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

+ **W.P.(C) 7267/2013 & CM No.15629/2013**

% **Date of decision: 19th December, 2013**

RFN SAGIR KHAN & ORS Petitioners

Through : Mr. S. S. Pandey and
Mr. H.S. Tiwari, Advs.

versus

UNION OF INDIA & ORS Respondents

Through : Mr. Ankur Chhibber and
Mr. Aashish Gumber, Advs.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J. (Oral)

1. The factual matrix given rise to the present petition is largely undisputed and to the extent necessary is noticed hereafter. The writ petition raises an important question with regard to nomination of Persons Below Officer Rank (PBOR) of the Indian Army for being deputed to proceed on a UN Mission and Overseas tenure. It is unfortunate that this question has arisen despite the adjudication on this issue by the Division Bench dated 25th May, 2008 in ***WP(C)No.8085/2007 Naib Sub. Subedar Singh v. Union of***

India & Ors. with regard to the cut off date for consideration of personnel as being eligible for being so nominated. Several writ petitions have been necessitated on the allegation that the respondents are arbitrarily working the selection policy.

2. Given the question which has been raised by the petitioner, it is necessary to note the dates on which the petitioners were enrolled with the Indian Army and dates on which they were posted with the 8 Rajputana Rifles (8 Raj Rif), which is the unit which stands nominated for proceeding on UN Mission. The respondents have set out this information in tabulation which reads as follows:-

“

Sl.No.	Army No, Rank & Name	Date of Enrolment	Date of which effect from posted to 8 RAJRIF
(a)	1601714P Rfn Sagir Khan	22 Dec 2003	17 Oct 2004
(b)	16018590P Rfn Alakesh Singh	01 Nov 2004	15 Oct 2005
(c)	16018240H Rfn Lokesh Kumar	23 Apr 2004	10 Feb 2005

(d)	16018860Y Rfn Tauhid Ansari	19 Mar 2005	21 Jan 2006
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3. The petitioners’ unit, 8 Raj Rif was selected for UN Mission by a letter dated 11th May, 2011 issued by the Integrated Headquarter of the Ministry of Defence, (Army).

4. It appears that after such nomination, a new battalion being 23 Rajputana Rifles was being raised by the respondents. Learned counsel for the petitioner contends that this battalion was created as a specialised force of paratroops. The respondents have stated that petitioners were permanently transferred to 23 Rajputana Rifles with effect from the following dates:-

“

(a)	1601714P Rfn Sagir Khan	-	28 Jun 2011.
(b)	16018590P Rfn Alakesh Singh	-	26 Jun 2011.
(c)	16018240H Rfn Lokesh Kumar	-	10 Jun 2011.
(d)	16018860Y Rfn Tauhid Ansari	-	26 May 2011.

”

5. Coming to the prescriptions with regard to the manner in which the personnel would be short listed for proceeding on UN

Mission, we are informed that the first policy on this subject was issued by the Staff Duty Directorate of the Army Headquarter on the 17th of June, 2010. Mr. S.S. Pandey, learned counsel for the petitioner has placed this policy before us which is captioned as “***Selection of PERS for UN MSN : Policy***”. The material clauses thereof relied upon by the petitioner read as follows:-

“3. UN assignments are prestigious in nature and afford the individual an opportunity to have a useful exposure. Further, under the existing environment, while selecting personnel for UN missions/assignments, due consideration should be given to our JCOs and OR who have served in CI operations/Operations Vijay/Meghdoot/HAA and have professionally proven themselves in such operations.”

“7. Selection Procedure.

(a) It is imp that the selection process of PBOR must be fair and transparent. Besides the CO, the Fmn cdrs are also reqd to monitor and oversee the selection process. The Fmn Cdrs will ensure the following:-

(i) A sainik Smln is taken by the Fmn Cdr of the Unit nominated for the UN Msn once the selection process has been completed. At this forum, the Fmn Cdr, besides addressing the unit, will interact with the tps to ascertain that the selection was fair.

