
(2012) 02 DEL CK 0043

In the Delhi High Court

Case No : Writ Petition (C) No. 774 of 2012 and CM No. 1713 of 2012

Major Gaurav Negi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 02 DEL CK 0043

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : S.S. Pandey, for the Appellant; Ravinder Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has sought a direction to the respondents to allow him to proceed with his unit, 6 MAHAR, on the UN Mission in the same manner as the officers of his unit are proceeding on such mission and has also sought quashing of order, if any passed by respondents, whereby the petitioner is excluded from the contingent of 6 MAHAR earmarked to move on the UN Mission and the order dated 13th January, 2012 passed by the respondent transferring the petitioner to 5 MAHAR located at Sikkim.

2. Relevant facts to comprehend the contentions of the petitioner are that the petitioner was granted Short Service Commission in the Indian Army in 1 PARA (SF) after completing the training from Officers Training Academy, Chennai. He was later on posted to 6 MAHAR, Regiment of Corps of Infantry. The petitioner asserted that he had served with utmost dedication to duty and to best of his abilities wherever he had been posted either in peace, field or counter insurgency areas. He stated that he had even participated in Op Rakshak and Op Parakram with his unit.

3. In terms of the existing instructions, the petitioner was asked to exercise his

option in the 4th year of his service for the grant of permanent commission. Though the petitioner opted for permanent commission, he was, however, not granted the permanent commission but was instead given an extension for five years.

4. The petitioner was thereafter, posted at 1 Rashtriya Rifles Battalion (MAHAR) in October, 2006 till May, 2009. The petitioner asserted that he participated in the unit activities and due to his distinguished performance he was awarded the Vice Chief of Army Staff Commendation Card in 2007.

5. The petitioner disclosed that in the event of opting for grant of permanent commission in his second chance, he would have lost one year and eight months of seniority and, therefore, he had opted to continue in Short Service Commission which had been further extended for 4 years.

6. The petitioner also gave details of other awards given to him which according to him are also reflected from the record of his service. On 21st September, 2010, the petitioner was posted in his parent unit i.e. 6 MAHAR where he is continuing till date.

7. The unit of the petitioner was shortlisted to form a part of a UN contingent consequent to which, according to the petitioner, he arrived at Delhi with advance party as Second-In-Command to complete the pre induction formalities, as the unit is likely to move sometime in July, 2012 or thereafter. The petitioner relied on the letter dated 19th September, 2011 and 29th September, 2011 regarding instructions issued for the unit of the petitioner for the deployment of troops as a part of contingent of 6 MAHAR.

8. The petitioner contended that by order dated 13th January, 2012 he has been posted out from his present unit, 6 MAHAR to another unit that is 5 MAHAR and thus he has been excluded from moving to the UN Mission and that he is required to report to his new unit on 13th February, 2012. Against the transfer of the petitioner from his unit 6 MAHAR to unit 5 MAHAR, the petitioner made a representation dated 31st January, 2012 contending, inter-alia, that the MS policy towards the Short Service Commissioned Officers is discriminatory and that it has to be reviewed as he has been excluded from the unit which is proceeding to the United Nation presumably on the ground that he does not have 5 years of residual service, as he is a Short Service Commissioned Officer and that he is entitled to serve till 2015 only, maximum period of fourteen years. The petitioner averred that though he did not get any such policy containing such stipulation, however, as per the information available to him, such condition had never been insisted upon in the past. The petitioner further averred that on such a policy he should not be denied the opportunity to go with his unit and serve the United Nations and if there is such a policy which requires five years of residual service, he undertook to serve with the Territorial Army (fully embodied) after the expiry of his contractual period of 14 years of Short Service Commission. The petitioner also gave the particulars of Short Service Commissioned Officers who

had accompanied the parent unit on UN Missions during their extension of Short Service Commission.

9. The petitioner has contended that after making the representation dated 31st January, 2012, he met the concerned authorities, however, he did not get any satisfactory reason for excluding him from the UN Mission. Aggrieved by the decision of the respondents, the petitioner has filed the present petition, inter-alia, on the grounds that his posting order to a different unit is arbitrary, illegal, unreasonable; that the respondents have failed to adhere to their own policy instructions which provides that all persons posted in the unit on the date when the unit is nominated for such UN Mission will be allowed to proceed for such missions unless the officials of the unit are ineligible because of the criteria of discipline, medical category etc; and because the petitioner had already accompanied the advance party of the unit and had started participating in the pre-induction procedure.

10. The petitioner also contended that if there is any policy to exclude a Short Service Commissioned Officer who has a residual service of less than 5 years then the residual service clause cannot be made applicable in the case of the petitioner because the petitioner had applied for grant of permanent commission however, the respondents deemed it appropriate to give him extension only up till 2015. It was further contended that any officer proceeding on a UN Mission is required to give a bond for serving up to 5 years only after coming back from such a mission and that there are several instances where the Short Service Commissioned Officer (SSCOs) have been allowed to proceed on release after coming back from such missions and were released from service before the expiry of five years.

11. The learned counsel for the petitioner, Mr. Pandey has emphatically contended and relied on the policy pertaining to detailment of attached personnel on UN MSNs dated 22nd November, 2004 to contend that even the personnel from other arms and services who are posted on the strength of battalion in a particular unit at the time of nomination are not denied an opportunity to proceed on the UN Mission with the battalion unless they themselves are disqualified on account of not meeting certain mandatory QR of discipline and medical status.

12. The learned counsel for the respondents, Mr. Aggarwal who appears on advance notice has produced the relevant file regarding the policy for the Short Service Commissioned Officers. He has contended that according to the said policy after 10 years of Short Service Commission only those Short Service Commissioned Officers who have been granted permanent commissions are to be considered for such missions and officers who are on extension are not to be considered for UN panel with the battalion.

