

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Writ Petition (S/S) No.859 of 2014**

Prithiwis Kumar Sarkar .....Petitioner

Versus

Union of India & others .....Respondents

Present:- Mr. Karan Anand, Advocate for the petitioner.  
Mr. Sanjay Bhatt, Central Government Standing  
Counsel for the Union of India/respondents.

**Hon'ble Sudhanshu Dhulia, J. (Oral)**

This writ petition was dismissed for non-prosecution on 14.02.2017. Now a restoration application (MCC No. 144 of 2017) has been filed by the petitioner.

2. Grounds shown in the affidavit for recalling the order dated 14.02.2017 seem to be sufficient and *bona fide*. Consequently, the restoration application is allowed. Order dated 14.02.2017 is hereby recalled. The writ petition is restored to its original number.

3. Heard the learned counsel for the parties on merits.

4. The petitioner is a Head Constable in Indo Tibetan Border Police (from hereinafter referred to as the "ITBP"). He has been transferred from Dehradun to Arunachal Pradesh vide order dated 13.05.2014.

5. The only ground for interference in the transfer order dated 13.05.2014 as alleged by the petitioner is that he is facing a criminal trial at Dehradun and since he has been transferred to far flung area of Arunachal

Pradesh, he would not be able to attend court proceedings at Dehradun.

6. However, merely for this reason that the petitioner is facing a criminal trial his transfer order cannot be interfered with. Dehradun admittedly is a soft place and where the petitioner is being transferred is considered a hard posting, even as per the admission of the petitioner. Therefore, the petitioner cannot be given the benefit of facing a trial at Dehradun and for that reason his transfer to any other place from Dehradun cannot be interfered with as that would be granting a benefit to the petitioner, even though he is facing a criminal trial at Dehradun. The ITBP is a disciplined paramilitary force where the petitioner's services are required at Arunachal Pradesh. Moreover, the post on which the petitioner is working is a transferable post.

7. In view of the aforesaid, there is absolutely no reason to interfere in the matter. The writ petition stands dismissed. Interim order, if any, stands vacated.

8. However, it is made clear that in case the petitioner does not comply with his transfer order dated 13.05.2014 within a period of one month from today, the respondents would be at liberty to initiate departmental proceedings against the petitioner.

**(Sudhanshu Dhulia, J.)**

28.02.2017

Ankit/