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

+ **W.P.(C) No.5003/2018**

ARUN SINGH CHAUHAN Petitioner
Through Mr.Ankur Chhibber, Adv.

versus

UNION OF INDIA AND ORS. Respondents
Through Ms.Barkha Babbar, Adv.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER
21.08.2018

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1. The petitioner, a Major in the Indian Army, has filed the present petition under Article 226/227 of the Constitution of India, seeking directions to the respondents to permit him to proceed on study leave to pursue a M.Sc. course in International Strategy and Diplomacy at the London School of Economics and Political Science (hereinafter referred to as LSE).

2. Briefly stated, the facts of the case are that the petitioner upon being commissioned in the Indian Army on 17.03.2007 as a Lieutenant, was promoted to the rank of Captain on 17.10.2009 and thereafter as a Major on 17.10.2013. As on date, he has completed over eleven years of service in the

Indian Army. On 08.08.2017, the petitioner had applied for and was offered a seat in the subject course at LSE for the academic year 2017-18. Armed with this offer of admission, on 12.08.2017, the petitioner made an application to the respondents seeking study leave of twelve months to pursue the course referred to above for the academic session 2017-18. The respondents however, returned the petitioner's application stating *inter alia* that in terms of paras 8 & 9 of the A/60010/GS/MT-9 policy letter dated 10.03.2005, he was required to apply one year in advance for grant of study leave.

3. This time, the petitioner resubmitted his application for grant of study leave one year in advance on 11.09.2017. On 29.09.2017, the respondents returned the petitioner's application stating *inter alia* that he had not forwarded a certificate from the Association of Indian Universities, confirming that the course proposed to be pursued by him, was not available in India. The petitioner approached the Association of Indian Universities for issuance of a certificate, which was duly issued on 09.10.2017. The said certificate was then submitted by the petitioner to the respondents on the very same date.

4. While the petitioner was eagerly awaiting the decision of the respondents on his application, in accordance with the laid down criteria, on 21.11.2017, the first list of officers selected for grant of study leave for the year 2019-20 was issued, wherein his name did not feature. Even the second list declared on 27.03.2018, did not include the petitioner's name.

Aggrieved by the decision of the respondents of declining his request for grant of study leave, the present petition came to be filed in the first week of May, 2018.

5. Mr. Ankur Chhibber, learned counsel for the petitioner submits that denial of study leave to the petitioner, despite his complying with all the requirements laid down by the respondents, is arbitrary and unjustified; that the respondents cannot override or contradict their own existing policy for grant of study leave to unilaterally reject the petitioner's application as long as he fulfills the prescribed criteria; that the specialized course which the petitioner proposes to pursue, will not only benefit him, but also improve his outputs in service to the advantage of the Organization. Lastly, it is stated that rejection of the petitioner's application at such a belated stage, would cause grave injustice to him, inasmuch as he has not only invested immense time and efforts in preparing for the said course, he has also deposited a fee of £ 1,000 with the LSE.

6. On 23.05.2018, at the request of the counsel for the respondents, who had sought time to obtain instructions, the matter was adjourned to 30.05.2018. On 30.05.2018, notice was issued in the present petition with directions to the respondents to file their counter affidavit and keep the relevant record available for our perusal.

7. The respondents have filed a counter affidavit seeking to justify the exclusion of the petitioner's name for grant of study leave by stating that the selection of officers was made by a Screening Committee which had duly examined several

organizational aspects before recommending officers for study leave and, therefore, this Court ought to refrain from interfering with the said decision; that in the current year, 830 vacancies were available for sanctioning study leave of officers for a two year cycle, out of which 200 vacancies have been provided for Domain Specialization and the balance 630 vacancies have been distributed between two Screening Committees who allocated the said vacancies on a pro rata basis, to each of the Arms/Services in terms of the Instructions for Grant of Study Leave to Officers dated 10.03.2005.

