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

+ **W.P.(C) 10463/2019**

SI (MIN.) SHIV SAGAR GIRI Petitioner

Through: Mr. O. P. Agarwal, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Vikram Jetly, CGSC with
Ms. Rupali Kapoor, advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **26.09.2019**

CM APPL. 43269/2019 (exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 10463/2019 and CM APPL. 43268/2019 (stay)

2. This is the second round of litigation, where the Petitioner is questioning a movement order dated 16th September 2019 whereby he has been transferred from his present posting in New Delhi to the 17th Battalion BSF at Raipur.

3. Earlier, the Petitioner had filed W.P.(C) 9238 of 2019 which was disposed of by this Court by its order dated 29th August, 2019 essentially on the basis that the Petitioner's representation dated 10th April, 2019 whereby he had offered to forgo his promotion to the post of Inspector and requested to be retained in New Delhi on the ground of serious illness of his mother and wife, was not considered before issuing the movement order on the first

occasion. The Court had in the aforesaid order issued the following directions:

“7. Considering that the Petitioner's apprehension expressed before this Court on 27th August, 2019 has turned out to be correct and considering that his application dated 10th April, 2019 was in fact not decided by the Respondent the Court passes the following directions:

i) The movement order dated 27th August, 2019 produced before this Court today is hereby set aside.

ii) Within a period of two weeks from today and in any event not later than 16th September, 2019 the Respondents will take a decision on the Petitioner's aforementioned application dated 10th April, 2019.

iii) If in the course of taking such decision the Respondents seek to rely on any complaint/material against the Petitioner it will then be incumbent on the Respondents to provide such material to the Petitioner and seek his response thereto.

iv) The decision of the Petitioner's application will be communicated to the Petitioner not later than one week after it is taken.

v) It will be open to, the Petitioner to seek appropriate remedies in accordance with law, if such decision is adverse.”

4. Following the above order, the Respondents have now passed the impugned order dated 16th September, 2019 rejecting the Petitioner's representation and reiterating their earlier decision to transfer the Petitioner as Inspector to 17th Battalion BSF at Raipur, Chhattisgarh.

5. Counsel for the Petitioner has a grievance that in passing the said order,

while Rules 8 and 9 of the BSF (Tenure of Posting and Deputation) Rules, 2000 (hereinafter 'Rules') have been referred to, there has been no mention of Rule 12 of the Rules, which reads as under:

“12. Posting during move of Battalion- A member of the force posted to a Battalion, which is under move within or out of frontier shall not be transferred except under rule 10 and 11 and the powers to consider individual case on medical ground of the member of the force or his family as certified by a Medical Board shall rest with the Director General.”

6. The Court finds that Rule 12 does not make it mandatory for the Director General ('DG') to retain a member of the force on the grounds mentioned therein i.e. the illness of a member of his family. The power has to be exercised on a case to case basis. The Court finds that Raipur also has medical facilities, which can cater to the illness of the Petitioner's wife and mother.

7. It is then pointed out that the Petitioner has been in Delhi only since 20th June, 2018 and that the BSF Policy as regards the tenure of ministerial staff in Delhi and other static locations 'will be 4 years.' It is contended that since the Petitioner has not completed 4 years, it is unfair for the Respondents to post him out.

8. The above submission overlooks the fact that the Petitioner has been promoted as Inspector. Again, there was no compulsion on the Respondents to accept the offer of the Petitioner to forgo his promotion. In the circumstances, the Court is not inclined to interfere with the impugned order.

9. Accordingly, the petition is dismissed. The application is also disposed of.

10. Order '*dasti.*'

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 26, 2019

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