

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

% **Judgment reserved on: 22<sup>nd</sup> January, 2010**  
**Judgment delivered on: 1st February, 2010**

+ **W.P. (C) No.7994/2009 & C.M. No.4481/2009**

NAIB SUBEDAR K.C. JENA ..... Petitioner  
Through: Col. R. Balasubramanian &  
Mr. S.S. Pandey, Advocates

versus

UOI & ORS. .... Respondent  
Through: Ms. Jyoti Singh & Mr. Ankur  
Chhibber, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE GITA MITTAL**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

### **J U D G M E N T**

**GITA MITTAL, J.**

1. By this writ petition the petitioner assails the denial of the opportunity to go on the UN mission on which the unit, to which he was posted, has been deployed. The petitioner also assails the order dated 30<sup>th</sup> December, 2008, whereby he has been posted out of 2 JAK RIF long after the unit's deployment on the UN Mission.

2. There is no material dispute to the facts giving rise to the petition. To the extent necessary for the purposes of the present adjudication, the same are briefly noticed hereinafter.

3. The petitioner belongs to the Army Education Corps of the Indian army. We are informed that persons belonging to the Army Education Corps and other services are posted in different units for particular tenures. On 1<sup>st</sup> July, 2007, the petitioner was posted to the 2 JAK RIF, an infantry battalion, as its Havildar Instructor – then a Non-Commissioned Officer (hereafter referred to as 'NCO' for brevity) of the army.

4. A letter No.40202/FM/SD-4(A) dated 31<sup>st</sup> January, 2008 was issued by the Integrated HQ of MOD (Army) informing that 2 JAK RIF was selected for a UN mission. Copy of this communication from the Additional Director, Directorate General of Staff Duties of the Integrated Headquarters of the MOD (Army) has also been placed on record by the respondents. We also find no dispute to this fact in the counter affidavit.

5. On the 1<sup>st</sup> July, 2008, an event which should have brought rejoicing to the petitioner occurred. Instead, the same has necessitated the filing of the present writ petition. The petitioner was promoted on this date to the rank of Naib Subedar. Consequently, he became a Junior Commissioned Officer ('JCO' for brevity). It is an admitted position that even after his promotion, he continued to remain posted on the strength of 2 JAK RIF. It is an admitted position that on the 15<sup>th</sup> December, 2008 he was posted along with the unit for completion of the pre-induction training and formalities to the Khanpur Camp, New Delhi, as a precursor to the United Nations deployment.

6. Apart from the petitioner, one Subedar Mukesh Kumar Mishra, respondent no.6, had been detailed with 2 JAK RIF w.e.f. 6<sup>th</sup> November, 2006 as a JCO from the Army Education Corps.

7. In this background the Commanding Officer of the petitioner's unit addressed a communication dated 18<sup>th</sup> September, 2008 to the Directorate General of Military Training intimating it of this position. It was pointed out that as per para 3 of the communication dated 9<sup>th</sup> March, 2007 from the Integrated HQ of MOD (Army), it was only specified that 2 AEC personal would accompany a unit on a UN Mission without mention of any rank structure. A recommendation was made by the Commanding Officer to permit the petitioner, who stood promoted, to accompany the unit on the UN Mission as the second AEC personnel in terms of the said communication.

8. The petitioner contends that after he had completed the essential training and formalities including satisfying the medical fitness test for the foreign posting, the respondent No.3 issued a signal on 25<sup>th</sup> December, 2008 posting the respondent No.7, AEC Hav. Jai Kumar to the 2 JAK RIF for accompanying the unit on the UN Mission with the direction to the respondent No.5 to "post out/side step" the petitioner. This was followed by a communication dated 30<sup>th</sup> December, 2008 from the respondent No.5 posting the petitioner out of 2 JAK Rif to HQ 89 INF BDE.

