

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

Judgment Reserved on: February 24, 2015

% *Judgment Delivered on: February 27, 2015*

+ **W.P.(C) 6155/2010**

L/NAIK NAVEEN KUMAR Petitioner

Represented by: Mr.D.S.Kauntae, Advocate

versus

UOI AND ORS Respondents

Represented by: Mr.Rishi Kapoor, Advocate for
Mr.Arun Bhardwaj, CGSC

W.P.(C) 1091/2014

L/NAIK PAWAN KUMAR Petitioner

Represented by: Mr.D.S.Kauntae, Advocate

versus

UOI AND ORS Respondents

Represented by: Ms.Barkha Babbar, Advocate

W.P.(C) 1591/2013

NAIK SUBHASH SINGH Petitioner

Represented by: Mr.D.S.Kauntae, Advocate

versus

UOI AND ORS Respondents

Represented by: Ms.Barkha Babbar, Advocate

CORAM:

HON'BLE MR. JUSTICE PARDEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PARDEEP NANDRAJOG, J.

1. The petitioners in the three captioned petitions hold the rank of either a Lance Naik or a Naik and are aggrieved by the fact that they have been reverted from the Parachute Battalion of the Indian Army to, what the respondents call the Parent Regiment of the petitioners.

2. Whereas petitioner L/Nk.Pawan Kumar has been, as per the respondents, reverted to his Parent Regiment : Rajputana Rifles, the petitioner L/Nk.Naveen Kumar has been reverted to the Kumaon Regiment and petitioner Nk.Subhash Singh has been reverted to the Rajput Regiment.

3. Though, as would be evinced from the facts which we note hereinafter, a very short issue arises for consideration in the three petitions and hearing could be over in the three writ petitions in less than 5 minutes, the prolix pleadings, which swirl all over, created a cacophony resulting in hearing lasting for nearly 45 minutes, and that too with a fair-mount of fuzziness, requiring us to reserve the three matters for judgment so that in the peaceful atmosphere in the chamber we could read the pleadings carefully to find out where was the elusive nugget of gold buried in the mine of pleadings.

4. Regretfully, the pleadings of the parties do not bring out that the nugget of gold lies in a policy decision dated August 28, 2002 for the personnel of the Parachute Regiment.

5. The policy, in its preamble, guides that the Parachute Regiment of the Indian Army consists of Para and Para(SF) Battalions and is an elite volunteer force of the Indian Army and because of its specialized role, the Regiment needs to be kept at optimum level of operational efficiency and physical fitness. Towards this end, the specially selected manpower has to comprise of comparatively young, physically fit, mentally robust, intelligent, innovative and highly motivated persons so that the assigned operational tasks can be successfully accomplished.

6. The recruitment to the Parachute Regiment is carried out under the aegis of Para Regiment Training Centre with assistance from recruiting directorate. In addition, volunteers from arms/services are also permitted to join the Para Regiment.

7. Clause 9 of the policy, under the caption '*Recruitment Management*' specifies as under:-

(a) On completion of basic military training at Para Regiment Training Centre, individuals will be allotted a Parent Inf. Regt. by Infantry Department under intimation to AG's Branch/MP Dte. (MP-3). The young soldiers will be dispatched to respective battalions to undergo probation and final selection.

(b) Individuals found unfit if be posted to their parent regiment after obtaining sanction of Comdt. PRTC.....

8. When enrolled in the Indian Army, L/Nk.Pawan Kumar was allotted the Rajputana Rifles as his Parent Regiment, L/Nk.Naveen Kumar was allotted the Kumaon Regiment as his Parent Regiment and Nk.Subhash Singh was allotted the Rajput Regiment as his Parent Regiment. But since they had opted for the Para Regiment, they were sent to said Regiment.

9. Whereas Naik Subhash Singh and L/Nk.Pawan Kumar were reverted to the Rajput Regiment and Rajputana Rifles respectively, at their own request, L/Nk.Naveen Kumar was reverted to the Kumaon Regiment being convicted for an offence punishable under Section 69 of the Army Act.

