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

+ **W.P.(C) 4893/2019 and CM APPL. 21741-21742/2019**

R.R. BHARATI

..... Petitioner

Through: Mr. Ankur Chhibber, Mr. Yogesh
Kumar Mahur & Mr. Harkesh,
Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Geetanjali Mohan & Mr. N.K.
Agrawal, Advocates along with Mr.
Ramesh Agrawal, Asstt. Director
(Personnel), SAI.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

13.05.2019

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1. The petitioner assails the order dated 24.04.2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No.1262/2019. The petitioner had assailed his transfer from New Delhi to SAI Regional Centre, Lucknow in the said Original Application, which has been rejected by the Tribunal.

2. The petitioner had sought to place reliance on the Rotational Transfer Policy for Central Secretariat Service (CSS) circulated vide O.M. dated 16.07.2015 which, inter alia, provided that if the officer is due for

superannuation within two years, he/ she will be retained in the same Ministry/ Department against an existing vacancy of the promotional post. In case of no vacancy of the promotional post being available, then the officer will be transferred to another Ministry/ Department. The petitioner states that he is due to superannuate in January 2021 and since he has less than two years service remaining, he could not be transferred as was done vide order dated 11.04.2019, whereby he was transferred out from SAI Head Office to SAI Regional Centre, Lucknow.

3. The Original Application was opposed by the respondents, who stated that, firstly, the petitioner had throughout been posted in Delhi, which was contrary to the aforesaid policy. Secondly, it was informed to the Tribunal that a complaint of sexual harassment had been made against the petitioner and that was the reason for his transfer. The Tribunal did not find favour with the Original Application by observing that, firstly, the petitioner had himself benefitted from the breach of the aforesaid policy and, therefore, could not seek its enforcement and, secondly, the petitioner was also faced with a complaint of sexual harassment.

4. Mr. Chhibber submits that the petitioner had no role to play in his continued posting in Delhi and, therefore, the fact that the petitioner had been posted at Delhi throughout, is no reason to disregard and not implement the policy not to transfer out employees who have less than two years of service remaining.

5. Learned counsel for the respondents, who appears on advance notice, has submitted that the complaint against the petitioner regarding sexual

harassment has been received from a female employee, who is a young professional working under the “Khelo India Programme” at SAI Headquarters for the last 1.5 years. The complaint is against the petitioner. Since the petitioner is on a senior position and has the opportunity to impact the career and professional opportunities of the said complainant, action has been taken to transfer the petitioner in terms of the Vishakha Guidelines and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

6. Learned counsel for the respondent further points out that the petitioner was repeatedly called upon to appear before the Committee but the petitioner has not yet appeared in the proceedings. It is informed that once again the petitioner has been asked to appear before the Committee on 14.05.2019. Mr. Chhibber, on instructions, states that the petitioner shall appear before the Committee on 14.05.2019 and thereafter, as & when he is called for the proceedings.

7. We make it clear that in case the petitioner fails to appear in any of the proceedings, he shall be deemed to have done so at his own peril and the Committee would be free to proceed against him ex-parte. In that eventuality, it shall not be open to the petitioner to ask for another opportunity to represent himself before the Committee.

8. At this stage, Mr. Chhibber states that the petitioner may be granted one week's time to join at Lucknow since the inquiry proceedings are to be held at Delhi tomorrow. We permit the petitioner to join at Lucknow on or before 20.05.2019. However, we make it clear that it shall be open to the

respondents to determine as to how the period for which the petitioner has not reported at Lucknow should be treated in accordance with the Rules.

9. The petition stands disposed of in the aforesaid terms.
10. Order Dasti under the signatures of the Court Master.

VIPIN SANGHI, J

REKHA PALLI, J

MAY 13, 2019
B.S. Rohella