



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

% **Reserved on: May 25, 2023**

Pronounced on: May 30, 2023

+ **W.P.(C) 16174/2022 & CM APPL. 50580/2022**

HC GD G RAGHU AND ORS.

..... Petitioners

Through: Mr. Ankur Chhibber, Mr. H.S.
Tiwari, Mr. Anshuman Mehrotra,
Mr. Shivam Rai, Mr. Nikunj Arora,
Mr. Arjun Panwar & Ms. Samridhi
Bhatt, Advocates

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Jivesh Kr. Tiwari, Senior Panel
Counsel with Ms. Kamlesh Rani,
Deputy JAG/DC ITBPF

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present petition has been preferred by the petitioners seeking issuance of a writ of certiorari for quashing of order dated 14.07.2022 passed by the respondents, whereby their request for reconsideration for posting to embassy of India in Afghanistan, has been denied. In addition,



a writ of mandamus seeking a direction to respondents to process the case of petitioners for posting them at Afghanistan in terms of Standing Order No. 04/2017 dated 07.06.2017 as well as Corrigendum & Addendum dated 11.02.2021, on parity with Shri Ravikant Gautam, Second in Command; Inspector (GD) Sunil Panwar; Inspector (GD) Gopal Singh Meena and Dr.Sunil Kumar Bhagat, who have been re-deployed to the Embassy of India, Afganistan vide order dated 22.06.2022, is also sought.

2. The facts, as narrated in the petition, are that petitioners had joined the services of Indo Tibetan Border Police Force (“ITBP”) in the years 2001 and 2002 and were promoted to the rank of Head Constable in their respective trades. Pursuant to respondents inviting applications from eligible serving personnel for posting to Indian Mission, Afghanistan on deputation subject to passing the recruitment examination in the year 2019, petitioners applied and participated in the examination process. The respondents vide order dated 18.10.2019 declared the names of 128 successful candidates, wherein petitioners were shown to have made their place at Serial No. 14, 15, 16 and 17. The aforesaid order dated 18.10.2019 also mentioned that the names of the successful candidates were being kept in a separate panel for a period of three years in terms of Para 10(A) of Standing Order No. 04/2017 dated 07.06.2017 and after expiry of three years, their names shall automatically stand removed from the panel. Thereafter, respondents vide Corrigendum and Addendum dated 11.02.2021 added Para-21 stating that in case any officer/personnel get repatriated prematurely from a mission within a period of 03 months on operation grounds, they shall be reconsidered for the same type of



mission subject to mental and physical fitness, if the requirement is generated within a year.

3. After being selected in the selection process of the year 2019, respondents approved petitioners' deputation for induction at EOI, Kabul (Afghanistan) vide MEA order no. Q/PE/ 6618/ 56/2018 dated 11.02.2021 and vide Movement Order dated 13.05.2021 directed the petitioners to proceed from 22nd Battalion, ITBP, New Delhi to EOI, Kabul, Afghanistan on 16.05.2021. However, due to changed circumstances with the rise of Taliban and temporary closure of Embassy of India in Afghanistan, the ITBP Officials were relieved from their duties on 16.08.2021 and repatriated back to India on 17.08.2021 i.e. prior to completion of their three months deputation service in Afghanistan.

4. Subsequent upon reopening of Indian Embassy in Kabul on 22.06.2022, the ITBP personnel, including petitioner No.1, who were repatriated from Indian Mission, Afghanistan made representations to the respondents seeking re-deployment in Indian Mission, Afghanistan. However, instead of re-deploying the petitioners and such like other officials, the respondents in contravention of aforesaid Standing Order 04/2017 dated 07.06.2017 as well as Corrigendum & Addendum dated 11.02.2021, directed to recruit a fresh batch of officers for security at EOI, Kabul. The representations made by petitioner and other officers were rejected by the respondents on the ground of being contrary to Corrigendum & Addendum dated 11.02.2021.

5. During the course of hearing, learned counsel appearing on behalf of the petitioners drew attention of this Court to Para-10 of the Standing W.P.(C) 16174/2022



Order No. 04/2017 dated 07.06.2017 which reads as under:-

“(10) VALIDITY OF SELECTED CANDIDATES:

(A) FOR INDIAN MISSION AFGHANISTAN

The list of selected officers/personnel shall be valid normally for a period of three years from the date of completion of selection test or from the date of declaration of final test whichever is earlier.

