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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:-23.05.2019.

+ W.P.(C) 2493/2019 & C.M. No.11646/2019

SHAMSHER SINGH DANGI

..... Petitioner

Through Mr.Ankur Chhibber, Adv.

versus

UNION OF INDIA AND ORS.

..... Respondent

Through Mr.Siddharth Khatana, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. The petitioner has preferred the present writ petition to seek quashing of the order dated 28.02.2019 issued by the respondents, whereby the petitioner's deputation to the National Security Guard (NSG) has been cancelled. The petitioner also seeks a direction to the respondents to allow him to go on deputation to the NSG, pursuant to the Signal dated 07.12.2018 issued by the respondents, with all consequential benefits.

2. The petitioner is serving the respondent/Assam Rifles. Initially, he was posted to Delhi between 08.01.2007 and 29.03.2011 and, thereafter, he returned to serve the force at Assam. While serving at Assam in the year 2013, he applied to the NSG for deputation through the proper channel. In the meantime, he was again posted to Delhi on

25.07.2016, where he continues to serve till date, with the ADG (Medical), CAPF. Pertinently, the second posting of the petitioner at Delhi from 25.07.2016 onwards, was effected on account of the fact that the other selected candidate, namely Naib Subedar (Clerk) Laxman Ray of 20th Assam Rifles, did not accept the attachment with the office of the ADG (Medical), CAPF.

3. While the petitioner was serving at Delhi in the office of ADG (Medical), CAPF, his turn for participating in the interview for deputation to NSG matured. Vide Signal dated 20.09.2018, the petitioner was nominated to attend the personal interview at the NSG, Hqtrs. on 26.09.2018. The petitioner was declared successful for deputation to the NSG on 07.12.2018. On 12.12.2018, based on the Signal dated 07.12.2018, the office of the Hqtrs., Assam Rifles issued a letter requesting the office of the ADG (Medical), CAPF to relieve the petitioner by 15.02.2019, so as to enable him to join Hqtrs., NSG on deputation.

4. While the petitioner was preparing for his deputation, the respondents issued the order dated 28.02.2019 informing the office of the ADG (Medical), CAPF that the competent authority has decided to cancel the petitioner's nomination for deputation to the NSG, on the ground that he had remained at Delhi from 08.01.2007 to 29.03.2011 and from 25.07.2016 onwards till date. This order was passed without issuing any notice, or granting a hearing to the petitioner. Aggrieved thereby, he has preferred this petition.

5. Mr.Chhibber, learned counsel for the petitioner has placed reliance on the policy guidelines for deputation of Combatised

CAPF's and A.R. Personnel in other organisations, issued by the Ministry of Home Affairs, Govt. of India on 22.11.2016. These guidelines *inter alia* deal with deputation wherein clause 2 specifically provides as under :-

“(e) these guidelines will not be applicable in the case of deputation to SPG, NSG and NDRF as they are purely deputationist forces. However, the terms and conditions for deputation to these Organisations as prescribed by these specialised borrowing Organisations be followed.”

6. Mr.Chhibber submits that the respondents, therefore, could not have cancelled the deputation of the petitioner in the NSG on the ground that he had served at Delhi during the aforesaid periods.

7. On 13.03.2019, this Court had recorded the petitioner's submissions and learned counsel for the respondents had sought an adjournment to take instructions.

8. Counsel for the respondents defends the cancellation of the petitioner's deputation by placing reliance on an internal order issued by the Directorate General, Assam Rifles vide Record Office Instructions No.2/2017 on the subject of deputation to other organisations. Learned counsel for the respondents places reliance on paragraphs 42 and 44 of these office instructions, which reads as follows:-

“42. Application for deputation submitted by personnel already on ERE at a peace/good station with the intention of staying away from the unit for a prolonged period thereby denying opportunity to other deserving personnel serving with the units in difficult stns should not be encouraged. Applications of personnel serving on ERE/att will be submitted through Commandant of their

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affiliated unit to ensure that only deserving cases are recommended for deputation. Bd. of Offrs has the discretion to recommend such cases based on merit.

44. All the previous instructions issued on deputation are hereby superseded."

9. On our query, learned counsel for the respondents submits that these internal record office instructions do not, and cannot, supersede the guidelines issued by the Government of India, including the policy guidelines for deputation dated 22.11.2016 issued by the Ministry of Home Affairs, Govt. of India. Learned counsel submits that since the petitioner has served on deputation at Delhi during the aforesaid periods, he is not entitled to proceed on deputation with the NSG, which deputation is for a period of five years, thereby denying other deserving personnel— who are serving with units in difficult situations, the right to serve the force at Delhi or to proceed to Delhi on deputation as a member of the force.

10. A perusal of the Record Office Instruction No.2/2017 shows that the same, in fact, relies upon the policy guidelines dated 22.11.2016. Paragraph (e) of the said office instruction, which we have quoted hereinabove and has also been quoted in bold in the said instruction, clearly states that the eligibility criteria of not having served in Delhi as prescribed in the deputation guidelines will not be applicable in the case of deputation to SPG, NSG and NDRF, as they are purely deputationist forces.

11. The aforesaid being the position, reliance placed on paragraphs 42 and 44 of the said office instructions is of no avail since, admittedly, the policy guidelines issued by the Government of India

dated 22.11.2016, cannot be superseded or overruled by an internal instruction of the Assam Rifles.

12. In any event, even the said instructions recognise the position that the eligibility criteria of not having served in Delhi—as prescribed in the said guidelines, are not applicable to deputation *inter alia* to NSG. Thus, it is clear that the cancellation of the petitioner's deputation by the respondents is unjustified, incompetent and not premised on germane consideration. We, therefore, quash the impugned communication dated 28.02.2019 cancelling the petitioner's deputation to the NSG. We further direct the respondents to allow the petitioner to proceed on deputation to the NSG, in terms of the Signal dated 07.12.2018, with all consequential benefits.

13. The petition stands disposed of alongwith pending application.



VIPIN SANGHI, J



REKHA PALLI, J

MAY 23, 2019

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