

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 4th February, 2011

+ **W.P.(C) 6564/2010**

S. AHLUWALIA Petitioner
Through: Petitioner in person.

Versus

UNION OF INDIA & ORS Respondents
Through: Mr.AS. Chandiok, ASG with Mr.
Neeraj Choudhary, Mr. Khalid Arshad,
Advocates and Major Rahul Soni.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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. Having successfully completed his training at the National Defence Academy and the Indian Military Academy, the petitioner was commissioned in the Corps of Signals on 11.06.1994.

2. Petitioner earned time bound promotions and reached the rank of Lt.Colonel.

3. The undisputed position is that on account of petitioner having an old and an ailing mother who suffers various medical problems and a wife also having medical problems, the Army authorities were always sympathetic to the petitioner and accommodated him at Delhi for long durations.

4. Petitioner sought premature retirement which was rejected vide order dated 15.12.2006.
5. As per the petitioner, he had sought premature retirement inasmuch as he wanted to spend quality time with his mother who appears to be fairly unwell and his wife. The request was declined on account of deficiency in the officers in the Corps of Signals.
6. It appears that at the heart of the problem is the requirement to be summoned for emergency duty at any point of time by the Corps of Signals which upsets the house schedule of the petitioner, who would be happy with a 9 A.M. to 5 P.M. job.
7. To ensure that a trained human resource was not wasted and keeping in view the persistent requests of the petitioner that he be retired prematurely, as pleaded in para 2 of the counter affidavit, the Head of the Corps of Signals gave an interview to the petitioner on 10.04.2010 and suggested that the petitioner should explore alternatives to his request for premature retirement.
8. As pleaded in para 2 of the counter affidavit, a viable solution was, the petitioner putting in a request to be sent on deputation to the Directorate General of Quality Assurance (DGQA), a civil Department closely associated with the Indian Army inasmuch as the said Department oversees the quality of defence procurements.
9. Fortunately, the proposal materialized and in February, 2008, the petitioner proceeded on deputation to DGQA. The term of the deputation was two years.
10. The petitioner desired his tenure to be extended with DGQA or in the alternative wants that the Indian Army, i.e., the Corps of Signals should release him permanently so that he can find permanent secondment in the DGQA. Be it noted that working hours in the DGQA are 9 A.M. to 5 P.M.

11. Whereas the DGQA is agreeable to permanently absorb the petitioner, the Army authorities have refused to release him on the ground that the number of officers in the Corps of Signals is inadequate; during arguments it was stated that the deficiency is to the extent of 30 %.

12. When the petitioner highlighted that eight officers of the rank of Lt. Colonel have been released for permanent absorption in DGQA, as per response filed it is stated all were senior, i.e., had a longer length of service than the petitioner and we find that two officers of the rank of Lt.Colonel having been commissioned in the Corps of Signals on 08.06.1991 and 14.12.1991, have been released from the Corps of Signals for permanent induction in DGQA.

13. The petitioner latches upon the said fact to urge that the stand of the respondents of the Corps of Signals being short of 30% officers is incorrect. When questioned, Shri A.S. Chandhiok, learned A.S.G. responded by drawing attention to the fact that persons junior to the officers released for permanent induction in DGQA had been promoted as Colonels. Counsel stated that it is a known fact that the pyramidal structure in the Indian Army creates ego problems and where junior officers earn promotions above their seniors, the seniors have adjustment problem and as a measure of human resource management the Indian Army tries that the superseded officers should proceed on deputation or permanent secondment to sister organizations so that the command structure of the Indian Army is not affected.

14. We find considerable merit in the said submission, and therefore, hold that merely because two officers from the Corps of Signals holding rank of Lt.Colonel but much senior to the petitioner have been permanently seconded with the DGQA would not be a ground to infer that the stand of the respondent of Corps of Signals being short of staff by 30% officers is

incorrect.

15. But, at the heart of the matter remains the fact that the family circumstances of the petitioner compels him to take up a 9 A.M. to 5 P.M. job. We are given to understand that not only the mother of the petitioner but even his wife needs attention on account of medical problems. The petitioner is even willing to be retired prematurely. He offered to be retired prematurely, which request has been declined.