(B) XX

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(13) *It shall be the responsibility of Ops, Pers. and Estt. Branch Directorate General to ensure timely rotation officers/personnel deployed on foreign assignment and in no case, any officer/personnel should be allowed to remain on foreign assignment beyond the prescribed period. Ops Branch Directorate shall workout the turnover of Officers and personnel well in advance in consultation with Pers and Estt. Branch, Directorate General. ”*

6. Thereafter, vide Corrigendum & Addendum dated 11.02.2021, the respondents notified as under:-

“Officer and personnel repatriated within 03 months on operational ground will be re-considered for same type mission if requirement generated within the year subject to condition that they "should be physically & mentally fit for the assignment.”

7. Learned counsel appearing on behalf of petitioners submitted that



respondents have rejected the representations filed by the petitioners/officers acting contrary to the instructions laid down in Para 10(A) of the Standing Order No. 04/2017 dated 07.06.2017 as well as Corrigendum and Addendum dated 11.02.2021, on the ground that they had performed duties for more than 03 months during their previous deployment on deputation at Indian Mission, Afghanistan, which is incorrect.

8. Learned counsel for petitioners next submitted that on the other hand, respondents in violation of their afore-noted provisions, have once again re-deployed a few officers, namely, Shri Ravikant Gautam (020050057), Second in Command, though he had completed one year tenure in Afghanistan; Insp/GD Sunil Panwar (030180194), who had completed two years' tenure in Afghanistan and Insp/GD Gopal Singh Meena (020180236), who had completed two years and four months in Afghanistan, despite they were repatriated along with petitioners on 17.08.2021 but have been re-deployed to the Embassy of India, Afghanistan by the respondents in terms of their order dated 22.06.2022.

9. Learned counsel for petitioners submitted that one Dr. Sunil Kumar Bhagat (Regtl No. 111112554) who was posted in Kabul w.e.f. 13.05.2021 to 15.08.2021 i.e. three months and two days, he was again been shortlisted and sent to Embassy of India, Kabul, Afghanistan by the respondents vide orders dated 14.06.2022 and 22.06.2022.

10. Learned counsel for petitioners further submitted that vide signal dated 07.06.2022 respondents notified that those Commandos, 53 in number, who had performed well were shortlisted for training and practice for the competition of All India Commando Competition-2022. However,



infact these were to be sent to Embassy of India, Kabul and it was portrayed as if they were to sent to Hyderabad in order to keep petitioners in dark.

11. Learned counsel empathically submitted that petitioners were already trained soldiers to handle the foreign assignments and there is no justification for respondents to freshly recruit the soldiers for the task in hand, who are inexperienced. It was thus prayed that the list of empanelled 128 officers issued by the respondents on 18.10.2019 was in existence on the date when the Indian Mission at Afghanistan was re-opened on 22.06.2022, the petitioners were well within the limitation period of three years in terms of Para 10 (A) of the Standing Order No. 04/2017 dated 07.06.2017 and so, they deserve to be considered first for the designated foreign posting. It was submitted that petitioners are well within the consideration zone in terms of Corrigendum & Addendum dated 11.02.2021.

12. Lastly, it was submitted that the impugned Signal dated 14.07.2022 issued from the office of respondent No.2 is arbitrary and bad in law and hence, deserves to be set aside.

13. The respondents on the other hand have taken the stand that service personnel have no right to claim posting or deployment at the place of their choice. Learned Senior Panel Counsel appearing on behalf of the respondents submitted that the Government of India with the purpose of ensuring safety of personnel deployed in Indian Mission took a decision to shut down the operations from Afghanistan and so, the petitioners were repatriated. It was submitted that the petitioners had served in the



Embassy of India, Kabul for 03 months and 03 days and they do not fulfil the eligibility criteria mention in Standing Order No. 04/2017 dated 07.06.2017 as well as Corrigendum and Addendum dated 11.02.2021, which provides that the *officer and personnel repatriated within 03 months on operational grounds will be re-considered for the same type mission if requirement generated within the year subject to the condition that they should be physically and mentally fit for the assignment.* Furthermore, a joint decision of Ministry of External Affairs, Ministry of Home Affairs and ITBP, for safe and secure re-deployment of troops Ravikant Gautam, Second in Command along with two experienced Inspectors were deputed for a limited time, and Ravikant Gautam, Second in Command returned from the Embassy of India at Kabul on 02.11.2022 and other two officers also returned on 01.02.2023.

