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

% **Date of decision: 24th December, 2020**

+ **W.P. (C) 11149/2020**

RAJNI PARMARPetitioner
Through: Mr. Yash Mishra with Ms. Nidhi
Jaswal, Mr. Ruchi Kohli and
Mr. Pronoy Chatterjee, Advocates

versus

DIRECTOR GENERAL ARMED FORCES MEDICAL
SERVICES & ORS.Respondents
Through: Mr. Jivesh Kumar Tiwari, Senior
panel counsel

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

**CM APPL. No.34786/2020 (Exemption from filing certified
copies and legible copies of the documents along with accurate
margins)**

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

W.P. (C) 11149/2020, CM APPL. No.34785/2020 (for stay of the order dated 17th December, 2020 passed by the respondent No.1)

3. The petitioner, a Junior Hindi Translator with the respondent No.1 Director General Armed Forces Medical Services (DGAFMS) and being a civilian employee, has filed this petition impugning the order dated 17th December, 2020 and seeking a direction to the respondents to consider the case of the petitioner on compassionate grounds at the post of Junior Hindi Translator at Respondent no. 3 Armed Forces Medical Store Depot (AFMSD) Delhi Cantt., which is stated to be lying vacant.

4. The petitioner, being a civilian employee, has the remedy of approaching the Central Administrative Tribunal ('CAT') and has in the past in fact approached the CAT and the counsel for the petitioner also does not controvert the same. However his contention is that the petitioner "can always approach the High Court under Article 226 of the Constitution of India".

5. Undoubtedly so, but it is also a settled principle of law that the High Court, in exercise of discretion under Article 226, will not entertain a petition under Article 226 when the statutory alternate remedy is available. Reference in this regard may be made to *Sudhana Lodh Vs. National Insurance Co. Ltd. (2003) 3 SCC 524*, *U.P. State Bridge Corporation Ltd. Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh (2004) 4 SCC 268*, *A.P. Foods Vs. S. Samuel (2006) 5 SCC 469* and *Bela Rani Bhattacharyya Vs. Union of India (2014) 213 DLT 1 (DB)*.

6. The petitioner in the present case was issued a Movement Order dated 12th May, 2017 asking her to move from Delhi to AFMSD Lucknow. We are aghast that the petitioner has been able to stall her order of transfer/movement for the last more than 3 ½ years; first by approaching the CAT in OA 1695/2017, which application was eventually withdrawn, and thereafter by filing W.P.(C) 5331/2017 and W.P.(C)1304/2018 in this court and thereafter, again by filing another miscellaneous application before the CAT.

7. The counsel for the petitioner does not dispute that the job of the petitioner is transferrable. What shocks us is that a transferable employee has been able to, by abusing the process of the court, stall transfer for so long. The counsel for the petitioner however contends that since there is a vacancy at Delhi, the petitioner, owing to her family circumstances, should be posted against that vacancy. However he again agrees that merely because there is a vacancy, there is no right to be appointed at that vacancy.

8. As far as the family circumstances of the petitioner are concerned, the same are not found by us to be of such nature which any of the other government employee, also desiring to be posted at Delhi, would not have. The petitioner cannot claim a right to remain posted at Delhi.

9. The counsel for the petitioner then states that vide the impugned order the petitioner has been asked to join at AFMSD Lucknow and that her representation for being posted against the vacancy would be considered thereafter. He contends that the

petitioner will join at AFMSD Lucknow but a direction for decision on her representation in a time bound manner be granted. However when we asked the counsel for the petitioner, whether the petitioner is willing to give an undertaking to this court that she will join at AFMSD Lucknow, it is conveniently said that the counsel has no instructions.

10. In the circumstances, since there is no certainty of the petitioner still joining at AFMSD Lucknow, the question of issuing any direction for time bound decision of the representation, after the petitioner has joined at AFMSD Lucknow, also cannot be given.

11. The petition is found to be in abuse of the process of the Court.

12. At this stage, the counsel for the petitioner states that the petitioner is willing to join at AFMSD Lucknow within two weeks of the transfer order being issued. He states that the transfer order has not been issued till now and without the transfer order, the petitioner cannot proceed to Lucknow.

13. The counsel for the respondents, after taking telephonic instructions, states that the transfer order has already been issued.

14. The counsel for the petitioner states that on the basis of the said statement, the petitioner will join at AFMSD Lucknow on or before 30th December, 2020.

15. The undertaking of the petitioner that she will, on or before 30th December, 2020, join at AFMSD Lucknow, is accepted and the

petitioner, through counsel, is made aware of the consequences of breach of undertaking given to the Court. Subject to the petitioner complying with the undertaking and performing her duties at AFMSD Lucknow, the writ petition be treated as a representation of the petitioner for being transferred from AFMSD Lucknow to a unit in Delhi and the said representation be decided on or before 31st March, 2021.

16. The petition is disposed of in terms of the above.



**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

DECEMBER 24, 2020/mw

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