(ii) A written confirmation of the above

will be fwd by the Fmn Cdr to the SD Dte through respective ComdHQ.

(b) The Line Dtes wil ensure that the approved Bd Proceeding are fwd to SD-3 at least three months in advanced of the date of departure of the contingent.”

(Emphasis supplied)

6. It is implicit from the above that nomination of a personnel to proceed on UN Mission is not a routine matter. The selecting authorities effecting the selection are required to apply their mind with regard to the merit and experience of the persons who are to proceed to UN Mission especially having regard to the nature of the duties on foreign territories; often in conjunction with troops from other nations. Very often these troops are compelled to engage in peace keeping activities in civilian areas. Certainly the nature of functions discharged by Indian troops on these missions are extraordinary in nature necessitating maturity as well as experience. The respondents had therefore, prescribed that while selecting personnel for such assignments, due consideration should be given to the personnel who had served in counter insurgency operations as well as notified operations including the operation “Vijay”, “Meghdoot” as well as served in high altitude areas.

7. Judicial notice can be taken of the fact that the Indian troops are invited to participate in international operations given the sensitive nature of the requirement in these areas suffering from violence and strife in foreign countries. The respondents have emphasised that only “**professionally proven**” personnel should be selected.

8. We may emphasise on the use of the expression “**selecting personnel**” in para 3 and “*selection procedure*” in para 7 of the policy dated 17th June, 2010 which was notified by the respondents. The respondents have also afforded a fair opportunity to any person who may be aggrieved by his non-selection or selection of a person not meriting it, in the procedure provided under para 7. The officer of the rank of Formation Commander, who, as we are informed, may be Brigadier Commander of the rank of Brigadier or the Corps Commander of the rank of Major General and above, would be required to interact with the jawans/sainik in an open meeting (‘Sammelan’) to ascertain that the selection was fair. A written confirmation of the fact that such Sainik Sammelan had been called and fairness of selection ascertained was required

to be communicated to the Staff Duty Directorate.

9. We have noted above the seriousness with which the respondents have themselves treated the selection process in some detail, only to illustrate the casualness in the manner in which the personnel selection procedure has been completed in the instant case.

10. Another policy statement was issued by the respondents on 30th of August, 2010. This notes the valuable contribution of the Indian Army to UN Peace Keeping Operations. It divides the personnel in a contingent into the 'troop contingents' and staff personnel based on the functional delegation. The policy was laid down with the objective of meeting the aspirations of the PBOR and the needs of the organization. The scope of this policy has been detailed in para 3 thereof which reads as follows:-

“3. **Scope**

The reviewed policy is covered under the following heads:-

- (a) Reqmt of residual service on return from UN Msns (PBOR).*
- (b) Overseas exposures and ban pd.*
- (c) Ban pd in r/o SM of units being inducted to UN msns*

- (d) Restns due to discp and selection.*
- (e) Promotion of PBOR while dply in UN Msns.*
- (f) Gallantry award winners.*
- (g) Med std for selection.*
- (h) BCs and dispensation.”*

11. Emphasising in this policy is largely with regard to the manner in which PBOR would be treated and preceded on return from UN Mission.

12. It is urged by Mr. S.S. Pandey, learned counsel for the petitioner that so far as issues of selection which were covered in the policy dated 17th June, 2010, they remain sacrosanct even after the notification of the policy dated 30th August, 2010. It is submitted that the policy dated 30th August, 2010 does not impact the same.

13. An attempt is made by Mr. Ankur Chhibber, learned counsel for the respondents to urge that policy dated 30th August, 2010 has superseded the policy dated 17th June, 2010. A close reading of the policy dated 30th August, 2010 shows that it makes no reference at all to the manner in which selection is to be effected of the unit of the personnel to proceed on the UN Mission. Be that as it may, this issue does not need to detain us any further inasmuch as the

petitioner's contentions have been considered by the respondents in further clarifications and adequately addressed by the respondents. We note the same hereafter.