8. The respondents have further averred in the counter affidavit that there is a cadre shortage in the Infantry Units to which the petitioner belongs and, therefore, to ensure availability of sufficient numbers of medically fit officers in the operational environment, the petitioner's application has not been accepted. The respondents have sought to explain that in an Infantry Unit, besides the Commanding Officer, eighteen more officers are authorized, but presently, due to acute shortage of officers, these units are functioning with only 10-11 officers. The other explanation sought to be offered for refusal of grant of study leave to the petitioner is that the number of applicants desirous of proceeding on study leave, is greater than the available number of vacancies.

9. Keeping in view of the stand taken by the respondents in their counter affidavit, we had examined the records produced by learned counsel for the respondents on 07.08.2018. The said record revealed that in its meeting held on 27.03.2018, the

Screening Committee, (in short 'SCM-II'), while considering 478 applications, had recommended 285 officers for grant of study leave. In this meeting, the number of vacancies for each of the 13 Arms/Services, were computed separately and for each category, the number of vacancies available, the number of applications received and those recommended for study leave were prepared in a tabulated form, the last column indicating utilization of the vacancies. On perusing the tabulated statement, it transpired that in respect of the Infantry, there were 81 vacancies against which 75 applications had been received and 62 applications were recommended for selection. The remaining vacancies which were available for the Infantry, 19 in number, appear to have been distributed to other Arms/Service, more particularly between Army Service Corps (ASC) and Army Ordinance Corps (AOC). We were also informed by Ms.Babbar, learned counsel for the respondents that even the SCM-I had in a similar manner, diverted certain vacancies earmarked for the Infantry, to other branches.

10. In view of the aforesaid position, learned counsel for the respondents was requested to explain the logic behind divesting the vacancies earmarked for the Infantry to other Arms/Services, especially keeping in view the fact that the alleged plea of cadre shortage taken in defence, neither finds any mention in the 'Exclusion Criterion' laid down in para 14 of the Instructions dated 10.03.2005, nor does it find place in the AI 42/82 or in AO 11/87, which are the only policies applicable for grant of study leave to officers in the Indian

Army. At that stage, learned counsel for the respondents had sought some time to obtain instructions from the Department. While adjourning the matter to 14.08.2018, we had contemporaneously directed that an officer competent to assist learned counsel for the respondents should appear on the next date.

11. On 14.08.2018, Colonel Ajeen, who was present alongwith counsel for the respondents, had unsuccessfully tried to explain the reasons for declining study leave to the petitioner by relying on the Army Instructions AI 42/82 and AO 11/87 as also the Army Instructions dated 10.03.2005 for grant of study leave to officers. On the said date, we had again addressed pointed queries to the officer present in the context of the 'Exclusion Criterion' in Para 14 of the Instructions dated 10.03.2005 as also para 26 thereof that prescribes separate vacancies for each Arm/Service. Learned counsel for the respondents had then stated that the Department may be given some time to re-examine the issue in the light of the queries raised by this Court. At her request, the matter was again adjourned for today.

12. Today, learned counsel for the respondents states that she has received instructions from the Military Secretary Branch in terms of a letter dated 21.08.2018, to the effect that while the competent authority has directed that a review be undertaken to bring in cadre constraints, organizational efficiency, course utility and other connected issues within the policy, so as to make it more elaborate, it has been decided not to make any

exception in the case of the petitioner herein or permit him to proceed for study leave in the current academic year.

13. In view of the aforesaid stand, we have proceeded to consider the matter on merits and have heard learned counsels for the parties at some length. The undisputed position which emerges from the record is that in order to bring transparency in the matter of grant of study leave to officers, the respondents have laid down guidelines by way of AI 42/82 & AO 11/87, followed by detailed Instructions issued on 10.03.2005, which not only specify the relevant 'Exclusion Criteria', but also clearly prescribe in para 26 of Instructions dated 10.03.2005, that the vacancies are to be worked out separately at 2% of the authorized strength of each Arm/Service.

