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

% ***Date of decision: November 01, 2022***

+ **W.P.(C) 15094/2022 & CM. APPL. 46671/2022**

RAVI KUMAR SINGH Petitioner

Through: **Ms. Saahila Lamba, Advocate**

Versus

UNION OF INDIA & ORS. Respondents

Through: **Mr. Jitesh Vikram Srivastava, Senior
Panel Counsel & Mr. Prajesh
Vikram Srivastava, Government
Pleader**

CORAM:

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE**

JUDGMENT (oral)

1. Pertinently, this is second round of litigation by the petitioner before this Court. The petitioner in the first round of litigation being W.P.(C) No. 14736/22 had sought quashing of the signals dated 15.09.2022 and 21.09.2022 and movement order dated 06.10.2022 passed by the respondents. In the first round of litigation and this Court vide decision dated 18.10.2022 had directed the competent authority of respondents to decide petitioner's representation dated 21.09.2022 within two weeks.
2. Aggrieved against the decision dated 25.10.2022 passed by the

respondents apropos thereto, the present petition has been preferred by the petitioner seeking quashing of the said order dated 25.10.2022; signals dated 15.09.2022 and 21.09.2022 and movement order dated 06.10.2022 passed by the respondents. In addition, direction is also sought to respondents to either permit petitioner to complete his four years tenure at OPS Directorate, FHQ, New Delhi or to post him to any other Directorate/Establishment in Delhi to enable him to complete remainder of his three years' tenure.

3. Learned counsel appearing on behalf of petitioner has submitted that Rule 5 of Border Security Force (Tenure of Posting and Deputation) Rules, 2000 prescribed that the tenure of members of the Force belonging to the ministerial cadre shall be four years and petitioner was posted at FHQ, New Delhi only in September, 2021. Also submitted that petitioner has remained posted at Meghalaya Frontier for nearly 7 years out of his service tenure of 15 years and respondents have arbitrarily rejected petitioner's request to continue posting at FHQ, New Delhi. Learned counsel for petitioner has submitted that petitioner has been transferred from OPS Directorate, FHQ, New Delhi without affording an opportunity of hearing and that the information inadvertently disclosed by the petitioner was very much available in the public domain. Learned counsel next submitted that against the Show Cause Notice, petitioner has already been issued a warning and for the same action of petitioner, he cannot be given two punishments.

4. It has been also submitted that impugned transfer order posting him from FHQ, New Delhi to Meghalaya Ftr would lead to uprooting his entire family and he will not be able to render any kind of assistance to his wife and old aged parents.

5. The factual background of the present petition is that the petitioner, who is working as Sub-Insp (Min) and posted with Ops Dte, FHQ BSF, has remained posted and served in North East Regions for more than eight years i.e. 15.10.2009 till 29.06.2018. Vide Signal No. R/3129 dated 22.06.2021, he was directed to join his present place of posting at FHQ, New Delhi, which he had joined on 18.09.2021. However, pursuant to a Court of Inquiry, a Show Cause Notice dated 08.09.2022 was issued to him, to which he filed a reply dated 12.09.2022 regretting his mistakes with an undertaking not to repeat the same. Thereafter, vide Pers Dte (Staff Section) FHQ Signal No. R/3127 dated 19.09.2022, he was transferred to Meghalaya Ftr. Vide letter bearing No. No.1112/COI/Adm/Ops/2022/21053-54 dated 20.09.2022, the competent authority informed the petitioner that the reply furnished by him to the above said Show Cause Notice was not satisfactory and for his egregious negligence, he was issued a warning to be careful in future. The petitioner preferred a representation dated 21.09.2022 to the respondent with the following prayers:-

“5. Sir, I have been posted to. Meghalaya Frontier for further adjustment vide Pers Dte (Staff Section) FHQ BSF Signal No. R-3127 dated 19 Sept' 2022 which is demotivating and definitely not good for my career since I have completed only one year period at FHQ BSF. I have also very shocked and mentally & physically stressed to listen my posting/transfer to Meghalaya Frontier whenever I was earlier posted/served in Meghalaya Frontier from 15/10/2009 to O 1/ 08/ 2016 which is so far flung area from my native place and I will face many difficulties/ problems to look after my old aged & ailing parents who are under treatment of dangerous diseases.

6. *Keeping in view of the above enumerated facts, I request with my folded hands that I may be given a once more chance to serve in Delhi by posting to anyone Dtes of FHQ BSF or other establishment of Delhi Ancillary till completion of my tenure at Delhi. I will put my more than 100% efforts wherever I will be posted to anyone Dtes of FHQ BSF or other establishment of Delhi Ancillary so that I can look after my old aged & ailing parents who are under treatment of various dangerous diseases.”*

6. Subsequently, the respondents issued the Movement Order dated 06.10.2022 directing the petitioner to proceed to 110 Bn BSF on permanent posting in compliance to Pers Dte (Staff Section), FHQ Signal No.R/3127 dated 19.09.2022 and FTR HQ BSF Megh Signal No.A/4475 dated 03.10.2022. Since petitioner's representation dated 21.09.2022 seeking continuation of his posting at Dtes of FHQ BSF was not considered by the respondents, the petitioner preferred a writ petition before this Court being W.P.(C) No. 14736/2022. The said petition was disposed of by this Court with direction to respondents to consider and decide petitioner's representation in time bound manner, however, it was made clear that while considering petitioner's representation, the respondents shall be at liberty to change his posting as per their requirement.

7. The respondents vide Speaking Order dated 25.10.2022 has decided petitioner's representation dated 21.09.2022 holding as under:-

“5. Whereas, as per Rule-19 of Border Security Force (Tenure of posting and deputation amendment) Rules, 2002- Power to extend or reduce tenure of a member of the Force in certain cases,

where the Director General, of the Force is satisfied that in the interest of the Force or in the cases of hardship, it is necessary or expedient so to do, he may, by order and for the reasons to be recorded in writing extend or reduce the tenure of a member of the Force.

6. The representation of the petitioner No.061070019 Sl(Min) Ravi Kumar Singh of Ops Directorate, FHQ (Now 110 Bn BSF) dated 21.09.2022 has been examined comprehensively in the ambit of policy & guidelines as well as the facts & circumstances of the case and the DG BSF has not considered the request of the petitioner for posting in any Directorate of the FHQ BSF or other establishment in Delhi.”

8. Upon hearing learned counsel appearing on behalf of petitioner and on perusal of the material placed before us, we find that the aforesaid order dated 25.10.2022 passed by the respondents clearly speaks that Rule 19 of Border Security Force (Tenure of posting and Deputation) Rules, 2002 provide that in the interest of the Force or in case of hardship, the tenure of a member can be extended or reduced by the Director General. In his reply dated 12.09.2022 to the Show Cause Notice dated 08.09.2022 the petitioner has admitted having committed a mistake for disclosing certain information to a stranger on the landline phone call, even though stand of petitioner is that the said information is already available in public domain; finding his reply unsatisfactory, petitioner has been issued a warning and subsequently, transferred. However, without going into this aspect, we find that petitioner has neither leveled any allegations against the respondents nor has been able to establish any *mala fide* in the decision and action of respondents. It

is settled position of law that unless any arbitrariness is shown, the Courts should refrain to interfere in the transfer and posting orders as such transfers are exigency of service, especially in the case of armed forces.

9. With aforesaid observations, finding no merit in the present petition, it is accordingly dismissed. Pending application is disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

NOVEMBER 01, 2022

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