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

+ W.P.(C) 4393/2018

RAJAN KUMAR SHUKLA Petitioner
Through: Ms. Saahila Lamba, Advocate

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. Vijay Chandra Joshi, Mr. Pradeep
Jha, Advocate with Mr. Vinod Kumar, DC (Law).

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER
% **12.07.2018**

1. The present petition has been filed by the petitioner praying *inter alia* for quashing the orders dated 03.04.2018, 05.04.2018 and 23.04.2018 issued by the respondents, prematurely repatriating him from the respondent No.3/National Security Guard to his parent cadre, respondent No.2/BSF.

2. When the matter was listed for admission on 27.04.2018, counsel for the respondents had sought time to obtain instructions from the Department as to the reason for prematurely repatriating the petitioner from the respondent No.3/National Security Guard to respondent No.2/BSF. Accordingly, the case was adjourned for today.

3. In the meantime, during the summer vacations, the petitioner had filed an application for keeping the impugned orders in abeyance till the next date

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of hearing. In the order dated 13.06.2018 passed by the Vacation Bench, the submission of the counsel for the respondents was recorded to the effect that a complaint alleging sexual harassment against the petitioner was received and the same had not been withdrawn by the complainant. Noting the said submission, the Division Bench had opined that since the complaint against the petitioner had not been withdrawn, his premise that the repatriation order against him is wrong, is baseless and it is the discretion of the borrowing authority to retain an official on deputation. With these observations, the application was dismissed.

4. Today, learned counsel for the petitioner submits that the petitioner has already joined his parent cadre, i.e., BSF and therefore, the writ petition has been rendered infructuous. She, however, raises a grievance that earlier the complainant had withdrawn the complaint of sexual harassment against the petitioner and now it is stated by the counsel for the respondents that the said complaint has been sought to be revived, which request has been acceded to. She submits that instead of following the procedures of the court of enquiry as prescribed under Rule 173 of the BSF Rules, 1969, the Department has short-circuited the entire procedure and indicted the petitioner, which is contrary to law.

5. When confronted with the aforesaid position, counsel for the respondents concedes that on receiving the complaint of sexual harassment against the petitioner, no opportunity of hearing had been afforded to the petitioner to defend himself.

6. That being the position, the order dated 08.12.2017 passed by the Inspector General, South Bengal Frontier, BSF is not sustainable. We have

perused a copy of the said order, wherein it has been recommended that disciplinary action be initiated against the petitioner on various counts and written warning be issued against him. It is agreed that the order dated 08.12.2017 shall not be given effect to and instead, the procedure prescribed in Rule 173 of the BSF Rules, 1969 shall be followed for considering and deciding the allegations of sexual harassment received against the petitioner.

7. The petition is disposed of.

HIMA KOHLI, J

REKHA PALLI, J

JULY 12, 2018

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