14. To test the decision taken by the respondents of turning down the petitioner's request for study leave on the anvil of the extant Guidelines/Instructions, it is deemed appropriate to extract hereinbelow the relevant Army Instructions/Guidelines. Para 2 of the Army Instructions AI 42/82 that lays down the conditions for the grant of study leave is as follows:-

"2. Conditions for grant of study leave:-

(a) Study leave will be admissible to officers of All Arms and Services.

(b) Study leave may be granted to an officer to enable undergo, in or outside India, a special non-academic course of study certified by the Army HQs as enhancing his usefulness as an Armed Forces officer.

(c) Study leave ex-India will be ordinary admissible for those non-academic courses only, which are not available at any University or Institution in India.

(d) Study leave shall not ordinarily be granted to an officer who has rendered less than 5 year service or who is due to retire from service within 3 years of the date of return to duty from leave.

(e) The maximum period of study leave will generally be upto 24 months. xxx xxx

(f) The study leave will be admissible not more than twice throughout the service subject to overall 28 months limit prescribed in (e) above.

(g) Study leave vacancies will be filled up.

(h) xxx xxx xxx xxx

(j) xxx xxx xxx xxx”

15. Relevant extracts of Paras 2 and Para 9 of AO 11/87 are reproduced hereinbelow:-

“2. Conditions for the grant of study leave are as under:-

(a) Study Leave will be admissible to officers of all Arms and Services.

(b) Study Leave may be granted to an officer enabling him to undergo, in or Ex-India, a non-academic full time regular course/programme/doctoral studies leading a recognised formal; diploma/degree in institutions recognized by the Ministry of Education, Science and Technology, certified by Army Headquarters as enhancing his usefulness as an officer. xxx xxx

(c) Study Leave shall not be granted to an officer who is due to retire from service within 5 years of

the date of return to duty from study leave in respect of Cols and above, and, 7 years for Lt Cols and below, Residual service will be calculated in the rank of the officer at the time of sanction of study leave. xxx xxx xxx xxx xxx

(d) The maximum period of study leave will be upto 24 months. xxx xxx xxx xxx

(e) Study Leave Ex-India will ordinarily be admissible for those non-academic courses which are not available at any University or Institution in India.

(f) Study Leave will be admissible not more than twice throughout the service, subject to the overall 28 months limit prescribed in sub-para (d) above.

(g) Study Leave vacancies will be filled up.

9. The criteria for approving study leave to be followed by the Screening Committee will be as per the priorities given below:-

(a) Usefulness of the subject of study to Arms/Service.

(b) Subjects contributing to an officer's employability in the service.

(c) Residual Service of the officer from the point of view of utility of his education to the service.

(d) Officer who have obtained admission in recognized Universities or Institutions will be preferred.

(e) Officers who have been away from regimental duties for the last 2 years after specialized courses or post graduate courses will be given lower priority.

(f) *Officers with a good career profile will be given preference.*

(g) *Battle casualties and disabled officers who have limited scope for furthering their career will be given preference.”*

16. Paras 14 and 26 of the Instructions dated 10.03.2005 are as below:-

“14. Exclusion Criterion. The relevant exclusion criteria are as under:-

(a) *The residual service is less than three years on termination of study leave.*

(b) *The applicant has less than 10 years of service as on 01 Sep of the first year of availing study leave (except bonafide battle/physical casualties in whose case minimum service limit is five years).*

(c) *The applicant stands approved for selection grade promotion, and the promotion is likely to materialize during the proposed study leave period.*

(d) *The applicant has not completed two years of service after completion of HC/LDMC/Staff College/other long courses (more than 180 days duration).*

(e) *Deliberate omission or falsification of data in the study leave application. Some examples are:-*

(i) *Bio-data and record of service incomplete or wrong.*

(ii) *The applicant does not opt for any of the following:-*

(aa) *A university recognized by the UGC.*

(ab) An Institute recognized by the Government of India under Deptt of electronics/All India Council of Technical Education for post graduate level. This accreditation is given by the above department/council to institutes for specific period and specific course. Officers taking study leave in such institutes are responsible to check the validity of the accreditation.

