

(2013) 11 DEL CK 0317
In the Delhi High Court
Case No : Writ Petition (C) 7010 of 2013

Naib Sub Anil and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 11 DEL CK 0317

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : S.S. Pandey, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—By way of the instant writ petition, the petitioners have challenged their exclusion from accompanying their parent unit i.e. 8 RAJ RIF on UN Mission tenure premising the decision of respondents on the policy dated 30th August, 2010. The primary ground of challenge is that the respondents have wrongly been ignored vide policy dated 25th January, 2011, which specified that any individual who had been part of the unit for five years continuously or otherwise, posted or in the panel should be considered for the UN assignment when the unit was selected. This was also applicable to any individual who had done a foreign tenure. The petitioner has also asserted individuals discrimination on the ground that the persons who have been posted at UN Mission prior hitherto are being permitted to proceed for a second tenure on UN Mission.

2. The petitioner was permitted to give details of personnel of 8 RAJRIF who had already availed the overseas tenure at HQ Indian Military Training Team (IMTRAT), a UN Mission and had been considered for a second UN Tenure from the same battalion.

3. The respondents have verified the factual assertions made by the petitioners and have placed a communication dated 22nd November, 2013 dealing with the grievance made by the petitioner enclosing all relevant annexures.

4. In order to avoid delay in consideration, learned counsel for the petitioner has submitted that these communications" and the annexures may be taken on record for the purposes of the present adjudication. It is ordered accordingly.

5. With the consent of both the parties, we have heard learned counsel appearing in the matter.

6. Before examining the issues urged by the petitioner, it is necessary to briefly note the policy which governs the selection of Jawans for proceeding at UN Mission. With regard to the selection of Jawans i.e. the Persons Below the Officer's Rank ("PBOR") for a UN Mission, the same have been prescribed by the Army Head Quarters Staff Directorate who has formulated the Policy:-Selection of PBOR for UN Mission dated 30.08.2010. The relevant portion thereof reads as under:-

4. Overseas Exposure and Ban Pd.

(a) The ban pd for a UN/overseas tenure in case of PBOR will be commensurate with the length of service rendered in the UN msn/oversees assignment. The min reckonable service in this regard will be 90 days. The ban pad will be decided as under:-

(b) Pers who have done a tenure in staff/instructional capacity overseas based on indl. merit, when coming up for selection for dply with parent unit in UN msns. or vice versa will be considered eligible for second tenure overseas and no ban will be applicable in r/o these pers, provided he has served at least five years in the Bn (on its panel)"

(c) Any PBOR (Gallantry Award Winner) who had a foreign tenure can be considered for a second tenure, subject to the policy applicable wrt gallantry awards. The indl should have completed his previous foreign tenure, five years from the dt of current dply in UN Msn."

7. So far as the petitioners are concerned and the details of their previous deployment at the HQs IMTRAT is concerned, it has been explained by the respondents in their counter affidavit as follows:-

6 As per the service records (Sheet Roll) of the petitioners, they were actually deployed in UN Mission Area for the period for 195-203 days i.e. more than 180 days. It is also submitted that troops are deployed in UN Mission Area with incoming contingent and other administrative de-induction. Handing/taking over with incoming contingent and other administrative formalities till transportation of troops from UN Mission Area to India are part of UN Mission deployment and the petitioners were paid for each day i.e., 195 to 203 days of their deployment.

8. The respondents have explained the details with regard to the period of the petitioners" UN Mission posting. The information of their complete deployments as well as the extensions have been furnished.

9. It would appear that the petitioners have spent period which is beyond 180

days as prescribed in para 4 (a) (iii) of the Policy dated 30th August, 2010. As such the ban of 10 years for consideration for a second overseas tenure as prescribed under para 4(a) (iii) of the Policy would be applicable in the instant case.

