

(2018) 03 DEL CK 0027

In the Delhi High Court

Case No : W.P.(C) 9186 Of 2017 and CM APPL. 37554 Of 2017

Anil Kumar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 09-03-2018

Acts Referred:

Indo -Tibetan Border Police Force Act, 1992 — Section 23, 43

Citation : (2018) 03 DEL CK 0027

Hon'ble Judges : HIMA KOHLI, REKHA PALLI

Bench : Division Bench

Advocate : Mr Ankur Chhiber, Ms. Abha Malhotra

Final Decision : Dismissed

Judgement

1.The petitioner, who was enrolled in the respondent No.2/ITBP in the rank of a Constable (GD) on 31.8.1992 and was promoted to the rank of a

Head Constable on 04.2.2011, is aggrieved by the Office Order dated 28.12.2016 issued by the respondents excluding him from the List for

Deployment with FPU (Formed Police Unit) under UN Mission in DR Congo (MONUSCO) (in short "UN Mission") and the order dated

3.10.2017, whereby his representation dated 23.10.2017 against the order dated 28.12.2016, was rejected.

2. A glance at the relevant facts of the case is necessary. In the year 2015, names were called from persons who were willing to be deployed with the

UN Mission. The petitioner had applied for deployment with FPU (Formed Police Unit) under the UN Mission and had participated in the selection

procedure, in terms of the Standing Order No. 16/2012 (in short "S.O.16/12"). Thereafter, the petitioner had participated

in the pre-selection test and the written comprehensive examination. The results

of the selection process were declared on 13.5.2016. As the petitioner was placed at Sr. No.3 in the Reserve List, he was not selected for deployment with FPU under the UN Mission, for the year 2017.

3.The 2017 batch deployed with FPU under the UN Mission in January, 2017 was scheduled to return to India in January, 2018. The petitioner was expecting that since his name had been included in the Reserve List for deployment, he would get an opportunity to participate in the UN Mission for the year 2018. The said hopes were however dashed to the ground as his name was excluded from the said list, which as per the petitioner, is in violation of his legal rights having been successful in the selection procedure in terms of S.O. 16/12.

4.The Office Order dated 28.12.2016, issued by the respondents removing the name of the petitioner from the UN Mission panel stated as follows:-

â??Dated 28/12/2016

OFFICE ORDER

Consequent upon passing of pre-selection training/test conducted during B.T.C. Bhanu dated 14.07.2015 to 16.07.2015 the Force No. 920220142

H.C./GD Anil Kumar, 5th Bn, ITB.Police has been placed in U.N. Mission D.R. Congo panel for 02 years as per Directorate's I.T.B. Police Office

Memorandum no. 16535-96 dated 07.08.2015.

2.The personnel has been placed as a reserved candidate along with contingent going to U. N. Mission in January 2017 as per seniority of above panel

by Ops Section, Directorate, I.T.B. Police as well he is directed to report to U.N. CIVPOL for pre-induction training. In reply the 5th Bn, I.T.B.Police

vide signal No. 6421 dated 23.07.2016 has informed that above personnel has been punished 02 times by ""Severe Reprimand"" on 10.08.2015 and

29.10.2015 and in the APAR during year 2015 he has achieved 03 marks which is below ""Good"".

3.For selection/attachment of a personnel as per standing order 16/12 the minimum ACG grading for last five years should be good as well as during five years no major punishment should be awarded and no minor punishment should be awarded during last one year.

4.Above personnel has been punished 02 times by ""Severe Reprimand"" and in the APAR during year 2015 he has achieved 3 marks which is below

Good"" therefore, as per eligibility of provision of para 1(a) of Standing Order

16/2012 the name of Force No. 920220142 H.C./GD Anil Kumar, 5th Bn is removed from the panel U.N. Mission Congo.

5.This issues with the approval of competent authority.

Sd/-23.12.2016

(Harender Kumar)

Sr. Administrative Officer (Estt.)â??

