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

Date of decision: 29th July, 2020

+ **W.P. (C) 3189/2020, C.M. Appl. No.11080/2020 (for interim stay)**

KULWANT RAI SHARMA

..... Petitioner

Through: Mr. Surender Singh Hooda & Aditya
Hooda, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rakesh Gogna, CGSC with Ms.
Aakanksha Kaul, Mr. Manek Singh,
Mr. Akshya, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

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[VIA VIDEO CONFERENCING]

ASHA MENON, J.

1. The petitioner is a Commandant with the Border Security Force (BSF) and has filed the instant petition with the following prayers:

- (a) *Issue a writ, order or direction in the nature of certiorari and quash the BSF Signal No. R/ 3226 dated 21.2.2020 qua the petitioner and;*
- (b) *Issue a writ, order or directions in the nature of mandamus directing the respondents to post the petitioner to any BSF establishment in Delhi till the time the petitioner completes his Delhi tenure of three years and;*

(c) *pass any other/further order(s) or direction(s) that this Hon'ble court may deem fit and proper in the interest of justice.*

2. The petitioner claims that under Rule 5(1) of the Border Security Force (Tenure of Posting and Deputation) Rules, 2000, he was entitled to continue to remain in Delhi for a period of three years and that by means of the impugned Signal, he was being transferred out of Delhi after having served for only a year and a half. The transfer order in question has been challenged claiming it to be prompted by *mala fide* as the IPS officers were unhappy with him for having approached the court for the grant of NFSG and NFU and other financial benefits to the BSF Cadre officers to bring them at par with the IPS officers, thus annoying the IPS lobby, who were now singling him out to deny him the opportunity to complete his tenure at FHQ Delhi. It is also submitted that even though the petitioner was due to be promoted to the rank of DIG in the next 6 to 12 months, he was being posted to a duty battalion in order to ruin his career. Hence, he has prayed that the transfer order dated 21st February 2020 qua him be quashed.

3. The learned counsel for the petitioner Mr.Hooda submitted that the petitioner had been attached with the Ministry of Home Affairs (MHA) as exigency of service on 27th February 2018 (Annexure P-1) and it was without any sanctioned post and benefits and was *ad hoc*. Because he was compelled to reside in a hostel and his family life had been disrupted, the petitioner made a request to the BSF to place him

in a BSF establishment in Delhi so that he could obtain family accommodation. Accordingly he was posted from SHQ Krishnanagar to DIG(HQ) Force HQ, though he continued to be attached to the MHA. But the respondents wrongly treated it as a “request posting”. According to the petitioner this was only a paper posting and the subsequent posting dated 5th September 2018 from DIG (HQ)FHQ BSF to Command HQ (Spl Ops) ANO was also a paper posting as he was not required to physically join at the latter post which was located at Delhi, as he continued to remain attached to the MHA.

4. The learned counsel for the petitioner submitted that the MHA de-attached him on 8th November 2019 and the petitioner reported for duty physically on 16th December 2019 at DIG(HQ) FHQ as he had not physically reported to Command HQ (Spl Ops) ANO till then. As by that point of time the petitioner had completed a tenure that was a little short of two years at Delhi, he applied to the Director-General BSF on 16th December 2019 requesting him for continuation of his posting at the DIG(HQ) FHQ or to post him in any BSF establishment in Delhi to complete his tenure of 3 years at a static formation in accordance with the extant rules.

5. Learned counsel contends that due to the bias of the senior officers, instead of considering the valid and genuine request of the petitioner which was in accordance with the rules and as per the practice of the BSF, while his posting from the DIG(HQ) FHQ to 146 BN BSF, located at Panjipara, West Bengal was cancelled yet he was posted to 166 BN BSF, located at Panisagar, Tripura with

immediate effect while three other Commandants were specifically allowed to remain in Delhi to complete a three year tenure though the institution to which they were attached had moved out of Delhi, clearly establishing that the petitioner was being discriminated against.

6. The effect of this transfer was to disentitle the petitioner to residential accommodation for his family in Delhi. The learned counsel for the petitioner submitted that through repeated representations it was pointed out that his daughter had just joined her first assignment in Tata Consultancy Services, NOIDA and required parental support and that in all his 29 years of unblemished service it was only for a brief period of one year and nine months from October 2003 to June 2005 that he had remained posted at Delhi and in ordinary course he could have been allowed to complete his tenure of 3 years at FHQ, Delhi. These representations have been placed on the record as Annexure P-9 to Annexure P-13.

7. The learned counsel for the petitioner submitted that the respondents have neither given any written reasons for denying him his request nor has any fact been highlighted in the noting-sheets of the department filed by the learned counsel for the respondents electronically, which could justify the discriminatory treatment meted out to the petitioner. It is submitted that the petitioner having been dealt with so unfairly was entitled to the relief he had claimed namely, the setting aside of the posting orders i.e. BSF Signal No.R/3226 dated 21st February 2020, with a further direction to the

respondents to post the petitioner at some BSF establishment at Delhi till he completes a tenure of three years at Delhi.