14. A copy of the letter dated 23rd December, 2010 addressed to the Staff Duty Directorate -3 (UN) which was issued by the Directorate UN Infantry-6, (Pers) has been placed before us by Mr. Ankur Chhibber, learned counsel for the respondents whereby the following queries were raised which was -

“2. As per Para 3(b) of Apx to SOP issued vide your Note under ref Pers who have done a tenure in staff/instructional capacity overseas based on indl merit when coming up for selection for dply with parent unit in UN Msn will be considered eligible for second tenure, provided he has served at least five years in the BN (on its panel).

3. You are requested confirm whether the five years service in the Bn is reqd on return from overseas msn availed earlier based on staff/instructional capacity or otherwise.”

15. The response dated 5th January, 2011 of the Staff Duty Directorate – 3 (UN) has been placed before us by the petitioner as well as the respondents which reads as follows:- (page 63)

“2. Any Indl who has been part of the unit for five years continuously or otherwise, posted or in the panel should be considered for the UN

assignment when the unit is selected. This is also applicable to any indl who has had a foreign tenure.”

16. Mr. Ankur Chhiber, learned counsel for the respondents has urged that regard must be had to the query raised by the respondents in the letter dated 23rd December, 2010 which was restricted to a second tenure with the UN Mission for PBORs and that the communication dated 5th January, 2011 had to be restricted to a person seeking to proceed on second tenure only. We find that this submission is to be noted only for the sake of its rejection. The query in the letter dated 23rd December, 2010 was limited to a second tenure. However, while responding, by the letter dated 5th January, 2011, the Staff Duty Directorate did not confine its clarification to the query. The stipulations in the communication dated 5th January, 2011 are clear and unequivocal. In the first part of para 2, it has been clearly declared that ‘*any individual*’ who has been part of the unit for “*five years*”, “*continuously or otherwise posted*” or “*in the panel*” “when the unit is selected” should be considered for the UN assignment.

17. It is apparent from the bare reading of the above that it is the date when the unit is selected which is material. It is also clear from the above that the expression “*five years*” qualifies “*continuous*”; “*otherwise posted*” as well as “*in the panel*”. The same therefore, has to be read as that such personnel should have been for five years on the strength of the unit either continuously or in broken tenures on the date when the unit is selected for consideration for the UN assignment. It also mandates that a personnel who has been on the strength of the selected unit for five years has to be considered for selection for proceeding on the UN Mission.

18. So far as query which was raised by the respondents in the note dated 23rd December, 2010 extracted above relating to the second tenure is concerned, the same been addressed by the Directorate in the second sentence of para 2 wherein it has been stated that the stipulation in the first sentence is “*also*” applicable to any individual who “*had foreign tenure*”. Therefore, even though the query raised by the respondents were restricted, however, the Staff Duty Directorate has addressed both exigencies,

i.e., a personnel being considered for proceeding on UN Mission for the first time as well as a PBOR who is being considered for proceeding on a UN Mission for a second tenure.

19. It is noteworthy that such stand has been orally taken before us. In this regard we may refer to the deposition made by the respondents in the counter affidavit. The relevant extract whereof reads as follows:-

“5. It is submitted for information that IHQ of Mod (Army) vide letter No.71362/Policy/SD-3 (UN) dated 05 Jan 2011 received by this office vide IHQ of Mod (Army) letter No.A/62006/UN/Inf-6(Pers) dated 13 Jan 2011 have clarified the Para 3(b) of the UN SOP issued vide IHQ of Mod (Army) letter No.71362/Policy/SD-3 dated 30 Aug 2010. Copy of letter dated 5.1.2011 is annexed herein as **Annexure-IV** and copy of letter dated 30.8.2010 is annexed herein as **Annexure-V**. As per the said policy, any individual who has been part of the unit for five years continuously or otherwise, posted or in the panel should be considered for the UN assignment when the unit is selected. This is also applicable to any individual who has had a foreign tenure. ...”

20. The same deposition has been reproduced in reply to ground (i) of the counter affidavit. It is therefore, an admitted position that in terms of the communication dated 5th January, 2011, any individual who has been part of the unit for five years has to be

considered for the UN assignment when the unit is selected. The same is also from the requisite certification by the Commanding Officer.

