

SUPREME COURT OF INDIA

Maj. Amod Kumar

Vs.

Union of India

WP(Civil)No.918 of 2017

(R.F.Nariman and Indu Malhotra,JJ.,)

06.09.2018

JUDGMENT

Indu Malhotra,J.,

1. The above-mentioned Writ Petitions were heard together as they raise common issues, and are being disposed of by the present common Judgement.

2. The facts material for the purposes of deciding the present Writ Petitions have been set out hereinbelow.

3. The Petitioners are personnel belonging to the Army Service Corps (“ASC”). The Petitioners in Writ Petition (Civil) Nos. 918 and 1077/2017 are Officers holding the ranks of Major and Lieutenant Colonel respectively, while the Petitioner in Writ Petition (Civil) No. 965/2017 is holding the rank of Sepoy. The Petitioners have impugned Posting Orders issued by the Respondents, posting them to operational units/operational areas. The Petitioner in Writ Petition (Civil) No. 918/2017 - Major Amod Kumar, who was serving as an Officer of the ASC, was posted to 44 Rashtriya Rifles as a Mechanical Transport Officer vide Order dated July 20, 2017. The Petitioner in Writ Petition (Civil) No. 965/2017 - Sepoy Prahalad Singh was serving in the ASC, having being trained for driving special vehicles. He was posted to 4 Rashtriya Rifles vide Order dated September 4, 2017. The Petitioner in Writ Petition (Civil) No. 1077/2017 - Lieutenant Colonel Shubhankar Mishra, who was serving as an Officer of the ASC, was posted to 694 Coy ASC (Tank and Transport) as an Officer Commanding vide Order dated September 15, 2017.

4. Submissions of the Petitioners

The Petitioners were represented by Ms. Meenakshi Arora, Learned Senior Advocate. The Petitioners inter alia made the following submissions:

4.1. The Petitioners submitted that they belong to the ASC, and have been posted to 'operational' areas/formations despite the findings of this Court in *Union of India & Anr. v. Lt. Col P.K. Choudhary & Ors.*¹ ("Lt. Col. P.K. Choudhary's Case").

4.2. The Petitioners submitted that this Court in Lt. Col. P.K. Choudhary's Case had held that the ASC, EME and other Minor Corps are 'non-operational' units/formations based on the stand taken by the Union of India. The Petitioners submitted that even though the findings of this Court in Lt. Col. P.K. Choudhary's Case that the ASC are 'non-operational' were rendered while adjudicating the issue of distribution of vacancies which had been created for the rank of Colonel amongst the various Corps of the Indian Army, the same would apply in the present case.

4.3. The Petitioners claim that as a consequence of the Judgement in Lt. Col. P.K. Choudhary's Case wherein the Petitioners have been classified to be 'non-operational' for promotional avenues, the same classification should apply as a necessary corollary for the purposes of deployment and postings also.

4.4. It was submitted that the preference given to 'operational' Corps in the matter of promotions was unjustified, particularly since personnel of the ASC move alongside with personnel belonging to the other Corps in operational areas. Thus, they are as vulnerable as the personnel of the other Corps.

On this basis, the Posting Orders issued by the Respondents directing the Petitioners to serve in operational units/areas were challenged as being in gross violation of their Fundamental Rights and principles of natural justice.

5. Submissions of the Respondents

The Respondents - union of india, and the Military Secretary Branch were represented by Mr. R. Balasubramanian, Learned Advocate. The Respondents made the following submissions:

5.1. The present Writ Petitions under Article 32 are not maintainable, since there is no violation of their Fundamental Rights whatsoever. Hence, the Writ Petitions are liable to be dismissed at the threshold on this count alone.

5.2. It was further submitted that if the Writ Petitioners have any grievance, the alternate remedy of challenging the Posting Orders before the Armed Forces Tribunal is available. Hence, the Writ Petitions are liable to be dismissed on this ground also.

5.3. On merits, it was submitted that transfers are not only a necessary incident of service, but an essential condition of service. An employee has no legal right, much less a Fundamental Right, to be posted in a particular place, or to be transferred to a place of his/her choice. The competent authority is empowered to determine the place of posting of the personnel concerned.

In this regard, reliance was placed on the decision of this Court in *Major General J.K. Bansal v. Union of India & Ors.*² to submit that the scope of interference in matters of transfer of members of the armed forces is very limited, and courts should be slow to interfere with the decisions of competent authorities, in the absence of an exceptionally strong case.

