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

+ W.P.(C) 11584/2015 & CM No.30685/2015 (stay)

MALLIKA MUKHOPADHYAY Petitioner
Through Mr.Ankur Chhibber, Adv.

versus

UNION OF INDIA & ORS Respondents
Through Mr.Rajesh Gogna, Standing Counsel.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

% **02.03.2017**

This writ petition is directed against the exclusion of the petitioner from the UN Mission to Congo which was due to leave India on 3rd January, 2016.

On or about 9th May, 1997, the petitioner was appointed Constable in the Indo Tibetan Border Police (ITBP). In 2006-07, the petitioner applied for appointment to the post of Sub-Inspector, through a Limited Departmental Competitive Examination.

The petitioner cleared the examination successfully, and she was appointed Sub-Inspector on 26th January, 2007. The petitioner claims that she has been working sincerely to the satisfaction of her superiors and by

dint of her hardwork, she was further promoted as Inspector (General Duty) on 25th June, 2010.

According to the petitioner, the 9th contingent, of which the petitioner was member, was selected for the UN Mission to Congo in 2014. The petitioner was placed at Serial No. 5 in the Reserve list of candidates for the UN Mission.

The petitioner has drawn our attention to the Ministry of Home Affairs Policy Guidelines dated 27th February, 2013, hereinafter referred to as the Policy Guidelines, for considering officers for various assignments in the UN Peace Keeping Missions.

The Policy Guidelines inter-alia provide that while preparing the panel, Central Armed Police Forces (CAPFs) should include reserved panelists of the previous year, who had cleared SPAT, but, could not be deployed, if such personnel were still willing for deployment.

According to the petitioner, the petitioner's name was put in the Reserve list in 2014. She was therefore, selected to be sent for the UN Mission in Congo in 2015. It is pleaded that the petitioner was detailed to undergo two weeks' induction training and her name figured at Serial No. 12 of the list of officers shortlisted for the pre induction training and

deployment in Congo in 2015.

It is pleaded that the petitioner reported at the 2nd Battalion in Delhi on 26th August, 2015 for Indian FPU-I (ITBP) D.R. Congo. The petitioner's name figured at Serial No.1 in the list of persons, who had reported for the UN Mission.

The selected candidates were required to undergo firing training, which the petitioner underwent. According to the petitioner, she was all set to go to Congo, but, all of sudden, she was informed that her name has been dropped as an enquiry was contemplated against her. In her place Inspector (GD) Anil Kumar was nominated.

According to the petitioner, she was taken by surprise as she was not aware of any enquiry pending against her. She therefore, made a representation on 24.11.2015 for permission to appear in person for hearing. By a letter dated 24.11.2015, the representation was forwarded to the Competent Authority.

After the petitioner made the representation, the petitioner was informed that disciplinary proceedings were contemplated against her. The petitioner was also given a copy of a fax message from the Deputy Inspector General (Personnel & Administration), Northern Frontier, ITBP to the DIG

(Establishment & Operations), stating that there existed an entry of punishment of dies-non awarded to the petitioner on 14.11.2004 during her posting at the 3rd Battalion. It was stated that a Court of Enquiry had been constituted by Commandant, 2nd Battalion and the petitioner had been found guilty of hiding facts and misleading the department to avail early promotion through the Limited Departmental Competitive Examination. From the signal message, it appears that a serious view had been taken and disciplinary proceedings were in contemplation.

The respondents have in their counter affidavit stated that the petitioner, who had qualified for the UNFAPT in the previous year had been directed to report at the 22nd Battalion alongwith 140 personnel for deployment in DR Congo. All pre-departure formalities were started by the Commandant UNCIVPOL Centre being the nodal agency. In the meantime, while the process of deployment of 10th Congo Contingent was going on, Senior Establishment Officer was informed that an enquiry was being contemplated against the petitioner. The petitioner was accordingly informed that her name had been dropped from the contingent deputed to UN Mission in Congo.

Admittedly, no show cause notice has yet been issued to the

petitioner. The allegation against the petitioner is that she suppressed punishment before appearing for the Limited Departmental Competitive Examination for promotion as Sub-Inspector. It is stated that the petitioner remained unauthorizedly absent for about 24 days in the year 2004 and was awarded punishment of dies-non. Later, in 2015, the period of dies-non has been regularised as extraordinary leave.

It is the case of the respondents that when the petitioner appeared for the Limited Departmental Competitive Examination, the punishment of dies-non was effective. It was only in 2015 that the dies-non was regularised as extraordinary leave. Mr. Gogna submits that dies-non was regularised as extraordinary leave only for the purpose of pension papers to enable her to get pension without break in service.

It appears that as of now, there has only been some correspondence. No charge-sheet has yet been issued to the petitioner. Disciplinary proceedings have not yet been initiated against the petitioner. The allegation that the petitioner was responsible for tearing and pasting of pages in her Service Record Book seems to be incredible since the service book was admittedly not in her custody, but, in the custody of the authorities. Perhaps, the respondents suspect, connivance and manipulation on the part of the

petitioner to get the service book pasted.

