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

+ **W.P.(C) 4111/2018 & C.M. No.16188/2018 (Stay)**

AJAI PRATAP SINGH Petitioner
Through: Ms. Saahila Lamba, Advocate.

versus

UNION OF INDIA AND ORS. Respondents
Through: Ms. Shiva Lakshmi, CGSC with
Mr. Ruchir Ranjan, Mr. Siddharth Singh,
Advocates with Mr. Vinod Kumr DC, BSF and
Mr. Sawant Sameer, DC.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

% **11.05.2018**

1. The petitioner is aggrieved by the Signals dated 26.3.2018 and 19.4.2018 issued by the respondent/BSF transferring him from STS-I, New Delhi to 163 BN.

2. The petitioner was appointed in the BSF on 09.12.1991 and is presently working on the post of Commandant. On 08.6.2016, when the petitioner was working as Second-in-Command, he was posted to the Signal Regiment at New Delhi under the FHQ Frontier. On 07.10.2016, the petitioner was promoted to the rank of Commandant and posted to STS-I, New Delhi under the FHQ Frontier. On 26.3.2018, the respondents issued a Signal, posting the petitioner from STS-I, New Delhi to 163 BN. and thereby curtailing his tenure in Delhi by a period of 15 months. The

petitioner submitted a representation to the respondents for reconsidering the posting order, which was rejected vide Signal dated 19.4.2018. Aggrieved by the said rejection order, the petitioner has filed the present petition.

3. Ms. Lamba, learned counsel for the petitioner submits that the petitioner's tenure of posting in Delhi has been arbitrarily curtailed by the respondents by 15 months particularly when he was given a choice of posting of transfer and he had requested that he be retained in Delhi at FHQ, New Delhi till completion of his tenure that would have expired in ordinary course in June, 2019. She states that when the petitioner had submitted his preference to continue in the FHQ, New Delhi till completion of his tenure and the respondents had accepted the same, there is no justification for curtailing the said tenure and directing him to move out of Delhi, half way through his tenure.

4. Learned counsel for the respondents opposes the present petition and relies on Rule 9 of the Border Security Force (Tenure of Posting and Deputation) Rules, 2000 that prescribes that "*a member of the Force upto and including the post of Second-In-Command while posted in a static formation, shall be posted to a duty Battalion on promotion to the next higher rank. The tenure rule shall not be applicable in promotion cases*". She states that in the present case, the petitioner was promoted from the post of Second-in-Command to Commandant vide order dated 07.10.2016 and at that point in time, he was posted at Delhi, which is a static formation. In view of the fact that the petitioner had been promoted to the rank of Commandant, he was posted out of Delhi to a duty Battalion, on the next higher rank. She explains that it is for this reason that his posting/transfer

order has been issued.

5. Learned counsel for the respondents also relies on Rule 19 of the captioned Rules, which empowers the DG, BSF to issue orders of extension/reduction of tenure of a member of the Force. She states that administrative exigencies require that the petitioner be posted out of Delhi and not only the petitioner, but six other officers, who were also promoted alongwith him to the rank of Commandant, have been posted out of Delhi. Therefore, no discrimination has been exercised against the petitioner, contrary to the submissions made by the other side.

6. In response, Ms. Lamba, learned counsel for the petitioner refers to the Signal dated 22.7.2016, issued by the respondents to contend that once an officer was given an exercise to opt for a place of posting and his case was duly recommended by his superior officer, the respondents ought not to have posted him out.

7. We may note that the Signal dated 22.7.2016 itself mentions that continuation in same location can be considered by the respondents on any medical grounds/issues relating to the education of children etc. In such cases, recommendation for continuation at the place of posting can be made but it is not that in every case such a request must be acceded to. Further, the very same Signal clearly states that if there are more than one Dy. Commandants, then the rest will be posted out. Counsel for the respondents has stated on instructions that the said rule applies equally when it comes to posting Commandants. She states that when the petitioner is posted out, another officer of the rank of Commandant shall take over from him in Delhi.

8. Having regard to the rule position and the fact that it is on account of administrative exigencies that the petitioner has been posted out of Delhi, we are not inclined to interfere.

9. At this stage, learned counsel for the petitioner states that the petitioner may be granted a reasonable time to join his new place of posting.

10. Learned counsel for the respondents assures the Court that a minimum period of two weeks shall be given to the petitioner to join at his place of posting.

11. The present petition is accordingly dismissed along with the pending application.

HIMA KOHLI, J

VINOD GOEL, J

MAY 11, 2018

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