14. Learned Senior Panel Counsel submitted that petitioners were deployed at the Embassy of India at Kabul on 16.05.2021 and were repatriated to India on 17.08.2021 and as such they had already served in Kabul for three months and three days and so, they have rightly not been considered for re-deployment in Afghanistan. It was next submitted that MEA had requested for deployment of additional medical staff i.e. two medical officers and one, Mr. Sunil Kumar Bhagat was available in the panel, due to paucity of time process of selection cum empanelment as per Standing Order No. 04/2017 could not be done. Hence, dismissal of the present petition is sought by the respondents.

15. To submit that question of discrimination will arise only when there is a right to claim and the right is infringed by vesting the benefit in



favour of another, reliance was placed by learned senior panel counsel upon decision of this Court dated 16.10.2020 in W.P.(C) No. 8066/2020, titled as *Pandu Raga & Ors. Vs. Union of India & Ors.*; dated 03.08.2021 in W.P.(C) No. 7589/2021, titled as *Sunil Kumar & Ors. Vs. Indo Tibetan Border Police Through Its Director General [2021 SCC OnLine Del 3912]* and decision dated 06.08.2021, in W.P.(C) No. 7926/2021, titled as *Rani Devi & Anr. Vs. Indo Tibetan Border Force*.

16. In rebuttal learned counsel appearing on behalf of petitioners submitted that a direction is sought to the respondents to process the case of petitioners for deployment in Embassy of India at Afghanistan in terms of Standing Order No. 04/2017 dated 07.06.2017 and Corrigendum and Addendum dated 11.02.2021, as opportunity has been granted to the above named four officials who have been deployed vide respondents' order dated 22.06.2022.

17. Upon hearing learned counsel for the parties and on perusal of material placed before this Court as well as decisions cited, this Court finds that the undisputed position is that petitioners are amongst those 128 successful candidates who were nominated to be posted on deputation to Indian Embassy, Kabul, Afghanistan. Vide Movement Order dated 13.05.2021, the petitioners were relieved from duty to join on deputation in Indian Embassy, Kabul, Afghanistan vide w.e.f. 16.05.2021. However, due to closure of Embassy of India in Afghanistan, petitioners were relieved from their duties on 16.08.2021 and repatriated back to India on 17.08.2021. The petitioners had thereby served for three months and three days on deputation in Indian Embassy, Kabul, Afghanistan.



18. Pertinently, the selection of ITBP troops for security of Indian Missions abroad (Afghanistan) on deputation basis and deployment of is governed by Standing Order No. 04.2017 dated 07.06.2017. The petitioners have averred that the validity of panel for Indian Mission Afghanistan is 03 years. Para- 20(xiv) of the aforesaid Standing Order No. 04.2017 dated 07.06.2017 clearly mentions that its validity shall be applicable to the officers and personnel from the date of issue of Standing Order. On perusal of Para-10 thereof we find that it has been notified therein that the validity of the list of successful candidates shall be for a period of three years from the date of completion of the selection test or final test, whichever is earlier. Further, the Corrigendum & Addendum dated 11.02.2021 clarifies that if the officer is repatriated within 03 months, on a representation made by him, he can be considered for re-deployment provided he is physically and mentally fit.

19. The petitioners are aggrieved that though they had represented to the respondents for their re-deployment Indian Mission Afghanistan, however, in violation of their own policies, respondents vide impugned Signal /order dated 14.07.2022 have rejected their candidature. The aforesaid order dated 14.07.2022 reads as under:-

“IT HAS COME TO THE NOTICE THAT ITBP PERSONNEL WHO WERE REPATRIATED FROM INDIAN MISSION AFGHANISTAN, ARE TENDERING THEIR REPRESENTATIONS/APPLICATIONS FOR RE-DEPLOYMENT IN INDIAN MISSION AFGHANISTAN (.) PARA (.) IN THIS REGARD IT IS APPRISED THAT OWING OF THE SECURITY SITUATION OF



