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

% **Date of Decision: 16th October, 2020**

+ **W.P. (C) 8066/2020**

PANDU RANGA & ORS.Petitioners

Through: Mr.Umesh Kumar Yadav and
Binay Kumar Pandey, Advocates

versus

UNION OF INDIA & ORS.Respondents

Through: Mr.Satya Ranjan Swain, Central
Govt. Sr. Panel Counsel with
Mr.Sahaj Garg, GP

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

JUSTICE RAJIV SAHAI ENDLAW

C.M. Appln. No.26236/2020 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

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3. The three personnel of the respondent No. 4 Central Reserve Police Force (CRPF) have filed this petition impugning the circular/list dated 19th September, 2020 and seeking mandamus for restoration of circular/list dated 16th September, 2020 and to remove the names of (i) Constable (GD) Sudhir Kumar, (ii) Constable (GD) Nagendra Singh and, (iii) Assistant Sub-Inspector Pradeep Kumar, from the list and to include the names of the petitioners in the list.

4. It is the case of the petitioners, (i) that the Ministry of External Affairs (MEA) in consultation with the Ministry of Home Affairs (MHA) prepared a contingent of 45 personnel working with the Union of India (UOI), for deployment in the embassy of India in Baghdad, Iraq; (ii) in the year 2018, the process of preparing the said contingent of 45 personnel was started; (iii) the petitioners met all the qualifications needed for such deployment and were amongst the successful candidates selected for such deployment; (iv) that after due selection, the administrative orders regarding issue of transfer orders, accommodation clearance and issuance of passport and visa in respect of selected personnel were cleared; (v) however out of 45, only 30 were sent to the Indian Embassy at Baghdad and the remaining 15 were promised to be sent at a later date; (vi) that several of the left out candidates, including the petitioners, made representations but to no avail; (vii) the said 15 personnel were discriminated vis-à-vis the 30 who were sent; (viii) the conduct of the respondents was arbitrary, perverse and illegal and was assailed by one of the 15 personnel by filing W.P. (C)7686/2019; (ix) the petitioners thereafter in paragraphs 13 & 14 of the petition have pleaded as under:-

“13. That on 17.09.2019 the matter was listed for arguments where the counsel for the Respondents appeared and did not fight the case on merits and gave a statement before this Hon'ble Court that the petitioners would be sent to Bagdad in a phased manner as and when sufficient accommodation is available. That as the Respondent had made their stand clear this Ho'ble Court was

pleased to dispose off the Writ accordingly. The copy of the order dated 17.09.2019 is annexed herewith as Annexure P2.

14. That after the orders were passed by this Hon'ble Court in the Writ Petition WP(Civil) 7686/2019 the petitioners waited for the nod from the Respondent regarding the availability of the accommodation in the Embassy of Bagdad”;

(x) that on 16th September, 2020, a circular was circulated wherein the names of the petitioners appeared and the petitioners were happy that they are getting an opportunity to serve the country; (xi) however on 19th September, 2020, another circular was issued and in which the names of the three petitioners were not included; (xii) that the second circular was issued without application of mind inasmuch as the same contained the name of Assistant Sub-Inspector Pradeep Kumar aforesaid when he had already resigned by that time; (xiii) similarly in the circular dated 19th September, 2020, the names of Constable (GD) Sudhir Kumar and Constable (GD) Nagendra Singh are included who did not possess the minimum qualification when the selection process was initiated; and, (xiv) the conduct of the respondents is discriminatory.

5. A bare perusal of the order dated 17th September, 2019 in W.P. (C) 7686/2019, though filed by another and not the petitioners but represented by the same Advocate as the petitioners herein, shows that the representation contained in paragraphs 13 & 14, quoted above of the writ petition, to be not correct. Paragraphs

3 to 6 of the said order dated 17th September, 2019 are as under:-

“3. The list of persons to be sent was finalized way back on 9th March, 2019. Admittedly, of the 45 persons so selected, 30 have been sent to Iraq, while the remaining 15, of which the Petitioner is one, have not.

