

\$~15

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

% **Date of Judgment: 3rd August, 2021**

+ **W.P.(C) 7589/2021**

SUNIL KUMAR & ORS.

..... Petitioners

Through: Mr. Aditya Gaur, Mr. Tushar Sinha
and Mr. Rakesh Mishra, Advocates.

versus

**INDO TIBETAN BORDER POLICE
THROUGH ITS DIRECTOR GENERAL**

..... Respondent

Through: Mr. Gaurang Kanth, CGSC for ITBP.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

CM No.23739/2021(for exemption)

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

W.P.(C) 7589/2021 & CM No.23738/2021(for stay)

3. The present petition has been filed by 30 petitioners belonging to the respondent, Indo Tibetan Border Police (ITBP), who were posted at Consulate General of India (CGI), Kandahar, Afghanistan between August-September, 2020 and February, 2021. The tenure of posting of the

petitioners was to be for a term of two years. On account of disturbance and unrest in Afghanistan, it was decided by the Government of India to temporarily stop its operation in CGI, Kandahar and to send officials posted therein, including the petitioners, back to India, as a precautionary measure. The petitioners made a representation against the aforesaid act of de-induction of the petitioners from Kandahar and upon such representation, the Third Secretary (Security), CGI, Kandahar, vide e-mail dated 5th July, 2021 to the respondent ITBP, requested that in place of the petitioners, personnel with longer tenure be sent back to India. On 10th July, 2021, the petitioners were repatriated to India and were quarantined at ITBP Camp, Chhawla, New Delhi. On 14th July, 2021, the petitioners sent a representation to the respondent requesting that the petitioners be given preference for transfer back to Embassy of India, Kabul.

4. The present petition has been filed seeking the following directions: (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.

5. It has been contended by the counsel for the petitioners that (i) the petitioners had been transferred back prematurely, as their tenure of two

years had not been completed; (ii) in terms of Communication dated 11th June, 2021 of the Ministry of External Affairs (MEA), a copy of which has been emailed by the counsel for the petitioners to the Court Master, whenever the strength of personnel deployed at Afghanistan is required to be curtailed by the Government of India/MEA due to various operational/administrative reasons, the personnel having served maximum period of tenure in Afghanistan will be de-inducted and to maintain the prescribed strength, in all deployment locations, the remaining strength would be reshuffled against the deployment locations as per the operational requirements; (iii) in the past, as per the Officer Order dated 13th June, 2021 of the Embassy of India, Kabul, 12 officials from the Embassy of India at Kabul have been transferred to CGI, Kandahar as replacement of 12 officials who were repatriated to India, in terms of aforesaid Communication dated 11th June, 2021; (iv) in terms of Communication dated 11th June, 2021, the respondent ITBP should have repatriated the personnel who had completed maximum tenure in Afghanistan; (v) the petitioners have been de-inducted from their posting at Afghanistan without taking into consideration their term of posting; and (vi) the petitioners apprehend that they will be re-deployed at other locations of the respondent ITBP and, therefore, miss out on the opportunity of being re-inducted for being deployed at Afghanistan.

6. The counsel appearing on advance notice on behalf of the respondent, ITBP opposes the petition. He places reliance on a Policy document dated 11th February, 2021, of the respondent ITBP in respect of '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)'. Relevant extracts of the said Policy document are set out below:-

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

The counsel for the respondent ITBP submits that in terms of the above Policy document, the personnel which were deputed for less than three months in Afghanistan would be reconsidered for deployment as and when the vacancies occur.

7. He further submits that the issues raised in the present petition are squarely covered by the judgment of this Court in ***Pandu Ranga Vs. Union of India*** MANU/DE/1881/2020.

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.

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.

xxxxx

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."

11. There is no merit in the present petition. Dismissed.

12. However, we take on record the submission made by the counsel for the respondent, ITBP to the effect that those of the petitioners whose posting in Afghanistan lasted less than three months will be considered for fresh deployment in terms of the Policy document of the respondent dated 11th February, 2021. Respondents will be bound by the same.

AMIT BANSAL, J.

RAJIV SAHAI ENDLAW, J.

AUGUST 3, 2021

A