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

+ W.P.(C) 3858/2019 & CM No. 17558/2019

MAJ. RAJEEV KUMAR (RETD.) Petitioner

Through: Mr Atul Batra, Advocate.

versus

UNION OF INDIA AND ANR. Respondents

Through: Mr Atul Batra, CGSC with Mr Nikhil
Bhardwaj, GP for respondents.
Dr Surender Singh Hood with Ms
Meenakshi Sharma and Maj. Rajeev
Kumar

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **12.04.2019**

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 26.02.2019, whereby the petitioner was dis-empanelled from the panel of security agencies maintained by respondent no.2 (DGR). The impugned order was passed on the allegation that the petitioner had violated the relevant provisions of the concerned policy.
2. The petitioner joined services of the Indian Army on 12.05.2005 as a Captain (Short Service Commission) in the Medical Corps. The petitioner is a qualified doctor. He suffered a disability and consequently was relieved from the services on 12.10.2015 (after the expiry of 10 years) on account of his medical disability.
3. Thereafter, the petitioner took up employment as a Consultant in the

Department of Nuclear Medicine at HCG Oncology LLP at Vadodra, Gujarat.

4. The petitioner was desirous of carrying on the business of providing security services and, therefore, applied for empanelment with DGR. The petitioner's security agency was empanelled with DGR on 03.11.2016 and the said empanelment is valid for a period of three years that is till 02.11.2019.

5. The petitioner states that in view of the above, he resigned from his employment as a Consultant with HCG Oncology LLP at Vadodra, Gujarat on 07.11.2016, in the anticipation of getting contracts for providing security services. He states that he remained unemployed for a period of six months (that is, from 07.11.2016 to 01.04.2017) awaiting the award of contracts for security services.

6. He states that since no contract was provided to him he once again took up employment on 01.04.2017 with Sterling Cancer Centre, Bhyali, Gujarat. He states that he also furnished an undertaking stating that he would resign from his current employment if his business of a security agency flourished.

7. Thereafter, certain public sector undertakings – Hindustan Petroleum Corporation Limited (HPCL) and Indian Oil Corporation Limited (IOCL) – awarded contracts for providing security services. However, the same was for limited periods and only for a limited number of guards. The petitioner states that the number of guards were insufficient for the security agency to break even and for the petitioner to draw any profits/emoluments. In the aforesaid circumstances, the petitioner continued with his employment as a doctor with the Sterling Cancer Centre, Bhyali, Gujarat.

8. The Ministry of Defence issued a show cause notice dated 07.11.2018, on account of several allegations. First of all, it was alleged that the petitioner had not employed adequate number of ex-servicemen (ESM) as guards for providing security services. Second, it was alleged that the petitioner has not submitted certain details as required under the relevant Office Memorandum dated 09.07.2012 (hereafter 'the OM'). Third, it was alleged that he had not provided the rent agreement, landline/fax instalment as required under the aforesaid OM. Fourth, it was alleged that the petitioner had not submitted Form 26AS for assessment of year 2017-2018 indicating the tax deducted (TDS) at source and deposited to the credit of the petitioner, Lastly, it was stated that the petitioner's continued employment with Sterling Cancer Centre was in contravention of the conditions of the OM dated 09.07.2012.

9. The petitioner responded to the aforesaid allegations. However, the same were not accepted and the respondent passed an order dated 26.02.2019 – which is impugned herein – dis-empanelling the petitioner.

Submissions

10. The learned counsel appearing for the petitioner assails clause 5(e) of the Eligibility Criteria for Empanelment as contained in the OM dated 09.07.2012. The said clause is set out below:-

“(e) Should not have availed of any other Employment /Self Employment/welfare benefits from DGR.

Should not be re-employed with the Indian Armed Forces or any other Government/Semi-Government organisation, Central Public Sector Undertakings, Public Sector Banks after retirement or employed in the private sector once they are awarded the contract. An undertaking by the officer to the effect that he will resign from such job if he takes up

the contract should be submitted in this regard at the time of resignation of the contract with PSUs. The officer will confirm in writing to the DGR that he has resigned from such job after getting the contract. Any false declaration in this regard will make the applicable liable for cancellation of the registration/sponsorship and criminal prosecution for breach of trust.”

11. The learned counsel appearing for the petitioner contends that the said condition is illegal, essentially, for two reasons. First, that the same violates the provisions of the Private Security Agency Regulation Act, 2005 (PSRA); and second, that the said condition is violative of Article 14 of the Constitution of India since it makes no distinction between pensioners and non-pensioners. He submits that whereas pensioners have an alternative source of income and, therefore, the condition of not taking up any other employment may not be onerous but in the case of non-pensioners, who have no other source of income, the condition that they should not avail of any other employment is highly onerous and harsh.

12. In addition to the above, the petitioner further submitted that the import of the impugned order would be that the petitioner would be compelled to immediately withdraw the guards provided to HPCL and IOCL. He states that it would disrupt the affairs of not only the petitioner but also of HPCL and IOCL. It is earnestly contended that in the circumstances, the petitioner ought to have been granted some time for withdrawal of the guards.

Reasons and Conclusions

13. The contention that the eligibility criteria requiring the applicant not to be employed for availing the benefits of the DGR scheme is invalid as

being contrary to the provisions of the PSRA is wholly unmerited. The said Act is for regulating the business of private security agencies and has no bearing on the scheme floated by DGR. The scheme for sponsoring ex-servicemen (ESM) for providing security services agency to Public Sector Enterprises is for rehabilitating ex-servicemen. In terms of the said scheme, security agencies of ESMs that are empanelled with DGR, are sponsored for contracts with various PSU's. The said agencies are not absolved from the rigors of PSRA

14. Since the object of the said scheme is to provide re-employment to ESMs after their retirement/superannuation – that is for persons who are otherwise unemployed – the eligibility criteria restricting the benefit of the scheme only to persons who are unemployed cannot, by any stretch, be stated to be arbitrary or reasonable.

15. The contention that the said criteria is violative of Article 14 of the Constitution of India, since it does not differentiate between pensioners and non-pensioners, is also unpersuasive. As stated above, the object of the said scheme is to provide employment to unemployed personnel in this regard, whether an officer otherwise drawing pension or not, is not relevant. It is also pointed out that the providing security services is a full-time employment and the ex-servicemen are expected to devote their time to the said work.

16. The contention that the petitioner ought to be granted further time for dis-empanelment is also unpersuasive. The petitioner was fully aware of the conditions of the empanelment and had accepted the same. On the petitioner being dis-empanelled, he is now required to take steps for withdrawal of the security services which would now be provided by any other sponsored

agency(ies).

17. In view of the above, the present petition is dismissed. The pending application is also dismissed.

VIBHU BAKHRU, J

APRIL 12, 2019/MK