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

+ **W.P.(C) 10618/2018 & C.M. No. 41362/2018**

SANJEEV KUMAR (IDSE) Petitioner
Through: Mr. M.K. Bhardwaj, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through: Mr. Arun Bhardwaj, CGSC with
Mr. Nikhil Bhardwaj, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **05.10.2018**

Caveat No. 929/2018

1. Appearance is entered by learned counsel for the caveators/respondents, who states that a complete set of the paper book has been served on him.
2. In view of the above, the caveat stands discharged.

W.P.(C) 10618/2018 & C.M. No. 41362/2018 (stay)

1. The present petition has been filed by the petitioner assailing an order dated 11.9.2018, passed by the Central Administrative Tribunal dismissing O.A. No. 2416/2018 filed by him for quashing and setting aside his transfer-cum-posting order dated 04.5.2018, transferring him to HQ CE Sri Nagar Zone and order dated 15.6.2018, rejecting his representation against the said transfer order.

2. By the impugned order, the Tribunal has dismissed the O.A. filed by the petitioner by holding that his application is meritless. Aggrieved by the said order, the petitioner has filed the present petition.

3. Mr. Bhardwaj, learned counsel for the petitioner has taken two pleas to urge that the Tribunal has erred in passing the impugned order. Firstly, he contends that the Tribunal failed to appreciate that the petitioner's posting order dated 14.1.2016, posting him at Delhi was illegal inasmuch as the said posting order had restricted the petitioner's posting for two years on compassionate grounds whereas, ordinarily, the period of posting is for four years. Secondly, it is submitted that the Tribunal ignored a specific plea raised by the petitioner with regard to the competence of the officer, who had issued the impugned posting order in respect of the petitioner.

4. Coming to the first plea taken by learned counsel for the petitioner with regard to restricting the posting order of the petitioner at Delhi for two years, in terms of the order dated 14.1.2016, we may note that the petitioner had not only unreservedly accepted the said posting order, he had proceeded to join his place of posting where he remained for a period of two years. Only after exhausting the entire period of two years, when the impugned transfer order was issued directing the petitioner to join at Sri Nagar HQ CE Sri Nagar Zone, did he get wiser and proceeded to file the O.A. before the Tribunal, wherein he raised a plea with regard to the purported illegality of the order dated 14.1.2016, on the ground that the same was a *malafide* action on the part of the respondents and his posting at Delhi was not a compassionate posting. Once the petitioner had accepted the posting order

dated 14.1.2016 and joined his place of posting in terms of the said order, it does not lie in his mouth to challenge the said order after exhausting the period of two years. The stand taken by the petitioner in this regard is found to be wholly untenable and is rejected.

5. The plea of the learned counsel for the petitioner that his client had complied with the posting order dated 14.1.2016 as the same was made subject to the outcome of the Court case, is also found to be without any basis inasmuch as the posting order dated 14.1.2016 clearly stated that the period of absence of the petitioner from Kanpur till the date of his joining at the new place of posting, would be regularised after he joined, subject to the outcome of the Court case. Nowhere did the posting order dated 14.1.2016 state that his joining at the place of posting would be subject to the outcome of the Court case.

6. Coming to the second and the only other plea taken by learned counsel for the petitioner to assail the impugned order, relating to the competence of the officer, who had issued the impugned transfer order in respect of the petitioner, it is the submission of Mr. Bhardwaj, learned counsel for the petitioner that the Transfer Order has been issued by the Engineer-in-Chief whereas the Competent Authority, is the DG, MES, who could issue such an order with the approval of the Minister concerned.

7. The aforesaid plea is also found to be devoid of merits for the simple reason when the petitioner had received the earlier posting order dated 14.1.2016, posting him from Kanpur to Delhi, he did not challenge the authority of the Engineer-in-Chief, who had issued the same. In fact, the

petitioner had promptly complied with the said order without questioning the authority under which it had been issued. Moreover, on perusing the letter dated 14.5.2016, addressed by the petitioner to the Chief-in-Engineer (WAC) Palam, we find that he had clearly stated therein that he had reported on arriving on 19.1.2016 and had been performing his duties continuously. There is not a whisper in the said letter either on the purported curtailed period of his posting or on the competence of the issuing authority of the posting order dated 14.1.2016. It is only when the subsequent posting order dated 04.5.2018, came to be issued by the same authority namely, the Engineer-in-Chief, that the petitioner has raised a flimsy ground that the said officer is not competent to pass any posting order in his case.

8. No other point has been argued by learned counsel for the petitioner to assail the impugned order.

9. In view of the aforesaid facts and circumstances, we do not find any merit in the present petition, which is dismissed in *limine* along with the pending application, with costs of Rs.10,000/- to be deposited with the “Public Fund A/C, CE(AF), Palam”, within two weeks.

HIMA KOHLI, J

REKHA PALLI, J

OCTOBER 05, 2018

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