10. The petitioners have placed six instances of persons who have been permitted by the respondents to proceed on second UN Mission Tenure. In respect of these persons, the respondents have explained as follows:-

3. Names of the following persons of 8 RAJRIF given by the petitioners have already availed overseas tenure at HQ IMTRAT and they have been considered for second UN tenure alongwith contingent of 8 RAJRIF due to the reasons given in succeeding para:-

4. The above named individuals were posted with HQ IMTRAT against "Adm. Staff" and "Instructor" vacancy as shown against each, and are eligible for second overseas tenure as per Para 4 (b) of IHQ of MoD (Army) letter No 71362/Policy/SD-3 dated 30 Aug 2010 (Annexure-I) and as confirmed by Hon''ble Delhi High Court vide Court Order dated 11 Sep 2013 in the CWP No. 5689/2013 filed by JC-469857 M Sub Mukhtar Ahmed Ansari of 8 RAJRIF and IHQ of Mod (Army) vide their letter No. A/62006/UN/Inf-6 (Pers) dated 25 Sep 2013 (Annexure-II & III). However, this office forwarded their case to IHQ of MoD (Army) Vide letter No. RAC/10/20/UN Msn dated 09 Oct 2013 (Annexure-IV) for clarification on the basis of the Hon''ble Delhi Court order dated 11 Sep 2013 and IHQ of MoD (Army) vide their letter No. Dated A/62006/UN Msn/Inf-6 (Pers) dated 10 Oct 2013 (Annexure-V) intimated that selection of Junior Commissioned Officer and other rank for second tenure overseas be pursued strictly as per Para 3(b) of Appx to SD-3 (UN) Policy letter No 71362/Policy/SD-3 dated 30 Aug 2010 (Annexure-I). Since IHQ of MoD (Army) vide their letter No A/62006/UN/Inf-6 (Pers) dated 25 sep 2013 (Annexure-II) has already confirmed the eligibility of persons who had served with HQ IMTRAT against Adm. Staff vacancy for second overseas tenure, therefore names of these individuals have been considered to UN Mission alongwith 2nd rotation contingent of 8 RAJRIF.

5. Selection of JC-470956 Nb Sub Vijay Singh, Sena Medal for second tenure of UN Mission with RAJRIF has been done against 1% share of gallantry award winners as per Para 4 (c) of IHQ of MoD (Army) letter No 71362/Policy/SD-3 dated 30 Aug 2010 (Annexure-I) as confirmed by IHQ of MoD (Army) vide their letter No A/62005/UN/Inf-6 (Pers) dated 21 Aug 2013 (Annexure-VI).

11. Learned counsel appearing for the petitioner has vehemently contended that the petitioners were also posted as staff with the Mission. There is no pleading at all in the writ petition to this effect.

12. We find from para 1 of the policy dated 30.08.2010 that a careful distinction has been given between TP contingents (Troop Contingents) and staff personnel which is also the basis of justification for the distinction drawn with regard to the prohibition laid down in para 4 of the policy. There is no challenge to the Policy

dated 30-8-2010 by way of the present petition. No material is available before us to the effect that the petitioners were deployed as Staff Personnel at HQ IMTRAT.

13. So far as the deployment of petitioners are concerned, the respondents have explained as follows:-

4. Ban Pd in r/o SM of Units being inducted to UN Msns.

SM of units detailed for UN Msn will be considered for dply with the unit irrespective of having availed a previous overseas exposure/UN msn, provided they fulfil all other relevant criteria for dply.

14. The petitioners having proceeded on a UN Mission & having spent more than 180 days at such Mission cannot proceed on a second mission for a period of ten years. They are, therefore, not eligible as per the relevant criteria for doing so. In view thereof, the exclusion of the petitioners for proceeding on the subject UN Mission cannot be assailed on any legally tenable grounds.

15. In this regard, Ms. Barkha Babbar, learned counsel for the respondents has also placed reliance on the judgment dated 11th September, 2013 titled as Sub Mukhtar Ahmed Ansari v. Union of India and ors, in W.P. (C) No. 5689/2013, wherein a similar challenge was raised. In view of the para Nos. 10 and 11 of the above judgment, the court has placed reliance on Policy dated 30th August, 2010. Relevant paragraphs of this judgment are reproduced as under:-

10. So far as the issue, as to whether the petitioner had proceeded to IMTRAT, Bhutan as part of troop contingent or was on staff deployment in the battalion, we may refer to the comments of the company Commander in application for interview made by the petitioner. These comments are dated 16th April, 2013. We find that the Company Commander has specifically endorsed in para 3 that at IMTRAT the petitioner had served in the tenure in the capacity of staff. This position is reiterated in the communication dated 1st May, 2013 wherein the Chief Record Officer for the Officer In-Charge Records of the Rajputana Rifle's record has clearly stated the following:-

