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

19

+ W.P.(C) 6053/2016

DHARAMBIR SINGH Petitioner

Through: Ms.Saahila Lamba, Adv.

versus

UNION OF INDIA AND ORS Respondents

Through: Ms.Saroj Bidawat, Adv.

20

+ W.P.(C) 6054/2016

SATVIR SINGH Petitioner

Through: Ms.Saahila Lamba, Adv.

versus

UNION OF INDIA AND ORS Respondents

Through: Ms.Saroj Bidawat, Adv.

21

+ W.P.(C) 6055/2016

JAGDISH SINGH Petitioner

Through: Ms.Saahila Lamba, Adv.

versus

UNION OF INDIA AND ORS Respondents

Through: Ms.Saroj Bidawat, Adv.

24

+ W.P.(C) 6058/2016

MEHTAB SINGH Petitioner

Through: Ms.Saahila Lamba, Adv.

versus

UNION OF INDIA AND ORS Respondents

Through: Ms.Saroj Bidawat, Adv.

25

+ W.P.(C) 6059/2016

JAI SINGH

..... Petitioner

Through: Ms.Saahila Lamba, Adv.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms.Saroj Bidawat, Adv.

28

+ W.P.(C) 6374/2016 & CM No.26100/2016 (for stay)

JAMSHED ALAM

..... Petitioner

Through: Ms.Saahila Lamba

versus

DIRECTOR GENERAL, BORDER SECURITY FORCE & ANR

..... Respondents

Through: Mr.Rajesh Kumar, Adv. Wioth
Mr.Arvind Sharma, DC, BSF.

29

+ W.P.(C) 6463/2016 & CM No.26502/2016 (for stay)

SARVODAY KUMAR SINGH

..... Petitioner

Through: Ms.Saahila Lamba, Adv.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr.Jaswinder Singh & Ms.Debajyoti
Behura, Adv.

31

+ W.P.(C) 6466/2016 & CM No.26505/2016

UMESH CHANDRA

..... Petitioner

Through: Ms.Saahila Lamba, Adv.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr.Jaswinder Singh & Ms.Debajyoti
Behura, Adv.

32

+ W.P.(C) 6467/2016 & CM No.26506/2016 (for stay)

MAHINDER SINGH

..... Petitioner

Through: Ms.Saahila Lamba, Adv.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr.Jaswinder Singh & Ms.Debajyoti
Behura, Adv.

33

+ W.P.(C) 6483/2016 & CM No.26565/2016 (for stay)

UMESH KUMAR

..... Petitioner

Through: Ms.Saahila Lamba, Adv.

versus

DIRECTOR GENERAL BORDER SECURITY FORCE AND ANR

..... Respondents

Through: Mr.Umesh Sharma, CGSC.

CORAM:**HON'BLE MS. JUSTICE INDIRA BANERJEE****HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA****ORDER**

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16.02.2017

1. In all the writ petitions, the petitioners, some of whom are Head Constables and some of whom are Assistant Sub Inspectors of Police have challenged movement orders, whereby they have been transferred out of Delhi.

2. Section 7 of the Border Security Force Act, 1968 provides that every Member of the Border Security Force shall be liable to serve in any part of India, as well as outside India. The services of all the writ petitioners are transferrable.

3. In *Union of India and Others vs. S.L. Abbas* reported in AIR 1993 SC 2444, the Supreme Court held that policy of transfer as to who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by *mala fides* or made in violation of any statutory provisions, the Court cannot interfere with it.

4. The writ petitioners have challenged their respective movement orders upon reference to the Border Security Force (Tenure of Posting and Deputation) Rules, 2000. In W.P.(C) No.5867/2016 (*Kailash Chander vs. Union of India & Ors.*) a Division Bench of this Court held:-

"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."

5. In the case of Rohit Singh and Anr. Vs. Union of India & Ors. being W.P.(C) No.7112/2016, another Division Bench of this Court of which one of us i.e. Indira Banerjee J. was a Member, held that a stipulation in the rules that COBRA personnel would be allotted their Choice Zones and posted at Soft Field/Static Offices/Peace Stations as per eligibility and administrative/operational feasibility/availability of vacancies conferred discretion on the competent authority to post COBRA personnel in Soft Field/Static Offices/Peace Stations as per their eligibility as well as administrative /operational feasibility. The

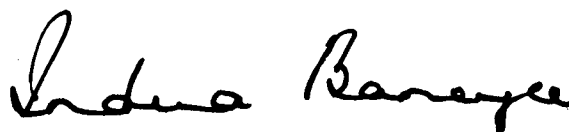
use of the words 'administrative/operational feasibility' did not confer any right on the petitioners to seek a posting at Soft Fields/Static Offices/Peace Stations. The aspect of administrative/operational feasibility had to be determined by the competent authority and the writ court would not substitute the view of the competent authority with its own view. The Division Bench also observed that the standing orders of the Border Security Force were in the nature of guidelines, the same were directory and not mandatory.

6. In these writ petitions, no specific case of vindictiveness or *mala fides* has been made out. It is the case of the respondents that the petitioners having been promoted, they were required to be posted in field areas.

7. For the reasons discussed above and in particular the explanation that the petitioners are required to perform two years of mandatory field service, we do not deem it appropriate to interfere with the impugned movement orders.

8. The writ petitions are therefore, dismissed.

9. Pending applications also stand disposed of.



INDIRA BANERJEE, J



ANIL KUMAR CHAWLA, J

FEBRUARY 16, 2017

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