

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

% *Date of Decision :October 19, 2012*

+ **WP(C) 6039/2012**

HARISH SINGH BISHT Petitioner
Represented by: Mr.S.R.Kalkal, Advocate

versus

UOI & ORS. Respondents
Represented by: Mr.Ankur Chibber, Advocate

AND

+ **WP(C) 6040/2012**

KUNDAL SINGH Petitioner
Represented by: Mr.S.R.Kalkal, Advocate

versus

UOI & ORS. Respondents
Represented by: Mr.Ankur Chibber, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG, J. (Oral)

WP(C) No.6039/2012 & WP(C) No.6040/2012

1. Kundal Singh the writ petitioner of WP(C) No.6040/2012 was enrolled as a Combatant Soldier in the Indian Army on January 31, 1986 and was attached to the Kumaon Regiment. He served with 9 Kumaon Regiment as an Combatant Soldier in operational areas till July 12, 1987 and was thereafter re-mustered as a Clerk/GD on May 17, 1989 and was posted in the record office of the Kumaon Regiment. He thereafter served in the 3 Kumaon and the 13 Kumaon which were based

in operational areas, but performed duties of a clerk. The grievance raised by him is of not being sent for UN Mission Duty in spite of his being selected.

2. Petitioner Harish Singh Bisht likewise joined the Indian Army as a Combatant Soldier on September 30, 1985 and was posted with the Kumaon Regiment and initially with 9 Kumaon. He served as a soldier in operational areas but was re-mustered as a Clerk/GD, on a date not given. He also raises a grievance of not being assigned a foreign UN Mission posting.

3. The grievance which is common to both petitioners is that for the second rotation in Congo, in spite of the nominal roll of clerks detailed for second rotation recording their names at serial No.4 and 5, they have not been detailed for second rotation posting at Congo and instead Chanchal Singh Koranga and Hemender Singh have been nominated.

4. In the counter affidavit filed it has been explained that at the first rotation three JCO Clerks Subedar Major R.D.Upreti, Subedar N.K.Khan and Naib Subedar S.A.Karemula were sent because they were already working with 3 Kumaon. Fourth JCO Naib Subedar Babu K.B. was the only one left for second rotation and since two more were required more names were required. The Commandant was of the view that as against 3, 6 JCO Clerks be sent by accommodating three persons from the GD Cadre. Therefore, five names were called from Kumaon Records with respect to persons who had worked with the 3 Kumaon.

5. We highlight here that but for the Commandant requiring three more clerks, petitioners would have not even been eligible to be considered for being sent to Congo.

6. Since Babu K.B. was already available, five more names being required, the concerned officer of the Kumaon Regiment sent the names of Subedar Clerk Hemender Singh, Subedar Clerk Harish Singh Bisht, Naib Subedar Clerk Kundal Singh (the last two being petitioners) and Subedar Major Chanchal Singh Koranga and Subedar Major Inder Krishan Raina.

7. This is the list relied upon by the petitioners. But when sent for approval to the Colonel of the Regiment he opined that GD vacancies could not be utilized by the clerks because the Unit was going for operational duty in Congo and therefore he decided that 3 GD posts would not be accommodated from amongst clerks. The General Duty Cadre would mean the fighting soldiers. The Colonel also took the view that only three JCO Clerks, the authorized strength would proceed for UN Mission assignment and therefore directed that a Board of Officers will draw out a list of 3 eligible clerks and, in this manner Babu K.B., Subedar Major Chanchal Singh Koranga and Subedar Clerk Hemender Singh found their names in the list of JCO clerks to be sent for second rotation.

8. As per the writ petitioners they were inducted in the Indian Army as soldiers i.e. in the General Duty and they have knowledge of working in operational areas and can handle firearms.

9. But, this would be wholly irrelevant. The reason is that the petitioners, probably because of their qualification opted to be re-mustered in the clerical cadre and since then have been performing clerical work. Further, the initial decision was to send three JCO clerks and not six JCO clerks by adjusting three GD cadre persons, which subsequent decision was not approved by the Colonel of the Regiment.

Thus, the petitioners cannot rely upon the initial list of six persons, three of whom were after adjusting three posts in the GD cadre.

10. In a contingent how many combatant soldiers and how many clerical post holders should be sent is a matter of policy. Whether some GD cadre personnel could be substituted from the clerical cadre persons is also a matter of policy, and a Court can have no say therein.

11. After the writ petition was filed and the counter affidavit came on record and a rejoinder was filed, learned counsel for the petitioner has obtained some information under RTI and he wishes to rely thereon to bring home the point that Chanchal Singh Koranga has never served the 3 Kumaon. From this it is sought to be projected that induction of Chanchal Singh Koranga is manipulated. Learned counsel further relies upon the information which records that since Chanchal Singh Koranga has only 11 months to serve he should be sent to Congo because at the third rotation he would no longer be in service. It is sought to be highlighted that Kundal Singh is similarly situated having 14 months service. Learned counsel argued that Kundal Singh has served with 3 Kumaon.

12. Now, this fact is asserted today and since the men would be leaving for Congo on October 21, 2012, as stated by counsel for the petitioner it is submitted that we should decide the matter today itself.

13. We would thus be constrained to overlook the submissions made with respect to additional information relied upon by the petitioner for the reason it relates to facts and may warrant a further response. But would note that even if we were to remove Chanchal Singh Koranga, Kundal Singh cannot be sent in any case for the reason he has two red ink entries in his service record which would disentitle him for a foreign

mission posting, where people with impeccable service profile are sent. In said eventuality Subedar Inder Krishan Raina would find a place in the list.

14. We terminate our view by highlighting that scope of judicial interference in such kinds of postings is minimal. It is a matter of policy as to who should go for a foreign posting and unless something palpably arbitrary is revealed, the Court would not microscopically sift the rival versions.

15. We further highlight that the final decision is to send only three JCO clerks and not adjust any GD vacancy with clerks.

16. The writ petitions are dismissed.

17. No costs.

CM 16332/2012 in WP(C) 6039/2012 & CM 16333 in WP(C) 6040/2012

Disposed of as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

OCTOBER 19, 2012
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