
(2014) 09 DEL CK 0021

Delhi High Court

Case No: Writ Petition (Civil) No. 554/2014

CPL B.S. Siddha

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Sept. 18, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2014) 09 DEL CK 0021

Hon'ble Judges: Najmi Waziri, J; Kailash Gambhir, J

Bench: Division Bench

Advocate: S.S. Pandey and H.S. Tiwari, Advocate for the Appellant; Ajay Dignpaul, CGSC, Advocate for the Respondent

Judgement

Kailash Gambhir, J.

The petitioner, a Corporal in the Indian Air Force, has filed the present writ petition under Article 226 of the Constitution of India seeking:

i) a direction against respondent Nos. 1 to 4 to discharge him from his present service; and

ii) a direction against respondent No. 5 " CRPF to not cancel his candidature, for having not completed seven years of service as on the date of submission of his application for seeking appointment in a Group "A" post as Assistant Commandant.

2. Mr. S.S.Pandey, the learned counsel for the petitioner submits that the case of the petitioner is strikingly similar to the case of Cpl. Sandeep Kumar v. Union of India and Ors, decided by this Court in W.P. (C) No. 4864/2012 vide order dated 21st August 2012 and that of Deepak Rajak vs. Union of India and ors, decided by this Court in W.P. (C) No. 7526/2012 vide order dated 4th December 2012.

3. The petitioner had cleared his class 10th examination with more than 81% marks in the year 2004 and his 10+2 examination in the year 2006 with 85% marks. It is submitted that having a good academic record, the petitioner aspired to taking the engineering exams, but due to compelling family circumstances and financial constraints, he opted for an early employment and accordingly applied for the post of an Airman Group "Y" post in the Indian Air Force. He got selected to the said post after having passed the requisite tests and was finally enrolled in the Indian Air Force as an Airman on 27th December 2006.

4. In May 2010, the UPSC invited applications from eligible candidates for filling up of Group "A" post of Assistant Commandant in various Central Para Military Forces. The petitioner vide his letter dated 9th June 2010 made a request to the Commanding Officer of HQ, EAC (U) , Air Force, Shillong to appear in Central Police Forces Exams 2010, his case was recommended by the Adjutant on 15th June 2010. By a letter dated 21.05.2011, the petitioner was informed about his having qualified the written examination. He was thus directed to appear for the Physical Efficiency Test (PET) followed by the Medical Standards Test which was conducted by Central Police Force, under the overall coordination of Central Industrial Security Force (CISF) on 6th June 2011. After having qualified all the aforesaid tests, vide letter dated 29th July 2011 the petitioner was directed to appear for personality test/interview on 19th August 2011. By a letter dated 2nd August 2011, the petitioner sought the necessary permission from his Company Commandant to appear in the said interview and as per the petitioner, the necessary approval was granted by the Adjutant of the petitioner's Unit. Having gone through this entire process, the petitioner could find his name in the merit list of 130 selected candidates at S. No. 76. He received a letter dated 8th February 2013 from Director General, C.I.S.F. offering him an appointment to the post of Assistant Commandant (Company Commander/ Quarter Master) in the CRPF but at this stage, he was denied his discharge from the Air Force because he had applied to the post of Assistant Commandant Group "A" Post before the completion of seven years of service, which was stated to be in contravention of AFO 14/2008 and AFO 4/2012. In these circumstances, petitioner made a request to DG (CRPF) for granting extension of time to undergo the basic training and the same was granted to him vide letter dated 18th March 2013.

5. It is also the case of the petitioner that he had received an appointment letter from respondent No. 5 vide letter dated 9th December 2013 and thereafter on 27th December 2013, by which time he had completed seven years service in the Indian Air Force. With this completion of seven years, the petitioner vide his application dated 30th December 2013 requested the Air Force Authorities for his immediate discharge so as to enable him to join the CRPF on the said Group "A" post but the said request was not acceded to by the CO, aforesaid, Jandal, Pathankot on the same ground - that his application for the civil post was in contravention of AFO 14 of 2008 and AFO 4 of 2012. It is in this background, the petitioner has filed the instant writ petition.

