
(2012) 10 DEL CK 0202
In the Delhi High Court
Case No : Writ Petition (C) 6498 of 2012

Nishant Sankale	Vs	APPELLANT
UOI and Others		RESPONDENT

Date of Decision : 15-10-2012

Acts Referred:

Citation : (2012) 10 DEL CK 0202

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Rekha Palli and Ms. Punam Singh, for the Appellant; Rajeeve Mehra, ASG with Mr. Ruchir Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Relevant record has been perused. On February 24, 2012 nominations were called for CISF contingent consisting of 140 personnel to be deployed at Haiti. 924 nominations were received. Petitioner applied for the post of Contingent Commander and so did a few others including Shri Jacob Kispotta and Shri Anand Saxena.

2. On April 13, 2012 a board was constituted to select officers and the said board empanelled three persons and listed their name in order of merit for the post of Contingent Commander. At serial No. 1 was the name of the petitioner, at serial No. 2 was the name of Jacob Kispotta and at serial No. 3 was the name of Anand Saxena.

3. The matter was put up for consideration before the DG CISF who opined on May 23, 2012 that the petitioner does not possess a good moral character and thus petitioner's selection should be negated on the ground of doubtful integrity.

4. The reason why aforesaid view was expressed by the DG CISF is the fact that when posted at Delhi, on April 02, 2012 the petitioner was

transferred to Kalpakkam, Tamil Nadu, and he made a request on same day and met the DG CISF with a request that if he was transferred the

education of his son who was in class-X and was to take the ensuing class-X examination in March 2013, would be adversely affected. Taking a

sympathetic view, the DG CISF cancelled the order transferring the petitioner to Kalpakkam. This fact was construed by the DG CISF as

evidence of the petitioner not making a bona-fide request when he sought his transfer to be cancelled inasmuch as note dated May 23, 2012

records that the DG CISF was of the opinion that how come the petitioner is prepared to go on a foreign mission forgetting the welfare of his child.

By applying the reverse logic, the learned DG CISF has opined that if the petitioner, for extra money, can proceed to a foreign mission assignment,

it would obviously a case of a ruse when the petitioner sought transfer-posting to be cancelled.

5. At the outset we may note that the objective fact before the DG CISF i.e. of the petitioner representing a cause of his son's education being

adversely affected and thereby having the transfer-posting order recalled, even if it was a ruse, would not entitle a view to be formed that the

petitioner is a person of doubtful integrity and lacks a good moral character. This view has to be formed with reference to an offence or a wrong

committed which has an element of moral turpitude.

6. We accordingly declare that the remark dated May 23, 2012 be expunged from the record lest it finds itself sitting in the confidential roll (CR)

of the petitioner.

7. Besides, the petitioner did not get his transfer-posting withdrawn by stating that he has to personally teach his son. Since the request was verbal,

we have no record of the exact nature of the request made, but would find a point in the argument advanced by Ms. Rekha Palli, learned counsel

for the petitioner that as a consequence of the transfer the petitioner would be obliged to surrender the residential accommodation allotted to him at

Delhi and this would have dislocated the education of his son. Even on this count we find no case made out to record, in the language used, the

note dated May 23, 2012.

8. But we find a good reason not to allow the writ petition for the reason the record shows that the actual decision taken to send Anand Saxena as the Contingent Commander was premised on an entirely different reasoning.

9. While taking the final decision and keeping in view the recommendations of the board, DG CISF has noted, as recorded in the note dated June

01, 2012, that the petitioner and Jacob Kispotta, at serial No. 1 and 2 of the panel, earlier on had the benefit of a foreign assignment and Anand

Saxena had none, therefore it would be advisable to send Anand Saxena as the Contingent Commander.

10. This we find to be a good reason.

11. Learned counsel for the petitioner submits that the earlier policy of not even considering a person who had a tenure abroad for a UN Mission

posting has now been replaced with a policy that persons sent abroad for a UN Mission posting would be put on a cooling off period for three

years, meaning thereby, that the bar of consideration is for three years. Counsel submits that in view of the policy, since petitioner was placed at

serial No. 1 of the select panel, he has an indefeasible right to be sent as the Contingent Commander.

12. Now, even with respect to promotions, nobody has a vested right to be promoted. The only right is to a fair consideration for being promoted

and if the parameters of fair consideration are stipulated, the consideration for purposes of promotion has to be as per the parameters stipulated.

However, this principle would not be applicable to matters pertaining to posting. Nobody has a vested right to be posted at a place. No doubt,

where the employer, for purposes of transparency, has framed guidelines on the subject, the same have to be considered and taken into account

and unless shown that the policy is exhaustive of all the circumstances and situations which may be encountered it cannot be said that the policy has

to be applied as a statute.

13. Needless to state, a policy guideline on a posting is always treated indicative of and not conclusively determinative of on the subject of a

posting.

14. Now, there is no criteria laid down in the policy on the basis of which a merit position has to be drawn. Thus, the panel prepared by the board

in which petitioner was placed at serial No. 1 had a fair element of the subjective

satisfaction of the members of the board to place petitioner at serial No. 1 of the merit panel. It is in this context it assumes importance of there being fairness in not only the preparation of the select panel but even the final decision taken, to send a particular person on a UN Mission Foreign Posting. Merely because the petitioner was at serial No. 1 of the select panel would not confer upon him an indefeasible right to be sent to the foreign mission posting. We find fairness in action when DG CISF took the view that since the persons at serial No. 1 and 2 of the panel had the benefit of a foreign posting in the past, Anand Saxena who had none should be made the Contingent Commander.

15. We only wish to bring out our view that issues of vested rights and rights simpliciter in the domain of service law have to be considered not pedantically but keeping in view the nature of the dispute brought before a Court. In a matter pertaining to posting, the Executive must have a free hand and even if there exists a policy with respect to posting the same cannot be treated as an edict and would always be subject to not only the exigencies of service but even a fair distributive postings; if a particular posting carries extra perks. We highlight that UN Mission foreign posting entitles those sent on deputation to a Foreign Allowance, which is paid in US dollars and also gives an exposure of a kind to the person posted which the person may not get in India and thus the concept of distributive justice may be applicable in the decisions of such kind.

16. The writ petition is dismissed but with a direction that the negative comment against the petitioner in the note dated May 23, 2012 shall be expunged and shall not form part of the CR of the petitioner. No costs.