9. The petitioner has placed reliance on a message dated 11<sup>th</sup> March, 2009 from the AEC records to the petitioner's unit to send the petitioner on the posting with the specific assurance that in case the Commanding Officer's proposal for the petitioner to accompany the

unit on the UN Mission was agreed to by the competent authority, the petitioner would be made available for such posting. The petitioner submits that on account of the pressure put on the petitioner's Commanding Officer, he was compelled to issue the petitioner's movement order on 21<sup>st</sup> March, 2009 despite his recommendations for permitting the petitioner to proceed on the UN posting with the unit still pending consideration.

10. Apart from the communication dated 8<sup>th</sup> January, 2009, another letter dated 2<sup>nd</sup> March, 2009 was sent by the Commanding Officer recommending the petitioner's continuation in the unit as the AEC staff member for the UN Mission. The respondents, however, did not agree to the same. A stand was taken that as per the existing policy only one AEC JCO was authorized during the first rotation of the unit in the deployment for the UN posting, who would be relieved by a NCO in the second rotation. According to the respondents, for the reason that the petitioner stood promoted as a JCO, he could not be sent on the UN posting as one JCO was already in place in the unit.

11. Aggrieved by this stand of the respondent, the petitioner has filed the present writ petition on or about the 28<sup>th</sup> of March, 2009 contending that the stand of the respondents was contrary to the prescribed policy for the UN posting and also contrary to the manner in which the same had been operated in the past. The petitioner also assails his posting out of the unit after its selection for the UN Mission. The petitioner has placed reliance on a specific instance with regard to the manner the respondents had proceeded when a similar situation

arose in relation to AEC personnel posted with the 10 Assam RIF which was earlier deployed on the UN posting at the same location.

12. Before this court the sole ground for opposition of the claim of the petitioner for deployment on the foreign posting in the second rotation of the unit is the contention that after his promotion, the petitioner was not on the authorized strength of 2 JAK RIF and that only such personnel who are on the authorized strength of the unit could proceed for the foreign posting.

13. We have heard learned counsels for the parties at length and given our considered thought to the material placed as well as submissions made before us.

14. The COC issue which arises for consideration is as to whether the stand taken by the respondents is in consonance with the declared policy governing the subject. The petitioner has placed before us the policy dated 22<sup>nd</sup> November, 2004 which governs detailment of attached personnel on UN Missions. It is not disputed on behalf of the respondents that this very policy governs the deployment of UN Mission even on date.

15. We find that this policy statement reiterates the position that an Infantry Battalion nominated to proceed on a UN Mission consists not only of the infantry personnel but requires posting of requisite number of persons from other arms and services. Inasmuch as, both parties have placed extensive reliance on this document, the relevant portion of the policy dated 22<sup>nd</sup> November, 2004 may be usefully extracted *in extenso* and reads as follows :

"71362/Policy Gen/SD-3 UN 22 Nov.,04

GENERAL STAFF SHAKHA/GENERAL STAFF  
BRANCH SD-3 (UN)

POLICY : DETAILMENT OF ATTACHED  
PERSONNEL ON UN MSNs

1. Please refer to existing policy on the subject. Inf bns of the Indian Army have since long been detailed to proceed on UN Peacekeeping msns in various regions of the world. As of now, whenever an inf bn is nominated to proceed on an UN msn the composition of the bn is made up to meet the requirements of the UN msn by posting in the requisite number of personnel from other arms and services under arrangement of concerned line dtcs.

2. As per the provisions of the existing policy being followed all attached personnel on strength of the nominated inf bn (normally personnel from EME AMC and AEC) are replaced by a corresponding (or more if required) number of personnel specially selected for the UN msn by respective record offices/line dtcs. This invariably gives rise to a feeling of being discriminated against amongst those posted on the strength of the unit who have honestly served the bn through thick and thin but have to be posted out after the bn is nominated to proceed on a UN msn. This also temporarily disturbs the cohesion in the bn for understandable reasons. Feedback has been received from our bns who have served on UN msns recommending that personnel from other arms and services who are posted on the strength of the bn at the time of nomination should not be denied an opportunity to proceed on the UN msn with the bn unless they themselves are disqualified on acct of not meeting certain mandatory QR of discipline and med status.

