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

+ **W.P.(C) 6482/2015**

% ***Judgment dated 17th July, 2015***

STATE OF TAMIL NADU Petitioner

Through: Mr.Sandeep Khurana and
Ms.Seemab Ali Fatima, Advocates

versus

UNION OF INDIA & ANR. Respondent

Through: Ms.Poonam Kalia, Mr.Vikas Mahajan,
Mr.S.S. Rai, Advocates for UOI /respondent no.1
M.Ravi Prakash, Advocate for respondent no.2

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. By the present writ petition, petitioner has challenged the order dated 29.5.2015 passed by the Central Administrative Tribunal on an OA filed by the respondent no.2 herein.
2. We have heard detailed arguments on behalf of the parties at the stage of admission. The necessary facts to be noticed for disposal of the present writ petition are that the respondent no.2 is a promotee IPS Officer of Tamil Nadu Cadre. Aggrieved by the order of suspension passed against her by the Tamil Nadu Government on 12.3.2014 and charge-sheet issued to her for initiating disciplinary proceedings against her by the State of Tamil Nadu dated 5.4.2014 and also aggrieved by the inaction on the part

of the Union of India for not having decided her appeal dated 24.4.2014 against suspension initially led to the filing of the OA before the Central Administrative Tribunal. During the pendency of the matter, when the matter was taken up on 31.10.2014 it was brought to the notice of the Tribunal that the order of suspension passed against respondent no.2 (petitioner in O.A.) was revoked by the Union of India and accordingly to that extent the relief sought by her became infructuous.

3. The only question which remained to be decided by the Central Administrative Tribunal was the first prayer with regard to quashing of the charge-sheet.
4. Before the rival submission of learned counsel for the parties can be considered, we deem it appropriate to notice some of the relevant facts, which led to the filing of O.A. by respondent no.2.
5. In this case by a communication dated 22.4.2010 was addressed by the Government of India, Ministry of Home Affairs, PMA Cell, to the Home Secretaries to all States / Union Territories; Directors – IB/ CBI/SVP NPA/ SPG/ NEPA/ NICFS/ CFSL/ DCPW/ NCRB; DsG – BSF/ CRPF/ ITBP/ CISF/ NSG/RPF/ BPR&D/ SSB/ NCB/Assam Rifles; Commissioners of Police, Delhi / Mumbai/ Lolkatta/ Chennai, informing nomination of police officers for deployment with UN Peacekeeping Missions (UN SAT 2010-11). In paragraph 5 of this communication the State Governments were requested to nominate not more than five police officers latest by 30.6.2010 from the rank of Head-constable to S.P. / Commandant level proportionate in number fulfilling the eligibility conditions as set out in paragraph 5 (a) to (j), which reads as under:

“5. The State government/ UTAs/CPOs are requested to nominate not more than 5 police officers latest by 30th June, 2010 from the rank of Head Constable, to SP/ Commandant

level proportionate in number fulfilling the following eligibility conditions:

- a) The candidate should be Graduate
- b) Possesses four wheeler valid driving license
- c) Must have completed 08 years of actual police experience including training period as on 30.04.2010 (the date proposed for issue of circular for calling fresh nomination)
- d) Above 25 years of age on 30.04.2010.
- e) Must have good command over English Language (Spoken & written)
- f) IPS officer should be of 1998-2001 batch (IPS officers should not be debarred from Central Deputation, Foreign training)
- g) Nominated officers should be clear from Cadre/Vigilance angle. The Officers against whom disciplinary / vigilance cases are pending, not be nominated.
- h) The officers having previous UN experience must have completed cooling off period of three years as on the date of issue of circular starting from the date of repatriation / end of previous UN Mission.
- i) Female police personnel be given preference.
- j) Officers proceeding on retirement / superannuation within a period of three years from the date of issue of circular may not be nominated.”

