

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

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Judgment delivered on: 17.10.2014

+ **W.P.(C) 7146/2014**

**CDR CSS DEOPA (RETD).**

..... Petitioner

versus

**UNION OF INDIA & ANR.**

..... Respondents

**Advocates who appeared in this case:**

For the Petitioners : Mr Aditya Chhibber and Mr Prashant Shivarajan.

For the Respondents : Mr Rajesh K. Gogna, CGSC with Mr Arnab Naskar for R-1 & 2.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**JUDGMENT**

**VIBHU BAKHRU, J (ORAL)**

**CM No.16775/2014**

Allowed, subject to all just exceptions.

The application stands disposed of.

**W.P.(C) 7146/2014 & CM No.16774/2014**

1. The petitioner impugns an order dated 19.06.2014 passed by respondent no.2 (hereinafter referred to as “DGR”) whereby DGR had held that since the petitioner had exceeded the authorized quota of 300 guards, his security agency functioning under the name and style of Jai Malanath Security Service would be “Non Operational (Quota Over)”. The said order dated 19.06.2014 is hereafter referred to as “impugned order”. It is

contended on behalf of the petitioner that the impugned order is contrary to the policy of the respondent and the petitioner would continue to be entitled to sponsorship for security guards by renewing his empanelment.

2. According to the petitioner, the quota of 300 guards fixed was only for a block of four years and would be automatically replenished after completion of the four year period.

3. Briefly stated, the relevant facts for considering the controversy involved in the present petition are that the petitioner was serving as an officer in the Indian Navy and took pre-mature retirement on 01.03.2003. After his retirement, the petitioner was empanelled with the DGR on 21.11.2009 for providing security services.

4. In order to rehabilitate ex-servicemen and to enable them to adapt to a civilian life, the Government had issued instructions to Central Public Undertaking to avail security cover from security agencies sponsored by DGR. The DGR provides sponsorship of guards to empanelled security agencies which are run by ex-servicemen. In order to have an equitable distribution of sponsorship, the DGR had framed a policy whereby the DGR has fixed a quota of security guards and the sponsorship is limited to that extent. In other words, each empanelled servicemen would be entitled to provide security services by deploying a total of 300 guards over a span of four years or till he attains the age of 63 years, whichever is earlier.

5. This policy was amended w.e.f. 09.07.2012 by an Office Memorandum no.28(3)/2012-D(Res-I) and the quota of guards for each sponsored ex-serviceman was fixed to a maximum of 70 guards per year

and this sponsorship would be valid up to the age of 60 years. Paragraph 15 of the Office Memorandum dated 09.07.2012 is quoted as under:-

“15. Quota of guards

(a) Individual ESMs: The quota for each sponsored ESM will be upto 70 guards year. The sponsorship will be valid for 2 years and extendable up to the age of 60 years. The sponsorship will clearly indicate the date up to which the sponsorship is valid. However, actual sponsorship will depend on demand and there will be no guarantee in this regard. The above figure is the upper limit for the present, which may be amended based on demand, etc.

(b) The empanelment will be renewed every 3 years.

(c) ESM Corporation: DGR will sponsor not more than 1000 Security Guards/year. The number of guards will not exceed 1000 at any point of time.

(d) The CPSUs will seek fresh sponsorship/re-sponsorship from DGR, 3 months prior to this date. It will issue a satisfactory performance report if seeking re-sponsorship. For existing private limited security agencies, the date upto which such sponsorship is valid will be clearly indicated and allowed to complete this term. The CPSUs will be informed by DGR in this regard. However no additional director will be permitted.

(One Guard Year is defined as One Security Guard employed for 12 months).”

6. The above referred Office Memorandum was subsequently amended by an Office Memorandum dated 16.01.2013. Paragraph 4 and 15(a) of the said Memorandum was also amended whereby the quota of guards for each

sponsored ex-serviceman was increased to 120 guards per year. Paragraph 4 as amended by Office Memorandum dated 16.01.2013 reads as under:-

“All individual security agencies and Private Limited Companies empanelled prior to 9<sup>th</sup> July, 2012 will be governed by the old guidelines on security agencies in respect of age and cumulative quota of guards without being permitted to add new Directors. Thus security agencies empanelled prior to 9<sup>th</sup> July, 2012 will be governed by the old rule of 63 years of age/cumulative quota of 300 guards whichever is earlier.”

(emphasis supplied)

Paragraph 15(a) as amended by Office Memorandum dated 16.01.2013 reads as under:-

“(a) Individual ESMs: The quota for each sponsored Ex-servicemen will be upto 120 guards year. The sponsorship will be valid for 2 years upto the age of 60 years of ESM(0). However, actual sponsorship will depend on demand and there will be no guarantee in this regard. The sponsorship letter will clearly indicate the date upto which the sponsorship, is valid.