10. The argument of petitioners Pawan Kumar and Subhash Singh is that the applications containing their request to the parent Regiment is a result of compulsion by the Commanding Officer of the Unit and thus the order reverting them to their Parent Regiment is liable to be set aside; with the additonal plea that notwithstanding they making a request to be relieved from the Parachute Regiment, the question of the two being reverted to their

so called Parent Regiment does not arise, because they had no Parent Regiment. They plead that emoluments in the Para Regiment are much more than emoluments they would receive in the Regiment to which they are transferred because the personnel of the Para Regiment are paid extra allowances. They plead that they have a right to serve in the Para Regiment till the age of their superannuation. Petitioner Naveen Kumar pleads that for the offence in question he could not be transferred to what the respondents call, his Parent Regiment.

11. The application bearing signatures of L/Nk.Pawan Kumar praying that he be sent to a non-para Regiment is dated August 16, 2013. It was processed at various levels between August 16, 2013 and final approval was granted to accept his request on September 22, 2013. Formal order conveying acceptance of his request was issued on September 24, 2013. It needs to be simply highlighted by us that between August 16, 2013 till when the formal order dated September 24, 2013 was conveyed to him, he never made any grievance to any authority that his Commanding Officer obtained his signatures on a blank papers. On October 09, 2013 he was formally struck off the strength of the Parachute Regiment with effect from November 10, 2013 and was transferred to the Rajputana Rifle Regiment, he filed a statutory complaint on January 30, 2014, in which for the first time he raised the issue that his Commanding Officer obtained his signatures on a blank paper. The writ petition was filed by him without awaiting a response to his statutory complaint. As regards Nk.Subhash Singh, way back on January 02, 2006 he submitted an application informing that he was unable to take the physical stress while discharging duties in the Para Regiment and requested for being posted out from 6 para on compassionate grounds. His request was accepted and the Commanding Officer posted him for administrative duties to be performed at the Force Headquarter, which was treated as an extra

regimental employment. He worked there till June 17, 2010 when he was reverted to the 6 Para and was deployed in counter insurgency operations in the State of Jammu and Kashmir. On July 02, 2010 he made a request citing lack of physical fitness, to be sent out from the Para Regiment, which application was processed at various levels. The request was accepted. He was transferred to the Rajput Regiment vide order dated April 27, 2011.

12. As regards Nk.Subhash Singh there is ample evidence that even in the past, citing lack of physical endurance, he had been requesting to be sent out from the Para Regiment and there is ample intrinsic evidence of the voluntariness of his application submitted in the year 2010 to be sent out of the Para Regiment. Further, as is the case with Nk.Pawan Kumar, even he never raised any issue between July 02, 2010 till April 27, 2011 that the Commanding Officer obtained his signatures on a blank paper.

13. Thus, the plea by Pawan Kumar and Subhash Singh that their signatures were obtained on blank papers has no legs to stand on.

14. With respect to the second plea that neither of the two could be sent outside the Parachute Regiment to a so called Parent Regiment, because they had no Parent Regiment, the answer is simple. As per the policy for the personnel recruited to the Parachute Regiment, which is dated August 28, 2002, vide para 9 thereof, all individuals posted with the Parachute Regiment are allotted a Parent Infantry Regiment and the two, as noted above were allotted a Parent Infantry Regiment, and thus their argument that notwithstanding they opting out of the Parachute Regiment, could not be sent to an Infantry Regiment because they had no Parent Infantry Regiment, is without any factual substance.

15. The reason why a Parent Infantry Regiment is allotted to those who are recruited in the Parachute Regiment is that, whether they seek a voluntary discharge from the Parachute Regiment or are removed from the

Parachute Regiment, on reversion to the Parent Infantry Regiment, the seniority has to be protected and the only way it can be so done is to allocate the personnel, at the time of joining service, to an Infantry Regiment which is treated as their Parent Infantry Regiment. Indeed, the record produced before us evidences that when the two were recruited in the Indian Army they were allotted a Parent Infantry Regiment notwithstanding the two being found meritorious to be allotted to the Parachute Regiment.

16. As regards petitioner Naveen Kumar, the policy of posting personnel in the Parachute Regiment warrants, apart from others, a high level of motivation for the selected manpower, and we find nothing absurd in the policy which empowers the Army Authorities to remove a personnel from the Parachute Regiment and send him to the Parent Unit if the person is convicted for having committed an offence punishable under the Army Act, 1950.

17. Though Naveen Kumar, in a writ petition which runs into 23 pages has made a reference to his trial at the Court Martial but no arguments were advanced in relation thereto because in the prayer there is no challenge to the said proceedings and the verdict of guilt.

18. The three writ petitions are accordingly dismissed but without any order as to costs.

(PARDEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 27, 2015
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