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

+ **W.P.(C) 976/2017 & CM No.4481/2017 (for stay)**

SUBASH CHAND

..... Petitioner

Through: Ms.Saahila Lamba & Mr.T.S. Dagar,
Advts.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Jagjit Singh, Sr. Standing Counsel
with Mr.Preet Singh, Mr.Sukhdev
Singh & Ms.Kiran Kaushik, Advts.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

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21.02.2017

In this writ petition, the petitioner has challenged an order dated 215/Sec(ABE)/TR-6/65, New Delhi dated 20.01.2016 issued by the Government of India, Ministry of Railways (Railway Board) whereby about 26 office bearers who have completed their tenure in the same battalion have been transferred on administrative grounds.

The petitioner has challenged the order of transfer, relying on the order No.99/Sec (Spl)/RPF/Assn./pt., New Delhi dated 17.06.2002 of the Government of India, Ministry of Railways (Railway Board) which provides:-

“(i) The President and Secretary of the Zonal/Divisional RPF Association should preferably be posted at the Hqrs of the

Zone/Division concerned.

(ii) The President/Secretary of the Zonal/Divisional RPF Association who has completed his tenure at a place may be allowed to continue at his place of posting till he holds office. Permission to continue beyond the tenure shall be granted by the CSC in the case of Divisional President/Secretary and DG in the case of the Zonal President/Secretary.”

From the language and tenor of the said order dated 17.06.2002, it is patently clear that the directives contained therein are directory and not mandatory. Under the said order, the President and the Secretary of the Zonal Division of the RPF Association should preferably be posted at the headquarters. The President/Secretary of the Zonal Division who has completed his tenure at a place may be allowed to continue at his place of posting till he holds office. Permission to continue beyond the tenure is to be granted by the CSC.

The language and tenor of the Government order makes it patently clear that the directives are directory and not mandatory. The President and the Secretary may after completion of normal tenure at the place be given permission to continue beyond the tenure. In this case, permission has not been granted.

It is true that discretionary power cannot be exercised arbitrarily. It is well settled that if the facts and circumstances warrant exercise of discretion in a particular manner, discretion is to be exercised in that manner. However, the office bearers specified do not have any right to continue beyond tenure irrespective of whether permission to continue is granted or not. The challenge in this case is

to an order dated 20.01.2016. The order of movement is not in respect of the petitioner alone but in respect of 36 office bearers as observed above. The order ought not to be interfered with after over one year.

Ms.Lamba, learned counsel for the petitioner has also referred to an order No.2014/Sec(Spl)/6/12 dated 18.09.2014 of the Railway Protection Force, Ministry of Railways, Government of India, which *inter alia* provides “(s) The provisions of tenure and periodical transfer shall not apply for transfers on administrative ground and to enrolled members of the Force posted in Dog Squad, Bomb Squad, Band and as Armourers, Drivers and Ancillary staff”.

Ms.Lamba, learned counsel for the petitioner submits that the petitioner being a Member of the band, the provisions of tenure does not apply to the petitioner. However, Under Chapter VII of the Railway Protection Force Rules, 1987 framed in exercise of the powers conferred by the Railways Protection Force Act, 1957, the services of all Members of the force are transferrable anywhere in India.

The reliefs prayed for in the petition are, in our view, barred by limitation. The writ petition is, therefore, dismissed. The pending application also stands disposed of.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

FEBRUARY 21, 2017/gm