The petitioner, as observed to above, appeared for the Limited Departmental Competitive Examination in the year 2006-07 and soon thereafter, she was appointed Sub-Inspector. She was also promoted Inspector. All along the records remained with the respondent authorities. The respondent authorities actually converted dies-non into extraordinary leave in 2015, which means that the records relating to dies-non were available till then. The authorities concerned obviously passed an order allowing dies-non to be converted into extraordinary leave, upon reference to the records. May be, this was done for the purpose of pension papers. The fact is that dies-non has been converted to extraordinary leave. Moreover, if the records had altogether been wiped out, regularization of leave may not have been possible even for the purpose of pension.

As argued by Mr. Chibber, it is doubtful whether action can be initiated after over 10 years, for any act of misdemeanour at the time of the Limited Departmental Competitive Examination in the year 2006-07 and that too, after the petitioner had subsequently been promoted from the post of Sub-Inspector to Inspector. All through the respondents must have known of dies-non in her records.

Since no disciplinary proceedings have been initiated, we do not deem it necessary to pass any order restraining the respondents from initiating disciplinary proceedings. The issue can be dealt with at the appropriate stage.

In any case, the allegation against the petitioner is basically of misrepresentation and suppression of material facts. It is well settled that when facts could easily have been ascertained by the respondents with some diligence, it cannot be said that they were misled by suppression. These observations are however, prima facie observations.

The allegations against the petitioner of tampering with her service book, are also not specific. So far as the petitioner is concerned, there is not a whisper anywhere of how and in what manner she tampered the service books, when service books were in the custody of the authorities. No other person has been named, not even the person in whose custody the book remained. There is not a whisper of the point of time, when the pages were detected to have been pasted. Mr. Gogna stated that the pasting was detected at the time of reconciliation.

There can also be no dispute that entries in the service book are made by the respondent authorities and/or officers of the respondents authorities

and not by the officer concerned herself/himself.

It is true that assignment to the UN Mission cannot be claimed as a matter of right. However, once an officer is selected for the Mission his/her departure cannot be stopped on the ground of contemplation of disciplinary proceedings relating to alleged offence committed over a decade ago. The petitioner has arbitrarily been stopped from proceeding for the U.N. Mission.

In ***Badrinath v. Government of Tamil Nadu & Ors.*** (2008) SCC 395 cited by Mr. Chibber, the Supreme Court held :

From the above judgments, the following principles can be summarised:

- (1) Under [Article 16](#) of the Constitution, right to be 'considered' for promotion is a fundamental right. It is not the mere 'consideration' for promotion that is important but the consideration must be 'fair' according to established principles governing service jurisprudence.
- (2) Courts will not interfere with assessment made by Departmental Promotion Committees unless the aggrieved officer establishes that the non-promotion was bad according to Wednesbury Principles or was it mala fides.
- (3) Adverse remarks of an officer for the entire period of service can be taken into consideration while promoting an officer or while passing an order of compulsory retirement. But the weight which must be attached to the adverse remarks depends upon certain sound principles of fairness.
- (4) If the adverse remarks relate to a distant past and relate to remarks such as his not putting his maximum effort or so on,

then those remarks cannot be given weight after a long distance of time, particularly if there are no such remarks during the period before his promotion. This is the position even in cases of compulsory retirement, compulsory retirement.

(5) If the adverse remarks relate to a period prior to an earlier promotion they must be treated as having lost their sting and as weak material, subject however to the rider that if they related to dishonesty or lack of integrity they can be considered to have not lost their strength fully so as to be ignored altogether.

(6) Uncommunicated adverse remarks could be relied upon even if no opportunity was given to represent against them before an order of compulsory retirement is passed.”

The adverse entries in this case relate to 2004. The petitioner was allowed to appear for the Limited Departmental Competitive Examination to the rank of Sub-Inspector in 2006-07 and later, promoted as Inspector. On the ground of adverse entries and/or suspicion of misdemeanour pertaining to the year 2006-07, the petitioner cannot be penalized without recourse to disciplinary proceedings.

Deployment for the U.N. Mission may not be a promotion. It is, however, recognition of efficiency, withdrawal from the Mission after selection on the ground of alleged misconduct prior to due promotion is penal and unjust.

It is also doubtful whether disciplinary proceedings could be initiated in respect of stale charges. Perhaps not. However, whether the charges

were stale or not would be a factual issue, depending on the date of discovery of misconduct and other factors. Since no disciplinary proceedings have been initiated, we are not deciding the legality and/or validity of the proposed disciplinary proceedings. We need not go into the exercise of deciding whether charges would be stale in the event disciplinary proceedings were to be initiated.

Since the petitioner has not been held guilty of misconduct in a properly instituted department, and she had been duly selected and even underwent special training for the U.N. Mission, the name of the petitioner may be recommended to the UN Authorities for the next U.N. Mission. The situation may have been different, if the petitioner were to be indicted and held guilty in a properly constituted inquiry, based on cogent evidence of her involvement in falsification of documents. However, as of now, there is nothing against the petitioner except for vague allegations.

The writ petition and pending applications are disposed of accordingly.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

MARCH 02, 2017/vp