6. The respondents have contested this petition and the main contention raised by the respondent in the counter affidavit is that in terms of the AFO 14/2008, an individual is eligible to apply for civil post only on completion of seven years service. Furthermore, the application of the individual seeking permission to apply for civil employment is to be routed through proper channel i.e. from the Unit of an individual and prior to appearing for the interview, the individual is required to apply for the grant of "No Objection Certificate" (NOC) which is to be issued by the Air Head Quarter. It is also the stand of the respondent that discharge from the service cannot be claimed as a matter of right and nothing shall interfere with the power of Air Headquarter to suspend, withhold or discharge temporarily or otherwise on compassionate ground or review the same in a particular case. It is also the stand of the respondents that under para 6 of AFO 4/2012, no Airman/NCs(E) of the Indian Air Force is eligible to apply for civil posts/services under Central/State Governments including PSUs and jobs in private sector without prior permission from the competent Air Force authority. Applications seeking permission to apply for civil employment are scrutinised by their parent Unit and cases of Airmen/NCs (E) falling in the eligible category as provided in AFO 04/2012 are forwarded to the prospective employer. It is also the stand of the respondents that at the time of submission of an application for the Civil post the Airmen are required to submit an undertaking as per Appendix "D" to AFO 04/2012 stating therein that "it is certified that I have read and understood the contents of AFO 04/2012" and as per the respondents, such undertaking was furnished by the petitioner before the submission of the application. It is also the stand of the respondents that in terms of para 3(ix) of standing order 01/2009 no extension in joining the CRPF can be granted after exceeding a period of one year or till the start of next basic training whichever is later and in the case of the petitioner the said period has already come to an end.

7. We have heard the submissions and counter submissions made by the learned counsel appearing for both the sides and given our thoughtful consideration to it.

8. The main contentions, raised by the respondents herein were the subject matter of discussion in some of the cases decided by this Court. In Cpl. Sandeep Kumar (supra) , the petitioner therein was not discharged from service as he did not inform the Department before he submitted his application to the UPSC; and secondly, as on that date, he had not served the Armed Forces for a period of seven years. In this context, while placing reliance on the earlier judgment of the Division Bench of this Court in W.P. (C) No. 8760/2008 titled Pradeep Kumar vs. Union of India and Anr., decided on 16th December 2008 the Court held as under:-

"13. In an unreported decision dated December 16, 2008 in WP(C) No. 8760/2008 Pradeep Kumar v. UOI and 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.

14. 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 and Ors., dated November 30, 2009: WP(C) No. 13420/2009 Cpl. Praveen Kumar v. UOI and Ors., and dated July 28, 2010: WP(C) No. 3257/2010 Cpl. Charan Singh v. UOI and Ors.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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."

9. In another case of Deepak Rajak (supra), this Court was confronted with an identical case and reliance was placed on the previous judgments being Pradeep Kumar and Sandeep Kumar (supra) , the petitioner therein was granted the same benefit. In the present case the petitioner had forwarded his application directly to the UPSC without getting the same forwarded through his employer, Indian Air Force and such non-adherence to the Rules has been held to be a mere technical irregularity.

10. So far as the facts of the present case are concerned, it is not in dispute that the petitioner although had not completed the service for a period of seven years as on the date of the submission of his application with the UPSC, he had certainly completed the seven years period before the start of his training period. The petitioner herein had also applied for permission to appear in the CPF Examination in 2010 and his application was duly approved by the Adjutant, so in the facts of the case, the petitioner had sought permission from the Commanding Officer of his Unit before his medical examination and the PET was conducted and thus unlike in the case of Deepak Rajak (Supra) the petitioner took, necessary steps to seek prior permission from his employer to apply for the civil post.

11. Concurring with the views taken by this Court in the cases referred to above and case of the petitioner being identical in all respects, we issue a writ of mandamus directing the respondent Nos. 1 to 4 to issue a "No Objection Certificate" as well as a discharge certificate so as to relieve the petitioner from his services as Airman within a period of six weeks from the date of this order. This Court also directs respondent No. 5 to admit the petitioner for basic training for CRPF Academic from the next batch. However, we also make it clear that this late joining of the petitioner will not affect his seniority which shall be reckoned as per his merit alongwith other batch mates, selected for the post of Assistant Commandant Group "A".

12. With the aforesaid directions, this petition stands disposed off.