3. A **policy decision** has therefore been taken that henceforth, all personnel from other arms and services who are already on the **posted strength of the inf bn** at the **time of its induction for the UN msn** and **fulfill all other med disciplinary and service criteria**, will be allowed to proceed with the bn on the UN msn. Only additional personnel from

other arms and services as may be required to make up the desired composition of the bn will be posted to the bn by requesting the line dtes for the same.”

It is noteworthy that so far as this policy is concerned, it noted, the past experience that personnel from other arms and services who are posted on the strength of the battalion on nomination should not have been denied an opportunity to proceed on the UN Mission with the battalion, unless they are otherwise disqualified. A clear position, therefore, has been taken that “all personnel” from “other arms and services” who are “already on the posted strength of the Infantry Battalion”, at the time of its induction for the UN Mission and otherwise eligible would be allowed to proceed with the battalion. The material date thus on which entitlement for proceeding on the UN Mission is concerned is the date on which the nomination of the unit for the UN Mission is effected.

16. The respondents have made a fervent effort to contend that only one JCO, and one NCO of the AEC could proceed on the UN Mission; that the petitioner having been promoted to the post of a JCO had become a surplus against the authorised strength of the unit and therefore could not proceed for such posting.

17. The above facts show that the petitioner has been side stepped from the UN posting not because of the reason he was not eligible for the same, but for the reason that he had been promoted after the deployment of the unit on the UN Mission. Our attention is drawn to the Record Of Instruction being ROI/2005 which prescribes the instructions regarding “Selection of AEC Personnel For Posting To

The UN Mission". These instructions were amended and approved by the Army Headquarters and communicated to AEC Records by the letter no. A/7901/UN Mission/GS/MT-14 dated 30<sup>th</sup> of May, 2005. No dispute to their bindingness has been raised in these proceedings. These instructions leave no ambiguity at all in the manner in which the respondents are required to proceed in the matter. The aforesaid instructions, inter alia, contain the following provisions:

"General

1. The Indian Army is one of the largest contributors of troops in UNPK operations. In recent years, the strength and frequency of deployment of Indian Troops on UN Missions/Foreign Assignment has further increased. The Army Educational Corps too contributes its due share on these assignments, whenever a unit authorised AEC PBOR is nominated for a UN Mission.

Eligibility

3. xxxx

(g) All PBOR due for promotion or attending a promotion cadre/career course during the period in which the unit is likely to be away on a UN Mission will become eligible only if they render an "ADVERSE CAREER CERTIFICATE" (appx 'A') duly countersigned by the Officer Commanding their respective units.

Xxxxx

Status of AEC PBOR Already Posted to a Unit Nominated for UN Mission

5. All AEC PBOR already on the posted strength of the unit at the time of its induction for a UN Mission, who fulfill Medical, Disciplinary and Service QR laid down by AHQ and the amplifications thereof contained in this ROI, will be allowed to proceed with the unit in accordance with Army Headquarters policy as

laid down vide letter No.71302/Policy/ Gen/SO 3(UN) dt.22 Nov 2004.

6. PBOR who accompany a unit on a UN Mission will not be posted out from the unit till the conclusion of the UN assignment, irrespective of the length of the assignment or the total duration of their tenure with that particular unit or the location of their service, (Peace/Field/High Altitude Area) provided they have rendered an "Adverse Career Certificate" as per Appx. 'A' to this ROI.

xxxx

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 AHQ will be taken as the cut off date for upholding/ cancellation of Posting Orders as and when required.

A 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 indl extended upto the date on which the main body of the unit reaches its peace/ad loc in India."

(Underlining supplied)

18. The above instructions reiterate the policy dated 22<sup>nd</sup> November, 2004 and contain a clear stipulation that a person, who is on the posted strength at the time of its induction on the UN Mission, would not be posted out from the unit. The respondents have also anticipated the possibility of a likely promotion which may become due to a personnel while abroad on the UN posting. In para 3(g) of the instructions, it is provided that it is only if a person becomes due for promotion or for attending a promotion cadre/career course while the

unit is away or likely to be away on a UN Mission, then such event i.e. the promotion/course may require to be postponed. For this reason option is given to the AEC personnel who are eligible to proceed on the UN posting only after giving an “adverse career certificate”.