6. The respondent no.2 applied for the UN SAT 2010-11 test on 3.9.2010. The application of the respondent no.2 was processed by the petitioner and forwarded to respondent no.1 on 4.10.2010. On 24-25 April, 2012 another communication was issued on the same lines as that of the communication of 22.4.2010 but for UN Peacekeeping Missions (UN SAT examination 2012-13). Paragraph 9 of this communication would be

extremely relevant and is thus being reproduced below:

“9. The State Government / UTAs / CPOs are further requested that the officers who had passed the UN SAT 2010-11 test held from 13th to 17th December, 2010 but could not be deployed so far may again be nominated to re-appear for UN SAT test 2012-2013 (as per the list attached), in addition to their regular nomination. It may here be intimated that the validity of the UN SAT held in December, 2010 is likely to be extended upto December, 2012. Therefore, in case, by the time of UN SAT 2012 or thereafter up to December, 2012 these officers are deployed with different Missions, their names will be removed from the panel of UN SAT 2012.”

7. It may again be mentioned at this stage that the validity of the UN SAT Test 2010-11 was extended upto December, 2012. On 12.5.2012 the respondent no.2 once again expressed her willingness for being considered and offered to re-appear in the UN SAT 2012-13 test, however, this application of the respondent no.2 was neither approved, nor forwarded by the State of Tamil Nadu (petitioner herein). Relying on paragraph 9 of the communication dated 25.4.2012, the Permanent Mission of India (PMI) based at New York conveyed the selection of respondent no.2 for UN Peace Keeping Mission by a communication dated 10.1.2013. On 11.1.2013 the Ministry of Home Affairs addressed a communication to the Home Secretaries and DsGP of NCT of Delhi, UT Administration, Chandigarh, Rajasthan and Tamil Nadu informing them that the United Nation's Department of Peace Keeping Organization (UNDPKO) through PMI to U.N. has conveyed the selection of four Indian Police Officers for deployment with U.N. Mission in South Sudan; and the name of respondent no.2 was mentioned at serial no.3. Based on

the aforesaid communications, the respondent no.2 was relieved by the petitioner on 16.1.2013.

8. It is the case of the petitioner herein that by communication dated 30.1.2013 from Principal Secretary to Government of Tamil Nadu addressed a communication to the Director General of Police, Chennai, requesting that the respondent no.2 be recalled. On the same date a fax was issued to the respondent no.2; to Home Secretary of Govt. Secretariat, Chennai; to Director (Pers), GOI, MHA, New Delhi, by DGP, Tamil Nadu, Chennai, which reads as under:

“KINDLY REFER TO THIS OFFICE MEMO NO.006569/ GB IV(1)/2013 DATED 12.01.2013 RELIEVING YOU FROM THE POST OF DEPUTY COMMISSIONER OF POLICE, LAW AND ORDER, TRICHY CITY TO JOIN UN MISSION ON 17.01.2013 IN ANTICIPATION OF GOVERNMENT ORDERS(.) THE TAMIL NADU GOVERNMENT HAVE REJECTED YOUR DEPUTATION TO UN(.) HENCE, YOU ARE DIRECTED TO RETURN IMMEDIATELY SINCE ANY DEPUTATION AND TRAVEL ABROAD IS SUBJECT TO GOVERNMENT ORDERS(.) IN FAILURE OF SUCH AN ORDER SO FAR YOUR TRAVEL ABROAD WILL NOT BE IN LINE WITH GOVERNMENT RULES [ALL INDIA SERVICE MANUAL, 1955 MISCELLANEOUS EXECUTIVE INSTRUCTIONS CONCERNING ALL INDIA SERVICES 7(2)](.)

9. As per the petitioner, despite the telegram of 30.1.2013, the respondent no.2 proceeded to join the UN Peacekeeping Mission, ignoring the contents of the telegram. On 12.03.2014 the respondent no.2 was placed under suspension with immediate effect as disciplinary proceedings were contemplated against her. Charges were framed against respondent no.2

under Rule 8 of the All India Service (Discipline and Appeal) Rules 1969 on 05.04.2014. The respondent no.2 participated in the enquiry and filed her written statement of defence on 15.04.2014. Respondent no.2 also filed an appeal before the respondent no.1 under Rule 16 of the All India Service (Discipline and Appeal) Rules 1969 praying for revocation of her suspension on 24.4.2014. While her appeal was forwarded with the remarks by the State Government, Ministry of Home Affairs on 31.5.2015, simultaneously on 07.07.2014 an enquiry authority was appointed. In this backdrop the respondent no.2 filed OA.No.3582/2014 on 23.9.2014, which was finally allowed on 29.5.2015. Mr.Khurana, counsel for the petitioner has urged the following grounds for quashing the order passed by the Central Administrative Tribunal.

