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

+ **W.P.(C) 3620/2021, C.M. Appl. No. 10987/2021, 10988/2021**

SUB (PA) AWADHESH KR SINGH

..... Petitioner

Through: Mr. Manoj Kumar Gupta, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vikram Jetley, CGSC with Mr.
Arjun Singh Katoch, (OIC Legal
Cell) for respondent – UOI.

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Date of Decision: 22nd March, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

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MANMOHAN, J (Oral):

C.M. Appl. No. 10987/2021 (Exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P. (C) No. 3620/2021 & C.M. Appl. No. 10988/2021 (Stay)

1. Present writ petition has been filed challenging Respondent's letter dated 03rd February, 2021 and Movement Order dated 09 February 2021 directing the Petitioner to return to Unit i.e., HQ 161 INF BDE i.e., Uri

Division of Kashmir. Petitioner seeks a direction to the Respondents to withhold his movement since he is being directed to report back to Unit with thirty days leave upto 12th March, 2021 contrary to his posting Order dated 24 September 2020. Petitioner further seeks direction to the Respondents to allow him to continue his attachment to Army HQ (Addl Dir Gen-International Co-operation, Foreign Divisions) till pendency of this Writ or /and till his departure on posting to Defence Attache, Embassy of India at Kathmandu for which approval was given by Respondent No.2 vide letter dated 03 September 2020. Petitioner also seeks direction to the Respondents to withhold the posting/ movement of any Defence Attache to Embassy Kathmandu (Nepal) in place of Petitioner and call all the records with regard to non approval of Petitioner's name for posting as JCOs(PA) to Defence Wing abroad by the Secretary, DMA as the same is contrary to the letter dated 3rd September 2020. Petitioner lastly prays that the Respondents be directed not to harass the Petitioner un-necessarily by forcing him to sign any un-willingness etc. or any other kind of documents/ proceedings which make him ineligible for foreign posting.

2. Learned Counsel for the Petitioner states that in the posting order dated 24th September, 2020 it has been stated that "*Representation for cancellation/diversion/deferment of posting will not be entertained. Move will be carried out as intimated by ADG(MP-1) and a copy of move order will be endorsed to this office for updating records.*" Consequently, according to him, Respondents cannot now cancel or act contrary to the order dated 24th September, 2020.

3. He states that the petitioner has invested all his savings in buying necessary items etc. as this foreign posting was not only a matter of pride for

him but also for his family. He also states that on 14th January, 2020, MP-I of the Respondents had issued a letter to ASC Records (S) of the Petitioner issuing a call up notice for attachment with integrated Headquarter of Ministry of Defence (Army) for briefing and language study prior to posting to its mission abroad.

4. Per contra, learned counsel for the Respondents has handed over in Court the Minutes of proceedings of Board of Officers dated 26th December, 2018 of the candidates who had not only attended but also passed the course for Selection and Posting of Combatant Staff for Foreign Assignments course at Sr.No.40. The relevant portion of the Minutes of Board of Officers reads as under:-

“3. There are few indls cases which were discussed by the BOO and u/m was decided:-

*(a) **JCO Clk (SD) Cat.** JC-668221H Sub Maj Kuldeep Rajoriya was promoted as Sub Maj on 01 September 2018 and therefore has got four yr residual service till dt 31 August 2022. The JCO Clk is therefore not eligible for the vacs in Embassies of India where in the tenure of three yrs is beyond August 2022. It is decided by the BOO to detail the JCO i.e Sub Maj Clk Kuldeep Rajoriya for HCI, Islamabad (Pakistan) where the tenure of 18 months is likely to finish by February 21/22 subject to all other clearances in time.*

*(b) **JCO PA Cat.** JC-670876N Nb Sub PA Awadhesh Kumar Singh is being detailed for vac of EoI, Nepal as per his position in merit. However, the issue of present GSL being for Hav PAs only was brought out by the member of MIFD. The BOO has therefore decided to detail the JCO for Nepal vac as reserve pending the modification of the GSL and necessary Govt sanction for change of rank in PA category. The JCO has been informed accordingly. The Hav PA who is res one at the time of decision will be detailed for Nepal in case the GSL is not modified with in the desired timeframe. MIFD will take up case for modification to GSL and info the prog to MP1 on the ibid issue.*

*(c)**Hav Clk (SD) Cat.** No. 15612460X Hav Clk Vinod Kumar PV has been detailed to proceed to UNIFIL as SO status based on vac intimated by SD3 vide their Note No 27595/1/SD3 (UN) dt 12 Dec 2018. The indl has been info by the BOO.*