21. It is also material to note that the cut off date for consideration of the eligibility of the personnel is the date on which the unit is selected.

22. Mr. Ankur Chhibber, learned counsel for the respondents has stated that the communication dated 7th July, 2010 mandated that all personnel on the panel of the unit for the UN Mission must proceed with the unit referring the contents to the certification by the Commanding Officer. We have noted hereinbefore the date on which the personnel must be on the panel of the unit which has been nominated for the UN Mission. The letter dated 7th July, 2010 has to be read inconsonance with the declared policy of the respondents and even otherwise the relevant date which is relevant for considering the eligibility of PBOR for proceeding on UN Mission is the date on which the unit was selected and therefore, nominated for proceeding on a such mission and no other date.

23. The mischief comes in when the respondents attempt to override the unequivocal declaration by the Staff Directorate of the date of selection of the unit as the cut off date. This has been done by a misreading of the requirement of the certification by the Commanding Officer. The declared policy and the clarification in the letter dated 5th of January, 2011. Yet the respondents, as stated in the counter affidavit, have proceeded as follows:-

“5. ...But as per IHQ of Mod (Army) letter NO.A/62006/UN/R/Inf-6 (Pers) dted 07 Jul 2010, all personnel on the panel of the unit nominated for UN Mission must proceed with the unit. It has also been directed that Commanding Officer of the unit will render certificate to this effect that **“all eligible personnel on the panel of the unit have been detailed for UN Mission in first/second rotation and no eligible personnel on the unit panel is left for detailement with the unit for UN Mission.”**

This certification is clearly incomplete as it does not refer to the date on which the unit was selected for the UN Mission.

24. The certification of a person being on the unit strength certainly cannot be with regard to the date on which the personnel are being considered for selection or the date when the Unit is proceeding on the Mission, as the respondents have attempted to

assert in the present case. The certification by the Commanding Officer of the unit has to relate to the eligibility of the personnel as their being on the panel of the unit on the date the unit was detailed for the UN Mission.

25. With regard to the issue as to manner in which the PBORs have to be nominated for proceeding on UN Mission is concerned, we have emphasised heretofore that the respondents have to examine the eligibility of the PBOR and then effect his selection for the same. In this regard para 7(b) of the policy dated 30th August, 2011 is material and reads thus:-

“(b) All offrs, JCO and OR, irrespective of Arm/Service, who earn gallantry awards while being att with bns/Regs, even if prior to shortlisting of the bn/regt for UN msn will **be considered** for proceeding with the nominated bn/regt for UN msn, subject to their meeting all other requisite QR. In case of offrs, only those with upto five yrs service on the tentative dt of nomination of the uni/regt would be considered for such assignments in the interest of optimal comd and cont structure of the constituting unit/regt.

(Emphasis supplied)

26. Even here there is clear and unequivocal reference to the qualitative abilities of all personnel for consideration for

proceeding with the nominated battalion. The same must necessarily relate to discharge of functions as PBOR and not to any consideration of an arbitrarily appointed date for drawing up a select list or nomination of personnel to proceed on the UN mission. Even if we were to hold that the policy dated 30th August, 2010 superceded the policy dated 17th of June, 2010, certainly the qualities to which consideration must be given by the authorities for selecting members of the contingent can be gleaned therefrom.

27. We may also note another anomaly in the manner in which the respondents are proceeding and have proceeded in the instant case. The policy statement as well as the documents referred to above use the expression “*selection*”. We find that the letter dated 23rd December, 2010, refers to individual merit of the PBOR. The selection is firstly of the unit which is then nominated for proceeding on the UN Mission. Only thereafter selection of the personnel on the panel of the unit on such date has to be effected. The counter affidavit repeatedly uses the word “nomination” instead of the word “selection” as if PBOR who are on the strength of the unit has a right to proceed on the UN Mission irrespective of

his merit. It is also implicit therefrom that no assessment of the ability of the personnel who have been deputed has been undertaken. This certainly is not permissible.