10. It is contended by Mr.Khurana, counsel for the petitioner that the order passed by the CAT is bad in law and is liable to be set aside. It is further submitted that the Tribunal has failed to appreciate that once the order relieving respondent no.2 was recalled, she was duty bound to join her parent cadre. It is also submitted that the letter of 16.1.2013 for relieving the petitioner was issued without taking into account that paragraph 9 of the communication dated 25.4.2012 had not been complied with and in fact was violated inasmuch as that as per paragraph 9 the dead-line was extended up to December, 2012 for selection, whereas respondent no.2 was selected in January, 2013 and it is for this reason that her relieving order was recalled.
11. It is also contended by counsel for the petitioner that respondent no.2 did not follow the directions of the petitioner and being under the supervision and control of the petitioner she was duty-bound to comply with the directions contained in the fax dated 30.1.2013.
12. It is further contended that the disobedience and not joining back to her

State cadre was an act of misconduct and indiscipline unbecoming of an police officer, which resulted in her suspension and filing of charge-sheet against her.

13. It is strongly urged before us that the moment the fax of 30.1.2013 was received by the respondent no.2 she should have joined her parent cadre, and moreso, since she was still in India at that point of time and had not left for South Sudan for the UN assignment.
14. Additionally, it is urged before us that the enquiry cannot be quashed at the initial stage, as no *mala fides* have been alleged against the petitioner by the respondent no.2. No other ground has been urged or pressed.
15. Counsel for the Union of India submits that the order of suspension has been revoked and a review filed by the petitioner herein against the order of revocation also stands dismissed by an order dated 15.1.2015. We are informed that the petitioner herein has also challenged the order by which the suspension of the respondent no.2 was revoked by filing of a writ petition, which is pending before a Single Judge of this court.
16. Mr.Ravi Prakash, counsel appearing for the respondent no.2 submits that the respondent no.2 has unquestionable respect for the order passed by her State Cadre and had every intention to comply with the directions contained in the fax of 30.1.2013, which is evident from the fact that upon receipt of the said fax respondent no.2 addressed a communication dated 1.2.2013 to the Director General of Police, Tamil Nadu, Chennai, informing him that she had approached the National UN CIVPOL Centre to relieve her but they refused to do so. She had also informed the DGP, Tamil Nadu, Chennai that she thereafter was served a copy of the letter No.21023/07/2010-PMA (vol.-III), Government of India MHA, (Police Division-II) PMA Cell dated 1st February, 2013 by the MHA that the request for withdrawal of her name for deployment with UNMISS, had

not been approved at that stage. Mr.Prakash, also submits that respondent no.2 was left with no option but to leave for South Sudan as after being relieved by the petitioner she was reporting to the officials of the Ministry of Home Affairs and she could not have left the campus without their approval and permission. It is also contended by Mr.Prakash that the assignment to South Sudan was a difficult assignment, having regard to the political conditions in South Sudan and peace keeping force was deployed to maintain law and order and it is not as if she had agreed to go abroad on a safe post for some training. It is also contended that the gravity of the situation at South Sudan can be assessed from the fact that five Indian soldiers died during the period when respondent no.2 was deployed over there.

17. Mr.Prakash also submits that once the Union of India has passed orders revoking the suspension of respondent no.2 and a review filed by the petitioner stands dismissed, the State Government should put a quietus to the matter and should not harass the respondent no.2 herein, whose conduct would show that once having received the fax she made every endeavour to approach the Ministry of Home Affairs, seeking her relieving orders to join the State Government.
18. We have heard counsel for the parties and also carefully examined in detail the order passed by the Central Administrative Tribunal.
19. The main thrust of argument of Mr.Khurana, counsel for the petitioner is that the Tribunal has failed to consider that the respondent no.2 ignored the instructions of the petitioner, who is the Cadre Controlling Authority and proceeded to UN Peacekeeping Mission in South Sudan on 05.02.2013, showing scant regard to the fax and the instructions of the petitioner. The Tribunal also failed to appreciate that the validity of the UN SAT 2010-11 was extended upto December, 2012 and thus the