*(d)**Pers of Int Corps.** As per para 22 (e) of SOP for Selection and Posting of Combatant Staff for Foreign Assignments, Int Corps pers should not be posted to Pakistan, Bangladesh, China, Afghanistan, Russia, Myanmar and Iran. Hence, No 15614528M Hav Clk Krishan Kumar is nominated for Italy as per OOM.*

*(e)**Language Qualification Criteria** Fwg indls are nominated for the countries as under based on their proficiency in language in accordance with para 22 (e) of AO 09/2018/MP and para 22 of SOP for selection and Posting of Combatant Staff for Foreign Assignments:-*

(i) No 15696215X Hav Clk Mithun Chatterjee is nominated for China. Indl is qualified on Chinese language from Barkatula University, Bhopal and qualified interpreter from SFL Delhi.

(ii) No 14846492A Hav PA N Senthil is nominated for Malaysia. Indl is proficient in Tamil language.”

(emphasis supplied)

5. Learned counsel for the Respondents emphasises that it was made clear to the Petitioner at the inception stage itself that the post at Embassy of India at Nepal, at that moment, was held by a Havaldar and only if the Board of Officers received the Govt. sanction letter for change of rank in PA category, would the Petitioner be posted at Nepal.

6. He further states that on 03rd February, 2021, the Integrated Headquarter of Ministry of Defence (Army) had not approved the posting of JCO (PA) to Defence Wing, Abroad. The Petitioner was directed to be reverted back to MP-I for further disposal. The Note dated 03rd February, 2021, handed over in Court, is reproduced hereinbelow:-

“A/87011/MUFD (OA)

03 February 2021

INTEGRATED HEADQUARTERS OF MOD (ARMY)
ADDITIONAL DIRECTORATE GENERAL OF INTELLIGENCE
COOPERATION
(FOREIGN DIVISION), SOUTH BLOCK, ROOM NO 128B
RTU OF JCO (PA) AS STAFF FOR FOREIGN ASSIGNMENT

1. Further to our Note No A/87100/MI/FD (OA) dt 13 Nov 2020 vide which the Secy DMA has not approved of JCOs (PA) TO Defendant Wgs abroad.
2. JC-670876N Sub (PA) Awadhesh Kumar Singh is hereby reverted back to MP-1 for further disposal.
3. It is requested that a suitable relief of staff (Hav/PA) for Defendant Wg, Embassy of India, Kathmandu (Nepal) may pl be provided to this Div at the earliest for commencement of docu.
4. For urgent necessary action pl

(Himansu Issar)

Lt Col

GSO 1, FD

For VCOAS”

(emphasis supplied)

7. Having heard learned counsel for the parties, this Court finds that the condition mentioned in the posting order dated 24th September, 2020 and relied upon by learned counsel for the Petitioner does not operate as an estoppel against the Respondents. The said condition is in fact an undertaking by the Petitioner that he will not seek cancellation/diversion/deferment of posting. There is no such embargo on the Respondents in the posting order dated order 24th September, 2020.

8. Further the Petitioner, who is working as a Subedar, was informed at the beginning of the training that he will be detailed at the Embassy of India in Nepal in accordance with position in merit only if the Board of Officers

received the Govt. sanction letter for change of rank in PA category from Havaldar to Subedar, as according to the Govt. Sanction letter, then in force, the post was reserved for Havaldar. Consequently, the Board of Officers detailed the Petitioner as JCO for Nepal vacancy as reserve pending the modification of the GSL and necessary Govt. sanction for change of rank in PA category. Unfortunately, for the Petitioner, the integrated HQ of MOD (Army) did not approve the upgradation of PA post in its Embassy in India in Nepal to that of Subedar. Consequently, the Petitioner was directed to be reverted back to MP-I and the direction was issued to appoint a suitable person in the rank of Havaldar, PA at Kathmandu in Nepal.

9. Keeping in view the aforesaid, this Court is of the view that the decision not to transfer the Petitioner to the Embassy of India in Nepal is neither arbitrary nor vitiated by malice. Further, this Court is of the opinion view that the Petitioner has no vested right over a particular post and that too in a particular embassy. It is also settled law that transfer is a matter of exigency of service.

10. Accordingly, this Court is of the view that the Petitioner is not entitled to any relief. Consequently, the present writ petition along with pending applications is dismissed.

MANMOHAN, J

ASHA MENON, J

MARCH 22, 2021
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