19. We also find the unequivocal mandate of these instructions that in case a posting order of any AEC personnel is signed on or after the date of the nomination of the unit for the UN Mission, the same would be cancelled and the tenure of the individual extended upto the date on which the main body of the unit reaches its assigned location in India. It is inherent from the above that the spirit and purpose of the policy and instructions is that all such personnel who are on the posted strength of the unit on the date of its induction on the UN mission and satisfy the eligibility conditions prescribed in the instructions of 2005 are entitled to proceed for the foreign deployment – UN Mission irrespective of whether they are promoted between the time of the unit’s deployment and its proceeding on the UN Mission.

20. It is necessary to examine the issue of the cut off date for entitlement for consideration of eligibility on the posting. The communication dated 22<sup>nd</sup> November, 2004 does not advert to the date on which the nomination of the unit for the foreign posting is required to be considered to have been made. However, this issue has also been anticipated by the respondents and clearly provided for in the instructions contained in the AEC ROI (Records Office Instructions) 02/2005, as amended vide ROI 03/2006. These instructions lay down a comprehensive policy governing the selection procedure for shortlisting personnel for a UN Mission. Para 9 of the policy declares

that the actual date on which the nomination order of the unit for the UN Mission is signed at the Army Headquarters will be taken as the cut-off date with regard to the matter relating to upholding/cancellation of posting order as and when required. As per these instructions a posting order signed on or after the date of nomination of unit for a UN Mission will be cancelled.

21. In 2007, a challenge was laid before this court by one Naib Subedar Singh, also of the AEC, seeking posting on a UN Mission contending that his name was illegally removed from the select list of personnel when he was posted with 2 Naga Battalion after its selection for such mission. Though the challenge is not relateable to the issue arising in the instant matter, however, this court had occasion to consider the issue of the cut-off date with regard to posting of AEC personnel to UN bound units. In para 10 of the judgment pronounced on 23<sup>rd</sup> of May, 2008 in the ***W.P.(C) No.8085/2007*** entitled ***Naib Sub Subedar Singh v. Union of India & Ors.***, this court held that the cut-off date in terms of the said policy and ROI 02/2005 (as amended vide ROI 03/2006) is the actual date on which the nomination order is signed at the Army Headquarters.

22. On application of the above noticed instructions and principles, the documents placed on record in the instant case show that the selection and nomination of 2 JAK RIF on the UN Mission was actually effected on 30<sup>th</sup> January, 2008 when this fact was also communicated by the Integrated HQ of MOD (Army) to 2 JAK RIF under copy to the headquarters of the concerned command.

The principles laid down by this court, the policy and instructions noticed hereinabove would bind adjudication by this court.

23. It is noteworthy that the petitioner continued to be posted with the 2 JAK RIF till as late as on 11<sup>th</sup> of March, 2009 when he was required to move to HQ 29 Inf.Bde. The respondents have not stated or pointed out any other unit or battalion to which the petitioner was posted between 30<sup>th</sup> January, 2008 to December, 2008. Even the message dated 26<sup>th</sup> of December, 2008 merely mentioned that the petitioner be "posted/side stepped" without anything more. Thus, the petitioner has clearly continued to be posted on the strength of 2 JAK Rif for almost a year after its selection for the UN mission. So much so that he was also deployed for, and underwent the necessary training with the unit for the UN mission.

24. At this stage, it is necessary to note that so far as the eligibility is concerned, the respondents have not raised any dispute before this court with regard to the petitioner's entitlement. The petitioner meets the service, medical and disciplinary criterion for proceeding on the UN mission. In fact in the letter dated 8<sup>th</sup> of January, 2009, the petitioner's Commanding Officer has informed that the petitioner's conduct in the unit since his posting on 1<sup>st</sup> of July, 2007 has been exemplary and his devotion to duty and performance outstanding during his tenure with the battalion. Again on 2<sup>nd</sup> of March, 2009, the Commanding Officer strongly recommended the petitioner's inclusion in the mission in view of his dedication and brilliant service. This position is not disputed by the respondents in the counter affidavit or the submissions made before us.