respondent no.2 was ineligible on the date when she was selected. It has also been urged before us that in the absence of approval / sanction by the petitioner, the respondent no.2 could neither be deployed with the UN Peacekeeping Mission nor she could have disobeyed the instructions of the State Government. Since the bone of contention as is evident upon reading of the charge framed against the respondent no.2 is that she failed to return from Delhi despite receiving fax message dated 30.1.2013 seeking her recall, and thus she had failed to maintain absolute integrity and in defiance to duty and had conducted herself in a manner unbecoming of a member of the service and thereby violated Sub-Rule (1) of Rule 3 of All India Services (Conduct) Rules 1968.

20. The Tribunal has in depth discussed the sequence of events and the contentions of both the parties. We find no infirmity with the same, however, it has been strongly highlighted that since respondent no.2 was available in Delhi when the fax of 30.1.2013 was received by her, she had yet not left for South Sudan, she was in a position to join her State Cadre; and in her absence to comply with the fax message she was rightly suspended and a charge-sheet was issued.
21. The question which would thus arise for consideration is whether on the face of the record, was there any act of defiance on the part of the respondent no.2.
22. Upon receipt of the communication from the petitioner, the Ministry of Home Affairs, Government of India, addressed a letter to the Directors General of Police, Tamil Nadu, Chennai dated 1.2.2013, which is reproduced below:

“To,

The Directors General of Police,

Tamil Nadu, Chennai.

Subject: Deployment Ms.Sathiya Pria, IPS with UN Mission in South Sudan- reg.

Sir,

The Director General of Police, Tamil Nadu, Chennai may refer to their OM No.006569/GB IV(I)/2013 dated 12th January, 2013, Commissioner of Police, Trichy City, OM No.A2/1332/2013 dated 13th January, 2013 and DGP, TN, CNI Fax No.Nil dated 30th January, 2013 on the above mentioned subject.

2. In this context, it is intimated that the nomination of Ms.Sathiya Priya, IPS for deployment with UNMISS has already been approved by the United Nations, Department of Peacekeeping Operations, New York and finalized all the travel / development formalities. As such, at this stage, your request to withdraw the name of Ms.Sathiya Priay, IPS from the UN deployment with UNMISS has not been approved by this Ministry.

3. This is for your information please.

[Emphasis added]”

23. The petitioner was informed that the nomination of respondent no.2 for deployment with UNMISS had already been approved by the United Nations Department of Peacekeeping Operation, New York and also finalized all the travel/ deployment formalities and therefore, at that stage, the request for withdrawal was not approved by the Ministry. Copy of the letter was marked to the Chief Secretary, Government of Tamil Nadu, Chennai; the Commandant, National UN Civil Police Centre; and to the respondent no.2. The matter did not rest at this stage and yet a very detailed communication dated 13.2.2013 was addressed by the Government of India Ministry of Home Affairs to the Additional

Secretary to the Additional Secretary to the Government of Tamil Nadu,
Home Department. The communication dated 13.2.2013 reads as under:

“Dated, the 13th February, 2013

To,

Shri N. Mani,
Additional Secretary to the Govt. of Tamil Nadu,
Home Department,
Secretariat,
Chennai-9

Subject: Deployment Ms.Sathiya Priya, IPS with UN
Mission in South Sudan – reg.

Sir,

Please refer to your letter No.3758/Pol.1/2013 dated 04th February, 2013 and this Ministry letter of even number dated 01st February, 2013 on the above mentioned subject.

2. In this matter, it is mentioned that the position as contained in your above referred letter is not the correct position.

3. In this contest following, factual position is intimated:
(a) This Ministry vide letter No.21023/07/2010-PMA dated 22nd April, had requested all States, UTs, CAPFs and other organization to forward nomination of 05 police officer for UN SAT 2010-11 giving preference to Female Police Officers (Copy enclosed as Annexure-I).