5. Aggrieved by the aforesaid order, the petitioner submitted a representation on 23.1.2017, stating inter alia that the reason for excluding his name

from the Reserve List was contrary to the eligibility conditions prescribed in S.O. 16/12 as the punishment of â??Severe Reprimandâ? awarded to

him twice in the year 2015 (on 11.08.2015 and 29.10.2015) and his achieving three marks, which is below the grading of â??Goodâ?, could not be

taken in consideration for declaring him ineligible for consideration as the grading for the year 2015 and the two punishments of reprimand were

awarded to him in the said year, were much after the date of his submitting an application for being deployed in the UN Mission. It was also stated by

the petitioner that his APAR grading for the year 2015 had subsequently been upgraded by the Competent Authority as the Reviewing Officer had

granted him six marks, thereby grading him as â??Good?, which satisfies the eligibility criteria laid down in S.O.16/12. However, the aforesaid

representation submitted by the petitioner was rejected by the respondent No.2/ ITBP, vide order dated 03.10.2017.

6.In the course of arguments, learned counsel for the petitioner had referred to another Office Order dated 29.5.2017, that recorded inter alia the

recommendations received from the JAG Branch (Law) from whom a legal opinion had been sought, to contend that as per the opinion given, the

petitioner fulfilled the eligibility conditions prescribed in S.O.16/12 dated 08.11.2012, which was applicable at the time of his selection for deployment

with the UN Mission and that the said selection was conducted between 14.7.2015 to 16.7.2015, whereas the minor punishments were awarded to the

petitioner after the selection process was over, on 10.8.2015 and 29.10.2015, for which his APAR for the year 2015, was not available for

consideration. Consequently, the JAG Branch (Law) had opined that â??in the absence of any provision for continuously evaluating the eligibility

criteria, it may not be appropriate to delete his name from the panelâ??.

7.Mr. Chhiber, learned counsel for the petitioner had argued that the JAG Branch had correctly observed that the rule governing â??eligibility and

validity? of the petitioner?s selection would be S.O.16/2012 whereas the respondents had proceeded to consider his case under Standing Order No.

4/2017 dated 07.6.2017 (in short â??S.O.4/17â?), which was impermissible since the selection process was conducted in the month of July, 2015

when the said Standing Order had not even been issued and therefore, it could not have beenÂ Â Â Â applied retrospectively. In support of the said

submission, learned counselÂ Â Â Â Â Â Â Â had cited judgments in the case of K.C. Jena (Naib Subedar) vs. UOI & Ors. reported as 168 (2010)

DLT 445 (DB) and Nb Sub (Clk) Jagjivan Singh vs. Union of India & Ors.Â reported as 2014 SCC OnLine Del 4208.

8.The aforesaid submissions were however countered by Ms. Abha Malhotra, learned counsel for the respondents, who submitted that no doubt the

petitioner was nominated as a reserve member for â??Rotation of next IFPU deployed with the UN Missionâ?, vide order dated 13.5.2016, but

thereafter, the 5th Btn. ITBP, the parent Unit of the petitioner, had sent a message dated 23.7.2016, intimating that he had been awarded two

punishments of â??Severe Reprimand? on 10.8.2015 and 29.10.2015 and his APAR for the year 2015, was graded with three marks, which was

below â??Goodâ??.

9.In the light of the aforesaid information furnished by the parent Unit of the petitioner, the matter was thoroughly examined by the respondents and he

was found ineligible for consideration, in terms of the guidelines stipulated in S.O. 16/12. Resultantly, the petitioner was de-empanelled from the panel

of the UN Mission by the impugned order dated 28.12.2016. In his representation dated 23.1.2017, the petitioner had claimed that the period of

punishment of one year awarded to him had since been completed and his APAR for the year 2015 was upgraded from three marks to six marks. The

matter was re-examined by the respondents in the light of the aforesaid representation and it was concluded that even though the petitioner?s APAR

grading for the year 2015 had been upgraded from three to six marks, the punishment of â??Severe Reprimandâ? awarded to him could not be

ignored in terms of the guidelines laid down in para 1(a)(a.b)(vi) of S.O. 16/12.