25. So far as the petitioner's promotion is concerned, this event has also occurred almost seven months after the unit was selected for the UN posting. The petitioner, therefore, met the criterion prescribed under the Instructions of 2005 and policy of 2004 as noted above, and could not have been posted out or side stepped because of his promotion, and was entitled to proceed with the unit.

26. The respondents' contention that the petitioner was not on the authorized strength of the unit and, therefore, was not entitled also appears to have no legal or justifiable basis. There is no dispute that the Instructions of 2005 as well as the policy dated 22<sup>nd</sup> November, 2004 continue to bind the respondents' actions so far detailing AEC personnel on the UN Mission postings are concerned even on date. Nothing to the contrary has been pointed out.

27. The respondents have placed reliance on a document, which purports to be a tabulation of units where AEC, JCOs have been assigned as on 30<sup>th</sup> November, 2009. Even if this was to be considered as a document laying down the authorized strength of the units, the same would not have bearing on the present matter, inasmuch as, the policy of 2004 and instructions of 2005 noted above are concerned with the posted strength of the personnel in the unit selected for the UN Mission and have anticipated the event of a possible promotion of the personnel posted in unit. The very fact that the respondents have prescribed the calling of an "adverse career certificate" only from a person who becomes entitled to promotion between the period when the unit has been nominated for the UN mission posting and prior to it actually proceeding for the same, would show that happening of such

an event after the nomination of the unit, is not to be considered as an ineligibility or a disability for such person to proceed with the unit. The same is also apparent from the fact that the instructions clearly stipulate that an AEC personnel who is on the posted strength of the battalion on the date of its nomination/selection would not be posted out irrespective of length of service or tenure. This stipulation clearly negates the submission that the respondents impart any sanctity to authorized strength of units.

28. We also find that the stand taken before this Court is contrary to the stand of the respondents in the several communications, which have been placed before us. A letter dated 21<sup>st</sup> January, 2009 the office of the Chief Record Officer and Commanding Officer of the Army Educational Corps was sent as a response to the recommendation dated 8<sup>th</sup> of January, 2009 by the Commanding Officer of 2 JAK RIF requesting cancellation of the petitioner's side stepping. In this letter, it was mentioned that as per the letter dated 9<sup>th</sup> of March, 2007 of the Integrated HQ of MoD (Army) one AEC JCO and one AEC NCO would proceed to the UN Mission with the battalion and for this reason, the petitioner was required to be side stepped as directed.

29. We had called upon the respondents to produce the letter dated 9<sup>th</sup> of March, 2007, which has been handed over to this court during the course of arguments. This communication relates to detailment of the AEC personnel with troops on the UN Mission. Based on the recommendations of the Integrated HQ of MOD (Army) the (SD Directorate), the following the directions of DCOAS (IS&T) were communicated to the AEC:

“whilst no fixed Nos. can be earmarked for AEC pers, dispensation may be considered on case to case basis”.

In para 3 of the communication it was observed that the vacancy is given to AEC personnel as a purely welfare measure at the cost of 2 combatants and for this reason only 2 AEC personnel would proceed to an Infantry Battalion deployed on UN Mission for a period of 6 months.

This communication unequivocally records that this special dispensation be worked so that all AEC personnel posted to the infantry battalion could get an equal opportunity to be part of the UN mission with the battalion.

30. It is an admitted position that the UN Mission has not required deployment of personnel by specification of a rank structure. From the above as well, it is apparent that the policy of deployment of AEC personnel with the UN is not rank specific. The reliance by the respondents on the policy dated 9<sup>th</sup> of March, 2007 is in fact wholly misplaced and actually runs counter to the submissions which have been made before this court.