2 It is submitted that this Regt was detailed to provide pers on ERE to HQ IMTRAT in Nov 1988 against the vac of Instr. Adm. staff & Ten vide IHQ of MoD (Army) vide their letter quoted at Para 1(a) above. Accordingly, JC-46985M Sub (then Rfn) Mukhtar Ahmad Ansari of 8 RAJRIF was posted with HQ IMTRAT wef 25 Nov 1998 to 16th Feb 1991 against the vac of adm. staff of Rfn/Sep (GD) IHQ of MoD (Army) vide their letter ref at Para 1(c) above has already clarified that pers who availed HQ IMTRAT against adm vacs are not eligible for second tenure in UN Msn. However, 8 RAJRIF has fwd an application submitted by the above named JCO along with comments of coy Cdr and Offg CO (copy at) quoting that the JCO was posted at HQ IMTRAT against vac of staff and therefore, he is eligible to proceed to UN Msn along with his parent unit i.e. 8 RAJRIF as per para 4 (b) of IHQ of MoD (Army) letter No. 71362/Policy/SD-3(UN) dt. 30th August,

2010.

11. It cannot be disputed that the record centre would be the best place to provide the correct and complete information with regard to the deployment of personnel in a particular posting. The above statement made by the record office cannot be disputed. We find it has been unequivocally declared that the petitioner who belongs to 8 Rajputana Rifle was posted with the Head Quarter IMTRAT, Bhutan with effect from 25th November, 1988 to 16th February, 1991 against vacancy of administrative staff.

In view of the above, the petitioner is clearly covered under para 4 (b) of the Policy having done a tenure in staff capacity overseas.

16. We may now deal with the reliance placed on communication dated 25th January, 2011 by the petitioner. In this regard, it is contended by learned counsel for the petitioner that when he had proceeded at HQ IMTRAT, the petitioner was working in UN Mission as a part of the 2 RAJRIF whereas, now he is part of 8 RAJRIF. The petitioner strongly contends that therefore, he should be selected to proceed on UN Mission.

17. Mr. Pandey, learned counsel for the petitioner relies upon the policy letter dated 25th January, 2011 which reads thus:-

Records The Rajputana Rifles

Pin-900106

C/o 56 PO

25 Jan, 2011

RAC/10/20/UN Msn Policy

8. RAJRIF

(All Bns & RRRC)

POLICY: SELECTION OF PBOR FOR UN MSN

A copy of IHQ of MoD (Army) Note No. 71362/Policy/SAD-3 (UN) dt 05 Jan 2011 is fwd herewith for strict compliance please.

Sd/-Illegible

(Kamal Kishore)

Ld Col

SRO

For OIC Records

Copy of IHQ OF MoD (Army) Note cited above.

AS ABOVE

1. Ref. Your Note No. A/62006/UN/Inf-6(Pers) dt 23 Dec 2010.
2. Any indl who has been part of the unit for five years continuously or otherwise, posted or in the panel should be considered for the UN assignment when the unit is selected. This is also applicable to any indl who has had a foreign tenure.
3. For your necessary action pleas.

Sad/-XXX

(A. Ashok)

Lt Col

GSO-1, SD-3 (UN)

18. The policy dated 30-8-2010 clearly declares the consideration of personnel below officer's ranks for proceeding on a UN Mission. For the purposes of administrative convenience, it would appear that the respondents have earmarked PBOR from a particular regiment for selection for UN Deployments.

19. We have been informed by Ms. Barkha Babbar that in the year 2007, personnel from 2 RAJRIF were being considered for deployment on the UN Mission. However, there was shortage of staff from the regiment. As such persons from 8 RAJRIF (including the petitioners) were additionally deployed for the said Mission. The petitioners were included only in these circumstances. This is evident by not only the Policy dated 30-8-2010, but the letter dated 25th January, 2011 also clarifies the same position and unequivocally refers to any individual who had been a part of the Unit for 5 years or otherwise could be considered for UN Mission when the Unit is selected. It cannot be disputed that exclusion of the petitioners is premised on the criterion laid down by the Policy dated 30th August, 2010. In view thereof, the decision of the respondents excluding the petitioners is clearly based on applicable Policy and cannot be faulted.

We find no merit in the writ petition which is hereby dismissed.

C.M. No. 15168/2013

1. In view of order passed in the writ petition, the application does not survive for consideration and the same stands dismissed.