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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.459/2003 &
M.A. NO.486/2003

New Delhi this the 02nd day of ^{May}~~April~~, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI S.K.MALHOTRA, MEMBER (A)

1. Shri K.S. Chauhan
Sub-Area Organiser(SAO)
S.S.B. Headquarters,
R.K. Puram,
New Delhi.
 2. Shri S.L. Janartha,
Assistant Director,
S.S.B. Headquarters,
R.K. Puram,
New Delhi.
 3. Shri V.K. Sharma,
Sub-Area Organiser(SAO)
S.S.B. Headquarters,
R.K. Puram,
New Delhi.
- ...Applicants

(None present)

vs.

1. Union of India Through
The Secretary
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi
-Respondents.

(By Shri Rajinder Nischal, Advocate)

O R D E R

Justice V.S.Aggarwal:-

MA No.486/2003

Misc.Application No.486/2003 for joining
together in OA No.459/2003 is granted.



OA No.459/2003

2. Applicants are working in the Special Service Bureau (SSB) which was set up in the year 1963 in the wake of the Chinese aggression pursuant to realisation that conventional defence arrangements alone are not enough to meet the overall security requirements of the country. It was felt that the border population of the country needed to be trained and mobilised. It is alleged that the SSB was initially started with a set of officers drawn on deputation from various departments of the Government including, the Indian Administrative Service and the Indian Police Service. All posts in the SSB were temporary till the year 1973. After appraisal of the performance of the force during the Bangladesh operation, 40% of the posts in SSB were made permanent. It has been pleaded that the process of absorption of officers taken on deputation was initiated. Thereafter, the recruitment rules in the cadres of the SSB were framed. The Government notified recruitment rules for the Senior Executive Cadre and the Junior Executive Cadre in June 1976 and March 1977 respectively. The applicants belong to the Senior Executive Cadre and the Junior Executive Cadre of the said service.



3. The Junior Executive Cadre comprises only two grades, namely the Sub-Area Organiser which is Group 'A' Gazetted post and Circle Organiser which is a Group 'B' Gazetted post. The promotional avenues for the posts included in the Junior Executive Cadre are those of Joint Area Organiser, Area Organiser, Deputy Inspector General, Inspector General/Joint Director, Director/Additional Director General, Principal Director besides Director General. The Sub-Area Organisers and the Assistant Commandants are inter-changeable in performing field duties.

4. The applicants are aggrieved by the communication from the Deputy Secretary, Ministry of Home Affairs which reads as under:-

"Subject: Nomination of Police Officers
for deployment with UN Police
Task Force at Kosovo in 2003

Reference MHA UO of even number of dated
23rd January 2003 and 28th January 2003 on
the above subject.

2. The matter relating to nomination of Non-combatised staff has been considered by this Ministry. This Ministry is of the view that only police personnel i.e. Combatised Staff should be nominated for deployment under the UN Peacekeeping Mission. SSB is, therefore, requested to nominate six more personnel in place of personnel mentioned in this Ministry's UO of even number dated 28th January 2003."

5. The grievance of the applicants in this regard is that they are being ignored to take part in the training programme to be conducted by the 15th Battalion of Indo Tibet Border Police, Tigri

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Camp, Madangiri and a direction should be issued that they should be allowed to participate in the training and the subsequent selection by the UN SAT Team for deployment with the U.N. Police Task Force at Kosovo. According to the applicants, their case is not being considered on the ground that they are not combatised staff. ~~While~~ ^{is assailed} ~~assailing~~ The said decision [^] to be illegal, because according to the applicants, various posts included in the Executive Cadre of SSB are combatant posts and involve actual field work as in the case of battalion staff, the only difference being that the Executive Cadre officers by the very sensitive nature of their work which involves a lot intelligence and mixing with the local population, are not required to wear uniforms. They are also given basic training like other police officers. They are allowed to carry arms and ammunition and officers of their cadre were being deployed with U.N. Police Task Force, Kosovo. It is on these broad facts that the reliefs referred to above are being claimed.

6. In the reply filed, it has been admitted that Sub Area Organisers were provisionally included in the list of nominations for pre-selection training on the recommendations of the SSB. The SSB wanted the Government to re-consider an earlier decision conveyed vide

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Government of India, Ministry of Home Affairs letter dated 19.9.2002. Mere inclusion in the list of nominations pending final decision by the Government does not ipso facto confer any right for nomination : nor mere inclusion provisionally means Government's final decision about their deployment. It is asserted that there is clear demarcation between the two wings. They are totally different from the applicants who are not combatised staff. In the pleadings, it has been pointed that none of the allowances admissible to the combatised staff like uniform, kit allowance etc. is admissible to this category. They both are governed by different set of rules and are having different retirement ages. The non-combatised officers retire at the age of 60 years while combatised staff upto the rank of Commandant retire at the age of 57 years. Further, for promotion in the combatised ranks, the combatised personnel are required to attain Medical Category Shape-I which is not the requirement for non-combatised ranks. As per the respondents, this shows that they are a separate discipline. It has further been pointed that in the year 2001, the Ministry of Home Affairs was informed by the Ministry of External Affairs about a complaint received by U.N. Peacekeeping Mission, Kosovo alleging that a number of Indian Civil Police Officers deployed in Kosovo were not police

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officers but civil officers belonging to SSB. This created a lot of embarrassment and hence a conscious and considered decision was taken that only policemen should be deputed for U.N. deployment. Pistols are given to Executive Cadre officers for discharge of their official duties but that does not change their status to that of a combatised officer. Furthermore, a plea has been raised that the applicants cannot claim any right to the posting.

