



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

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Date of decision: March 05, 2024

+ **W.P.(C) 2623/2017**

(69) **NAIB SUBEDAR MURLI MANOHAR
DIWEDI 2 GRENADIERS**

..... Petitioner

Through: **Ms. Archana Ramesh, Adv.**

versus

UNION OF INDIA & ORS

..... Respondents

Through: **Mr. Bhagwan Swaroop Shukla,
CGSC with Mr. Raghav
Raghuvanshi, Adv. for UOI with
Major Partho Katayan, (Army)**

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J. (ORAL)

1. The petitioner, after enrolling in the Indian Army as Religious Teacher-Junior Commissioned Officer¹ at the rank of Naib Subedar (Direct Entry) on 10.06.2009 was sent to Intelligence Corps from 13.07.2009, whereafter, he was permanently transferred by the ADG Manpower, Army HQ² to Grenadiers Regimental Centre on 17.09.2009 by way of a Movement Order. The petitioner then filed a Statutory

¹ Hereinafter referred to as '**RT-JCO**'

² Hereinafter referred to as '**respondent no.3**'



Petition to the Chief of Army Staff³ on 23.12.2013, which was disposed of *vide* a speaking order dated 08.07.2016 passed by the Officer-in-Charge, Grenadiers Records⁴ along with the GOC in C Western Command only partially allowed the petition by granting him seniority at par with his batch mates who attended RTT-59 Course and not transferring him back to Intelligence Corps.

2. Aggrieved thereby the petitioner has preferred the present petition seeking to set aside the order of the respondent no.4 dated 08.07.2016 as also a direction to the respondents to permanently transfer him back to Intelligence Corps.

3. Learned counsel for the petitioner principally submits that the respondent no.4 was not the competent authority to dispose of the Statutory Petition to the Chief of Army Staff and that the petitioner was transferred without any application by the petitioner, which is not legally sustainable in the eyes of law.

4. *Per-contra*, learned counsel for the respondents submits that as a matter of fact since the Intelligence Corps does not have any authorized Religious Teacher (JCO) on their permanent establishment nor does there exist any provision to impart/ sponsor training (Basic & Trade) for the Religious Teacher (JCO), the petitioner was accordingly transferred from the Intelligence Corps to Grenadiers vide order dated 17.09.2009.

³ Hereinafter referred to as '**respondent no.2**'

⁴ Hereinafter referred to as '**respondent no.4**'



5. We have heard the learned counsel for the parties and perused the documents on record.
6. Though the petitioner after his appointment in a '*general*' cadre post of RT-JCO on the rank of Naib Subedar (Direct Entry) on 10.06.2009, was simply attached to the Intelligence Corps for the purpose of training, however, as a matter of fact, within a short span of less than *three months* he was permanently transferred to the Grenadiers Regiment on 17.09.2009 itself. This was, primarily, as the petitioner was never given direct appointment in the Intelligence Corps. The same, in any event, was not possible since there is neither any cadre post of RT-JCO on their permanent establishment in the Intelligence Corps nor there is any provision to impart/ sponsor training (Basic & Trade) for such RT-JCO in the said Intelligence Corps. As such, there was no vacancy of any RT-JCO in the said Intelligence Corps.
7. Moreover, as per his service records, the petitioner while serving for almost five years with effect from 17.09.2009 to 23.12.2013 in the Grenadiers Regiment was granted promotions twice.
8. Under these circumstances, this Court does not find anything untoward against either the prescribed procedure followed by the respondents or with the decision arrived at by them. Based thereon, it can be safely inferred that the decision of the respondents in passing the impugned order exhibits due application of mind.
9. In view thereof and coupled with the settled position of law wherein the scope of judicial review under Article 226 of The



Constitution of India is to be, rather, sparingly exercised and that too in extremely exceptional cases as and when there is something shocking the conscience of a Court of law and certainly not on all occasions or for every reasons, this Court finds no scope for interfering with the impugned order passed by the respondent no.4.

10. Accordingly, the present petition is dismissed with no order as to costs.

SAURABH BANERJEE, J.

V. KAMESWAR RAO, J.

MARCH 5, 2024/So