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

% Judgment delivered on: 18th July, 2023

+ **W.P.(C) 9118/2023 & CM APPL. 34697/2023**

RABINDRA KUMAR SAHA

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Ms. Saahila Lamba, Advocate

For the Respondents:

Mr. Tanveer Ahmed (SPC) Mr. Hilal Haider (GP)
with Brig. Gaurav Kaushal, VSM, Col. R.K. Nair,
SM Col. P.H. Reddy, MR and subedar Ram Niwas.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks quashing of order dated 09.06.2023, *inter alia*, on the ground that same is contrary to the Posting Policy dated 14.05.1999 & 15.01.2013 issued by the respondent. Petitioner also seeks a direction to the respondent to permit him to continue on the post of Chief Engineer (P) at Project Chetak.

2. By the impugned order dated 09.06.2023, petitioner has been posted to Headquarters, Director General Border Road (DGBR) at New Delhi.



3. Petitioner impugns the order on the ground that posting period of the petitioner has been curtailed from the normal tenure of two-three years. Further, it is contended that the proper and prescribed procedure for posting and transfer has not been followed in the present case. Learned counsel for petitioner submits that the correct procedure of posting is that the recommendation of posting at his level has to be routed through Addl. Director General (HQs) for decision at the level of DGBR. Learned counsel for petitioner submits that in case a procedure is prescribed to be followed, such procedure has to be strictly followed and since the procedure of routing the posting order through Addl. Director General (HQs) to the DGBR has not been followed, the posting order could not have been issued.

4. Learned counsel for petitioner submits that the Addl. Director General Border Roads (North-West), who is incharge of the project where petitioner is presently posted, has written a letter dated 19.06.2023 to the Director General Border Road and has pointed out that the posting of the petitioner is not in harmony with the DGBR (HQs) policy and has requested the Director General Border Road to review and cancel the posting order.

5. This is disputed by the learned counsel for the respondent who submits that there is no procedure of routing any recommendation through Addl. Director General (HQs). It is contended that the Director General Border Road is the competent and the final authority to decide on posting issues and the matter has been considered at the



level of the DGBR and in the organizational interest, the subject decision has been taken.

6. Learned counsel for petitioner submits that petitioner has less than two years of service left. It is pointed out that the petitioner has continuously tenanted sensitive appointment for more than three years contrary to the guidelines issued by the CVC and accordingly petitioner was directed to be posted out of the said organization. Further, it is pointed out that handing over and taking over of charge has already commenced on 08.07.2023 but could not be concluded because of the pendency of the present petition.

7. Learned counsel for the respondent submits that the Director General Border Road has considered the posting policy as also the recommendation of the Addl. Director General Border Road (North-West) and on 20.06.2023 decided not to accede to the representation of the petitioner as well as recommendation of the Addl. Director Border (North-West) due to organizational constraints and has directed that the posting order be implemented.

8. It is settled position of law that the Court in exercise of power under Article 226 of Constitution of India does not substitute its view for the view of the competent authority. The competent authority i.e. DGBR has taken the decision keeping in view the organizational constraints and in organizational interest. Merely because the tenure of the petitioner has been curtailed would not imply that the decision is not taken in organizational interest. The posting policy relied upon by the petitioner also stipulates that the same caters to the



organizational requirements and that the organizational and functional requirements will be the overriding consideration for posting. Keeping in view the nature of the organization, the personal interest and interest of the officer will be subservient to the organizational and functional requirement of the organization which will override all other considerations.

9. It is not in dispute that the Director General Border Road is the competent authority and the senior most authority with regard to posting. The impugned posting order has been issued under the Director General Border Road of the competent authority i.e. DGBR. The representation of the petitioner and the recommendation of the ADG (North-West) has also been considered by the competent authority and keeping in view the organizational constraints, he has declined to recall the same and has rejected the representation.

10. We also find no merit in the contention of learned counsel for petitioner that the correct procedure has not been followed. The ultimate deciding authority is the Director General Border Roads. Merely because it is alleged that the recommendation for the posting has not been routed through the ADG (HQs) would not imply that the competent authority has not taken into account all the relevant consideration and the organizational interest. The DGBR is an authority superior to the ADG (HQs) and it is also not in dispute that the recommendations of the ADG (HQs) are not binding on the DGBR, the ultimate deciding authority. It is also not in dispute that DGBR has the power to reject the recommendations of the ADG



(HQs). Since the competent authority i.e. DGBR has already looked at the recommendation and representation and in organizational interest taken a decision, we are of the view that said decision does not call for any interference even if there was a procedure error in not routing the file through the ADG (HQs). This of course is without prejudice to the contention of the respondent that the file is not to be routed through ADG (HQs) and proper procedure has already been followed.

11. Further the respondent in the counter-affidavit has categorically taken a stand that the petitioner has continuously tenanted sensitive appointment for more than three years contrary to the guidelines issued by the CVC. Accordingly, petitioner was directed to be posted out of the said organization.

12. Looked from that angle also, we find that no malafide can be attributed to the respondent and impugned posting order does not warrant any interference by this Court.

13. We also find no merit in the contention of learned counsel for petitioner that the expression organizational interest is not to be strictly construed and even the respondent has been loosely construing the same and instance has been cited of an another officer whose posting orders were repeatedly changed in organizational interest. Merely because there is an instance of an officer whose posting orders have been repeatedly changed citing organizational interest would not imply that in the case of the petitioner, organizational interest has not been kept in mind. We are not made aware of the facts and circumstances of the case, the example of which has been cited by the



petitioner, to even explore whether in that case ‘organizational interest’ was not kept in mind. It could be possible that in the case of that officer, the organizational interest demanded change of posting orders from time to time.

14. Looked at from any angle, we find that there is no infirmity in the posting order or that the same warrants interference in exercise of power under Article 226 of Constitution of India.

15. We find no merit in the petition. Petition is consequently dismissed.

16. Copy of the judgment be given dasti under the signatures of the Court Master.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

JULY 18, 2023/dr