7. When the matter was listed for hearing, there was no appearance on behalf of the applicants. In these circumstances, we did not have the advantage of hearing the applicants learned counsel.

8. The basic question raised on behalf of the respondents was that the order under challenge is basically a discretionary order which was passed because of the policy decision and, therefore, this Tribunal should not interfere in such an order which hardly has any civil or legal consequences. Otherwise also, it was alleged that the applicants are not a combatised force and were rightly ignored.

9. On both the counts, we find that the arguments so advanced in the facts must prevail.

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10. Discretionary powers of the administration are as much an important phenomenon in Indian jurisprudence as they are in common law or any other legal system. There is a growing realization that such powers are necessary to achieve a just social order and to make the rule of law a positive reality. Of course that does not mean that the administration must be given unlimited and un-necessary discretion. Discretion does not mean arbitrariness. The words of Lord Halsbury from *Sharp vs. Wakefield*, 1891 Appeal Cases 173 "discretion means, when it is said that something is to be within the discretion of authorities and that something is to be done according to the rules of reason and justice, not according to private opinion: *Rookes case*: according to law and not humour. It is not arbitrary, vague and fanciful"

11. This has been accepted in India from the inception of the Constitution. Thus the courts in India have established that an unguided discretion conferred upon the administrative authorities may not be consistent with the basic rights guaranteed in part III of the same and have invalidated such a conferment in many cases. In *Jaisinghani vs. Union of India*, AIR 1967 S.C. 1427, the Supreme Court observed that in a system

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governed by rule of law, discretion when conferred upon authorities must be confined within defined limits.

12. At the same time, all orders may come under the gaze of the Courts/Tribunal unless they are purely administrative in nature. If rules of fairness and arbitrariness are not given a go-bye the court will be not justified in interfering.

13. While saying so, we are conscious of the fact that there has to be transparency in the system which has to be just and fair and not arbitrary. There is no absolute discretion to pick and choose in an arbitrary manner. This is for the reason that mala fide and arbitrariness both suffer from the same vice. The Supreme Court in the case of M.P. Oil Extraction and another vs. State of M.P. and others, (1997) 7 SCC 592 had encoded the same facts recited above that unless the policy framed is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is violative of any constitutional or statutory mandate, the courts should not interfere. The Supreme Court held:

"Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy

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offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields."

Almost identical was the view point expressed in the case of Gyan Prakash vs. Union of India and others, (1997) 11 SCC 670 and the same principle was stated in the following words:

"Normally the Court will not interfere with the administrative policy of the Government. When such policy violates some provisions of the Constitution such as Article 14, the Court will step in to set right. On facts we are unable to hold that such a contingency has arisen in this case warranting interference."

14. In the present case in hand, it appears that it is basically a policy matter and the discretion so exercised while drawing the said

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policy that non-combatised officers have not to be deputed cannot be challenged before a Tribunal/Court. There is no indefeasible right with a person to be sent on any assignment. Once the discretion is not capricious or arbitrary, we have no reason to go beyond the said discretion that has been so exercised.

15. In the pleadings, an attempt has been made to urge that the applicants are also combatised staff and their ignorance on that basis is illegal. Once again, we find that this plea has to be stated to be rejected. The decision taken indicates that only policemen were to be sent who are combatised staff. The reply indicates that there are separate set of rules and separate retirement ages for combatised and non-combatised staff. Promotion in combatised rank is governed by the Medical Category Shape-I which is not the requirement for non-combatised staff like the applicants.

16. In addition to that, it transpires that Ministry of External Affairs had informed the Ministry of Home Affairs about a complaint received by U.N. Peacekeeping Mission, Kosovo alleging that a number of Indian Civil Police Officers deployed in Kosovo were not police officers but were civilian officers belonging to




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SSB.

17. In that backdrop, even if earlier they were being so sent and complaint in this regard as referred to above was received, we find precious little for us to consider the said decision on the administrative side.

18. Merely because somewhat similar training was given to others keeping in view the nature of duties that have to be performed by the applicants, the same will not confer a right on the applicants to claim that they are also a combatised staff. In this regard, therefore, the objective that the department intend to achieve is clear that people who are combatised staff are sent. The same cannot be held to be arbitrary and, therefore, there is no ground to interfere in this regard.

19. Resultantly, the present application being without merit must fail and is accordingly dismissed. No costs.


(S.K. Malhotra)
Member (A)


(V.S. Aggarwal)
Chairman

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