28. The question as to what would be the cut off date is certainly *res integra*. This issue had arisen for consideration in ***WP(C)No.8085/2007*** entitled ***Naib Sub. Subedar Singh v. Union of India & Ors.*** The writ petitioner was a person who was seeking his posting to the UN Mission. Nb. Sub. Subedar Singh was posted with 2 Naga which was selected for UN mission. Though initially included in the select list of personnel for the UN Mission, however, his name was subsequently removed by communication dated 2nd January, 2007 which action he had challenged. The petitioner was thereafter transferred from 2 Naga Battalion to 785(1) Ad Brigade. In his place, respondent no.7 had been posted to 2 Naga Battalion who had been put in the select list for proceeding to the UN Mission. Nb. Sub. Subedar Singh had challenged the removal from the list by way of said writ petition. It is noteworthy that the Army Headquarter had issued a letter dated 3rd May, 2006 whereby 2 Naga Battalion was nominated for

proceeding on the UN Mission.

29. We note that the policy considered by the court in this case, is similar to that placed before us. The court had noted the policy declaration made in ROI – 02/05 read with ROI 3/2006 in para 9 judgment of the Division Bench dated 25th May, 2008 which applied to this case. The relevant clauses stand extracted in para 9 of the judgment which reads as follows:-

“9. ROI 02/2005 deals with selection of AEC personnel (to which category the petitioner belongs) for posting to UN Mission. It starts with the introductory remarks, namely, in recent years the strength and frequency of deployment of Indian Troops on UN Mission/Foreign Assignment has increased tremendously. The AEC contributes its due share on these assignments whenever a unit authorized AEC PBOR is nominated for UN Mission. The aim of the said instructions was, therefore to lay down a comprehensive policy governing the selection procedure for short-listing such personnel for UN Missions. Para 3 of these instructions lays down the eligibility criteria. It is not necessary to go into the same as there is no dispute that the petitioner otherwise fulfilled the said criteria. Para 4 stipulates that deficiency of AEC staff in any unit nominated for UN Mission would be filled up by AEC Records from the list of PBOR short-listed by a Board of Officers as specified in the subsequent paragraphs. Para 7 and 9, which are relevant for our purpose are extracted below: -

“7. AEC PBOR already posted to a unit nominated for a UN Mission but who do not meet the eligibility criteria for UN Mission will be replaced by AEC Records with other PBOR who have been short listed for UN Missions by a specially constituted Board of Officers convened for the purpose.

xxx

xxx

xxx

9. Although the tentative turn over schedule for UN bound units is declared well in advance, the actual date on which the nomination order is signed at Army HQ will be taken as the cut off date for upholding/cancellation of Posting Orders as and when required. As posting order signed prior to nomination of the unit for UN Mission will be carried out and no representation will be entertained on it. However, a posting order signed on or after the date of nomination of the unit for UN Mission will be cancelled and the tenure of the individual extended upto the date on which the main body of the unit reaches its peace/field location in India.”

30. Thereafter, in ***Nb. Sub Subedar Singh (Supra)*** this court had interpreted the above para 9 of the policy, which deals with cut off date similar to that in the present case, in the following terms:-

“10. It is clear from the reading of para 9 that this policy specifies the cut-off date for posting of AEC personnel to such units which are UN bound units.

Cut-off date which is fixed as per this para is the actual date on which nomination order is signed at Army Headquarters. It further stipulates that if there is any posting order which is signed on or after the date of nomination of the unit for UN Mission the same will have to be cancelled. If one has regard for the aforesaid provision which needs to be followed in its letter and spirit, the conclusion is obvious, namely, the petitioner has not been able to make out his case for UN posting.

