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

% ***Date of decision: 03.06.2022***

+ **W.P.(C) 9305/2022**

**MUKUL KUMAR** ..... Petitioner

Through: Mr. Punit Vinay and Mr. Sunil  
Kumar, Advocates

versus

**UNION OF INDIA & ANR.** .... Respondents

Through: Mr. Pradeep Kumar Jha, Sr. Panel  
Counsel with Mr. Hemendra Singh,  
Dy. Commandant (Law), BSF

**CORAM:**

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

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**J U D G M E N T** (oral)

**CM.APPL.27885/2022 (exemption)**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

**W.P.(C) 9305/2022 & CM.APPL.27884/2022 (stay)**

3. Vide the present writ petition, petitioner seeks quashing of order bearing No.FHQ, BSF Signal/Order No.R/3225 dated 22.04.2022 only to the extent upto which petitioner was transferred out from BSF Force, Headquarter, New Delhi; quashing of order bearing No.HQ SDG (WC), BSF Signal/Order No.R/1137/dated 04.05.2022 to the extent upto which the petitioner was posted in 78 Bn BSF; quashing of order bearing No.FHQ

BSF Signal/Order No.R/3215 dated 14.05.2022 whereby petitioner's request/application for cancelling his transfer from FHQ, BSF, New Delhi was rejected by the competent authority; directions to respondents to post the petitioner to any BSF establishment in Delhi till the time the petitioner completes his Delhi tenure of three years on compassionate grounds and to post the petitioner in National Capital Region facilitating easy access to AIIMS, Delhi for his wife's treatment.

4. Notice issued.
5. Learned Senior Panel Counsel for respondents accepts notice.
6. Petitioner on his promotion from Assistant Commandant to the rank of Deputy Commandant was transferred out from Force Headquarter, Border Security Force to the Western Command vide Letter dated 22.04.2022.
7. Case of the petitioner is that his wife is suffering from PCOD since 2018. She was diagnosed with GUTB (Genito Urinary Tuberculosis) in December, 2021 and she has been taking treatment from AIIMS, Delhi as she is childless till date whereas the marriage of the petitioner was solemnised in 2016.
8. Learned counsel for respondents has drawn attention of this Court to Clause 9 of Notification dated 25.03.2000 issued by Ministry of Home

Affairs which is as under:

*“9. Posting on promotion.- A member of the Force upto and including the post of Second-in-Command while posted in a static formation, shall be posted to a duty Battalion on promotion to the next higher rank. The tenure rule shall not be applied in promotion cases:*

*Provided that the members of the Force who have less than 2 years of service before attaining the age of superannuation shall be exempted from application of this rule:*

*Provided further that the provisions contained in this rule shall only apply to the members of the Force who are promoted to a post which also exists in a Battalion.”*

9. Whereas, learned counsel for the petitioner has drawn the attention of this Court to the List of Promotion of the Assistant Commandants to Deputy Commandants dated 24.10.2018 wherein the respondents, while issuing the similar transfer order of promotion qua some of the promotees were kept at the same place in a static headquarters including Force Headquarters. Thus, as evident the aforesaid List of Promotion, the said Clause 9 of the aforesaid Notification has been relaxed in some of the cases by the respondents itself.

10. As submitted by learned counsel for petitioner, the petitioner's wife has been taking treatment since 2018 and when she got diagnosed with GUTB. She started taking treatment from AIIMS, Delhi. Learned counsel for petitioner, on instructions from the petitioner who is present in Court,

submits that since he has no child, he wants to continue with the treatment at AIIMS, New Delhi and it will take maximum one year, therefore, his transfer orders may be extended for one year.

11. Learned counsel for petitioner, on instructions from petitioner, has undertaken that no further extension, on whatsoever ground, shall be sought by him for transfer order.

12. The said undertaking of learned counsel for petitioner is taken on record.

13. Keeping in view the aforesaid facts and on humanitarian grounds, we hereby direct the respondents to extend the transfer of petitioner for one year.

14. In view of above, the present petition and pending application are disposed of.

15. It is made clear that this order has been passed in special circumstances and shall not be treated as precedent.

**(SURESH KUMAR KAIT)**  
**JUDGE**

**(SAURABH BANERJEE)**  
**JUDGE**

**JUNE 3, 2022/rk**