

(2012) 08 DEL CK 0199

Delhi High Court

Case No: Writ Petition (C) 4864 of 2012

Cpl. Sandeep Kumar

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: Aug. 21, 2012

Citation: (2012) 193 DLT 144

Hon'ble Judges: Pradeep Nandrajog, J; Manmohan Singh, J

Bench: Division Bench

Advocate: Arvind Nayar, for the Appellant; Barkha Babbar, Advocate for R-1 to R-3 and Mr. Naresh Kaushik, Advocate with Ms. Aditi Gupta, Advocate for R-4, for the Respondent

Judgement

Pradeep Nandrajog, J.

Still in his teens, barely past eighteen, but less than nineteen years of age, armed with a Senior Secondary High School Certificate, the petitioner joined service under the Indian Air Force as an Airman on January 12, 2004. He obviously did so for the reason his parents could educate him no further and there was a financial constraint, if not stress, in the family. As a young lad, barely past the age of eighteen, the petitioner picked up public employment and after appropriating a small portion of his earning for himself, remitted the same to his parents so that in their old age, even they could find some joy in life. The petitioner is a native of village Khaleta District Rewari, Haryana. But the petitioner had a higher vision in life. While serving the Indian Air Force he completed higher education and obtained a graduate degree. He kept on reading and enhancing his knowledge.

2. Who does not desire to achieve greater heights in life? Except the lazy, we can think of none.

3. The petitioner is not a lazy person. He not only acquired a further degree when in service, but even read enough to sit at a competitive examination conducted by UPSC for the post of Assistant Commandant in the Central Para Military Forces.

4. Responding to an advertisement dated May 29, 2010 inviting application from eligible candidates to sit at the examination pertaining to the recruitment of Assistant Commandants in the Central Para Military Forces, then aged 24 years, the petitioner submitted the necessary application form. He committed a mistake which is now being held against him. Required to certify in the application form that he had informed his department that he would be taking the examination in question, without informing his department, the petitioner submitted the application form and disclosed therein that he had informed his department.

5. The requirement of the form admittedly is, that those who are in Government service should either get the form forwarded through their office or alternatively could submit the form directly but expressly recording an undertaking in the form that they had informed the concerned department of having submitted the form.

6. The hard work put by the petitioner paid dividends when the result was declared in January 2012 and the petitioner's name appeared at serial No. 68 of the list of successful candidates allocated to Central Industrial Security Force. On March 26, 2012, the petitioner received a provisional letter of offer which required the petitioner to obtain a discharge from the Air Officer Commanding. The petitioner submitted the necessary application which was rejected on the ground that the petitioner had applied for the post in question without prior intimation to the department and additionally for the reason when the petitioner had applied for the post in question he had not completed 7 years' service from the date of enrollment in the Indian Air Force.

7. As per Air Force Order No. 14/2008 dated September 19, 2008, guidelines have been framed on permission to be granted to Air Force Personnel to apply for civil posts or posts in Public Sector Undertakings. Vide paragraph 1 of AFO 14/2008 it is stipulated that no Air Force personnel would be permitted to apply for a civil post or a post in a Public Sector Undertaking unless he has served for 7 years from the date of enrollment. Further, if the post is a Group "A" post, the right to be relieved from service is a matter of right but for other posts the right to be discharged is subject to the requirement and need of the Air Force which is based upon the criticality in the trade i.e. number of officers available in a particular discipline; and if the number is less, the same would be treated as a critical situation.

8. The post of Assistant Commandant in the Central Para Military Forces is admittedly a Group "A" post and thus the issue of criticality in the discipline in which the petitioner is serving in the Air Force is irrelevant.

9. As noted, the reason why the petitioner is not being discharged from service is that he did not inform the department before he submitted the application form to UPSC and secondly as on the date when he submitted the application form he had not served the Air Force for 7 years.

10. As noted, the petitioner joined the Air Force on January 12, 2004 and would have thus completed 7 years service as on January 12, 2011. Admittedly, the petitioner had submitted the application form to UPSC in June 2010, by which date the petitioner had not completed 7 years service.

11. AFO 14/2008 requires a No Objection Certificate to be obtained by Air Force personnel for being discharged from the Air Force, and vide para 7 of the policy it is stipulated as under:-

7. Application for NOC is to be submitted by the individual after receiving call letter from the interview/verification of documents or after the result of written test where selection is based on success in written test only. However, in all cases NOC is to be obtained by the individual invariably before submitting application for discharge on being selected for the civil post.

12. In an unreported decision dated December 16, 2008 in WP(C) No. 8760/2008 Pradeep Kumar v. UOI & Anr., considering a pari-materia policy framed by the Air Force, where the petitioner therein had similarly applied to take the examination for the post of Assistant Commandant in a Para Military Force but had not completed 7 years service but by the time the result was declared and when he sought a discharge, had completed 7 years service, the Division Bench held that the ethos of the policy was that a person should have served Air Force for 7 years before he could seek discharge and thus it hardly mattered whether on the date when he had applied for the job the person had not completed 7 years service; if when the person sought discharge he had served for 7 years, the right to be discharged, for Group "A" posts, would automatically flow.

13. The said view has been reiterated by various Division Benches in the decisions dated October 21, 2009: WP (C) No. 9088/2008 Cpl. N.K. Jhakar v. UOI & Ors., dated November 30, 2009: WP(C) No. 13420/2009 Cpl. Praveen Kumar v. UOI & Ors., and dated July 28, 2010: WP(C) No. 3257/2010 Cpl. Charan Singh v. UOI & Ors.

14. It may be true that if the petitioner is directed to be discharged by the Air Force Authorities we may be encouraging a breach of discipline and would be condoning wrong information furnished by prospective candidates while filling up the application forms. On facts we have noted that the petitioner furnished a wrong declaration when he submitted the application form that he had informed his department of so doing: a declaration which is admittedly wrong.

15. But, declarations which relate to a vital information which would have a bearing on public employment i.e. eligibility, declarations pertaining to character etc. would stand on a footing different than declarations which relate to procedures.

16. Courts often face a dilemma where competing interests clash, but then it is the duty of the Court to solve the same. The dilemma which we face in the instant case is of a young man who stands before us and beseeches us that coming from a

humble socio-economic background, standing by his family by taking up a job at a young age of 18 and having served the nation for 7 years, first as an Airman and then as a Corporal with the Air Force, he should be pardoned for a technical wrong information supplied by him and the consequences of he being accountable for an action be factored i.e. he would continue to languish and would retire as a JCO whereas joining CISF as an Assistant Commandant at the age of 26 years (this is the petitioner's current age) his career prospects may take him to the top most post.

17. Aspirations of the youth of this country, and especially of those who come from humble origins need to be nurtured and protected, and in our opinion not sacrificed on the altar of punishments. That apart, what purpose would it serve if we hold it against the petitioner: he would always have a brooding ill will against the system and would always feel cheated in life of not being permitted to achieve what he could by dint of hard-work. He would be a disgruntled Airman and suffice would it be to state that it is better not to have any employee rather than to have a disgruntled employee in the organization.

18. The aspirations of the petitioner, his hard work and his achievements when weighed in the scale with the interest of the organization in the other side, compels us to hold the scale in favour of the petitioner, and we feel that the petitioner deserves a pardon for the wrong committed by him, and thus we dispose of the writ petition issuing a mandamus to the respondents to issue a No Objection Certificate as also a Discharge Certificate and relieve the petitioner from service within a period of one week from today so that the petitioner is able to report for duties to Central Industrial Security Force. No costs.