13. The learned counsel for the petitioner, Mr. Pandey has contended that no such policy has been disclosed to the petitioner pursuant to his representation

dated 31st January, 2012, although the petitioner has also disclosed in the writ petition that presumably he has been excluded to proceed with the UN Mission on such a ground. The learned counsel for the petitioner wanted to peruse the details of the policy from the file produced by the learned counsel for the respondents, who, however, claimed privilege against divulging the details of the various other aspects of the policy.

14. This Court has heard the learned counsel for the parties. The petitioner himself has contended that presumably there is a policy that if a Short Service Commissioned Officer has a residual service of less than five years then such an official can be excluded. However, he has challenged the policy not only on the ground that he was willing to serve the respondents a period of five years after the expiry of his contractual period of 10 years of Short Service Commission but also on the ground that he had sought a permanent commission which was declined to him at first and only an extension of five years was granted to him at the time.

15. The plea of the petitioner is self contradictory since as per the pleas and contentions of the petitioner in the writ petition, on the expiry of 8 years of his tenure of Short Service Commission he was given the option for permanent commission, however, he did not avail the same as in that case he would have lost 1 year and 8 months of seniority and, therefore, he had thought it prudent to seek an extension of Short Service Commission instead, which was granted to him by extending his Short Service Commission for another 4 years.

16. The learned counsel for the respondents, Mr. Aggarwal has also contended that a Short Service Commission is granted for 5 years which is extended for another 5 years and thereafter an extension can be granted for another 4 years. Thus a Short Service Commissioned Officer can serve for a maximum of 14 years only. The learned counsel for the respondents has also disclosed that there is no policy about relaxation for an officer by not excluding to a UN Mission, if his residual service is less than 5 years.

17. As far as the plea of discrimination is concerned that SS-39428 Captain Inderpal Singh of 7 JAT was sent for UN Mission in a similar situation, it is apparent that the said officer had 5 years service in 2007 when he was sent for a UN Mission. The tenure of Captain Inderpal Singh was from 2007 up to 2011 and, therefore, the plea on behalf of the petitioner that he had a service of less than 5 years and he was still nominated for the UN Mission is not correct. The policy is that after 10 years of service only those Short Service Commissioned Officers who are granted permanent commission could be considered, as the total tenure of a Short Service Commissioned Officer is only 14 years. Captain Inderpal Singh admittedly in the facts and circumstances had not completed 10 years of service as he had the extension from 2007 to 2011 and consequently his nomination for the mission to UN was not contrary to the policy of the respondents.

18. The policy regarding not considering the officer on extension after 10 years of service of Short Service Commission is prevalent since February, 2007 and it cannot be inferred that such a policy is being used only for the petitioner. In any case no malafides or bias has been alleged by the petitioner. In any case, the scope of judicial review of a policy evolved by the authorities is limited. The Court has to leave the matter regarding non consideration of the Short Service Commissioned Officers for the UN Mission after 10 years of Short Service Commission, to the expertise of the Army authorities who are qualified to address the said issue. The Court has to follow the wholesome rule with regard to judicial interference in administrative decisions, that is if the authorities have taken into consideration the relevant factors and eschewed from considering irrelevant factors and have acted within the parameters of law, the Courts would not interfere with the same. The petitioner has not shown any such factors which would allow any scope for this Court to interfere with the policy decision of the respondents. Policy decision dated 22nd November, 2004 also is of no help to the petitioner as it does not negate the subsequent policy dated 19th February, 2007 regarding non consideration of the Short Service Commissioned officers for the UN panel after 10 years of service.

19. The Supreme Court while dealing with the scope of judicial interference regarding policy decisions had laid down in *Federation of Railway Officer Association & Ors v. Union of India*, (2003) 4 SCC 298 in para 18 as under:-

18.The wholesome rule in regard to judicial interference in administrative decisions is that if the Government takes into consideration all relevant factors, eschews from considering irrelevant factors and acts reasonably within the parameters of the law, courts would keep off the same. Even on the test suggested by Dr Pal, we cannot travel outside this principle to sit in appeal on the decision of the Government.

20. The Supreme Court had further held in 2001 (10) SCC 75 that so long as the Government decision is not actuated with any malice or is not the outcome of any arbitrary and whimsical act, the same should not be interfered with by a Court of law under Article 226 of the Constitution of India.

21. The petitioner himself in his representation dated 13th January, 2012 has contended that the MS Policy towards Short Service Commissioned Officers in this regard is apparently discriminatory and in the opinion of the petitioner, needs to be reviewed. However, it is well settled that the Courts, in exercise of its jurisdiction, does not transgress into the field of policy decisions. It is neither within the domain of the Courts, nor is it the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved, nor can the Court struck down a policy at the behest of a petitioner merely because it has been urged that a certain public policy would have been fairer or wiser or more logical.

22. In *Netai Bag and Others Vs. The State of West Bengal and Others*, , the

Supreme Court had observed as under:-

The Court cannot strike down a policy decision taken by the government merely because it feels that Anr. decision would have been fairer or wiser or more scientific or logical.

23. In the totality of the facts and circumstances there are no grounds to interfere with the decision of the respondents not to include the petitioner in the contingent of 6 MAHAR for the UN mission, the parent unit of the petitioner, on the ground that after 10 years of service, the petitioner, a Short Service Commissioned Officer is not to be considered for the UN panel as he had not been granted a permanent commission and his residual service is less than five years. There are no illegalities or any irregularities in the decision of the respondents which will require interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India in the facts and circumstances of the petition. The writ petition is, therefore, without any merit and it is dismissed.

Since the writ petition has been dismissed, the application for stay being CM No. 1713/2012 does not survive and the application for stay is therefore, dismissed as infructuous.