10. In their counter affidavit, the respondents have explained that the petitioner was punished on 10.8.2015 on account of his absenting himself at the

Border Post and again on 29.10.2015, when during his deployment at the Chhawla Camp, he had misbehaved with his seniors. It has also been

averred that the petitioner had over stayed for 30 days and the said absence was later on regularized as EOL leave and for which act of indiscipline,

no punishment was awarded. Learned counsel for the respondents submitted that despite the fact that the petitioner had committed an offence under

Sections 23 and 43 of the ITBP Force Act, 1992, for which he was liable to suffer imprisonment upto 14 years and 7 years respectively, he was let off

with a "Severe Reprimand" on both the occasions.

11. Learned counsel for the respondents has relied on the judgment dated 07.2.2017 passed by the Division Bench of this Court in W.P.(C) No.

11236/2016 entitled Hav. Mohd. Arif Khan vs. Union of India & Ors. to contend that no person can claim an inherent right to be selected for a

Mission. It was canvassed that only the best personnel with stellar records are selected for participating in Missions abroad and indisciplined

personnel, like the petitioner herein, cannot be sent for such a Mission, as it would adversely affect the Force and bring down the image of the country

in foreign lands.

12. We have perused the pleadings on record, examined the documents filed by the parties and the original records produced by the respondents and

given our careful consideration to the arguments advanced by learned counsels for the parties.

13. The limited issue that arises for a decision in the present case is as to whether the petitioner could have been de-empanelled after being placed in

the Reserve List for deployment with FPU under the UN Mission in the year 2018, in terms of S.O. 16/12 dated 08.11.2012. 14. On examining the

stand taken by the respondents in their counter affidavit, it is clear that S.O. 4/17 was not applied to the petitioner's case retrospectively, as alleged by

him. Instead, the guidelines laid down in S.O. 16/12 were followed in the present case. For ready reference, the relevant extract of S.O. 16/12 that

lays down the eligibility conditions for a Head Constable, is reproduced herein below:-

(a.b) OTHER RANKS (Head Constable)

i) Minimum Service: 06 years in GD Cadre

ii) Maximum Age: 45 Years

iii) Education: Matric

iv) Courses: Should have undergone basic training.

v) Medical Category: SHAPE-I

vi) Service Record : Minimum ACR grading for last five years-GOOD. No major punishment awarded during the service and no minor punishment awarded during last one year.

vii) EHA/HA Service: Minimum three years.

15. The validity period of selected candidates has been prescribed in para 14 of S.O. 16/12, which is as follows:-

“(14) VALIDITY OF SELECTED CANDIDATES:

The list of selected personnel shall be valid normally for a period of two years from the date of completion of selection test or from the date of

declaration of result of final selection test whichever is later. The personnel who are not deployed from the list/panel within two years should be re-

called by Estt Branch, Directorate General to appear for fresh empanelment if willing and eligible at that point of time.”

16. Under the head of “Miscellaneous Instructions” incorporated in S.O.16/12, it was declared that empanelment does not ensure a guaranteed

deployment in a foreign Mission and the same shall be determined on the basis of the actual requirement of the Mission. As can be seen from the

eligibility conditions laid down in S.O. 16/12, it was essential for a Head Constable, like the petitioner herein, to have a minimum ACR grading of

“Good” for the last five years in his service record. It was further mandated that during the period of his service, no major punishment should

have been awarded and during the past one year, no minor punishment should have been awarded against the Force personnel.

17. In the instant case, the petitioner had participated in the selection process that was initiated in the year 2015. The result of the selection process

was declared only on 13.5.2016. At the time when the petitioner had participated in the pre-selection test between 14.7.2015 to 16.7.2015, his service

records were clean and in his APAR’s upto the year 2015, he was graded as “Good” and above. Since the validity of the list of the selected

personnel operates for a period of two years from the date of completion of the selection test or from the date of declaring of the result of the final

selection test, whichever is later and the petitioner was brought on to the panel of UN Mission on 07.8.2015, the said panel was to remain in operation

for a period of two years reckoned therefrom, i.e., till 06.08.2017. In the meantime, the petitioner was awarded two punishments and was assigned

three marks in his APAR for the year 2015, thereby grading him below

â??Good?. Thus, the petitioner fell foul of the eligibility conditions prescribed in S.O.16/12, which not only prescribed that for being selected, a

candidate ought to have been graded in his APAR as â??Good?, for the past five years, in addition thereto, it was essential that no major punishment

was awarded to him during his service and no minor punishment was awarded during the past one year.

