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

+ **W.P.(C) 10831/2015 & C.M.No.27871/2015**

RAKESH KUMAR

..... Petitioner

Through: Ms.Rekha Palli, Sr.Adv. with
Ms.Punam Singh and Ms.Ankita
Patnaik, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms.Shiva Lakshmi, CGSC with
Mr.Arindam Dey, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **24.11.2015**

1. The petitioner is aggrieved by the order dated 14.09.2015 sending him on posting to Narkhatiaganj, 44th Battalion, Sashatra Seema Bal (SSB). He urges that this posting is contrary to the Standard Operation Procedure (SOP) dated 25.11.2014 which assures a tenure of at least two years.

2. The petitioner, a direct recruit SSB Officer was promoted as Commandant in the year 2014. He was serving in the 27th battalion when on 17.03.2015 his unit (27th Battalion) was directed to be rotated with the 44th Battalion. This meant that the 27th Battalion was to function at Jhapaha, designated as an Anti Naxal unit. He was sent for promotional course which he successfully completed in June, 2015. While so, on 27.08.2015, he was directed to be relieved to report to

Jhapaha. He claims to have done so when suddenly on 14.09.2015 he was sent back to Narkhatiaganj. The grievance articulated is two-fold, one that result of the impugned order would be deprivation of a chance to work in an Anti Naxal unit, necessary for career advancement and secondly that the petitioner was instrumental in nabbing some smugglers and had actively sought the probe further in the matter. It is well-settled that the posting and transfer orders dictated by the exigencies of administration, cannot be lightly interfered with in exercise of judicial review. That a posting or transfer order might facially be contrary to non-statutory guidelines *per se* would not entitle the court to fault exercise of administrative discretion. It is only in a proven case of malafides, violation of mandatory guidelines or rules and regulations where the decision making process culminating in the transfer order is vitiated by irregularity or unfairness, would be justified the court's stepping in under Article 226 of the Constitution of India. Beyond this framework, the courts would be advised to refrain from succumbing to the temptation of viewing subjective grievances as illegality capable of correction.

3. In view of the well recognised principle of law, in the administrative sphere, all that the court can do under the circumstances is to take note of the fact and direct the SSB to take into consideration that the current posting order impugned in this case (dated 14.09.2015) was not made at the petitioner's request. The consequent deprivation of chances of serving in an Anti Naxal unit shall not be therefore adversely impact his future career or promotional prospect. The second direction that the court deems fit is that the Director General,

SSB shall ensure that the investigation into the smuggling incident which the petitioner was able to unravel during his posting in the 27th Battalion at Narkhatiaganj is pursued actively and the offenders prosecuted in accordance with the law.

4. The writ petition and the pending application are disposed of in terms of the above directions.

5. Dasti.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

NOVEMBER 24, 2015

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