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Amarendra Kumar Vs Union of India (UOI) and Others

Writ Petition (C) No. 10028 of 2009

Court: Delhi High Court

Date of Decision: Aug. 2, 2010

Hon'ble Judges: J.R. Midha, J; Gita Mittal, J

Bench: Division Bench

Advocate: Jyoti Singh, for the Appellant; Rajinder Nischal and Gaurav Liberhan, for the Respondent

Final Decision: Allowed

Judgement

Gita Mittal, J.
Rule DB. With the consent of both the parties, the matter is taken up for final consideration. The original record relating to

the petitioner has been made available for perusal as well.

2. This writ petition raises a short issue. There is no dispute relating to the factual narration.

3. Pursuant to an advertisement issued by the Staff Selection Commission in the year 2002, the petitioner applied for appointment for the post of

Sub-Inspector (GD) in the Central Police Organization ("CPO" for brevity hereafter). The petitioner successfully appeared in the written

examination by a letter dated 7th March, 2003 and was called upon to appear on 3rd April, 2003 in the Physical Examination Test ("PET" for

brevity) at the Group Centre. The petitioner was declared successful even in the PET examination.

4. Our attention is drawn to the letter dated 17th May, 2003 sent by the Staff Selection Commission requiring the petitioner to present himself for a

medical examination to be held on 4th of June, 2003. This communication informed the petitioner that if he was found medically fit, he would have

been eligible for the interview which would be conducted on 5th June, 2003. There is no dispute before us that the petitioner was medically

examined on 4th June, 2003 and was thereafter interviewed for appointment to the post. Ms. Jyoti Singh, learned Counsel for the petitioner has

placed reliance on the communication dated 17th May, 2003 to contend that the same manifests that the petitioner was interviewed because he

was found medically fit in all respects in the medical examination.

It appears that the petitioner also qualified in the interview which was conducted by the respondents resulting in issuance of the communication

dated 24th November, 2003 informing the petitioner of his provisional selection for appointment to the post of Sub-Inspector (GD) in the CRPF

as a result of the aforenoticed selection process.

5. Mr. Gaurav Liberhan, learned Counsel appearing for the respondents has drawn our attention to the terms and conditions of the appointment at

serial No. 2(h) which were notified to the petitioner in the letter dated 24th November, 2003 which states as follows:

(h) Your appointment is subject to your medical fitness, which will be conducted by the appropriate medical authority of this department on your

reporting to the Training Centre. Appointment letter will only be issued on medical fitness and on satisfying various other requirements.

This communication contains all the other standard terms and conditions as well for appointment which are normally incorporated in appointment

letters issued by the government. The stress on behalf of the respondents is on their authority to insist on medical fitness.

6. Pursuant to the receipt of this letter, on 22nd December, 2003, the petitioner reported to the Group Centre, CRPF, Pinjore. The troubles of the

petitioner began thereafter.

7. The medical examination in terms of the appointment letter of the petitioner was conducted on 24th December, 2003. It appears that a signal

was sent by the CPO of the North West Zone Office to the effect that once physical measurement standards are satisfied and a detailed medical

examination is conducted by the Medical Board, such measurements of the candidates will not be taken again and they would not be subjected to

another medical examination when they actually joined their respective CPOs. This signal also notified that the medical examination conducted

during the selection process would be valid for a period of one year. It was also intimated that only such persons who are beyond the period of

validity of first medical examination would be required to undergo a detailed medical examination.

8. The respondents have placed a further signal dated 12th April, 2004 before us which was to the effect that in case the medical dossier of a

candidate was incomplete due to the non-availability of inter alia, the X-ray film/report, a candidate would be declared fit subject to his chest X-

ray which may be got completed from the regional office of the Staff Selection Committee. The petitioner contends that despite repeated requests

between 29th December, 2003 and 31st December, 2003 to get his chest X-ray taken privately, no action at all was taken by the respondents for

a period of almost four months.

9. It is only on receipt of clarification vide signal dated 8th April, 2004 when the Office of IGP, North West Zone sent a requirement that the

petitioner along with his dossier was required to be sent to the regional office of the Staff Selection Commission (Central Region), Allahabad for

the purposes of getting his chest X-ray done.