8. *Per contra*, Mr. Gogna, Senior Standing Counsel for the respondents contended that the petitioner had been posted with the MHA on service exigency without any role of the BSF and against no post and with no benefits of service. It was pointed out that the posting order of the MHA dated 1st May 2018 (Annexure.P-2) itself mentioned that though the normal tenure of attachment was three years, the official could be repatriated “at any time on administrative grounds”. It was the MHA which de-attached the petitioner, again, without any input from the BSF on 8th November 2019 (Annexure P-7) and was directed to report to IG (Pers), BSF, New Delhi. As the posting to DIG(HQ) FHQ and subsequently to Command HQ (Spl Ops) ANO (Annexure P-4 & Annexure P-5) was only in response to the request of the petitioner for a posting in Delhi to be able to obtain residential accommodation during his attachment with MHA, the petitioner could not claim as a matter of right a posting for 3 years in Delhi and since the posting to Delhi was not a routine posting Rule 5 of the BSF (Tenure of Posting and Deputation) Rules, 2000 had no applicability.

9. According to the learned Standing Counsel, the BSF has actually been accommodating the petitioner because of his senior position in the Force. Upon his return from attachment, the petitioner has been posted in routine and nothing more can be read into it. According to the learned Standing Counsel, all throughout the

petitioner in his representations requested for a posting in Delhi to enable him to avail of government accommodation for his family. Not once had he claimed any right to complete his tenure under Rule 5 being fully aware that he could claim no such right. Raising it now by way of this petition was a clear after-thought and deserved out-right rejection.

10. Producing the noting-sheets the learned Standing Counsel urged that these supported his submission that every request made by the petitioner, including for study leave for two years, had been considered at all levels in an effort to grant him benefits, but as it was not possible to do so under the Rules, his requests had to be turned down. No *mala fide* could be attributed to the action of the BSF officers including in the posting orders under challenge. Thus, it was prayed that the petition be dismissed.

11. We have heard both counsel and have carefully perused the record including the record of the noting-sheets dealing with the various representations made by the petitioner for a continued tenure in Delhi. A perusal of Rule 5 as reproduced in the counter affidavit at internal page 8, shows that it relates to “*routine transfer to static formation due to turn over*” on completion of the field service. Such a posting was recommended to be for a period of three years. Admittedly, in the instant case, the petitioner had come to Delhi not on a “*routine transfer to a static formation*”. Rather, due to exigencies of service, he was “*attached*” with Police-II Division, MHA in New Delhi. This attachment, though normally for three

years, as per the order (Annexure P-2) could also end sooner for administrative reasons. It is clear that the MHA took that decision to repatriate the petitioner before the expiry of the three-year tenure. In other words, neither the posting nor the repatriation was under Rule 5 and the petitioner is bound by the terms of his attachment order dated 1st May 2018 (Annexure P-2) whereunder, there is no vested right in the petitioner to remain in Delhi for three years.

12. As regards the contention of the learned counsel for the petitioner that as he was “*posted*” to Delhi from 142Bn to SHQ KNR (Annexure P-3) and which posting was considered as a “*request posting*” he was entitled to the benefit of Rule 5, suffice it to note that he himself claims the posting to be on paper. It is clear that the BSF placed him at an establishment in Delhi as the petitioner had sought such a placement to enable him to avail the residential accommodation for his family. It was his grievance that he had been placed at a disadvantage as the government accommodation was not admissible on attachment (Annexure P-2) and by posting him at DIG (HQ) FHQ, the BSF removed this disadvantage while his attachment continued with the MHA. Such a posting cannot be considered routine posting to a static formation under Rule 5 and no right to a completion of tenure of three years at Delhi can be claimed by the petitioner. In not acceding to the request of the petitioner in this regard, we are unable to find any *mala fides*, even after perusal of the noting-sheets.

13. We find that the representations of the petitioner have been dispassionately and fairly considered by the competent authorities and there is not a hint of any victimization as sought to be claimed by the petitioner. There is no right of the petitioner to seek a posting in Delhi for three years. Transfer orders are not interfered with by courts unless there is bad intention or victimization is disclosed. The attempt to portray victimhood at the hands of the IPS Cadre officers because the petitioner sought financial benefits for the BSF Cadre officers is absolutely unconvincing and appears absurd.

14. No ground has been made out to quash the BSF Signal R/3226 dated 21st February 2020 or to direct the respondents to post the petitioner to an establishment in Delhi to enable him to complete three years tenure.

15. There is no merit in the petition, which is accordingly, dismissed.

ASHA MENON
(JUDGE)

RAJIV SAHAI ENDLAW
(JUDGE)

JULY 29, 2020
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