DG (R), in order to meet the impending requirement of PSUs may enhance the quota of guards based on demand on pro-rata basis under intimation to MoD.”

7. The empanelled ex-servicemen are also required to file a return in the prescribed form (N-2 Updation) with respect to the guards deployed by the security agency. This is essential to implement the policy as framed by the DGR. The DGR found that the petitioner had availed of his quota of 300 guards and the petitioner had also not disclosed the correct strength of guards in the N-2 returns filed by him. In these circumstances, the DGR

passed an order dated 27.01.2011 dis-empanelling the petitioner for sponsorship of guards as a security agency. Aggrieved by the said order, the petitioner preferred a Writ Petition (being W.P.(C) 1464/2001) which was disposed of by a Single Judge of this Court by a judgment dated 16.12.2013. This Court set aside the dis-empanelment order dated 27.01.2011 as the same had been passed without affording the petitioner an opportunity of being heard. It was further clarified that respondents would be at liberty to pass a fresh order after giving a proper show cause notice to the petitioner.

8. In compliance with the said judgment of this Court, the petitioner was issued a show cause notice and also afforded an opportunity to be heard. After hearing the petitioner, the DGR passed the impugned order principally on the ground that the petitioner had exceeded the authorized quota of 300 guards.

9. The fact that the petitioner had exceeded the quota of 300 guards is not disputed by the petitioner. He, however, contends that this quota has been increased to 120 guards per year and the petitioner would also be entitled to the same. It was further submitted that even as per old policy (which was in vogue prior to 09.07.2012) the petitioner was entitled to 300 guards on a cumulative basis in a block of four years.

10. The learned counsel for the respondent has submitted that the petitioner's understanding of the policy is erroneous and an ex-serviceman empanelled with the DGR prior to 09.07.2012 was entitled to a maximum of 300 guards in a four year period or till the ex-serviceman attained the age

of 63 years. Thus, in any event the maximum number of guards on a cumulative basis could not exceed 300. It was further submitted that this policy has been uniformly applied by DGR with respect to all ex-serviceman who were empanelled prior to 09.07.2012. He further submitted that revised guidelines were only applicable to ex-serviceman who were empanelled after 09.07.2012.

11. The policy framed by the respondents clearly indicated that the empanelled ex-servicemen were only entitled to a cumulative quota of 300 guards or till the ex-servicemen attain the age of 63 years. The counter affidavit filed on behalf of DGR in W.P.(C) 1464/2010 also clearly stated that *“the ceiling limit of allocations of guards to individuals proprietary security agency is 300 guards cumulatively in a four year period or 63 years of age of the proprietor, whichever is earlier”*.

12. Empanelling ex-servicemen for providing security services is only a measure to enable the ex-servicemen to adapt and establish themselves to a civilian life and was not intended to support the ex-servicemen for their remaining productive life post superannuation. This Court in the case of **Group Captain (Retd) Raj Singh Kataria v. Union of India & Ors.:** **W.P.(C) 6025/2012** decided on 30.11.2012 relied on paragraph 26 of the Instructions for Functioning of DGR Empanelled Ex-servicemen Security Safety and Fire Protection Management Agencies, which also spells out this object and is quoted below for ready reference:-

“26. An agency is initially sponsored to the Principal Employer for a period of one or two years. On the recommendations of the Principal Employer the same agency

may be re-sponsored as per norms laid down of quota of guards and age limit. It is also mandatory that there is no complaint outstanding against the agency and that it has been sending reports and returns as specified in these instructions. However, no agency will be sponsored for at a location beyond four years. It is expected that within this period the ESM Security Agency would have established itself and expanded its operation as a security service provider into the civil business and industry. This is also to provide an opportunity to newly retired ESM to avail of such opportunities.”

13. The contention that the petitioner should be granted the benefit of the new policy cannot be accepted. Although under the new policy the quota for number of guards is increased, the age bar has been decreased from 63 years to 60 years. The decision of the DGR to consider the ex-servicemen empanelled prior to 09.07.2012 under the old policy cannot be faulted. This Court in the case of **H.K. Basoya (Retd.) & Anr. v. Union of India & Anr.:** **W.P.(C) 4399/2014** decided on 22.09.2014, had rejected the challenge to the cut off date of 09.07.2012 and held that the same could not be subject to judicial review under Article 226 of the Constitution of India.

14. In the given circumstances, I find no infirmity in the impugned order passed by DGR and accordingly, the present petition is dismissed.

**VIBHU BAKHRU, J**

**OCTOBER 17, 2014**  
**RK**