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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: September 21, 2011

+ **W.P.(C) 3929/2011**

S AHLUWALIA Petitioner
Through: Ms.Rekha Palli & Ms.Punam Singh,
Advocates
versus

UNION OF INDIA & ORS. Respondents
Through: Mr.Anil Gautam, Advocate with
Lt.Col.Manish & Ms.Asha Anand,
Joint Director

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Petitioner is a commissioned officer in the Indian Army and holds the rank of a Lieutenant Colonel. He works in the Corps Of Signals.
2. With respect to equipments needed by the Indian Army, it works very closely with Directorate General of Quality Assurance

(DGQA) and to bring synergy between the two departments, technically qualified officers of the Indian Army are sent, from time to time, on deputation to DGQA. Permanent absorption of officers of the armed forces in DGQA is one of the mode of appointment in DGQA.

3. The petitioner has a domestic problem, in that, he has an old and ailing mother who suffers from various medical problems as also a wife having medical problems.

4. It is not in dispute that the armed forces have always been sympathetic to the petitioner and for said reason have accommodated him at Delhi for long durations.

5. Realizing that he cannot be permanently stationed at Delhi, way back in the year 2006, petitioner sought premature retirement, for the obvious reason, he found it difficult to cope up with his work in the Indian Army as also his domestic responsibilities. The request for premature retirement was rejected.

6. Fortunately for the petitioner a proposal materialized wherein he could be at Delhi. On 11.1.2008, for tenure of 3 years, petitioner was sent on deputation to DGQA.

7. The Indian Army required hands in the Corps of Signals. Curtailing the tenure to 2 years, vide order dated 12.1.2010 petitioner was repatriated to the Corps of Signals. Representation filed by him was rejected.

8. In April 2010, DGQA constituted a Board to consider permanent secondment of such armed forces personnel who

were found fit for permanent absorption in DGQA. The Board found petitioner fit to be absorbed in DGQA as per Board's recommendations dated 28.4.2010.

9. Needless to state, being a permanently commissioned officer in the Indian Army, unless Indian Army formally releases the petitioner for permanent secondment in DGQA, he could not be the beneficiary of the Board decision dated 28.4.2010.

10. Requisition sent by DGQA with respect to the Board's opinion dated 24.8.2010 to the Indian Army was responded to by the Indian Army on 28.8.2010. Unfortunately for the petitioner, the Indian Army declined to accord its approval for petitioner's permanent secondment in DGQA.

11. Reason given by the Armed Forces was that it functions in a command hierarchy which is ego centric and it normally recommends permanent secondment of such officers who are superceded. The obvious reason is that these officers who are superceded become junior to other erstwhile juniors and this causes ego clashes. It was pleaded that petitioner's requirement in the Army was necessary in public interest.

12. Petitioner filed W.P.(C)No.6564/2010 in this Court, titled S.Ahluwalia Vs. Union of India & Ors. The writ petition was disposed of vide order dated 4.2.2011 finding merit in the stand taken by the army authorities who generally accord permission for permanent absorption in DGQA of such officers who were superceded.

13. However, the extreme family hardship of the petitioner was

noted and thus while disposing of the writ petition it was directed that in view of the observations made in the decision, which were peculiar to the petitioner, the matter may be reconsidered for petitioner's secondment under DGQA. Alternatively, it was proposed that if petitioner was to re-seek premature retirement, the same should be considered in the alternative.

14. Reconsidering the matter, vide impugned order dated 29.3.2011, the army authorities have declined permanent secondment of the petitioner to DGQA.

15. Instant writ petition was immediately filed praying that the decision dated 29.3.2011 be quashed.

16. In the counter affidavit filed, the Indian Army disclosed to us that in May 2011, DGQA had requested Military Secretary Branch of Army Headquarters to intimate availability of officers who have concluded 2 year's tenure with DGQA and in response thereto, the petitioner was made available for consideration for permanent secondment in DGQA.

17. In other words, the Indian Army informed this Court that it has no objection if petitioner proceeds on permanent secondment to DGQA.

18. On 11.8.2011, the selection Board of DGQA met and considered the names of various persons including that of petitioner for permanent secondment in DGQA. The Board noted that the petitioner had already been found fit for permanent secondment at the Board meeting which was held on 28.4.2010 but did not make any recommendation qua the petitioner on the

reason that the petitioner had already been reverted to the Indian Army in April 2010, and the instant writ petition was pending. It was opined that it would be advisable to await the outcome of the instant case.

19. We have asked learned counsel for the respondent, who on instructions from Ms.Asha Anand, Joint Director, DGQA informs that there are several vacancies available in DGQA where officers of the armed forces can still be inducted on permanent secondment with DGQA.

20. From the facts noted hereinabove, the following emerges:-

- i. The medically infirmity of petitioner's wife and his aged mother requires petitioner to devote time with his family.
- ii. Petitioner has completed 2 year's tenure on deputation with DGQA before he was repatriated to the Indian Army.
- iii. The Board of DGQA which met on 28.4.2010 evaluated the petitioner and found him suitable for permanent absorption in DGQA.
- iv. When consent of Indian Army was sought, it declined to relieve the petitioner for permanent secondment alleging shortage of staff.
- v. The Indian Army has now no objection to petitioner's permanent secondment with DGQA.
- vi. The Board of DGQA which met on 11.8.2011 deferred considering petitioner's entitlement for permanent absorption in DGQA to await the decision in the instant writ petition.

21. The conspectus of aforesaid facts lead us to the conclusion that petitioner's evaluation for absorption in DGQA has already

been completed at the Board which met on 28.4.2010. The Indian Army has no objection now to his permanent absorption in DGQA. It is not a vacancy based appointment. No body's right is adversely affected if we are to direct that on the strength of the earlier selection strengthened by the current decision taken by the Indian Army to release petitioner to be permanently seconded in DGQA, petitioner be permanently seconded to DGQA.

22. The writ petition stands disposed of declaring that petitioner's entitlement for permanent secondment in DGQA as regards the said organization would be treated as having been settled with respect to the QASB selection dated 28.4.2010. Army's concurrence for petitioner's permanent absorption in DGQA would be treated as final so far as the Indian Army is concerned in view of the stand taken in the counter affidavit.

23. Mandamus is issued that necessary formalities be completed within 4 weeks and petitioner be released from Indian Army for permanent absorption in DGQA.

24. Learned counsel for the respondent is desirous and learned counsel for the petitioner on instructions from the petitioner states that for the purposes of seniority in DGQA, the petitioner would not claim ante dated seniority. Seniority would be reckoned with effect from the date he joins DGQA on permanent basis.

25. No costs.

26. *Dasti.*

CM No.13693/2011

Since writ petition has been allowed, the application is disposed of as infructuous.

PRADEEP NANDRAJOG, J

SUNIL GAUR, J

SEPTEMBER 21, 2011

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