10. In this background, the petitioner was sent along with his dossier to the regional office of the Staff Selection Commission at Allahabad with a

special messenger to complete his chest X-ray in order to complete the formalities of the medical examination. On 21st April, 2004, the Staff

Selection Commission (Regional Office) informed that the X-ray of the selected candidates was required to be undertaken by the Medical Board

constituted by the coordinating Central Para-Military Organization and that the Selection Commission had no role to play in this regard. It was

consequently directed that the X-ray of the petitioner should be done at the CRPF Group Centre, Pinjore itself or alternatively the Directorate

General BSF, the Coordinating CPO was required to be got in touch with, in the matter.

11. Still nothing was done in the matter till a signal dated 26th April, 2004 was sent by the Office of the DIGP, CRPF to the Group Centre,

Pinjore informing that the petitioner''s chest X-ray be got done from any Government hospital/private practicing Radiologist in the presence of a

representative from CRPF Group Centre, Pinjore Hospital. It was only thereafter that the petitioner was sent to the Chief Medical Officer/Incharge

of the CRPF for chest X-ray and as a result of the radiological examination, he was declared fit on 27th April, 2004 by the said Chief Medical

Officer. The petitioner''s dossier and record was thereafter forwarded by the respondents to the Commandant of the Battalion for issuance of

formal appointment letter. The formal appointment letter dated 6th May, 2004 was issued to the petitioner informing him that he has been

appointed as Sub-Inspector (GD) with effect from 27th April, 2004.

12. A challenge is laid to this action of the respondents for the reason that during the period when the respondents failed to take action with regard

to the radiological examination of the petitioner and unwarrantedly delayed the same, the respondents have floated the new contributory pension

scheme which came into effect from 1st April, 2004. The respondents also declared that the old pension scheme to which the petitioner would

have otherwise been entitled, if his appointment was effected on 22nd December, 2003 when he had reported on duty, he would have been

entitled to the benefit of the pension scheme which was applicable till 31st December, 2003. The contention is that the grave injustice has thereby

resulted to the petitioner who has also lost seniority by virtue of the appointment letter which has been issued to the petitioner.

13. The respondents have contested the case of the petitioner contending that their action was justified for the reason that the appointment letter

was required to be issued only with effect from the date when the petitioner was formally declared fit.

14. We have given our thoughtful consideration to the rival contentions. The delay in completion of the medical examination and the radiological

examination of the petitioner cannot be attributed to the petitioner in any manner. The record does not disclose at all that the petitioner was not

subjected to the X-ray when he was medically examined on 4th June, 2003. In this regard, we may refer to the letter dated 28th April, 2004

issued by the Office of the Additional DIG of the Group Centre, CRPF, Pinjore pointing out that the petitioner''s dossier requirements were

incomplete due to non-availability of the X-ray film.

15. Be that as it may, in any case, there is not even a wit of an explanation for as to why the X-ray could not be conducted at the CRPF Group

Centre, Pinjore once this matter came to the knowledge of the respondents on 24th December, 2003. The petitioner has contended that repeated

requests for completing the X-ray process between 29th December, 2003 and 31st December, 2003 evoked no action from the respondents

which is not denied in the counter affidavit which has been filed. The only explanation for the delay of almost four and a half months which has

resulted is to the effect that the matter remained in correspondence with the higher authorities and a decision was taken on receipt of a clarification.

16. We find that the petitioner has also given instances of five other personnel who had appeared with him for medical examination at the Group

Centre and were not subjected to any X-ray. Yet they were given appointment by their respective Group Centre with effect from the date of their

joining and reporting. It has also been contended in the writ petition that these candidates started getting their pay from the date of their

reporting/appointment whereas even though the petitioner underwent training and was admittedly on duty from 22nd December, 2003 to 26th

April, 2004 for a period of four months and six days till his services were terminated, he was not paid any pay and allowances. There is categorical

averment to the effect that during this period, the petitioner had been made to work and train just like the other persons who had been issued

appointment letters similar to the appointment letter of 24th November, 2003 issued to the petitioner. In reply to these categorical assertions, the

respondents have merely stated that "these need no comments". It is trite that such a plea in law tantamounts to admission of the averments made

in the writ petition.

17. We also find from the several communications placed by the respondents on record to the effect that the petitioner had been assigned to the

86th Battalion of the CRPF. It is also an admitted position that the petitioner was residing in the Official Mess of the CRPF at the Group Centre,

Pinjore. All these facts in totality manifest that the respondents have treated the petitioner as their employee with effect from 22nd December, 2003

when he joined the duty.

