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

Date of Decision: 24.12.2021

+ **W.P. (C) 14918/2021**

NAIB SUBEDAR MAHANTESHPetitioner
Through Ms. Archana Ramesh, Adv.

versus

UNION OF INDIA & ORS. Respondent(s)
Through Ms. Nidhi Raman, CGSC with
Mr. Zubin Singh, Adv. for R-1
to R-4

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed challenging the Signal dated 21.04.2021 issued by the respondent no. 3 which cancelled the petitioner's detailment for the United Nations Mission, Congo (hereinafter referred to as the 'UN Mission') relying upon paragraph 636(B) of the Army Medical Corps Record Office Instructions- 2014 (hereinafter referred to as the 'AMC ROI').

2. It is the case of the petitioner that the petitioner was enrolled in the Army Medical Corps on 30.09.2009. The petitioner was serving at the rank of *Havildar* and was posted to the Command Hospital, Southern Command, Pune on 10.02.2019. The petitioner was selected for the UN Mission vide Army Headquarters, DGMS letter dated

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16.04.2021, however, the nomination of the petitioner was cancelled on the ground mentioned in paragraph 636(B) of the AMC ROI. Paragraph 636(B) of the AMC ROI is reproduced hereinbelow:

“636. Essential OR

xxxxxxxx

(b) Should not be involved in court case due to any reason.”

3. The learned counsel for the petitioner submits that the petitioner had, indeed, proposed to file an Original Application (for short, ‘OA’) before the learned Armed Forces Tribunal, Regional Bench Mumbai (hereinafter referred to as the ‘Tribunal’). She contends that in accordance with the procedure prescribed by the Tribunal, an advance copy of the OA was served on the respondents before registering the same before the Tribunal. Reply to the proposed OA was also given by the respondents, however, thereafter, for the reason of Nation-wide lockdown due to COVID-19, the proposed OA was not registered. She further submits that subsequent to the cancellation of the petitioner’s nomination for the UN Mission, the petitioner was promoted to the post of *Naib Subedar* vide letter dated 23.05.2021 with effect from 01.06.2021, and therefore, the petitioner does not wish to file the said OA.

4. The learned counsel for the petitioner further submits that as the batch for which the petitioner had been nominated, has already left for Congo, the petitioner should be considered in the next batch to be nominated for the UN Mission.

5. The learned counsel for the respondents, on instructions, admits that the OA filed by the petitioner has not been registered. She, however, submits that the petitioner cannot be considered for any further UN Missions as he has been promoted to the rank of *Naib Subedar*, making him ineligible to go for such missions. She further places reliance on the judgment dated 04.08.2021 of a coordinate Bench of this Court in W.P.(C) 7642/2021, ***Naik Virendra Singh Gurjar v. Union of India & Ors.***, to submit that the petitioner also has an alternate efficacious remedy in form of a statutory petition for seeking redressal of his grievances and therefore, the present petition be not entertained.

6. We have considered the submissions made by the counsels for the respective parties.

7. It is now admitted before us that the OA filed by the petitioner was never registered before the Tribunal. The petitioner cannot therefore, be held ineligible for being nominated to the UN Mission relying upon paragraph 636(B) of the AMC ROI. At the same time, the batch for which the petitioner was nominated has already left for Congo. The petitioner's detailment was cancelled vide order dated 16.04.2021, while the present petition has been filed only in December, 2021. Therefore, no relief can be granted to the petitioner in the present petition.

8. As far as the nomination of petitioner in the future batch to be

sent for the UN Mission at Congo is concerned, we are of the opinion that the petitioner must first be directed to avail of the statutory mechanism for redressal of his grievances.

9. We, therefore, dispose of the present petition with a direction that the petitioner shall be at liberty to make a representation to the respondents seeking nomination in the future batch of UN Mission, Congo. Representation, if any made, shall be considered by the respondent no. 2, in accordance with law and by way of a speaking order, within a period of twelve weeks of receipt of such representation. We make it clear that we have not expressed any opinion on the representation that may be made by the petitioner.

10. Needless to state, if the petitioner is aggrieved by the decision taken on his representation, the petitioner shall be at liberty to challenge the same in accordance with law.

NAVIN CHAWLA, J

MANMOHAN, J

DECEMBER 24, 2021
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