transfer or duties, we feel it would be easy for him to find his way through and move up the ranks to represent the Services Cricket Team soon. Assigning Trade Duty can neither take away his opportunity of playing Cricket nor jeopardize his cricketing career.

24. Thus the second Posting Order issued by the respondent no.2, relating to IAF, does not call for any interference by this Court.

25. The present writ petition alongwith pending application is accordingly dismissed.

(SAURABH BANERJEE)

JUDGE

(SURESH KUMAR KAIT)

JUDGE

AUGUST 22, 2022/So

