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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 6712/2021

NEERAJ BALA

..... Petitioner

Through: Mr. Colin Gonsalves, Senior
Advocate with Oindrila Sen,
Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Farman Ali, Senior Panel
Counsel with Ms. Dacchita Shahi, GP
& Mr. Athar Raza Farooquei,
Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **19.07.2021**

[VIA VIDEO CONFERENCING]

C.Ms. No. 21114/2021 & 21115/2021 (both for exemption)

1. Allowed, subject to just exceptions and as per extant Rules.
2. The applications are disposed of.

W.P.(C) 6712/2021 & C.M. No. 21113/2021 (for interim relief)

3. The petitioner, a Commandant at Central Reserve Police Force (CRPF) Dwarka, has filed this petition impugning the order of her transfer, prior to the period of three years, to Greater Noida.
4. We have enquired from the Senior Counsel for the petitioner, the inconvenience if any, in transfer from Dwarka to Greater Noida, inasmuch as both fall in the National Capital Region and a large part of population living at one place, on a daily basis travels to other place for work; such transfer does not cause any prejudice.
5. Though the senior counsel for the petitioner has sought to contend

that son of the petitioner is studying in Delhi and/or that the petitioner has been allotted official accommodation at Delhi but there are no particulars in that regard and for the time being we are not convinced with the said ground of challenge.

6. However, the second ground urged by the senior counsel for the petitioner is, that the petitioner, on being posted as Commandant, CRPF, Dwarka, was vide order dated 29th May, 2019 (Annexure P-3 to the petition) also appointed as the Presiding Officer of the Sector Level Internal Complaints Committee (ICC) of Northern Sector in connection with sexual harassment of women at work place. It is contended that the transfer of the petitioner is malafide and/or motivated. Attention is drawn to pages 111 and 112 of the file, being part of the report/memorandum submitted by the petitioner as a Presiding Officer of the ICC, wherein the petitioner has returned findings not only against the person against whom that subject complaint was made but also against another Senior Officer. It is contended that the real reason for the transfer is to remove the petitioner as the Presiding Officer of ICC and which she is otherwise entitled to continue till remains posted as Commandant in CRPF, Dwarka.

7. *Prima facie*, merit is found in the aforesaid contention.

8. We are further of the *prima facie* view that when an officer, by virtue of a post, is also a Presiding Officer or Member of the ICC, ordinarily there should be security of tenure. The principles which apply to security of tenure of Judges and Presiding Officers of various quasi-judicial tribunals would, in our opinion, also apply to Members/Presiding Officers of ICC. The Supreme Court in *Madras Bar Association Vs. Union of India* (2014) 10 SCC 1 held that all Courts are Tribunals; any Tribunal to which any existing jurisdiction of Court is transferred should also be a Judicial

Tribunal, meaning *inter alia* that the Members of the Tribunal should have the independence and security of tenure associated with Judicial Tribunals. The Presiding Officers and Members of ICC, in our view, are also 'Judges' within the meaning of Section 19 of the Indian Penal Code, 1960. Per Section 11 (3) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 also, for the purpose of making an inquiry, ICC has the same powers as are vested in a Civil Court under Code of Civil Procedure, 1908 in the matter of summoning and enforcing attendance of any person and examining him on oath and requiring discovery and production of documents.

9. The counsel for the respondents CRPF appearing on advance notice has strongly opposed the contention aforesaid and has argued that there is no hard and fast rule of the tenure at a post being of three years and for administrative exigencies, officers/personnel can always be transferred even prior to three years.

10. Undoubtedly, so. However, once the personnel/officer by virtue of a post also occupies the position as aforesaid, the administrative exigencies, in our view, have to be weighed *vis-à-vis* the consideration of the need for security of tenure, inasmuch as, else there would always be apprehension that on returning unfavourable findings, the sword of transfer would be brought down.

11. Rather, the counsel for the respondents has drawn our attention to the part of the report submitted by the ICC, of which the petitioner was the Presiding Officer and has argued that the petitioner, contrary to all norms has given the name of DIG against whom observations/findings have been made in the said report. It is contended that no names ought to have been given.

12. The aforesaid argument reinforces the fear we have expressed, of the transfer of the petitioner being punitive. If one of the considerations for transfer was the factum of the petitioner in her report of the ICC having named the DIG, then the matter certainly requires consideration.
13. The counsel for the respondents at this stage, states that the petitioner has also pleaded to have given a representation against her transfer and the same be permitted to be decided.
14. Issue notice.
15. Notice is accepted by the counsel for the respondents appearing on advance notice.
16. A decision on the representation be taken, in the light of our aforesaid observations, within one week, as sought, and be communicated to the petitioner.
17. If the decision is against the petitioner, counter affidavit including on the aforesaid aspects, be filed within two weeks, as sought.
18. Rejoinder thereto, if any, be filed within further one week thereafter, as sought.
19. List on 25th August, 2021.
20. Till then, the impugned transfer order be not given effect to.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JULY 19, 2021

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