18. Given the aforesaid position, the contention of the learned counsel for the petitioner that the APAR of the petitioner for the year 2015 had been

upgraded by the Reviewing Authority and instead of three marks, he was given six marks thereby grading him as â??Good?, the petitioner was eligible

for selection, would not be of any avail when he did not fulfill the remaining eligibility conditions prescribed in the subject Standing Order, relating to

major punishment and minor punishment.

19. We have perused the APAR of the petitioner for the period from 16.8.2015 to 31.12.2015 wherein, it was recorded that he had remained absent

between 16.8.2015 to 31.12.2015 and his absence had been regularized for a period of 30 days, as EOL. Further, the petitioner was awarded

â??Severe Reprimand? by the Competent Authority and assigned three marks in his grading. Subsequent upgradation of his grading by the Reviewing

Officer from three to six marks alone was not sufficient to satisfy the eligibility criteria laid down in S.O.16/12 inasmuch as two major punishments

were also awarded to the petitioner on 10.8.2015 and 29.10.2015, which were neither reviewed nor expunged. Instead, the petitioner was let off with

a â??Severe Reprimand? on both occasions.

20. This being the factual position, we are of the opinion that the respondents cannot be faulted for de-empanelling the petitioner from the panel of UN

Mission, in terms of the impugned order dated 28.12.2016, as he was ineligible in terms of S.O. 16/12. There is merit in the submissions made by

learned counsel for the respondents that only the best officers ought to be selected for a UN Mission. One must be mindful of the fact that when the Force personnel are selected to participate in the UN Mission, it is not only affords them an opportunity to receive a higher monetary compensation, but most importantly, it provides them a platform to enhance their career profile and grants them a rare opportunity to get exposure at the international level. On such a Mission, the Force personnel are expected to act with utmost rectitude and absolutely discipline as they represent the nation on foreign land.

21. Thus, the level of integrity, discipline, honesty and probity that is expected of an officer selected to participate in a UN Mission is much higher than that which is ordinarily required for deployment within the country. It was perhaps that the said objective that weighed with the respondents who subsequently issued S.O. 4/2017 for streamlining the process of selection of ITBP troops for Security of Indian Missions Abroad on deputation basis and deployment with FPU on UN Mission (D.R. CONGO) and have tightened the eligibility criteria to ensure that only the most outstanding officers are selected and placed in the Selection List. In any event, as observed by the Division Bench of this Court in *Hav. Mohd. Arif Khan (supra)*, cited by learned counsel for the respondents that "selection for the UN Mission is essentially an administrative decision and no person can claim any inherent right for being selected for said Mission".

22. The decision in the case of *K.C. Jena (Naib Subedar) (supra)* relied on by learned counsel for the petitioner cannot be of any avail, as in the said case, the court was examining the circumstances where the petitioner therein was denied an opportunity to go on a UN Mission only on account of the fact that he was promoted during the time of his Unit's deployment abroad. Similar was the fact situation noticed in *Nb Sub (Clk) Jagjivan Singh (supra)* where the petitioner therein was denied deployment to the UN Mission on the ground that he had been promoted to the rank of a Naib Subedar before his induction to the UN Mission. The fact situation in the present case does not match with the aforesaid matters for the legal principles enunciated therein to apply to the petitioner in the instant case.

23. In view of the aforesaid facts and circumstances, we do not find any illegality or arbitrariness in the impugned Office Order dated 28.12.2016

passed by the respondents de-empanelling the petitioner for deployment with FPU under the UN Mission, as the said order is in consonance with the guidelines laid down in S.O.16/12. The present petition is accordingly dismissed as meritless along with the pending application while leaving the parties to bearing their own costs.