11. It is not in dispute that 2 Naga Battalion was nominated for UN posting vide Army Headquarters letter dated 3.5.2006. This is the cut-off date for upholding/cancellation of the posting orders as and when required. The petitioner, as on this date was not posted to the said unit. His posting orders came to be passed few days later, i.e. on 15.5.2006, and his actual posting to the said unit much later, i.e. on 18.2.2007. **Normally, the petitioner was not to be posted to this unit after the unit was nominated for UN posting in view of the aforesaid cut-off date prescribed. As stated in the counter affidavit, mistake occurred because of the reason that the posting order of the petitioner was issued by the OIC Records, which had no knowledge at that time that the said 2 Naga Battalion had already been nominated for UN Mission.** After coming to know of this mistake, in terms of para 9, the posting order was cancelled and the petitioner was directed to be moved out and join some other posting. The purpose of fixing such cut-off date, as explained by learned counsel for the respondent, is to ensure that there is no favouritism by posting personnel in the said unit after its nomination for the UN Mission. It is also to obviate denial of such posting to the existing personnel by moving them out. Once this

is the rationale behind fixing the cut-off date, we are of the view that it should be strictly followed and rule out any invidious discrimination or favouritism. Since the action of the respondents is in consonance with the policy, it is not possible for us to interfere with the same though in the facts of this case it may be harsh to the petitioner who served in the 2 Naga Battalion for 9 months and was acquitting himself well in discharge of his duties.”

(Emphasis by us)

31. Given the clear enunciation of law in the said judgment, certainly there is no scope for any confusion. The respondents should have applied the principles laid down by this court. The policies of the respondents are also clear and unequivocal supported the above annunciation of law.

32. It is an admitted position in the instant case that the petitioners were transferred out after they had completed over seven years with the 8 RAJ RIF which had been detailed for the UN posting. The respondents have also informed us that they were posted out of 8 RAJ RIF after the unit had been nominated by the order dated 11th May, 2011 for the UN posting. The four petitioners were therefore, clearly eligible in terms of the declared policy of the respondents for consideration for proceeding on the

UN Mission, as clarified on 5th January, 2011 as well.

33. Mr. S.S. Pandey, learned counsel for the petitioner has vehemently urged that the petitioners were the most meritorious jawans in the 8 RAJ RIF and were posted out only in view of the special requirements of the new unit that is the 23 RAJ RIF. It is submitted that the petitioners thereafter successfully completed commando training and form an elite class of expert paratroopers in the 23 RAJ RIF. The submission is that they have been wrongly penalized because of their merit.

34. The respondents have disclosed that after the arbitrary nomination, 8 RAJ RIF projected additional requirement of JCOs and PBORs to fill up their shortfalls of Mission for their second rotation contingent vide letter dated 20th March, 2013 and 14th May, 2013. The respondents claimed that this requirement was distributed between other units including the 22nd and 23rd RAJ RIF vide letter dated 30th May, 2013. Thereafter, the respondents drew up a list of reserved personnel working with 8 RAJ RIF on the basis of the longest service which such personnel had served with 8 RAJ RIF. On this basis the petitioners have been detailed as

“*reserved*” for the UN Mission and have been called to report to 8 RAJ RIF for pre-induction formalities by a signal dated 22nd July, 2013. The fact that the petitioners have been posted out, after their unit the 8 RAJ RIF was selected and nominated on a UN Mission, is not disputed. This action by itself reflects the illegality and arbitrariness of the action of the respondents without anything more. It supports the view that the material date was the date on which the unit was earmarked for the UN Mission. One of the essential considerations for selection of a person was the length of service on 8RAJ RIF. It is noteworthy that in *Nb. Sub Subedar Singh (Supra)*, the Division Bench had clearly held that posting a person out of the unit or to the unit, after it had been detailed for foreign mission was impermissible. Of course, the same may be essential keeping in view the nature of functions which the army discharges. There is substance in the submission that the consequence of the respondents action is wrongly penalising the petitioners because of their merit.

35. In view of the submission made on behalf of the petitioner, we had recorded the following order on 18th December, 2013

“1. The respondents inform us that the 8 Raj Rif was selected for the UN Mission in the first week of May, 2011. Our attention is drawn to the policy letter dated 5th January, 2011 which makes the following prescription: -

“2. Any Indl who has been part of the unit for five years continuously or othersie, posted or in the panel should be considered for the UN assignment when the unit is selected. This is also applicable to any indl who has had a foreign tenure.”

