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

+ **W.P.(C) 2557/2022 & CM APPLs.7325-26/2022**

SURENDER SINGH CHAUHAN Petitioner

Through: Mr. Rohit Bhagat, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Dilbag Singh, Adv. for UOI.

% Date of Decision: 10th February, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J: (Oral)

The petition has been heard by way of video conferencing.

1. Present writ petition has been filed challenging the letter dated 2nd February, 2022, whereby Respondent No.2 rejected the request of the petitioner to forward his application for deputation to the office of Respondent No.3. Petitioner further seeks quashing of the impugned Policy decision letter dated 10th January, 2018. Petitioner also seeks directions to Respondent No.2 to forward the application of the petitioner to the office of Respondent No.3 and upon his final selection to the post of “Senior Secretariat Assistant”, issue final “Vigilance Clearance Certificate” and “No Objection Certificate” in favour of the Petitioner to enable him to join the

office of Respondent No.3.

2. Learned counsel for the Petitioner states that initially the petitioner had joined Border Road Organisation [BRO] as LDC in 2008 and in 2019 he was promoted to the post of UDC. He states that pursuant to the advertisement published in the Employment News dated 18-24th December, 2021, the Petitioner, being an eligible candidate, applied for the post of Senior Secretariat Assistant on deputation basis with the Anthropological Survey of India. He further states that the Petitioner, vide letter dated 11th January, 2022, requested the Parent department i.e. BRO through proper channel to forward his application for deputation along with appropriate NOC.

3. Learned counsel for the Petitioner states that the application of the Petitioner for deputation was forwarded by the Commanding Officer to the appropriate authority along with all connecting papers including recommendation, etc. However, he states that the Respondents rejected the request of the Petitioner to forward his application vide the impugned order dated 2nd February, 2022. He states that the application of the Petitioner has been rejected relying on the provisions of the Policy decision letter dated 10th January, 2018 which does not have the sanction from Ministry of Defence.

4. Learned counsel for the Petitioner also emphasises that certain other similarly situated personnel have been issued No Objection Certificates by the Respondents. He also relies upon the order dated 1st February, 2022 passed by Gauhati High Court in W.P.(C) 454/2022, wherein the High Court had directed the BRO to forward the Petitioner's application therein to Anthropological Survey of India (Respondent No.3 herein).

5. Learned counsel for the Petitioner states that the Petitioner has very limited scope for promotion in his present organisation since the number of promotional posts is very limited and the Petitioner would have a higher chance of securing promotion to the next higher rank of Administrative Officer in the new organization.

6. Learned counsel for the Petitioner states that the impugned order is highly discriminatory, arbitrary and illegal, and the Petitioner has been singled out, which led to the filing of the present writ petition.

7. This Court in ***Kamlesh Kumar Jha vs. Directorate General Border Roads and Ors.*** in ***W.P.(C) 1306/2022*** decided on 3rd February, 2022 has held that an employee of BRO has no fundamental right to claim deputation to any other organisation or department. He has only a right of fair consideration in accordance with the policy and needs of the organisation.

8. In the present case, apart from making a bald assertion that similarly placed officers have been allowed by the respondent-BRO to proceed on deputation while the Petitioner's application has been rejected, the Petitioner has not provided the details of those officers as to how his case for being allowed to proceed on deputation is superior to them. This court is not expected to indulge in a fishing and roving inquiry to determine the comparative merit and demerit of the cases of these officers, especially in their absence.

9. The plea based on Article 14 is completely vague and without any merit. In the present petition, it has not been asserted that any of the officers to whom permission to proceed on deputation has been granted is otherwise ineligible for the same. Consequently, the ground of discrimination is not attracted to the facts of the present case.

10. The order passed by Gauhati High Court, relied upon by learned counsel for the Petitioner, is only an interim order. It has no precedential value and is not binding on this Court.

11. In **Kamlesh Kumar Jha vs. Directorate General Border Roads and Ors.** in **W.P.(C) 1306/2022** decided on 3rd February, 2022, this Court has further held that “...with all due respect, this Court is not in agreement with the view taken by Gauhati High Court. In fact, the consistent view of this Court has been that Article 14 of the Constitution of India is a positive concept and does not promote negative equality.

12. The Supreme Court in **Union of India v. M.K. Sarkar, (2010) 2 SCC 59** has held that “Article 14 is positive concept and cannot be enforced in a negative manner. Irregularity and illegality cannot be perpetuated on the ground that illegal benefits have been extended to others.” The Supreme Court in **Basawaraj and Another vs. Special Land Acquisition Officer, (2013) 14 SCC 81** has also held, “Article 14 does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated.” Even a Division Bench of this Court relied in **Shyam Singh & Ors. vs. Union of India & Ors** (supra) has held that “... It is well settled that Article 14 is a positive concept and no direction can be issued on the plea of discrimination, wherein the earlier decision itself was improper and wrong. In view of the above findings, we find no merit in the present writ petition and other connected writ petitions and they are dismissed.”

13. This Court also finds that the Petitioner's application for deputation has not been approved in accordance with the policy decision of the Respondent's letter dated 10th January, 2018. It is settled law that Government is bound to follow the rules and standards they themselves had set. Consequently, the impugned decision calls for no interference.

14. Assuming without admitting that the policy decision dated 10th January, 2018 is void then complete discretion to approve or reject the request for deputation would vest with the superior officers of the Respondents. In the present case, there is nothing to show that the decision of the Respondents is perverse or vitiated by malice.

15. Moreover, the Petitioner is an employee of BRO. If promotional avenues in BRO are limited then the Petitioner should not have joined the BRO.

16. If the Petitioner's argument of limited promotional prospect is taken to be a good ground for deputation then all UDC's and LDC's in BRO would have to be allowed to proceed on deputation leaving the BRO, the primary employer without any adequate staff!

17. Keeping in view the aforesaid conclusions, the present writ petition and applications, being bereft of merit, are dismissed.

MANMOHAN, J

NAVIN CHAWLA, J

FEBRUARY 10, 2022
AS