18. We may notice that the appointment letter dated 24th November, 2003 had stipulated that the appointment of the petitioner was provisional

subject to his completing the formalities stated therein. As noticed above, condition No. 2(h) in this letter informed the petitioner that his

appointment was subject to medical fitness which would be conducted by the appropriate medical authority of the department. The respondents

have clearly taken a decision which stands communicated in the aforenoticed signal dated 24th December, 2003 and 12th April, 2004 to the effect

that so far as fitness of a person was concerned, the certification thereof in the medical examination conducted during the selection process was

sufficient. The petitioner was duly certified as medically fit resulting in his being made to participate in the interview and the consequent appointment

letter dated 24th November, 2003 being issued to him. In terms of the said decisions of the authorities, it is apparent that the certification of the

petitioner''s fitness in the medical examination conducted on 4th June, 2003 was sufficient for him to be entitled to regular appointment. The

insistence on the x-ray was therefore, unnecessary even as per the respondents.

19. As noted above, the only reason for delay in issuance of the appointment letter is the missing X-ray in the dossier of the petitioner. There is

nothing on record to even enable us to hold that no X-ray was conducted at the time of the petitioner''s medical examination on 4th June, 2003.

There is no material which could manifest that the petitioner was not subjected to X-ray on 4th June, 2003 and only thereafter declared medically

fit. In these circumstances there is every possibility that the X-ray could have been misplaced in transit or otherwise from the dossier of the

petitioner. In any case, no fault can be attributed to the petitioner for the same.

20. As noted above, the petitioner has pointed out instances of at least five other persons in support of his contention that there were other persons

who were not X-rayed and have been issued regular appointment letters with effect from the date when they first reported for duty. In the given

facts, the action of the respondents in issuing the appointment letter to the petitioner with effect from 21st April, 2004 is unfair and unjust and

cannot be justified on legally tenable grounds.

21. The provisional appointment letter was issued to the petitioner in November, 2003 pursuant whereof he reported for duty on 22nd December,

2003. He trained with the respondents ever since.

22. The petitioner has admittedly been on duty since 22nd December, 2003 when he reported for duty. In this background, the non-grant of the

pay and allowance of the petitioner with effect from 22nd December, 2003 as well as the action in issuing the letter of appointment with effect from

27th April, 2004 is not justified.

23. There is an additional ground which persuades us to hold that the respondents have not been fair to the petitioner. It is an admitted position

also that the Defined Benefit Pension System of the respondents came to an end on 31st December, 2003.

24. The new Defined Contribution Pension Scheme which came into effect from 1st April, 2004 requires a monthly contribution from the salary

equivalent to 10% of the salary and dearness allowance.

25. The impact of issuance of the appointment letter with effect from 27th April, 2004 would be that the petitioner would be deprived of the

benefit of the earlier scheme which came to an end on 31st December 2003. He would therefore be required to make a monthly contribution from

his salary in accordance with the new scheme. Compared against the earlier scheme, this could certainly work tremendous financial loss to the

petitioner.

26. The justification of the respondents to the effect that the delay occurred because the matter was pending for correspondence with higher

authorities is also not supported by the record. There is no warrant at all for shuttling the petitioner between the Group Centre and Staff Selection

Committee and back when the medical facility for undertaking the X-ray was available at the Group Centre. In addition, it is not as if the

respondents were continuously in correspondence over a period of four and a half months since the issuance of the provisional appointment letter.

27. We may also note that the provisional letter of appointment dated 24th November, 2003 does state that the appointment is provisional.

However the only consequence thereof is that upon the completion of the stated formalities, issuance of the formal appointment letter would follow.

The appointment obviously has to relate back to the date of his original appointment.

28. In view of above discussion, it has to be held that the petitioner is deemed to have been regularly appointed with effect from 22nd December,

2003. The petitioner would also be entitled to the benefit of the Defined Pension Scheme which was valid till 31st December, 2003. The

respondents are required to ensure that all benefits which are admissible to the petitioner pursuant to the appointment with effect from 22nd

December, 2003 including seniority, etc. are made available to him.

29. In view of the above, we direct the respondents as follows:

(i) The respondents shall issue a fresh appointment letter to the petitioner informing him of his appointment with effect from the 22nd of December,

2003 when he has admittedly joined the duty.

(ii) The appointment letter in these terms shall be issued to the petitioner within a period of four weeks from today.

(iii) The respondents shall also ensure making payment of the pay and allowances to which the petitioner is entitled as per the applicable rules and

regulations with effect from 22nd December, 2003.

(iv) The arrears in terms of the orders which we have passed today shall be paid within a period of six months from today.

(v) The petitioner shall be entitled to all consequential benefits which follow from such appointment.

Rule is made absolute and the writ petition is allowed in the above terms.