31. Col. Balasubramaniam arguing for the petitioner has submitted that because of constraints of man power and placement of persons, the procedure of posting of troops based on the sanctioned strength as per rank is not sacrosanct and is not strictly enforced. Having regard to the posting of the petitioner itself, there is substance in this submission. The same is only reinforced by the care taken up in

drawing the provisions of the policy of November 2004 and the ROI of 2005 which make reference only to 'posted' strength of the unit.

32. The list dated 30<sup>th</sup> November, 2009 of the deployment of the AEC JCOs and other personnel placed before us by the respondents shows that most of the formations and units have only one JCO and one Havildar assigned to them. The competent authority would have drawn up the Instructions of 2005 after careful consideration of the matter. The submissions made before this Court based on the alleged authorized strength of the unit are contrary to the policy of 2004 as well as the instructions of 2005 as detailed hereinabove and are legally untenable. The policy would have been drawn up after a due consideration of the cadre management, including the aspects of promotion, posting and placement of the personnel. This is apparent from also the fact that the petitioner was not only promoted on 1<sup>st</sup> of July, 2008, but continued to be on the posted strength of 2 JAK Rif till March, 2009. The respondents have contended that the nomination of the 2 JAK Rif for the mission was effected on the 23<sup>rd</sup> of July, 2008. It is not the respondents' case at all that the petitioner was not posted against the strength of the unit even on this date, which alone is the relevant factor so far as the UN Mission deployment is concerned.

33. Learned counsel appearing for the petitioners has submitted that on other occasions, the respondents have read and applied the policy and the said instructions in the manner suggested by the petitioner before this court and for this reason, have ensured that all AEC personnel who are on the posted strength of a unit selected for deployment of UN Mission, are given the opportunity of proceeding on

a mission along with the unit. In this regard, our attention is drawn to the manner in which the respondents enabled the AEC personnel who were posted with 10 Assam Inf Bn, which was selected and went for the UN Mission prior to the deployment of 2 JAK RIF on the same mission. It is pointed out that 10 Assam Rifles was having the deployment of 1 AEC JCO and 3 AEC NCOs on the strength of the unit when it was selected for the UN Mission. In view of the aforementioned policy only one vacancy of a AEC personnel below official rank is permitted to proceed with the Infantry Battalion Group on a UN Mission in each rotation. The 10 Assam Inf Bn had to induct 1 AEC JCO in its first rotation of troops and 1 NCO in the second rotation. After this posting, 2 AEC NCOs posted with the battalion were left out of the troops detailed on the mission. Their case was taken up and it was proposed to accommodate them in the battalion in the second rotation for the UN mission against the Sol GD(Soldier General Duty) vacancy existing in the battalion. It was observed that on account of the large size of the contingent required for the UN mission, the 10 Assam Inf Battalion was able to rotate its 100% personnel on the foreign mission and yet was required to procure approximately 150 personnel from other battalions of the regiment. Such a request was made by 10 Assam Inf Bn by a communication dated 19<sup>th</sup> February, 2008. The respondent No.4 responded by a communication dated 17<sup>th</sup> March, 2008 accepting the request for inclusion of the AEC personnel against the personnel below officer rank (Sol GD) vacancy in the second rotation.

34. We find that a similar request was made by Commanding Officer of 2 JAK RIF Inf Bn on 2<sup>nd</sup> March, 2009 to the respondents pointing out that keeping in view the petitioner's dedication and outstanding service towards the organization, the case be viewed in his favour and the unit be permitted to include him as part of its contingent to the UN Mission in the Democratic Republic of Congo (MONUC) against the JCO(GD) vacancies existing in the battalion due to the size of the required contingent. It was mentioned that the battalion was able to rotate all its personnel still leaving a deficiency of approximately 150 persons, which was being filled from other battalions of the regiment.

Nothing is pointed out to us as to what precluded such course of action so far as the petitioner was concerned. Assuming that he was adjusted against the vacancy of a JCO (GD) in the second rotation of the battalion, no prejudice, financial or otherwise would result on any count at all. As discussed above, no prohibition at all on the petitioner's proceeding on the foreign posting is pointed out.