AFGHANISTAN. THE DECISION OF REPATRIATION OF TROOPS FROM VARIOUS LOCATIONS OF THE REPATRIATED ITBP PERSONNEL IS CONCERNED. IT IS INTIMATED THAT AS PER CORRIGENDUM & ADDENDUM TO S.O. NO. 04/2017 XXXXXX NO. 161 DATED 11.2.2021 "OFFICER AND PERSONNEL REPATRIATED WITHIN XXXXXX ON OPERATIONAL GROUND WILL BE RECONSIDERED FOR SAME TYPE MISSION IF REQUIREMENT GENERATED WITHIN THE YEAR SUBJECT TO CONDITION THAT THEY SHOULD BE PHYSICALLY & MENTALLY FIT FOR THE ASSIGNMENT." (.) PARA (.) THEREFORE. IN VIEW OF ABOVE, ALL FORMATIONS ARE REQUESTED TO SENSITIZE THE PERSONNEL WHO HAVE BEEN REPATRIATED FROM AFGHANISTAN ACCORDINGLY (.) ALSO ADHERE TO THE INSTRUCTIONS MENTIONED IN S.O. NO. 04/2017 AND ITS CORRIGENDUM/ADDENDUM ISSUED BY ESTT DTE IN THIS REGARD (.) THIS ISSUES WITH THE APPROVAL OF COMPETENT AUTHORITY (.) CFM PSE (.)"

20. Relevantly, vide aforesaid order dated 14.07.2022, liberty was granted to personnel, such like petitioners to make a representation for deployment in Afghanistan for approval of the competent authority as per Standing Order No. 04.2017 dated 07.06.2017 and Corrigendum & Addendum dated 11.02.2021. Since the representations were not decided by the respondents, the petitioners have approached this Court.

21. In the present case, it is undisputed that petitioners were relieved to



join on deputation in Indian Embassy, Kabul, Afghanistan vide vide Movement Order dated 13.05.2021 and they had joined on 16.05.2021. However, due to closure of Embassy of India in Afghanistan, petitioners were relieved from their duties on 16.08.2021 and repatriated back to India on 17.08.2021. Meaning thereby, they had served for three months and three days in Afghanistan and have exhausted the minimum prescribed period of three months mentioned in Corrigendum & Addendum dated 11.02.2021. So, the plea of petitioners that their case has not been considered in terms of Standing Order No. 04.2017 dated 07.06.2017 and Corrigendum & Addendum dated 11.02.2021 cannot be accepted.

22. So far as petitioners' claim seeking parity with Shri Ravikant Gautam, Second in Command; Inspector (GD) Sunil Panwar; Inspector (GD) Gopal Singh Meena and Dr. Sunil Kumar Bhagat, who have been re-deployed to the Embassy of India, Afganistan vide order dated 22.06.2022, is concerned the respondents have averred that for safe and secure re-deployment of troops Ravikant Gautam, Second in Command along with two experienced Inspectors were deputed for a limited time. Ravikant Gautam, Second in Command returned from the Embassy of India at Kabul to India on 02.11.2022 and other two officers also returned on 01.02.2023. Further stated that due to request for appointment of additional medical staff, Mr. Sunil Kumar Bhagat was appointed in the capacity of Medical Officer. We find that these officers were appointed only for a short span and for a temporary period in view of the exigencies expressed by the respondents.



23. Appositely, a Coordinate Bench of this Court in *Sunil Kumar and Others (Supra)* while dealing with a case wherein petitioners employed with ITBP were seeking re-deployment in Indian Mission Afghanistan and had remained posted there for more than three months before being repatriated, dismissed the petition holding and observing as under:-

“8. We have considered the rival submissions. The situation in Afghanistan is fluid, and urgent decisions have to be taken with regard to operation of Indian Missions there along with ensuring the safety and security of the personnel posted in such Missions. Considering the prevailing situation in Kandahar, the Government of India took a decision to shut down the operations at the CGI, Kandahar and therefore, had to repatriate the ITBP personnel posted there, including the petitioners, back to India. The petitioners cannot make out a grievance of the same. The petitioners also cannot raise any grievance that the ITBP personnel posted at Embassy of India, Kabul who have spent a longer term in Afghanistan than the petitioners, should have been repatriated to India in place of the petitioners, as unlike the CGI at Kandahar, the Embassy of India at Kabul continues to function.

10. 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.

11. 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.”

24. In the case in hand, petitioners have raised issues which are purely administrative in nature. With regard to deployment at a foreign mission, the de-induction and re-induction is upto respondents. The choice to repatriate or retain personnel is purely with the respondents, however, indisputably, as per the policy and without discrimination. By invoking jurisdiction under Article 226 of the Constitution of India, this Court cannot interfere or direct the respondents for posting of any personnel. This Bench has no difference of opinion rendered by this Court in ***Sunil Kumar and Others (Supra)***. In the light of the fact that petitioners before this Court have exhausted the minimum period of three months for deployment in Indian Mission Afghanistan and the prerogative of deployment lies with the competent authorities, we find no merit in this



petition.

25. The interim order dated 23.11.2022 is hereby vacated and the present petition and pending application are accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MAY 30, 2023
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