5.4. It was further submitted that the reliance placed by the Petitioners on the observations made in Lt. Col. P.K. Choudhary's Case (supra) is misplaced. In that case, this Court was considering the issue of allocation of additional vacancies created in the Selection- Grade rank of Colonel pursuant to the implementation of the recommendations of the Ajai Vikram Singh Committee. The decision in Lt. Col. P.K. Choudhary's Case was not rendered in the context of transfers or posting orders.

5.5. The Respondents submitted that the Army has no personnel who are 'non-combatants' or 'non-operational', with the exception of personnel belonging to the medical organization who have a distinct status under international Humanitarian Law. The Combat Arms, Combat Support Arms, Army Service Corps, and other Minor Corps are all 'operational' entities having a distinct 'operational' role.

5.6. The posting of the Petitioners is a part of their Regimental Duty, and is not based on their willingness to occupy such posts.

5.7. The postings of the Petitioners are in accordance with the policies and instructions of career planning, and management issued from time to time, and do not violate any statutory rules. The Petitioners have not referred to any statutory rules, executive policies, or instructions which debar them from being posted to such areas.

5.8. It was further submitted that the Petitioners have not alleged any mala fides or vindictiveness on the part of the authority which has issued the Posting Orders. Hence, the Writ Petitions cannot be entertained on this ground also.

5.9. The Respondents submitted that the claim of the Petitioners that they are 'non-operational' or 'non-combatants' is untenable as it strikes at the very root of the organizational effectiveness of the Army. If the grievance of the Petitioners was to be entertained, it would generate disaffection amongst personnel, and directly impact the morale of the forces.

6. Discussion and Analysis

In light of the submissions advanced by the parties, the following issues arise for consideration:

have failed to make out any case for interference by this Court. • Whether the present Writ Petitions filed under Article 32 of the Constitution are maintainable?

- Whether the action of the Respondents in posting the Petitioners and members of the ASC to ‘operational’ areas/units are valid in view of the decision of this Court in Lt. Col. P.K. Choudhary’s Case (supra)?
- Whether the postings of the Petitioners to operational areas are violative of statutory rules, executive policies or instructions?

The aforesaid issues will be addressed seriatim hereinbelow.

6.1. Before adverting to the issues at hand, a reference to the composition of the Army would provide the contextual matrix of the case. The Army is comprised of eleven major streams viz. - 1) Armoured Corps, 2) Infantry, 3) Mechanised Infantry, 4) Artillery, 5) Air Defence, 6) Engineers, 7) Signals, 8) Army Service Corps, 9) Army Ordnance Corps, 10) Electronics and Mechanical Engineers, and 11) Other Corps including Intelligence, Aviation and other Minor Corps.

Each stream has a distinct and specialised role. Personnel are imparted specialised training in their designated field. All streams work and co-operate in order to form a cohesive organisation. The ASC is a vital stream which is primarily responsible for ensuring provisioning, procurement, and distribution of supplies. ASC personnel provide the logistical support in the form of transportation, maintenance of vehicles, driving in difficult terrain, preserving equipment, and conserving fuel expended.

6.2. The Petitioners have contended that the Posting Orders passed by the Respondents posting them to operational areas/units is violative of their Fundamental Rights guaranteed by Articles 14 and 21 of the Constitution. The Petitioners have, however, failed to substantiate how their Fundamental Rights have been violated. Postings and transfers are a necessary incident of service. Hence, the grievance, if any, cannot be entertained under Article 32.

6.3. The Petitioners cannot assail posting/transfer orders directly before the Supreme Court by way of Writ Petitions under Article 32 of the Constitution. If the Petitioners have any genuine grievance, they have an alternate statutory remedy available by challenging the same before the Armed Forces Tribunals. Hence, the Writ Petitions under Article 32 are liable to be rejected on the ground of availability of an alternate remedy.