(ac) Institute recognized by MT Dte for specific courses.

(iii) While applying for study leave ex-India, sponsorship certificate is not submitted.

26. **Vacancies.** *These are worked out separately at 2% of auth strength for each Arm/Service.”*

17. From a perusal of the records relating to the recommendations of the SCM-II, produced in Court before us by the respondents, it becomes evident that while the vacancies in the Infantry were mentioned as 81 in number, the number of applications received were only 75 and out of these 75 applications, only 62 were recommended for grant of study leave. Thus, in SCM-II the utilization of the vacancies available for the Infantry were -19. Coming to the vacancies in the ASC, as against 6 vacancies 46 applications were received and 31 applicants were recommended for study leave, resulting in utilization of vacancies amounting to +25. Similarly, in the category of AOC, there were 11 vacancies against which 31 applications were received and 19 applicants were

recommended for study leave, taking the utilization of vacancies to +8. Therefore, the submission made on behalf of the respondents that one of the grounds for rejecting the petitioner's request was that the number of applicants desiring to proceed on study leave was greater than the available number of vacancies in the Infantry, is not at all borne out from the record.

18. We are of the opinion that once detailed guidelines have been laid down by the respondents for grant of study leave to officers, the Screening Committee ought to have made its recommendations strictly in terms of the said guidelines, particularly Army Instructions No.42/82, AO 11/87 and the Instructions dated 10.03.2005. While considering the applications received for study leave, the Screening Committee could neither have applied any criteria beyond the 'Exclusion Criterion' laid down in Para 14 of the Instructions dated 10.03.2005, nor could they have ignored para 26 of the Instructions, which specifically prescribes earmarking of separate vacancies for each Arm/Service. The Screening Committee appears to have exceeded their brief by rejecting the petitioner's application on the ground that he belongs to the Infantry Unit where there is an acute deficiency, which criteria admittedly does not find any mention in the aforesaid Instructions.

19. On the other hand, once the Instructions clearly state that the vacancies from each Arm/Service are to be worked out separately at 2% of the authorized strength, it was not open for

the respondents to have acted in violation of their own guidelines. Once it is established that the Infantry Unit to which the petitioner belongs, has not been given its 2% share in the matter of study leave, then the decision of the respondent of rejecting the petitioner's application for study leave cannot be sustained, as it is hit by the vice of arbitrariness being beyond the prescribed Guidelines.

20. It may also be relevant to note that as brought out in their letter dated 21.08.2018, handed over to us by learned counsel for grant of the respondents realising the aforesaid lacunae, now the respondents have themselves decided to review their policy governing grant of study leave, so as to include therein factors that form the basis of rejecting the petitioner's application. Thus, it becomes evident that the grounds on which the petitioner's application has been rejected, are extraneous to the existing policy/guidelines, which alone could have formed the basis of deciding the application for grant of study leave.

21. In view of the aforesaid discussion, while holding that the respondents' decision of rejecting the petitioner's application for grant of study leave is unsustainable, we are of the opinion that instead of tinkering with the recommendations made by Committee *in toto*, interest of justice would be adequately served by directing the respondents to grant permission to the petitioner herein, to proceed for study leave in terms of his request dated 11.09.2017. Accordingly, the respondents are directed to process the petitioner's case for grant of study leave to enable him to pursue the one year course of M.Sc. in

International Strategy and Diplomacy at the London School of Economics and Political Science, for the academic year 2018-19, that shall commence on 11.09.2018. The petitioner's application shall be processed by the respondents within two weeks from today under written intimation to him.

22. The petition is disposed of with no order as to costs.

23. In view of the urgency in the matter, a copy of this order be given *dasti* to learned counsel for the parties under the signatures of the Court Master, for compliance.

(HIMA KOHLI)
JUDGE

(REKHA PALLI)
JUDGE

AUGUST 21, 2018/aa