
(2013) 09 DEL CK 0248

In the Delhi High Court

Case No : Writ Petition (C) 5689 of 2013 and CM No. 12585 of 2013

Sub Mukhtar Ahmed Ansari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2013) 09 DEL CK 0248

Hon'ble Judges : V. Kameswar Rao, J;Gita Mittal, J

Bench : Division Bench

Advocate : S.S. Pandey, for the Appellant; Amrit Pal Singh, CGSC, Mr. M.P. Singh, Major Mahesh Sharma, (legal cell) and Major D.K. Singh, for the Respondent

Judgement

Gita Mittal, J.—Learned counsel for the respondents has handed over a copy of the letter dated 31st December, 1987 to us in support of his contention that the petitioner cannot be permitted to proceed for UN mission to Sudan as he is not covered under the policy dated 30th August, 2012. The petitioner was enrolled in the Army as a Soldier in the Regiment of Rajputana Rifles on the 14th of November, 1984. On 25th of November, 1988, the petitioner was posted to the Headquarter, Indian Military Training Team ("IMTRAT" hereafter) Bhutan. According to the petitioner this posting was effected following a selection process and he was selected along with two other individuals of his unit. The petitioner has claimed that he was posted as an administrative staff on the IMTRAT and thereafter served in various positions.

2. In the year 2012, the petitioner's unit, i.e., the Rajputana Rifles was earmarked for proceeding on a UN Mission to Sudan. As per the signal dated 30th January, 2013 issued by respondent no. 4 to respondent no. 5 it has been informed that the personnel who had availed tenure at IMTRAT as instructors were eligible to go for UN Mission and that personnel posted on administrative duties were not eligible. The petitioner was informed by his unit authorities that he was not eligible to proceed on the UN Mission as he had gone on such posting.

The petitioner's representation dated 11th March, 2013 was forwarded by his Commanding Officer with recommendations to the concerned authorities. The respondents however passed order dated 8th April, 2013 to the effect that the petitioner was not eligible for the UN Mission tenure as he was not posted with IMTRAT, Bhutan as Instructor.

This rejection has been assailed by the petitioner by way of the present writ petition.

3. The petitioner has contended that the respondents have erred in the decision they have taken on account of misreading of the policy for selection of Persons Below Officer Rank (PBOR) for UN Mission dated 30th August, 2010. It is urged that as per para 4(b) of the policy, personnel who have done a tenure in staff instructional capacity overseas based on individual merit would be considered eligible for second tenure overseas and no ban will be applicable in respect of these personnel provided he has served at least five years in the Battalion. The petitioner contends that he was posted as an administrative staff during the posting in Bhutan which has been informed by his unit in the comments dated 16th April, 2013 as well as Rajputana Rifles records in the communication dated 1st May, 2013.

4. The petitioner has placed reliance on the clarification dated 13th May, 2013 issued by the Director, Infantry-6 (personnel) to the Directorate General of Infantry/Infantry-6 (personnel) reiterating the principles laid down in para 4(b) of the policy aforesaid.

5. This communication has clarified that JCOs/OR who have earlier availed UN/IMTRAT tenure as part of contingent may not be considered. It is an admitted position that in case the petitioner is posted in the capacity of staff or in the capacity of an instructor capacity, he would be eligible for UN deployment despite previous deployment in Bhutan. The short dispute which is raised before us as to whether the petitioner proceeded on the Headquarter IMTRAT, Bhutan posting as staff personnel or as a member of the troop contingent.

6. For the purposes of the present writ petition, we may usefully set out the relevant extract of the policy for selection of PBOR for UN Mission dated 30th August, 2010 which reads as follows:-

POLICY: SELECTION OF PBOR FOR UN

MSNs

General

1. The contribution of Indian Army to UN peacekeeping operations with regard to PBOR can be broadly divided into two categories:-

(a) TP Contingents-These incl. all the PBOR who are dply as part of units/sub units of various Arms and Services in the MSN as Respective Dtes are responsible for the selection of these pers based on SOPs.

(b) Staff Pers.-A small No of PBOR are dply as staff in Msn/Force/Sect HQ. These pers are selected by nominated dtes from the corps roster, based on the QR for the vacs as laid down from time to time.

xxx xxx xxx

4. Overseas Exposures and Ban Pd.

(a) xxx xxx xxx

(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 cersa 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).

7. The policy is therefore, quite clear inasmuch as it specifies that the personnel who had done a prior UN posting deployment in staff or instructional capacity alone would be considered on individual merit for selection for a second such tenure, subject to the condition that they have served at least five years in the battalion.

8. There is no dispute that the petitioner has served more than five years in 8 Rajputana Rifles and fulfils the requirement of five years in a battalion.

9. 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 Office 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 & Tdn. vide IHQ of MoD (Army) vide their letter quoted at Para 1(a) above. Accordingly, JC-469857M Sub (then Rfn) Mukhtar Ahmad Ansari of 8 RAJRIF was posted with HQ IMTRAT w.e.f. 25 Nov 1988 to 16th Feb 1991 against the vac of adm. staff as 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 alongwith comments of Coy Cdr and Offg CO. (copy att.) quoting that the JCO was posted at HQ IMTRAT against vac of staff and therefore, he is eligible to proceed to UN Msn alongwith 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. 30 Aug 2010.

10. 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 that it has been unequivocally declared that the petitioner who belonged to 8 Rajputana Rifle was posted with the Headquarter 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 as having done a tenure in staff capacity overseas.

11. There is no then dispute with regard to the eligibility of the petitioner to proceed on the UN Mission to Sudan. In view of the above discussion, the fact that the petitioner had proceeded to IMTRAT Bhutan cannot come in the way of his deployment to proceed on a UN Mission.

In view of the above, we direct as follows:-

(i) The order dated 8th April, 2010 finding the petitioner ineligible for the UN Mission is contrary to the applicable policy and is hereby set aside and quashed.

(ii) We hold that the petitioner is eligible for consideration and deployment on UN Mission in accordance with the policy dated 30th August, 2010.

(iii) The respondents are therefore, required to re-consider the matter in the light of the above and pass appropriate orders with regard to his deployment on the proposed Mission within five days from today.

This writ petition is allowed in the above terms.

CM No. 12585/2013

In view of the order passed in the writ petition, this application does not survive for consideration and is dismissed.

Dasti to parties.