6.4. The decision of this Court in Lt. Col. P.K. Choudhary’s Case (supra) was rendered while adjudicating an Order passed by the Armed Forces Tribunal on a Policy Circular dated January 20, 2009 issued by the Government of India which had been quashed, and directions were issued to the Union of India to consider the personnel belonging to the Arms, Arms Support, and ASC for promotion to the rank of Colonel by creating supernumerary posts. This Court was considering the issue of distribution of vacancies which had been created for the rank of Colonel amongst the various Corps of the Indian Army. This Court considered the findings of the Ajai

Vikram Singh Committee, and noted that Armoured Corps, Infantry, Mechanised Infantry, Artillery, AD, Engineers and Signals were ‘operational formations’, while the ASC, Army Ordnance Corps, and Electronics and Mechanical Engineers were not.³ The Officers belonging to the ASC, Army Ordnance Corps, and Electronic and Mechanical Engineers, i.e. the services stream, do not constitute a common cadre with those serving in the Arms, and Arms Support for the purposes of promotion.⁴

As a result, they were not entitled to be considered for promotion to the rank of Colonel against the vacancies created in pursuance of the implementation of the AVS Committee Report.

This Court was not concerned with the issue of posting of personnel belonging to the ASC, and the findings therein cannot be said to apply to the present case. This Court was cognisant of the differential treatment accorded to personnel belonging to the ASC, amongst other streams, in the matter of promotions. The following observations made by this Court in Lt. Col. P.K. Choudhary’s Case are pertinent, and are reproduced here under:

“...The true position is that allocation of officers to different Arms and Services puts them in distinct cadres with the result that those comprising a particular cadre will have his or her promotional avenues available , at paragraph 22. at paragraph 36. against the posts comprising that cadre alone notwithstanding the fact that the Government of India may, as a policy, attempt to ensure as far as possible that officers of a given batch pick up their ranks around the same time or within a reasonable span of their counterparts in other cadres or that the disparitu in time frame for promotion is removed by making promotions retrospective from the dates officers in other ca.dre have been promoted⁵.”

(Emphasis supplied)

The contention of the Petitioners claiming parity with a different arm of the service, is misconceived and meritless, and is liable to be dismissed. Different streams of the Army have distinct, and specialised roles. They work in co-ordination with each other. The personnel of the ASC are imparted specialised training to provide logistical support to the other streams in the form of maintenance of vehicles, availability of trained drivers, preservation of equipment, and conservation of fuel.

To accept the prayers of the Petitioners merely on the basis of the contention that the ASC have been referred to as ‘non- operational’ for the purposes of promotion, would be to disturb the entire structure and operations of the Army.

6.5. The Petitioners have not made any submission that the postings are in violation of any statutory rules, executive at paragraph 38. policies or instructions.

In this regard, reliance can be placed on the decision of this Court in Major General J.K. Bansal v. Union of India (supra), which was cited by the Counsel for the Respondents during the hearing. In the said decision, this Court had referred to a number of its precedents⁶ on the scope of interference of Courts under Article 226 of the Constitution in cases where transfer orders had been challenged. The Court held that matters of transfers are best left to the discretion of the competent authority, and should not be tinkered with, in the absence of a demonstrable violation of statutory rules, or an instance of mala fide on the part of the competent authority.

This Court noted as follows:

“12...The scope of interference by the courts in regard to members of the armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made.”

The Petitioners have not alleged any mala fide against the Respondents. Hence, the contentions of the Petitioners cannot be entertained.

6.6. The Respondents have made a reference to the Oath administered to Officers and Sepoys alike at the time of commissioning. The said Oath is reproduced hereinbelow for reference:

“I (Name) hereby solemnly swear that I will bear true faith and allegiance to the Constitution of India, as by law established and that I will, as in duty bound honestly and faithfully, serve in the regular Army of the Union of India and go wherever ordered, by land, sea or air, and that I will observe and obey all the commands of the President of the Union of India and the commands of any officer set above me, even to the peril of my life ”

(Emphasis supplied)

This Oath is administered to all personnel, irrespective of the Arm or Service to which they are commissioned. As per the Oath, personnel are duty bound to serve wherever they are ordered to.

6.7. In view of the above discussion, the Petitioners

7. In light of the aforesaid findings, the Writ Petitions are dismissed, with no order as to costs.

Judgment Referred.

¹(2016) 4 SCC 0236

²(2005) 7 SCC 0227

³(2016) 4 SCC 0236

⁴(2016) 4 SCC 0236

⁵(2016) 4 SCC 0236

⁶*Shilpi Bose v. State of Bihar, 1991 Supp (2) SCC 659; Union of India v. S.L. Abbas, (1993) 4 SCC 357; and, National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan, (2001) 8 SCC 574*