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

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Date of Decision : July 12, 2016

+ W.P.(C) 5867/2016

KAILASH CHANDER

..... Petitioner

Represented by: Mr.Rakesh Dahiya, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Represented by: Mr.Vivek Goyal, CGSC for
UOI.

AND

+ W.P.(C) 5871/2016

MOHAN SINGH

..... Petitioner

Represented by: Mr.Rakesh Dahiya, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Represented by: Mr.Manish Mohan, CGSC with
Mr.Shivam Chanana,
Ms.Manisha Saroha and
Ms.Priyansha Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

CM Nos.24171-72/2016 in W.P.(C) 5867/2016

CM Nos.24177-78/2016 in W.P.(C) 5871/2016

Exemption allowed subject to all just exceptions.

W.P.(C) 5867/2016

W.P.(C) 5871/2016

1. Issue notice. Learned counsel as above appear for the respondents on advance copy of the writ petitions being served.
2. Arguments have been heard.
3. The two writ petitions are being decided by a common order because a common question of law arises for consideration.
4. The question relates to interpretation of the Border Security Force (Tenure of Posting and Deputation) Rules, 2000.
5. Before noting the precise question of law which arises for consideration, individual facts concerning the two petitions may be noted.
6. Both the petitioners are enrolled in the Border Security Force. Petitioner Kailash Chander was posted with the 25th Battalion, BSF stationed at Chhawala on June 05, 2014. He was then holding the rank of a Head Constable. On January 22, 2015 he was promoted as an Assistant Sub-Inspector.
7. Petitioner Mohan Singh was posted with the 25th Battalion, BSF stationed at Chhawala on June 06, 2014. He was then holding the rank of a Constable. On November 30, 2015 he was promoted as a Head Constable.
8. The two petitioners question the movement orders : dated June 09, 2016 and June 10, 2016 – the former pertaining to petitioner Kailash Chander and the latter pertaining to petitioner Mohan Singh.
9. Whereas petitioner Kailash Chander has been directed to report to the 82nd Battalion, BSF stationed in West Bengal, petitioner Mohan Singh has been directed to report to the 67th Battalion, BSF stationed at Amritsar.
10. Both petitioners rely upon Rule 6 of the Border Security Force (Tenure of Posting and Deputation) Rules, 2000. The rule reads as under:-

“6. Tenure – The tenure for a Battalion shall be as under:-

- (i) Extreme hard area – two years;*
- (ii) Normal tenure – Maximum six years.”*

11. Learned counsel for the respondents drawn our attention to Rule 9 of the Rules relied upon by the petitioners which reads as under:-

“9. Posting on promotion – A member of the Force upto and including the post of Second-In-Command while posted in a station formation, shall be posted to a duty Battalion on promotion to the next higher rank. The tenure rule shall not be applied in promotion cases;

Provided that, the members of the Force who have less than 2 years of service before attaining the age of superannuation shall be exempted from application of this rule;

Provided further than the provisions contained in this rule shall only apply to the members of the Force who are promoted to a post which also exists in a Battalion.”

12. A simple reading of the two rules would evince that Rule 9 dilutes the rigour of Rule 6, in that, the tenure rule is not to apply in cases of promotion.

13. The reason is obvious. When force personnel are posted to different Battalions, a wholesome exercise is carried out based on the requirement of force personnel holding different ranks. When a person earns promotion, then initial working gets disturbed. Further as one moves up the pyramid, the space becomes less.

14. This is the ethos of the exception carved out to Rule vide Rule 9. It stands on a logic and a reason. Thus, the claim of the petitioners that in terms of Rule 6 they should be permitted to serve with the 25th Battalion, BSF for a period of two years, the minimum contemplated by the Rules, is misplaced.

15. Having earned a promotion, the petitioners would be liable to be transferred to such Battalions where requirement exists for force personnel holding the ranks as held by the petitioners on promotion.

16. Both the writ petitions are dismissed in limine.

17. No costs.

CM No.24170/2016 (Stay) in W.P.(C) 5867/2016

CM No.24176/2016 (Stay) in W.P.(C) 5871/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

JULY 12, 2016

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