(b) Accordingly, Principal Secretary to the Government of Tamil Nadu vide letter No.72319/

Police -1/2010-1 dated 04.10.2010 had forwarded the willingness of Ms.Sathiya Priya, IPS alongwith vigilance clearance (copy enclosed as Annexure-II).

(c) In the UN SAT Merit list 2010-11 Ms.Sathiya Priya was selected and placed at Srl.No.101. All the CVs of selected candidates alongwith merit list was provided to UNDPKO through PMI to UN for further action as selection process is being done by UNDPKO on need basis/ eligibility required for a particular mission.

(d) Deployment of UN CIVPOL officers is a continuous process as and when the deployment orders are received from UNDPKO, this Ministry request concerned State Governments to relieve the listed officers to report National UN CIVPOL Centre to complete travel formalities that includes stitching of Uniforms, procurement logistic items etc. on personal cost of the Individual Police Officer. Prior to their departure their luggage are sent 03 days in advance through DHL / Airport Cargo.

(e) As per the existing procedure of MHA, immediately on receipt of selection for deployment of Ms.Sathiya Priya, IPS alongwith other three lady Police Officers with UNMISS, this Ministry vide communication of even number dated 11th January, 2013 has requested concerned State/ UT Administration to relieve the officers to report to Commandant National UN CIVPOL Centre by 17th January, 2013 to complete travel formalities.

(f) All the officers reported National UN CIVPOL Centre alongwith proper relieving order including Ms.Sathiya Priya, IPS. On reporting, Ms.Sathiya Priya, IPS had submitted the disc/ vig clearance issued

by the Director, Vigilance and anti-corruption vide his Rc.No.2012/VAC 24/2013 dated 18.01.2013, DGP, Tamil Nadu, Rc.No.006569/GB of (1)/2013 dated 12.01.2013 and Commissioner of Police, Tiruchirapalli City letter No.C.No.A2/1332/2013 dated 13th January, 2013 (copies of above letters are enclosed as Annexure III, Annexure IV & Annexure V respectively).

(g) Accordingly, following formalities for their deployments were completed including issuing of Index Numbers to the Police Officers by UNMISS.

- (i) Diplomatic passport.
- (ii) Visa
- (iii) Medical / vaccination
- (iv) Procurement of clothing/ equipments and other items as per the specification of UN.

3. The deployment process of Ms.Sathiya Priya, IPS has been done by MHA as per the prescribed practice. As such withdrawal of her name from the list after completion of all travel formalities including issuance of UN Index number and air voucher by UNDPKO would have been embarrassment for the GOI and could have also affected the future deployment of Indian Police Officers with various UN Missions. It is further mentioned that in all levels of meeting, MHA has been insisting the United Nations Department of Peacekeeping Office, New York to increase the strength of Indian CIVPOL Officers at various UN Missions abroad. Hence, withdrawal of name of an officer, whose name already stands approved for a particular Mission by UNDPKO, will jeopardize the commitments of HMA, GOI with UNDPKO. The deployment of an officer with UN Mission is done in the National interest as he/ she is representing the country to supplement United Nation's global peacekeeping process.

4. Ms.Sathiya Priya, IPS along with other three officers have already been deployed with UNMISS w.e.f. 05th February, 2013 for a period of 12 months.”

24. A careful reading of this communication would show the detailed grounds and seriousness in which the request of the petitioner for withdrawal of the nomination of respondent no.2 was declined by the Union of India. While giving a brief background, which led to the nomination of the respondent no.2, the entire process with regard to nomination and the procedure to be followed thereafter was explained. The petitioner was informed that various formalities were completed including issuance of a diplomatic pass-port, visa, medical examination /vaccination, procurement of clothing/equipments and other items as per the specifications. It was further explained that withdrawal of the name of respondent no.2 after completion of travel formalities, including issuance of U.N. Index number and air voucher by UNDPKO would have been embarrassing for the Government of India and could affect future deployment of Indian Police officers with various UN Missions. Petitioner was also informed that in all levels of meetings, Ministry of Home Affairs had been insisting to the United Nations Department of Peace Keeping Office, New York, to increase the strength of Indian CIVPOL officers at various UN Missions abroad. It was also brought to the notice of the petitioner that the deployment of an officer with UN Mission is done in National interest, as he / she is representing the country to supplement United Nation’s Global Peace Keeping Process.
25. The two communications (dated 1.2.2013 & 13.2.2013) which we have extracted hereinabove would leave no room for doubt that the respondent no.2 was not relieved by the Ministry of Home Affairs and having regard

