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

+ **W.P.(C) 1941/2017 & CM No.8596/2017**

Date of decision :5th July, 2017

SATYENDRA KUMAR JHA Petitioner
Through: Mr.Ankur Chhibber, Adv.

versus

UNION OF INDIA AND ORS Respondents
Through: Mr.Dev P. Bhardwaj, CGSC

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

1. Mr.Satyendra Kumar Jha in this writ petition impugns the decision of the respondents deploying Gurjeet Singh, the 4th respondent, for security duties at Embassy of India, Kathmandu and Consulate General of India, Birgunj (Nepal).

2. The petitioner submits that the petitioner and not the 4th respondent should have been sent for the said posting as the said respondent was earlier deputed for duties at Haiti between 27.10.2010 to 11.11.2011. Reference is made to the Clause (g) of the Standard

Operative Procedure (SOP). It is also pleaded that 4th respondent had not applied within the stipulated cut-off date pursuant to the notification dated 26.06.2015 for deployment in Nepal. Accordingly, the 4th respondent had not participated in the examination held on 28.07.2015 and 29.07.2015 but had participated in the examination/ interview held on 17.08.2015 and 18.08.2015.

3. We would take the second contention first. The respondents in the counter-affidavit have stated that the Central Industrial Security Force (CISF) has more than 300 units scattered all over the country and some times it becomes quite difficult to receive nominations from all sectors before due or cut off date. In the present case, the 4th respondent had submitted the application form with hard and soft copy on 04.07.2015, which nomination form along with 41 other nomination forms were received on 27.07.2015 i.e. one day before the written examination and interview scheduled to begin from 28.07.2015. To be fair and just and give opportunity to such officers who were not to be blamed and at fault, another test and interview were held on 17.08.2015 and 18.08.2015. The written test and interview were held by the same Board i.e. without changing the Constitution of the Board. Thus the said 42 officers were given an opportunity for selection and to compete with others on merits. Aforesaid explanation is a complete answer and negates, the second contention. The submission of the petitioner has to be rejected.

4. On the first aspect, we would reproduce paragraph (g) of the Standard Operative Procedure, which reads as under:-

“(g) Implementation of “Cooling” off period (03 years) for all deputations i.e. UN Mission; Indian Mission & Deputation within India (Except SPC & NSG who can apply any time). (Preference will be given to officers & men who have not done any deputation UN/Indian Mission abroad earlier.)”.

5. The 4th respondent in the present case was deputed to Haiti between 27.10.2010 to 11.11.2011. He would obviously not violate the cooling off period of three years. He was eligible and could have been considered for another foreign assignment for deployment in UN Mission/Indian Mission abroad.

6. Learned counsel for the petitioner has made reference to the bracketed portion which states that preference would be given to officers who have not earlier done any deputation in the UN/Indian Mission abroad. The respondents on the said aspect have submitted and clarified that 4th respondent had secured 213 marks in the written examination, whereas, the petitioner had secured 199.5 marks. In view of the substantial difference in the marks, competent authority took conscious and considered decision to depute the best officer/personnel for the foreign assignment.

7. Learned counsel for the petitioner has drawn our attention to the judgment dated 15.10.2012 in WP(C) 6498/2012, *Nishant Sankale v.*

Union of India & Ors and submits that bracketed portion of Clause (g) relating to preference is mandatory and not merely recommendatory. We have considered the said judgment and reasoning given therein. The said judgment does not hold or observe that all officers/ personnel earlier deputed to Indian Mission or UN Mission abroad are to be ignored, in preference to those who have not been earlier deployed. Paragraph 10 of the said judgment holds that the Directorate General while taking the final decision would take into consideration whether one of the person/personnel has had the benefit of an earlier foreign assignment. If this is so, the said person could be ignored and preference could be given to the person next below in the order. In the present case however, the respondents on examining the relevant facts and on account of difference of marks have sanctioned deputation of the 4th respondent. Clause (g) quoted above prescribes three years as cooling off period. This three years bar and prohibition from posting the same officer on deputation at the UN Mission or Indian Mission abroad, is not violated in the present case. It may be relevant here to quote portions of the decision of in **Nishant Sankele (supra)** which are as under:

“13. Now, even with respect to promotions, nobody has a vested right to be promoted. The only right is to a fair consideration for being promoted and if the parameters of fair consideration are stipulated, the consideration for purposes of promotion has to be as per the parameters stipulated. However, this principle would not be applicable to matters pertaining to posting. Nobody has

a vested right to be posted at a place. No doubt, where the employer, for purposes of transparency, has framed guidelines on the subject, the same have to be considered and taken into account and unless shown that the policy is exhaustive of all the circumstances and situations which may be encountered it cannot be said that the policy has to be applied as a statute.

14. Needless to state, a policy guideline on a posting is always treated indicative of and not conclusively determinative of on the subject of a posting.

15. Now, there is no criteria laid down in the policy on the basis of which a merit position has to be drawn. Thus, the panel prepared by the board in which petitioner was placed at serial No.1 had a fair element of the subjective satisfaction of the members of the board to place petitioner at serial No.1 of the merit panel. It is in this context it assumes importance of there being fairness in not only the preparation of the select panel but even the final decision taken, to send a particular person on a UN Mission Foreign Posting. Merely because the petitioner was at serial No.1 of the select panel would not confer upon him an indefeasible right to be sent to the foreign mission posting. We find fairness in action when DG CISF took the view that since the persons at serial No.1 and 2 of the panel had the benefit of a foreign posting in the past, Anand Saxena who had none should be made the Contingent Commander.

16. We only wish to bring out our view that issues of vested rights and rights simpliciter in the domain of service law have to be considered not pedantically but keeping in view the nature of the dispute brought before

a Court. In a matter pertaining to posting, the Executive must have a free hand and even if there exists a policy with respect to posting the same cannot be treated as an edict and would always be subject to not only the exigencies of service but even a fair distributive postings; if a particular posting carries extra perks. We highlight that UN Mission foreign posting entitles those sent on deputation to a Foreign Allowance, which is paid in US dollars and also gives an exposure of a kind to the person posted which the person may not get in India and thus the concept of distributive justice may be applicable in the decisions of such kind.”

Reading of the aforesaid paragraphs would indicate that the authorities are given a degree of flexibility in the matter of posting of such nature, while ensuring that fairness and transparency are not a casualty. Arbitrariness and nepotism are impermissible. Policy guidelines on the posting are not treated as a statutory mandate and the preference clause conclusively and affirmatively determinative of on the subject of posting. We therefore, find no merits in the second contention of the petitioner as well.

8. Another contention raised by the petitioner is that 4th respondent had submitted an undertaking that he was not in the promotion zone. However, the 4th respondent is at Sl. No.101 in the seniority list of Deputy Commandant and his juniors in the seniority list upto Sl. No.123 have been promoted vide order dated 10.02.2017. The respondents have pointed out that these are Local Rank Promotions

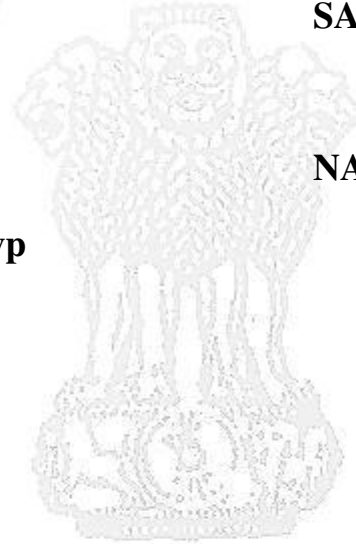
which are made by Directorate General. These are not regular promotions. No financial benefit accrues and is paid. In view of the abovesaid explanation given by the respondents on third aspect, we do not find any reason to quash deployment of the 4th respondent.

9. In view of the aforesaid discussion, we do not find any merit in the present petition. The same is dismissed with no order as to cost.

SANJIV KHANNA, J

NAVIN CHAWLA, J

JULY 05, 2017/vp



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