35. The petitioner places reliance on a telegraphic signal dated 21<sup>st</sup> April, 2009 and letter dated 2<sup>nd</sup> of June, 2009 from respondent no. 3 to respondent no.4 seeking approval for including the petitioner to accompany the unit against the vacancy of the JCO (GD). In response to such proposal by letter dated 27<sup>th</sup> April, 2009 followed by a signal dated 5<sup>th</sup> of May, 2009, the respondent no. 4 has instructed respondent no. 3 to take a decision at their end stating their approval is not required. Certainly no objection to the proposed action has been pointed.

36. It is to be noted that it was only on account of posting out of the petitioner that another officer of the AEC was directed to be posted in his place. Pertinently, the respondents have posted another AEC personnel who is a NCO only on 30<sup>th</sup> December, 2008 in the unit who has been detailed to proceed for the UN Mission in the second rotation. It is not that another combatant has been deployed to accompany the unit for the second rotation on the said UN Mission. The orders issued by the respondent on 30<sup>th</sup> December, 2008 reflect that the petitioner was posted out only to prevent him from proceeding with the unit on the UN Mission without assignment or awaiting a relief in his place. Col. Balasubramanian, learned counsel appearing for the petitioner, has pointed out that even the AEC relief personnel assigned to the unit in the petitioner's place has declined accompanying the unit on the UN Mission. In any case, having regard to the view we have taken, the posting out of petitioner long after its selection on the UN Mission was not permissible as per the policy, and instructions. Having regard to the message dated 11<sup>th</sup> of March, 2009 from the AEC records, the posting out is inconsequential.

37. The respondents have submitted that they acted fairly and conducted a selection process to select one from the two AEC JCOs available in 2 JAK Rifles. It is contended that Naib Subedar Mishra was found more meritorious than the petitioner and for this reason was deputed on the first rotation of the battalion on the US Mission.

It is noteworthy that the aforementioned policy postulates scrutiny of the personnel from the eligibility perspective and no method of selection is prescribed. We have found that only one AEC personnel stands deputed on the UN Mission. However, as per the policy declarations of the respondents, a total of two AEC personnel who were posted on the strength of the unit are entitled to accompany the battalion. The respondents have raised no objection at all to the eligibility of the petitioner even on date.

The so called selection to choose as to which of the two JCOs would accompany the first rotation of the battalion on the UN Mission cannot disentitle the petitioner from proceeding with the unit on its second rotation.

38. From the above discussion, the position which emerges is that the petitioner was on the posted strength of the battalion on the date that it was selected for the UN Mission and continued to remain thereon for a period of almost a year till he was posted out. It also has to be held that in view of the applicable policy and instructions, his promotion to the post of Naib Subedar would have no impact so far his detailment for the UN Mission was concerned. The respondents have even accommodated AEC personnel against the available GD vacancies in the battalion to ensure that all AEC personnel on the posted strength of the battalion get the life time opportunity of proceeding on a UN Mission. The respondents accept that this is a welfare measure. The valuable experience from interacting with

international troops and following a unique discipline would further the professional learning and enhance his skills rendering him a better AEC personnel. There is no dispute at all that the petitioner satisfies the eligibility criterion in terms of service, medical fitness and disciplinary status.

39. As a result of the above discussion, it has to be held that the posting out of the petitioner by the order dated 30<sup>th</sup> December, 2008, after the selection of 2 JAK RIF for the UN posting was contrary to the respondents' instructions on the subject.

Accordingly, the order dated 30<sup>th</sup> December, 2008 is hereby set aside and quashed.

40. As a consequence it is directed that the petitioner would be entitled to proceed on the UN Mission in the second rotation of 2 JAK RIF. The respondents shall ensure that the petitioner is permitted to complete remaining formalities, if any, and to proceed on the UN Mission without any delay.

This writ petition is allowed in the above terms.

**(GITA MITTAL)**  
**JUDGE**

**(VIPIN SANGHI)**  
**JUDGE**

**February 01, 2010**(rsk)