

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

% *Date of Decision : July 25, 2016*

+ **W.P.(C) 5770/2016**

SUBEDAR YUSUF ALI Petitioner
Represented by: Mr.Virender Singh Kadam, Advocate

versus

UNION OF INDIA & ORS Respondents
Represented by: Mr.Ankur Chhibber, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The petitioner was enrolled as a Jawan in the Indian Army on March 05, 1987. Earning promotions he reached the rank of Subedar. The petitioner would superannuate on March 31, 2017.
2. Currently, the petitioner is attached with the 14 Grenadier Infantry Battalion which has been nominated for overseas deployment under United Nations Interim Force in Lebanon. The Infantry Battalion is scheduled to fly out from Delhi on August 04, 2016.
3. The petitioner has been informed that in view of the policy for deputing members of the armed forces for United Nation missions he cannot be sent to Lebanon because the policy envisages that upon completion of the foreign assignment the member of the force should have at least 70 days residual service. The duration of the foreign assignment is six months. Thus, the Batalion would be returning on February 03, 2017. Since the petitioner would

superannuate on March 31, 2017 his residual service would be 56 days. This would be short by 14 days contemplated by the residual service policy term: 70 days.

4. The reason for minimum 70 days residual service left when the Battalion returns from the foreign shores is rationale and cannot be challenged for the reason before a person who has rendered pensionable service superannuates from service, and especially in the armed forces, lot of paper work has to be done so that the person receives the terminal benefits on the day of the retirement and the necessary cards/certificates are issued entitling the forced personnel to the benefit of being an ex-serviceman.

5. A policy guideline dated May 30, 2015 has been brought into aid by the petitioner. It is on the subject of dispensation in residual service criteria. It reads as under:-

"POLICY : SELECTION OF JCOs/OR FOR UN MSNS

1. Refer Inf-6 Note No.A/62006/UN/Inf-6 (Pers) dated 13 May 2016 (copy all).

2. The dispensation in residual service criteria in respect of JCOs/OR for deployment in UN Msns is governed vide Para 6 of Policy o selection of JCOs/OR for UN Missions promulgated vide SD Dte/SD-3A (UN) letter No.71362/ Policy/SD-3 (UN) dated 31 Dec 2014.

3. Cases where delay in induction is due to reasons beyond the control of an indl or organisation should be processed for dispensation in residual service. However, the following need to be considered while processing the cases for waiver in residual service criteria:-

a) Waiver should only be processed on receipt of fit schedule.

b) Only those indls who are left with minimum 40 days of residual service after completion of six months from the date of first flight to the Mission Area should be allowed to proceed for the UN Mission.

4. For your info and necessary action please.”

6. Suffice it to state that as per sub-para (b) of para 3 of the policy dated May 30, 2015, a person can be sent for UN mission deployment if minimum 40 days' residual service after completion of six months of foreign deployment remains. As noted above, petitioner's residual service on completion of six months' foreign deployment would be 56 days. It is 16 days more than the 40 days residual service contemplated by the policy dated May 30, 2015.

7. The argument of learned counsel for the respondents is that para 3 of the policy dated May 30, 2015 on the subject of dispensation in residual service contemplates delay in induction due to reasons beyond the control of the individual or organization and would urge that this would be of the kind where flights are not available or the United Nation missions postpone the deployment. In the short affidavit filed it is admitted that one Subedar Subhash Chand of 8 Dogra had been granted waiver of 29 days of shortfall of residual service. The justification given is that the rotation flight of 8 Dogra was delayed from its original schedule.

8. Question arises. Does the policy decision dated May 30, 2015 stands the scrutiny of reasonableness by adopting the criteria of delay in deployment occasioned to re-scheduling of the flight schedule? Clause (a) of para 3 contains the stipulation that waiver should only be processed on receipt of flight schedule and Clause (b) thereof prescribes that in such eventuality

waiver would be granted provided 40 days' residual service remains after completion of the six months' deployment.

9. We do not find any rationale in adopting the criteria of flight schedule being delayed as the basis to give benefit of relaxation. What is the nexus of the criteria with the object sought to be achieved? We find none. The policy recognizes that minimum 40 days' residual service is essential for the force personnel to complete paper work before retiring. To illustrate the unreasonableness of the criteria let us take that the deployment had to take place on July 04, 2016. The petitioner would have been entitled to be deployed because after six months of deployment he would have been left with more than 70 days' residual service. If the flight schedule got changed later on and the deployment got shifted to August 04, 2016, the petitioner would have been entitled to the benefit of the waiver. Now, delay in the flight schedule is fortuitous and so is the date of deployment which shifts by 2 or 3 weeks here and there keeping in view the movement out from the foreign shore to the parent country as directed by the UN mission and replacement being sent.

10. During hearing of the writ petition we had asked learned counsel for the respondents whether any administrative convenience would be caused to the Indian Army by re-visiting the contingent to be sent out and if the petitioner were to be deployed in Lebanon a person to be weeded out. Learned counsel fairly conceded that the deployment is of the entire Infantry Battalion and has got nothing to do with a fixed number of personnel to move out.

11. On the verge of his retirement, a deployment abroad would earn the petitioner about 6-8 lakhs of rupees and this is the civil consequence of the petitioner not being deployed in Lebanon. A sufficient right to be protected

and it not being a case of a simple deployment on the existing pay package.

12. The writ petition is allowed. Communication dated April 25, 2016 denying deployment in Lebanon to the petitioner is quashed. A direction is issued to deploy the petitioner as a member of the 14 Grenadier Infantry Battalion in Lebanon along with his buddies.

13. No costs.

14. Dasti under signatures of the Court Master today itself to learned counsel for the respondents.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JULY 25, 2016
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