

(2011) 08 P&H CK 0245
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2871 of 2011

Mohan Singh and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Citation : (2011) 164 PLR 746

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—This order will dispose of Civil Writ Petition Nos.2871 and 14458 of 2011. The petitioners in these cases have approached the Court to challenge the Standard Operating Procedure ("SOP" for short) as framed by the respondents to make selection of persons for detailing on U.N. Mission. It will be open to question if such an issue would be justiciable. Apparently, there is no right for a person serving in force like Indo-Tibet Border Police Force ("ITBP" for short) to ask for his detailment on U.N. Mission. The action of the petitioners to invoke writ jurisdiction of this Court to seek their detailment on U.N. Mission, thus, appears to be misplaced and misconceived. It is further doubtful if any employee can challenge SOP formulated to lay down or form a criteria for such detailment depending upon the requirement of the organisation.

2. At the outset, the counsel was, therefore, asked to make submissions in regard to the rights of the petitioners to maintain these writ petitions. The counsel could not make any meaningful submission to show that the petitioners have any right to be detailed, for which they can invoke the writ jurisdiction of this Court. In addition, the counsel has not been able to show that this Court has territorial jurisdiction to deal with the prayer as no cause of action has arisen under the territorial jurisdiction of this Court. The petitioners are belonging to different States and presently are also not serving under the territorial jurisdiction of this Court.

3. The petitioners have averred in the petition that troops from different cadres of ITBP are selected for security of Indian Mission Abroad/ for deployment of troops on U.N. Mission abroad or on U.N. Assignments. A SOP was framed by the respondents to regulate such selections on 31.8.2007. In one of the paragraphs of the SOP, it is provided that list of the selected persons shall be normally valid for a period of one year from the date of declaration or finalising the next select list, whichever is earlier. As per the petitioners, a list/panel was prepared and the respondents detailed/deployed 125 personnels of different cadres on 24.8.2010. Another 35 personnels were selected for deployment for 2 years on 10.10.2010, out of the panel so prepared. With effect from 31.11.2010, the respondents have revised the eligibility of the persons for the purpose of selection and have issued a new SOP. Copy of the same has been annexed with the petition as Annexure P-4. As per the petitioners, no afresh panel has been prepared but the new SOP has been made applicable arbitrarily to the petitioners and the names of the petitioners have been cancelled from the panel of the seniority list in violation of Para 7 of the earlier SOP. Some of the petitioners filed representations on 24.1.2011. When no action was taken, the petitioners have filed the present petition by invoking the doctrine of legitimate expectation, besides pleading violation of Para 7 of earlier SOP, which is also annexed with the petition as Annexure P-1.

4. While issuing notice of motion, this Court passed an interim order to the effect that instructions (SOP) dated 7.1.2011 will not be acted to prejudice the rights of the petitioners.

5. Reply has been filed on behalf of respondent Nos.1 to 3 giving justification, which has prompted the respondents to effect this change in the SOP.

6. In fact, the reasons disclosed in the reply would be an eye opener as to how interference in such like matters can have a devastating effect on the sensitive issue of such like detailment. Normally, the Court should keep their hands off from such issues. As per the reply, initially the detailment was regulated by SOP issued in the year 2005, The troops were selected for deployment on foreign mission based on eligibility criteria as prescribed. This is perhaps only to ensure fairness that some procedure has been prescribed, otherwise a person certainly can not claim as a matter of right to be detailed on U.N. Mission or for deployment in a particular manner. Age limit, as per 2005 SOP for Head Constable, was prescribed below 40 years. Due to non-availability of required personnels, this SOP was revised in the year 2007 and the age of eligibility of Head Constable was increased from 40 years to 45 years. The persons accordingly were being nominated for pre-selection test followed by selection test for empanelment of selected persons. The, reasons, which have forced the respondents to change the age to make a provision for detailment of young persons is stated to be a suicidal bomb attack on the Indian Mission in Afghanistan in July 2008. The Ministry of Home Affairs accordingly had asked the ITBP authorities to deploy young persons in Afghanistan preferably below 35

years of age, who are energetic and are also having Commando training, having skills to take individual initiative to counter the threat at the time of their deployment. The Indian Ambassador in Kabul has also recommended that only those ITBP persons are deployed on wars countries like Afghanistan for protecting Embassy persons and property who had undergoing basic Commando training. For this reason, there was a need to change the SOP, which has been done in the year 2010 and a eligibility has now been provided for detailment of younger age group persons with compulsory Commando training. The age has now been decreased for various ranks and accordingly the SOP issued in the year 2007 has been cancelled.

7. A decision has been taken to assess the suitability and eligibility as per the changed SOP, where age has now been reduced below 35 years. In this background, the challenge raised by the petitioners to the SOP apparently is not only misplaced and misconceived but would appear to be wholly without reasons and justification.

8. Besides, the counsel has not been able to show in any manner that how the petitioners would have a right to challenge the empanelment or to seek their detailment as they certainly do not possess any legal right in this regard. As has been held in numerous cases, the applicant has to show that he has a legal right to the performance of a legal duty, as distinguished from discretion, by the party against whom the mandamus is sought. Such a duty may be enjoined upon or imposed by the Constitution, by a statute, by a common law or by rules/orders having force of law. The mandamus does not tie to enforce the departmental manual or instructions, not having any statutory force or to enforce concessions, which do not give rise to any legal right in favour of the petitioners.

9. Not only this, the petitioners have not been able to cross the hurdle staring at them directly about the territorial jurisdiction of this Court to entertain this plea as no cause of action has arisen under the territorial jurisdiction of this Court and also none of the petitioners are shown to be presently serving in the territorial jurisdiction of this Court. The petitioners have, thus, totally abused the process of Court and have been able to stall the process of valid selection, for which very cogent and viable justification has been offered to change the eligibility criteria.

10. Civil Writ Petition No.2871 of 2011 is, thus, dismissed with costs of Rs.10,000/-to be deposited in the accounts of Legal Services Authority, U.T., Chandigarh. For the reasons mentioned above, Civil Writ Petition No.14458 of 2011 is also dismissed but without any order as to costs as said writ petition is being dismissed without issuing any notice or staying the process in any manner.