

(2013) 11 DEL CK 0122

In the Delhi High Court

Case No : Writ Petition (C) 6878 of 2013 and C.M. No. 14901 of 2013

Vinod Kumar Gupta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2013) 6 ILR Delhi 4499

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

Bench : Division Bench

Advocate : Shruti Agarwal, for the Appellant; C.M. Goyal and Mr. Ravichandran, Team Commander, NSG, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—Counter affidavits have been placed on record. Learned counsel for the petitioner submits that no rejoinder is necessary. With the consent of both the parties, matter has been heard.

2. The issue raised in these two writ petitions are identical and therefore are taken together for consideration. Both the petitioners have challenged their repatriation. The petitioners complain that they have been discriminated against by the orders of repatriation to their parent department whereby termination of their deputation has been effected after expiry of three years instead of five years and without any justified reason, whereas the three other medical officers of the Assam Rifles have been permitted a deputation term of five years.

3. The facts giving rise to the present petitions to the extent necessary are briefly noticed hereafter. Both the petitioners were commissioned as Medical Officers with Assam Rifles. Dr. Vinod Kumar Gupta (the petitioner in W.P. (C) No. 6878/2013) was sent on deputation to the National Security Guard (NSG) pursuant to order dated 21st December, 2010 wherein it was clearly stipulated that the period of his deputation in the NSG shall be for a period of three years subject to premature repatriation on unsuitability, indiscipline, exigencies of

service as well as if any other unforeseen factors so demand. Dr. Satish Kumar (the petitioner in W.P. (C) No. 7085/2013) was offered deputation with an identical stipulation. It is undisputed that so far as the first writ petitioner is concerned, his tenure of deputation of three years would come to an end on 30th November, 2013 and in case of second petitioner, the tenure of deputation will expire in January, 2014.

4. It appears that by identical orders made on 24th August, 2012, the NSG informed the authorities of Assam Rifles that the deputation of the petitioners would end on expiry of three years tenure whereupon they would be relieved. It is communicated in the same order that the Ministry of Home Affairs had passed an order dated 26th July, 2012 approving the proposal of the NSG to grant relaxation to Dr. Shailendra Kumar, Dr. Rajesh Kumar and Dr. Bipin Kumar to complete the tenure of five years deputation with the NSG. The petitioners contend that as these three doctors have been permitted to complete the period of five years, the petitioners are also entitled to relaxation for completion of tenure of five years granted to the other three doctors. It is contended that they are also medical officers with the Assam Rifles who proceeded on deputation with NSG in identical circumstances.

5. The respondents have filed counter affidavits before this court explaining not only the policy which governs appointment of persons on deputation with the NSG but also the circumstances in which the three medical officers were permitted a deputation tenure of five years. It is explained that the NSG is the Federal Contingency Force with the Union of India and is 100% deputation force. The personnel are taken from the feeder organizations which consists of the Army, Central Armed Police Forces like CRPF, BSF, CISF, ITBP, SSB and Assam Rifle etc. On the request of NSG, the feeder organizations sponsor their candidates who are interviewed, trained and inducted for a specified tenure of three years and five years as per the policy of the feeder organization, subject to agreement thereon by the Ministry of Home Affairs. Reference is made to the power of NSG to premature repatriation of an official on grounds of unsuitability, indiscipline and exigency of service etc. given the "highest standard of discipline" which is required by this organisation.

6. It is undisputed that the petitioners as well as the three other doctors noticed above were selected on deputation to serve with the NSG as Team Commander (Medical). The tenure of stipulation of three years has been mentioned in the offer of appointment made to the petitioners. It is undisputed that the offer of appointment was unconditionally accepted and the officers have so served with the NSG.

7. So far as the policy which governs the deputation tenure is concerned, it is pointed out that the notification in this regard was issued vide HQ NSG L/No. E.305/43/2010/NSG/5997 dated 21st December, 2010 which stipulated the deputation tenure as three years which had been fixed by the Ministry of Home Affairs, the controlling ministry vide their UO No. I-21022/4/2007 Pers-II dated

24th July, 2008.

8. A request was made by the NSG for increasing the deputation tenure of medical officers of the Assam Rifles from the stipulated period of three years to five years. This request was favourably considered by the Ministry of Home Affairs. By a common communication dated 14th October, 2011, the Ministry directed that the deputation tenure of medical officers of Assam Rifles with the NSG would be increased from three years to five years.

9. So far as Dr. Shailendra Kumar, Dr. Rajesh Kumar and Dr. Bipin Kumar are concerned, their deputation period of three years was coming to an end on 31st December, 2011 and 31st January, 2012 respectively. It was during the currency of the policy declaration dated 14th October, 2011 that the extension of their deputation tenure from three years to five years was directed by the NSG enabling these three doctors to complete the period of five years tenure on deputation. It has rightly not been disputed before us that on 31st December, 2011 and 31st January, 2012 when the tenure of these three doctors was coming to an end, the policy dated 14th October, 2011 was invoked.

10. We are informed that the Assam Rifles had objected to the tenure of the deputation increase to five years from three years of the medical officers. It is also a fact that the deputation period had been increased without consulting the department of Assam Rifles. The matter thus had to be reconsidered by the respondents. On a review of the issue, an order dated 19th March, 2012 was issued by the Ministry of Home Affairs. As such with the approval of the competent authority, the decision was taken by NSG to reduce the deputation tenure of medical officers of Assam Rifles in the NSG from five years to three years. The order specifically notes that the deputation tenure of Assam Rifles" personnel other than the medical officers in the NSG would remain the same.

11. This order dated 19th March, 2012 was applicable to the case of the petitioners. The respondents therefore took the decision to repatriate the present petitioners on expiry of the period of three years. In these circumstances, the decision to repatriate the petitioners cannot be faulted on any legally tenable grounds.

12. An attempt has been made to press the plea of discrimination given the extension of the tenure to the three doctors noted above. However, we noted above that the extension was granted to them under the then extant policy. The petitioners unfortunately cannot fault this extension as it was in terms of the policy which was thereafter reviewed.

13. It is urged by Ms. Shruti Agarwal, learned counsel for the petitioners that they had sent representations to the respondents which should have been favourably considered. The respondents have rejected the same by a communication dated 19th March, 2012 dealing at length with every contention raised by the petitioner. The respondents have also explained the circumstances in which the policy stipulation with regard to deputation tenure so far as medical

officers of the Assam Rifles were concerned, was given.

14. It is trite that no person has a right to proceed or remain on deputation. In this regard reference can be made to the pronouncement of the Supreme Court in Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others,

15. The petitioners proceeded on deputation fully knowing that they were so proceeding only for a period of three years. Their unconditional acceptance of the offer of appointment binds them and they are estopped from claiming a right to any extension thereof. For all these reasons, we find no merit in these writ petitions, which are hereby, dismissed.