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

+ W.P.(C) 11236/2016

HAV MOHD. ARIF KHAN

..... Petitioner

Through Mr. Virender Singh Kadian, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Through

Ms. Abha Malhotra and
Sh, Snjay Yadav, Advocates

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

% **07.02.2017**

This writ petition is directed against the exclusion of the petitioner from the UN Mission in Lebanon, for which the 14 Grenadiers Infantry Battalion has been nominated. In the writ petition it is pleaded that the 14 Grenadiers Infantry Battalion has been nominated for overseas deployment under the United Nations Interim Force in Lebanon by Integrated Headquarters of the Ministry of Defence (Army). According to the petitioner, all the members of the unit have been selected for deployment in the UN Mission except for a few, who do not meet the disciplinary, medical or other requisite criteria.

It is stated that the first rotation of 14 Grenadiers Battalion Group was scheduled for induction in the UN Mission in Lebanon in

the first week of August 2016 and the second rotation is scheduled for induction this month.

It appears that the petitioner had been granted casual leave from 6.7.2004 to 8.7.2004 on the ground of his father's illness. The petitioner however, over stayed his leave and reported for duty after unauthorised absence of 82 days, i.e., almost three months. Summary Court Martial proceedings were initiated against the petitioner for his unauthorised absence. The petitioner was convicted in the summary proceedings and was imposed the punishment of rigorous imprisonment in military custody for 89 days.

The petitioner availed of the statutory remedy under Section 26 of the Army Act, 1950 and submitted a statutory complaint dated 27.6.2016. However, the petitioner has not been included in the UN Mission in view of his conviction in the summary court martial.

The petitioner has challenged paragraph 8(c) of the policy circulated vide circular 71362/Policy/SD-3(UN) dated 31.12.2014, which is hereinafter referred to as the said policy, under which, a JCO/OR convicted by a Court Martial for any offence is inter alia debarred for induction in the UN Mission.

Paragraph 8 of the said policy is extracted herein below for convenience :-

“8. The following categories of JCOs and Other Ranks are considered ineligible for induction in UN Mission :

(a) JCOs/OR awarded red entry for any offence under Army Act Sections 34, 35, 37, 38, 40, 41, 42 (a), (b) (g), 43, 45 (where applicable), 46, 47, 52, 53, 54 (a), 57, 58, 64 (c), (e) and 69 will not be eligible for UN Msn.

(b) JCOs/OR should not have more than three red ink entries in their entire service including not more than one red ink entry during the last one year. Eligibility will be calculated in accordance with Para 5 (b) (i) above. It is clarified that black ink entries awarded will not debar a person from being nominated for deployment as part a contingent.

(c) Any conviction by a court martial for any offence would debar a JCO/OR from UN tenure, irrespective of the nature of the punishment awarded to him.

(d) JCOs/OR facing trial before a criminal court for any offence or against whom investigations under Army Act have been directed or are pending for committing offences mentioned at Para 8 (a) above, will not be deployed.

(e) It will be the responsibility of CO/OC to ensure that no person facing trial before a criminal court and/or released on bail is included in the contingent for deployment. Similarly, no disciplinary proceedings under the Army Act should be pending against any person at the time of deployment as part of the contingent. The CO/OC should render a certificate accordingly.”

It is well settled that policy decisions are not ordinarily interfered with by the High Court exercising its extraordinary jurisdiction under Article 226 of the Constitution of India.

In ***Brij Mohan Lal vs. Union of India reported in (2012) 6***

SCC 502, the Supreme Court held that general rule of Courts declining the power of judicial review in relation to policy decisions was subject to certain exceptions. The Court might interfere with a policy which failed to satisfy the test of reasonableness, in which case, it would be unconstitutional. Any change in policy would have to be made fairly and not arbitrarily with ulterior intention. A policy could also be interfered with and set aside on grounds of malafides, unreasonableness, arbitrariness, unfairness or if the policy was found to be contrary to or dehors against any statute or the Constitution of India.

Similar view has been taken by the Supreme Court in ***Natural Resources Allocation In Re. Special Reference No.1 of 2012*** reported in **(2012) 10 SCC 1** , where the Supreme Court held that if a policy was patently unfair, the Court would not hesitate to strike down the policy.

Learned Counsel strenuously argued that the policy and in particular paragraph 8 (c) thereof, was liable to be struck down on grounds of unreasonableness, arbitrariness and unfairness and violative of Article 14 of the Constitution of India. We are however unable to appreciate and understand how a policy decision to debar an officer convicted by a Court Martial for an offence, could be arbitrary or unreasonable or discriminatory or unfair and violative of Article 14 of the Constitution of India.

Learned Counsel contended that the provision was discriminatory for the reason that a single conviction in a Court Martial would debar a Junior Commissioned Officer or Other Rank

from a foreign mission, but, JCOs/OR with upto 3 red ink entries in their entire service would be selected.

On a conjoint reading of sub paragraphs (a) & (b) of paragraph 8, it is patently clear that a JCO/OR awarded red ink entry for any offence under the sections of the Army Act specified in sub-paragraph (a) would not be eligible for UN Mission. A single red ink entry in respect of any one offence under any of the Sections of the Army Act specified, would be a disqualification. Red ink entry in respect of other offences, which are offences of a minor nature, would not be a disqualification. However, even in case of red ink entries in respect of minor offences not specified in sub-paragraph (a), the maximum number of entries could be three, and red ink entries in excess of three would be a disqualification. Red Ink entries are not the same as conviction by a Court Martial. The provision of paragraph 8(c) of the policy cannot be said to be arbitrary only because a single conviction would be a disqualification whereas, in certain cases of red ink entries, only red entries in excess of three would be a disqualification.

Counsel submits that the punishment awarded is of a severe reprimand as provided in Section 71. The Military Confinement of 89 days is inconsequential. The fact remains that there has been a conviction and the conviction disqualifies the petitioner. Para 8(c) debars a person, who has suffered any kind of punishment in a Court Martial from being selected for the UN Mission.

As argued by learned counsel appearing on behalf of the petitioner, the petitioner had an unblemished service record except for the conviction for overstay referred to above. The petitioner should

therefore, be included in the UN Mission. However, as observed above, even a single conviction in a Court martial is a disqualification. There is thus no illegality in the exclusion of the petitioner from the UN Mission.

Counsel appearing on behalf of the respondent submits rightly that the petitioner has not been denied further promotion. He has been granted promotions even after the conviction.

The punishment was never set aside by any Competent authority. The selection for the UN Mission is essentially an administrative decision. No person can have any inherent right to be selected for a mission. There can be no discrimination, when a candidate does not qualify as per the declared policy guidelines. The writ petition is completely misconceived. The petitioner has failed to discharge his onus of establishing that paragraph 8(c) of the policy is arbitrary, unreasonable, unfair or violative of Article 14 of the Constitution of India.

The writ petition fails and the same is dismissed.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

FEBRUARY 07, 2017

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