16. Let us note the averments of the respondents in para 2 of the counter affidavit, for the reason we feel the solution to the problem has to be in harmony with the signature tune of para 2 of the counter affidavit, which reads as under:-

“During March 07, the petitioner again sought an interview with Military Secretary for reconsideration of his request for PMR. His case was referred to Signal Officer-in-Chief, Head of the Corps of Signals in the Army. On 10 Apr 2007, the petitioner was interviewed by the SO-in-C. The petitioner was suggested to explore alternatives to his request for PMR. The petitioner then approached SO-in-C, by writing a DO letter dated 17 Apr 2007, for considering his case for deputation to DGQA so that he could be posted to Delhi. His request was again considered sympathetically and in spite severe cadre deficiency at middle level officers, the petitioner was permitted to apply for deputation. The petitioner proceeded to deputation to DGQA and was posted to Kanpur from Feb 2008 to Mar 2010.”

17. Now, the respondents themselves find that the domestic affairs of the petitioner requires a compassionate approach to be adopted. The respondents do not want a trained personnel to be wasted. The respondents themselves suggest that alternatives be explored. The respondents themselves suggested that the petitioner should consider to apply for deputation with DGQA where he could work on a job which is 9 A.M. to 5 P.M. job.

18. If this be so, at least on humanitarian considerations, the petitioner would be entitled to be treated as a special case.

19. We may note that the respondents have justified the release of two officers in the rank of Lt.Colonel, i.e., the same rank held by the petitioner for permanent secondment with DGQA by pleading that notwithstanding shortage of staff, as a good human resource management policy, these two officers have been relieved inasmuch as they were superseded and since persons junior to them had become Colonels, the command structure in the Army was likely to be adversely affected. The same principle of good human resource management can certainly be extended, by way of an exception qua the petitioner. We note that the respondents are carving out exceptions keeping in view the requirements of not wasting human resource and at the same time ensure that neither the command structure is affected nor unhappy persons retained. We say so for the reason the respondents admit releasing for permanent secondment, officers in the Indian Army, notwithstanding shortage of staff, on the reason that being superseded for promotion these officers would have a problem working under officers junior to them and a happy solution would be to utilize their skills in other sister organizations.

20. No policy is capable of being formulated which is all embracing, for the obvious reason, wide and varied are the problems which spring up from time to time and no human mind can conceive of all futuristic problems and provide for pre-determined solutions. Thus, we do not get into the nuisances of the policy framed by the respondents, but would certainly note that the policy does not vest any right in any person to get a discharge for permanent secondment. The person concerned is only entitled to a fair consideration. We may also note that exigency of services is an important factor in the policy.

21. Noting that the case of the petitioner is a special case, noting the stand of the respondents in para 2 of the counter affidavit filed, we may only guide the respondents that it is better to part company happily rather than have a disgruntled officer being forced to work.

22. The petitioner had relied upon a decision of a Division Bench of this Court in the Writ Petition (Civil) No. 274/2009 Major Alok Shukla v. Union of India and others.

23. The said decision relates to Defence Services Regulations pertaining to permanent transfer of Army Officers to the Judge Advocate General department. The subject matter, i.e., Statutory Regulations were found creating rights in favour of the persons held eligible and thus the said decision would not be a precedent in the instant case where no such Regulation exist, as were considered by the said Division Bench. Observations in the said judgment pertaining to the equality and non-discrimination relate to the branch of law where the field is governed by statutory Regulations framed and it hardly needs emphasis that where a person is covered by a statutory Regulation, which confers a benefit, denial thereof would be a case of discrimination.

24. We dispose of the writ petition directing the respondents to re-consider the release of the petitioner for permanent secondment under DGQA and while so doing it would be taken note of the fact that the DGQA is agreeable to permanently absorb the petitioner. Observations made in the present decision above highlighted which flown out from para 2 of the reply filed by the respondents would be taken note of. Alternatively, if the petitioner were to resubmit the application for premature retirement, the same would be considered keeping in view the stand of the respondents in para 2 of the counter affidavit.

25. The reconsidered decision would be taken and conveyed to the petitioner within a period of eight weeks from today.

26 The writ petition is disposed of with no order as to costs.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

**FEBRUARY 4, 2011
RS**