to the fact that her request to the Ministry of Home Affairs was rejected and her not joining the UN Peace Keeping Force could also have entailed disciplinary action by the Ministry of Home Affairs against her besides leading to embarrassment to the country.

26. We may also notice that the tribunal at the time of hearing of the OA had requested the petitioner (respondent no.2 before the tribunal) to produce the relevant files, although the files could not be produced when the hearing was closed, but learned senior counsel for the State of Tamil Nadu had assured the tribunal that the relevant files would be produced within one week and the tribunal has noticed that seven (7) files were produced in a sealed cover by the State of Tamil Nadu. The learned Tribunal has carefully examined all the files and in the impugned judgment discussed in great detail the relevant portion of the files. At this stage we may add that the second request made by the respondent no.2 for being nominated for the UNSAT 2012-13 was neither formally rejected nor forwarded and in fact there is no order on that request. The Hon'ble Chief Minister did not approve or reject the proposal and after 46 days the Chief Minister's Office returned the file without any orders whatsoever on the Note for Circulation through CMO No.1502/A2/2012, with the noting dated 14.07.2012 that the file may be returned to the Home Department. The file was ultimately returned to Principal Secretary, Home Department on 21.07.2012. The Home (Police-1) Department then noted on 23.07.2012 that the Circulation Note, and the Note of the office of Chief Minister, show that the Hon'ble Chief Minister has returned the file without its being approved, and it was proposed that hence no further action was called for in the file, and the papers may be lodged, and orders were sought in this regard, which was approved by the Dy. Secretary (Police-1) on 23.07.2012 and by the Principal Secretary Home

Department also on 24.07.2012. That file was then consigned to records/ lodged. Nobody gave a thought to the generally accepted proposition that if there has been no rejection of the proposal, it could also have meant an automatic approval.

27. We may also notice that no response was issued by the petitioner to either of the two letters addressed by the Ministry of Home Affairs to the petitioner.
28. The communications extracted hereinabove leave no room for doubt that once the respondent no.2 was relieved from her State Cadre and granted permission to join the United Nations' Peacekeeping Force; and even the period spent by her for completion of pre-departure procedure and training would be counted as on duty but not under the control of the State Government of Tamil Nadu (the petitioner herein) as she already stood relieved in the afternoon of 16.1.2013. Once having been relieved by the State Government, respondent no.2 could not have left her training centre or declined to join the UN Peacekeeping Force at South Sudan, without express leave and permission from the Ministry of Home Affairs.
29. As far as submission of Mr.Khurana, that the Tribunal should not have interfered once the disciplinary enquiry against the respondent no.2 had been initiated, we find no force in this submission as well. Although quashing of an enquiry is an exception and not the rule and such discretion should be exercised on rare occasions and after the Tribunal is satisfied that the article of charges framed are neither in good faith; and as to whether the charge-sheet supplied to the delinquent officer would disclose allegations of misconduct. The learned Tribunal has passed a detailed judgment, dealing exhaustively with the submissions raised by counsel for the parties. The Tribunal has also examined the official files pertaining to the respondent no.2 herein and discussed the same in detail.

30. Having held that once the respondent no.2 was relieved by the State Government she could not have left the pre-training site without the permission of the Ministry of Home Affairs, which was declined, it cannot be said that respondent no.2 intentionally disobeyed the contents of the fax message dated 30.1.2013.
31. In the light of the above background and for the details reasons recorded in the order of the CAT, we find no grounds to interfere in the judgment of the learned Tribunal. No grounds are made out for judicial review. Consequently, the petition stands dismissed.

CM.11802/2015

32. In view of the order passed in W.P.(C) 6482/2015, the present application stands disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 17, 2015

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