4. Learned counsel for the Respondents pointed out that before the deployment of the contingent, the Ministry of External Affairs (MEA) was asked to send an advance party to assess the requirements and work out the deployment mechanism. After taking stock of the situation, the advance party reported that there is a space constraint in Baghdad and that only 30 personnel could be accommodated. It was accordingly recommended that the deployment would be done in phases.

5. Learned counsel for the Respondent states that the basis for sending the 30 personnel, out of the 45 originally selected, was a rank-wise selection on the basis of seniority in the merit list. He further states that the remaining 15, including the Petitioner, would be dispatched after arrangements for sufficient accommodation is made at Baghdad.

6. In view of the above clarification, no further directions are called for. Accordingly, the petition is disposed of.”

6. The petition is liable to be dismissed on the ground of the petitioners, in the petition, having misrepresented what had transpired before the court on 17th September 2019 in W.P. (C) No.

7686/2019.

7. The counsel for the petitioners states that he had mistakenly not pleaded that the respondents took a stand before this court that the selection, while sending 30 personnel, was rank-wise and on the basis of seniority in the merit list.

8. Be that as it may, the contention of the counsel for the petitioners now is that the statement of the counsel appearing for the respondents on 17th September, 2019 in W.P. (C) 7686/2019 that the selection of the 30 who were sent, was rank-wise and on the basis of the seniority in the merit list, was incorrect.

9. We are not sitting in appeal against the order dated 17th September, 2019. Even if it was so, the petitioners, immediately after coming to know of the stand of the respondents—as contained in the order dated 17th September, 2019 and that it was wrong, ought to have approached this court by way of an application or taken remedies against the order dated 17th September, 2019. On the contrary, now, after one year, this petition has been filed.

10. The counsel for the petitioners states that the petitioners were waiting to be sent as per the statement made by the respondents on 17th September, 2019.

11. It is not as if there was any categorical assurance by the respondents on 17th September, 2019 that the petitioners or all the remaining 15 will be sent. All that was said was that they will be sent as and when accommodation was available and which made the said stand contingent.

12. Even otherwise, we have at the outset, and now again, asked

the counsel for the petitioners as to what is the right of the petitioners to be deployed at Baghdad.

13. No answer has been forthcoming.

14. Service personnel have no right to be posted or deployed at any place. Reference in this regard may be made to *Shilpi Bose (Mrs) Vs. State of Bihar* (1991) Supp (2) SCC 659, *National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan* (2001) 8 SCC 574, *State of U.P. Vs Gobardhan Lal* (2004) 11 SCC 402, *Rajendra Singh Vs State of Uttar Pradesh* (2009) 15 SCC 178, *Union of India Vs. Deepak Niranjana Nath Pandit* (2020) 3 SCC 404 and *Baikuntha Nath Das Vs. Central Reserve Police Force* MANU/DE/1708/2020.

15. The counsel for the petitioners states that the claim of the petitioners is not asserting a right but on the basis of discrimination.

16. We may however notice that the three personnel, whose names are sought to be deleted, are not impleaded in the petition.

17. A petitioner can file a writ petition asserting his own right and not making a negative claim. Even otherwise, question of discrimination arises only when the petitioner has a right and when the petitioner has no right, he/she cannot claim to have been discriminated. It is only when there is a right and that right is infringed by vesting the benefit in favour of another, that discrimination can be claimed.

18. The petition is thus entirely misconceived.

19. The counsel for the respondents appearing on advance notice

states that the names of the petitioners No.1 & 3 were not included in the circular dated 19th September, 2020 on account of being over-age. It is informed that the maximum age prescribed for deployment at Baghdad is 35 years and the petitioners No.1 & 3 are above that age. It is further stated that the petitioner No.2 is already deputed in National Security Guard (NSG) -and thus cannot be deputed to Baghdad.

20. We are rather intrigued with the anxiety shown by the petitioners to be posted at Baghdad which still qualifies, as per advisories issued by most of the countries, as an 'unsafe destination'. The petitioners perhaps are unaware of the same.

21. There is no merit in the petition.

22. Dismissed.



**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

OCTOBER 16, 2020

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