2. The petitioner has made strong grievance that the respondents have misinterpreted the word “selected” in para 2 above as “inducted”. It is contended that after the unit was selected, new recruits were effected and the personnel of 8 Raj Rif who have been in the unit even for one year (even for three or four months) have been deputed for the UN Mission, contrary to the stipulation contained in the policy dated 5th January, 2011.

3. It has further been contended that the expression “five years” qualifies not only continuous posting in the unit but also the expression “otherwise postings” and “in the panel”. The requirement of having been part of the unit which is selected for a period of five years is though the same may be broken by postings to other positions, a sine qua non.

4. In view of the above, the respondents shall place before this court the list setting out the details of persons of the 8 Raj Rif who had not been posted in the unit for a period of five years, yet have been deputed on the UN assignment.

5. The respondents shall also place the list of such personnel, who were not on the strength of 8 Raj Rif on the date when the unit was selected for the UN Mission in May, 2011, yet have been deputed on the UN assignment.

6. The respondents shall also place a list before us of personnel of 8 Raj Rif who had completed the period of five years and were earmarked or assigned other units after the selection of 8 Raj Rif for the UN Mission.

7. The learned counsel for the petitioner submits that the policy dated 5th January, 2011 has been correctly implemented by 22 Rajput whose personnel were deputed to 29 Raj Rif. It is pointed out that upon selection of 22 Rajput in the UN Mission, eligible personnel were recalled from 29 Raj Rif and have been deputed to the UN Mission.

The respondents shall verify the correctness of this statement as well.

List on 19th December, 2013.”

36. Pursuant to the said order, the respondents have placed before us the list of personnel who have been deputed by them in the first and the second rotation. These lists are taken on record. The examination of the list of personnel in the first and the second rotation would show that almost 72 personnel who have not been on the strength of 8 RAJRIF for five years have been permitted to

proceed on the UN Mission even though they did not meet five years stipulation.

37. We may advert to the details of some other personnel who have spent around only one year in 8 RAJRIF as on 26th of May, 2013, provided by the respondents which read as follows:-

“

S.No.	Army Number	Rank	Name	Date of enrolment	Date on which posted to 8 RAJ RIF	Total service with 8 RAJ RIF as on 26 May 2013
66.	16021502Y	Rfn	Krishan Kumar	17 Aug 2010	18 Jun 2011	01 Year, 11 months & 08 days
67.	16021734X	Rfn	Bhopal Singh	06 Dec 2010	12 Oct 2011	01 Year, 07 months & 14 days
68.	16021801X	Rfn	Om Veer Singh Chaudhary	21 Dec 2010	12 Nov 2011	01 Year, 06 months & 14 days
69.	16022017W	Rfn	Sandeep Tomar	02 Jan 2011	12 Nov 2011	01 Year, 06 months & 14 days
70.	16022066Y	Rfn	Firoz Mohammad	16 Mar 2011	12 Jan 2012	01 Year, 04 months & 14 days
71.	16022249P	Rfn	Sandeep Kumar	24 Mar 2011	12 Jan 2012	01 Year, 04 months & 14 days
72.	16022783M	Rfn	Sawai Singh	23 Aug 2011	14 Jun 2012	11 months & 12 days
73.	16.23124K	Rfn	Zahoor Ahmed	29 Sep 2011	23 Aug 2012	09 months & 03 days

”

38. It is noteworthy that one candidate namely RFN Zahoor

Ahmed was enrolled into the Indian Army on 29th of September, 2011, i.e, long after the unit was nominated on 11th May, 2011 for proceeding on the UN Mission. He would have proceeded on training. As per the respondents Rfn Zahoor Ahmed was brought to 8 RAJRIF only on the 23rd of August, 2012 and as on 26th May, 2013 has tendered only 9 months and three days service.

