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

+ W.P. (C) 6408/2020

COL. AMIT KUMAR

.....Petitioner

Through: Mr. Rana Mukherjee, Sr. Advocate
with Mr. Sunil J. Mathews, Mr.
Ashim Dua, Ms. Daisy Hannah &
Ms. Surabhi Guleria, Advocates

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Chetan Sharma, ASG with Mr.
Harish Vaidyanathan Shankar,
CGSC, Mr. Sahaj Garg, Mr. R.V.
Prabhat & Mr. Amit Gupta,
Advocates.
Major Arjun Singh Katoch & Col.
Sachidananda Prabhu, Col. M.S.
(Legal).

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

15.09.2020

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[VIA VIDEO CONFERENCING]

C.M. Appln. No.22688/2020 (Exemption from filing certified true copies and fair typed copies of annexures)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P. (C) 6408/2020, C.M. Appln. Nos. C.M. Appl. Nos.22687/2020 (of the petitioner for ad-interim relief) & 22689/2020 (of the petitioner for appearance of party in person)

3. The petitioner, a Colonel in the Army (JAG Branch), has filed this petition impugning the posting order dated 15th May, 2020. Though certain grievances have also been made in the petition, of harassment of the petitioner at the hands of respondent No.3 Col. Anand Samantaray and respondent No.4 Col. S. Mukherjee, but we are presently not concerned therewith and the senior counsel for the petitioner has also fairly stated that for the purposes of the approach suggested by us, the said aspect, for the time being may be ignored.

4. It is the case of the petitioner, (i) that his wife is also a Colonel in the Army, in the JAG Branch and presently both of them are posted at Jodhpur; (ii) that the petitioner, on 16th December, 2019 had made a statutory complaint and as a consequence whereof, vide impugned posting orders dated 15th May, 2020, issued four months in advance instead of normal two months in advance, the petitioner has been posted at Andaman and Nicobar and his wife at Bathinda; (iii) that though the petitioner has represented against the posting orders, referring to the policy of making an endeavor for posting of spouses at the same station and pleading that the petitioner has a four years' old son and requires parenting by both parents and the other family circumstances of the petitioner also do not, for the time being permit the petitioner and

his wife to be posted at separate places but there has been no outcome thereof; and, (iv) that the petitioner, under fear of being posted out at a different station than his wife, on 15th August, 2020 has also applied for voluntary retirement.

5. The petitioner having applied for voluntary retirement, we at the outset only enquired from the senior counsel for the petitioner, whether not, in view of the petitioner having so applied for voluntary retirement, there is no need for us to go into the challenge to the posting order and the only direction which needs to be issued is for expeditious consideration of the application for voluntary retirement and for stay of the posting order, which in any case is to come into effect in November, 2020, till then.

6. The matter was passed over to enable the senior counsel for the petitioner to take instructions.

7. On pass over, senior counsel for the petitioner states that the petitioner, being unable to, at this stage, afford separation from his spouse, has opted for voluntary retirement, though would very much want to continue in service.

8. In view of the above, we have enquired from the counsel for the respondents No. 1 & 2 appearing on advance notice, whether it is possible for the petition to be considered as a representation of the petitioner and the matter being examined by an officer at the appropriate level, in a position to take the call/decision thereon.

9. The senior counsel for the petitioner also, under instructions has stated that the petitioner is not looking for posting at the same station as his wife, for all times to come but only till the child is of young age.

10. We also recollect having come across a circular in another case providing for an endeavor to be made for the parents to be posted at the same place, till the child is 10 years of age.

11. The counsel for the respondents No. 1 & 2 though has drawn our attention to page 206 to contend that the petitioner, even in his application for voluntary retirement, against the column whether he was under posting order, concealed the posting order but we are of the view that if the matter is to be looked at as a representation, the need to go into other details does not arise.

12. It is also the contention of the counsel for the respondents No. 1 & 2 that the petitioner has not even applied for spousal posting.

13. We now direct the writ petition to be treated as a representation by the petitioner for posting of the petitioner and his wife at the same station, wherever it may be and the authorities entitled to deal therewith to, within four weeks herefrom as sought, and which time is granted considering that the impugned posting is not to come into effect by then, inform, whether the petitioner and his wife can be given the benefit of spousal postings at the same place wherever it may be and if not, the reasons therefor.

14. The counsel for the respondents No. 1 & 2, under instructions states that though the wife of the petitioner was required to leave for Bathinda tomorrow but till the decision on the spousal posting is taken, she is also not required to proceed to Bathinda.

15. List on 20th October, 2020.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

SEPTEMBER 15, 2020

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