

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

% **Date of decision: 6th August, 2021**

+ **W.P.(C) 7926/2021 & CM No.24626/2021 (for stay)**

RANI DEVI & ANR.

..... Petitioners

Through: Mr. Aditya Gaur, Adv.

Versus

INDO TIBETAN BORDER POLICE

..... Respondent

Through: Mr. Ajay Digpaul & Mr. R. Digpaul,
Adv. with Mr. Sanjay Kumar
Yadav, JAG, ITBP.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

AMIT BANSAL, J.

CM No.24627/2021 (for exemption)

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

W.P.(C) 7926/2021

3. The two petitioners, being Constables (General Duty)(Female) working with respondent Indo Tibetan Border Police (ITBP) have impugned the transfer order dated 20th July, 2021, whereby the respondent has posted the two petitioners to 8 Battalion and 47 Battalion respectively. The petitioners have further sought the following reliefs: (i) to redeploy the petitioners at the Indian Mission, Afghanistan in place of the officials who have served maximum period of service; (ii) not to remove the petitioners from the panel of personnel to be deployed at

Afghanistan; (iii) to prepare a list of personnel including the petitioners who have served minimum period of service in Afghanistan in ascending order for the purposes of re-deployment, in place of the officials who have served maximum period of service, as and when vacancies arise; (iv) not to transfer the petitioners to a new place of posting; and, (v) not to suspend the diplomatic passports as well as visas issued to the petitioners.

4. It is the case of the petitioners that they were posted in August, 2020 in the Embassy of India at Kabul, Afghanistan as Security Assistants. The tenure of the petitioners was to be for a term of two years. However, on 13th June, 2021, the petitioners were re-deployed back to India. The petitioners claim that they are entitled to a stay of two years in Afghanistan and therefore they have been prematurely re-deployed to India only after serving for a period of ten months. It is further contended that there is a requirement of the petitioners in Kabul for the purpose of frisking of children and females visiting the Embassy of India at Kabul, Afghanistan as well as for the purpose of security, and the petitioners are duly trained for the same. The counsel for the petitioners submits that the petitioners have been arbitrarily de-inducted from Afghanistan while non-General Duty Female personnel, not trained to perform security functions have been retained. Reliance in this regard is placed on the Policy document dated 11th February, 2021 of the respondent for 'Selection of ITBP Troops (GO's and NGO's) for Security of Indian Missions Abroad (Afghanistan) on Deputation Basis and Deployment with FPU on UN Mission (D.R.Congo)'. The relevant extract of the aforesaid Policy document, relied upon by the counsel for the petitioners, is as under:

“Only GD cadre females will be deployed for the security related duties in Afghanistan. However, female force personnel of other cadre may be considered for the deployment against the vacancies arising in their respective cadres. The eligibility criteria and additional qualifications for deployment to Indian Mission abroad (Afghanistan) for female force personnel (all rank, all cadre) will be same as of their male counterparts.”

5. The counsel appearing on advance notice on behalf of the respondents along with the official from the respondent ITBP submits that there are three Constables (General Duty)(Female) still working at the Embassy of India at Kabul, who are performing the same functions as the petitioners were performing. He further submits that the said three personnel have completed lesser tenure of posting in Afghanistan than the two petitioners herein and therefore, in terms of the Policy document, they have to be retained in Afghanistan.

6. This Bench, in a recent judgment dated 3rd August, 2021 in W.P.(C) No.7589/2021 titled ***Sunil Kumar Vs. ITBP***, also dealing with re-deployment of ITBP personnel from Afghanistan to India has observed the following:

9. The petitioners in the present case have raised issues which are purely administrative in nature, being with regard to deployment of the personnel of the respondent ITBP at a foreign mission, de-induction and re-induction therefrom, who should be repatriated and who should be retained. These are purely administrative matters and decisions are taken based on the exigencies of the situation. In exercise of the jurisdiction under Article 226 of the Constitution of India, Courts cannot dictate where and how personnel of the respondent, ITBP should be posted. This would amount to taking over the running of the respondent, ITBP as well as the Government of India, which the Courts are ill equipped to do.

10. The petitioners as personnel of armed force like ITBP can be posted anywhere based on the requirement of the force. They have no vested right to be deployed in Afghanistan. Rather it amazes us that in view of the dangerous situation prevailing in Afghanistan currently, the petitioners are keen to be deployed there. Reference in this regard may be made to the judgment of this Court in Pandu Ranga supra. While dismissing the writ petition filed by the petitioners therein for including their names in the list of personnel to be posted at the Indian Mission in Baghdad, Iraq, the following observations were made by the Division Bench of this Court:-

“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.

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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.”

7. The dicta of the aforesaid judgment is squarely applicable in the facts and circumstances of the present case. The issues raised in the present petition are purely administrative in nature, with regard to deployment and re-deployment of personnel based at a foreign mission. Whether there is a requirement for services of the petitioners in Afghanistan cannot be assessed by the petitioners on their own. The said decisions have to be taken

on the basis of administrative and operational exigencies by the respondent alone and interference by Courts in the same is not permitted under the exercise of Article 226 of the Constitution of India. The petitioners being part of an armed force like ITBP have no vested right to be posted in Afghanistan, and can be posted anywhere based on requirement as assessed by the respondent.

8. In any case, the contention of the petitioners that there are no personnel in the Embassy of India, Kabul trained to perform security functions that the petitioners were performing has been controverted by the respondent. Moreover, as submitted by the counsel for the respondent, the re-deployment of the petitioners is in terms of the Policy document dated 11th February, 2021 as the three Constables (General Duty)(Female) currently deployed in Afghanistan have completed lesser tenure than the petitioners in Afghanistan.

9. There is no merit in the petition.

Dismissed.

AMIT BANSAL, J.

RAJIV SAHAI ENDLAW, J.

AUGUST 06, 2021

‘gsr’