39. We may note another extremely distressing aspect of the matter. Mr. Pandey, learned counsel for the petitioner has submitted that the five year unit posting requirement is a sound requirement to prevent corrupt practices in postings of personnel to units selected for foreign mission. This is evident from the similar stipulation in the policy which was considered by the court in ***Nb Sub Subedar Singh*** (Supra).

40. The respondents have placed before us only list of personnel with less than five year service with 8 RAJ RIF on 26th of May, 2013 (date of last flight of first rotation) and as on 15th January, 2013 (the date of last flight of second rotation).

41. So far as the list of such personnel (of the first rotation) is concerned, we may note that PBOR from serial nos.66 to 73 were

enrolled into the Indian Army between 17th August, 2010 to 29th September, 2011; were posted with 8 RAJ RIF between 18th June, 2011 and 23rd August, 2012, that is after the Unit stood nominated for the UN Mission and had barely served for a total period from 9 months 3 days to 1 year 11 months and 8 days in the Indian Army!

The position qua the second rotation is worse as per personnel from serial no.41 to 65 have been so posted and have spent 1 years 9 days and around 2 years 3 months only in 8 RAJ RIF.

These facts certainly support the submission of the petitioner that postings after a Unit stands selected for a foreign mission are motivated and guided by extraneous considerations.

42. What special awards, rewards or experience that such personnel bring for dispensing with the stipulations in the policy to flout the same? What professional maturity would a jawan of 9 months experience have with regard to special requirements, which could include engaging with civilians using guerrilla warfare at the foreign postings? The respondents must take a close look and

scrutinize who could be responsible for such postings and selections which may bring international discredit to the Indian nation as well as to the ability and capacity of its army. It must be ensured that there is no malafide in such appointments.

43. As has been noted in the judgment dated 25th May, 2010 as well as in the policy dated 17th January, 2010, selection of a Unit as well as of an army personnel for proceeding to UN Mission is prestigious selection. It is not only the interest of the PBOR but is also the honour of the Nation and glory of the Indian Army. This selection cannot be effected as if an idle formality was being completed as in the present case.

44. We would not like to comment any further on this aspect of the matter which has been completely overlooked in the working of the policy by the respondents.

45. In view of the above, the only and inevitable conclusion is that the respondents have failed to abide by the declared policy in effecting the selection and nomination of PBORs from proceeding on the UN Mission. We also find that the petitioners were eligible and have been wrongly denied consideration for selection to

proceed on the UN Mission.

46. We are informed that the second contingent from the 8 RAJ RIF troops have to proceed for UN Mission shortly. It is contended that in case the respondents were to re-examine the eligibility of the entire identified personnel in the contingent in terms of the findings which we have recorded today, it would interdict the departure of the contingent and materially impact the peace keeping functions to be discharged by the Indian Army in foreign countries. The same would be a counter productive exercise.

47. In view of the above, we direct as follows:-

(i) Keeping in view the urgency expressed and in the facts and circumstances of this case, as a onetime measure we permit the respondents to include such personnel to proceed on the UN Mission who were on the strength of 8 RAJ RIF on 11th of May, 2011 when the unit was identified for the UN posting, without insisting on the requirement of the five years tenure in the Unit.

(ii) For identifying the personnel in terms of our directions at serial no.(i) above, the respondents shall draw up a seniority list of

the personnel with regard to the period which they have spent on the strength of 8 RAJ RIF.

(iii) The petitioners being eligible, shall be considered, and, if placed appropriately in the seniority, shall be sent with the second contingent which is to proceed for the UN posting.

(iv) It shall henceforth be ensured by the respondents that only the personnel who meet the eligibility criteria noted by us are shortlisted and are deputed for proceeding on the foreign missions.

(v) The respondents shall scrutinise the nominations which have been effected of personnel of 8 RAJ RIF selected for proceeding on the UN Mission pursuant to its nomination made on 11th May, 2011. In case any malafide can be determined, action be taken against those responsible for such postings and nominations.

This writ petition and application are allowed in the above terms.

Dasti to counsel for the parties.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

DECEMBER 19, 2013/mk