
(2010) 03 P&H CK 0279
In the Punjab And Haryana At Chandigarh

Anjani Kumar Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Citation : (2010) 03 P&H CK 0279

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Augustine George Masih, J.—The petitioner has challenged order dated 20.07.2004 (Annexure P-19) passed by respondent No. 2 declining to absorb the petitioner in the Engineering Cadre/Wing of the Border Security Force on the ground that his normal tenure of deputation for three years having come to an end on 05.06.2004 was repatriated and further that his case for absorption was taken up for consideration after the repatriation, although the petitioner had moved a representation for absorption in the Engineering Cadre as Executive Engineer (Electrical). The challenge is also to the order dated 13.08.2004 (Annexure P-21) posting the petitioner on a General Duty post of the Border Security Force.

2. Counsel for the petitioner contends that the petitioner, in pursuance of an advertisement, was appointed on the post of Head Constable (Junior Engineer) (Electrical) on 10.12.1976 (Annexure P-2). His appointment was made against the existing vacancy of Tear Smoke Unit as there was no technical cadre at that time. During his service, another advertisement was issued, wherein the applications were invited for appointment to the post of Sub-Inspector (Junior Engineer) in the year 1978. The requirement for the post was again Matriculation with three years diploma in Electrical/Civil Engineering. The petitioner although was working as a Head Constable (Junior Engineer) (Electrical) but since it was a higher post with a higher pay scale, the petitioner applied for the same and on his selection to the said post, he was appointed as a Temporary Sub-Inspector

(General Duty) in the Border Security Force vide order dated 12.07.1978 (Annexure P-3). He contends that the petitioner continued to work and performed duty in the technical side and always worked as an Engineer. He contends that BSF Engineering Cell (non-Gazetted Posts) Recruitment Rules, 1978 were notified. The said Rules deals with the appointment to the post of Junior Engineer (Civil) and other posts dealing with the BSF Engineering Cell. The petitioner continued to work with the respondents but on the Engineering side and was promoted from time to time although treating him to be in the General Duty side as and when, according to the requirements of the post. He fulfilled all the qualifications and passed all the tests for promotion. Despite he being appointed in the General Duty side, he continued to perform his duties of the Engineering Wing. He contends that from the date of his appointment i.e. 12.07.1978 (Annexure P-3) till the impugned order dated 20.07.2004 (Annexure P-19) was passed, all through the petitioner was, for all intents and purposes, performing the duties of an Engineer. He contends that the petitioner was sent on deputation to the Engineering Wing in the year 1993. He continued as such on deputation till 18.06.2004. During his deputation period, a policy decision was taken by the respondents for absorption of qualified persons, who were on deputation in the Engineering Wing for absorption in the Engineering Cadre. As the petitioner was working on deputation since 1993, he made a representation for his absorption in the Engineering Cadre as Executive Engineer (Electrical). Unfortunately, before his case for absorption could be considered by the respondents, his deputation came to an end on 05.06.2004 and he was repatriated on 18.06.2004 leading to the rejection of his claim for absorption vide order dated 20.07.2004 (Annexure P-19). His submission is that merely because his period of deputation had come to an end and he was repatriated to his parent cadre i.e. the General Duty Cadre, should not be made a ground for non-consideration of his case for absorption in the Engineering Cadre as per the policy decision of the respondents. There was no delay on the part of the petitioner as he had submitted the required representation as per the policy within the time stipulated and fulfilled all the requirements on the date of his submission of the representation for being absorbed while he was on deputation. He, therefore, contends that order dated 20.07.2004 (Annexure P-19) passed by the respondents cannot be sustained and deserves to be set aside. His further contention is that the consequential order dated 13.08.2004 (Annexure P-21) also, therefore, cannot be sustained.

3. Counsel for the petitioner submits that the case of the petitioner is fully covered by the various judgments passed by different High Courts wherein similar questions came up for consideration and have been answered in favour of the employees where initially they were appointed in the General Duty Cadre but were performing the duties in the Engineering Wing but their claims were not being considered either for promotion in the Engineering Wing or were not being considered for absorption in the said Wing. Reliance has been placed on a Division Bench judgment of this Court in the case of Rakesh Kumar Kanda and

Ors. v. Union of India and Ors. CWP No. 15524 of 1997 decided on 19.12.2002, wherein the claim for considering the case of the petitioners for promotion to the post of Assistant Engineer (Civil) was not being accepted on the ground that they were appointed in the General Duty Cadre and were continuing in the said cadre. The said writ petition was allowed and directions were issued to the respondents to consider the case for promotion to the post of Assistant Engineer (Civil). As regards the claim of the petitioner for absorption, the counsel for the petitioner relies upon a judgment of the Division Bench of Delhi High Court in the case of R.K. Srivastava v. Union of India and Ors. CWP No. 667 of 2001 decided on 24.01.2001 (Annexure A-2), wherein a direction was issued by the Division Bench in the similar facts and circumstances as in the case of the petitioner that their case be considered in the light of the earlier judgments passed by Rajasthan High Court in SWP No. 1569 of 2000 and SWP No. 2281 of 2000. Reliance has also been placed on a Single Bench judgment of Jammu and Kashmir High Court in the case of Balbir Singh Sandhi v. Union of India and Ors. SWP No. 81 of 2001 decided on 09.03.2005 (Annexure A/3). He, on this basis, contends that the present writ petition deserves to be allowed and the same relief be granted to the petitioner.

4. On the other hand, counsel for the respondents submits that the petitioner was appointed in the General Duty Cadre. He continued to serve in the said Cadre and passed all the tests and fulfilled all the requirements in the General Duty Cadre for his promotion and, accordingly, was considered all through and promoted in the General Duty Cadre. He having never agitated this aspect before the respondents cannot now, at this belated stage, claim for change of Cadre or absorption. His further contention is that he having taken benefit under the General Duty Cadre cannot now turn around and claim benefit under the Engineering Cadre and cannot be permitted to switch Cadres at his convenience. He submits that the reason for repatriation of the petitioner from the Deputationist Department was one that the tenure on deputation of the petitioner had come to an end and further that there was a Staff Court of Enquiry (in short "SCOI") going on against the petitioner. He refers to the preliminary objection, which has been taken by the respondents in the written statement. He contends that as a matter of fact, initially one SCOI was initiated. During the first SCOI, it came to light that there were further three transactions which needed to be enquired into and accordingly, they were also registered as SCOIs. On completion of the same, in three of the SCOIs, nothing incriminating was found against him and in the first one, Director General Displeasure was conveyed to him. He, therefore, contends that the claim for deputation of the petitioner was rightly rejected by the respondents. He has made an effort to distinguish the judgments, which have been relied upon by the counsel for the petitioner on the ground that in none of the cases, the deputation period had come to an end and, therefore, the direction, which was given by the Court, was considered and claims were granted to the petitioners in those writ petitions. He, however, very fairly concedes that all through his tenure from 12.07.1978 till 2004, the

petitioner had been working in the Engineering side.

5. I have heard the counsel for the parties and have gone through the records of the case.

6. The facts are not in dispute as regards the appointment of the petitioner, his eligibility, his educational qualifications for the post etc. The petitioner holds three years diploma in Electrical Engineering. He was thus initially appointed as Head Constable (Junior Engineer) (Electrical) on 10.12.1976. Thereafter, he was appointed afresh on the post of Temporary Sub-Inspector (Junior Engineer) on 12.07.1978 against the vacancy of Sub-Inspector (General Duty) in the Border Security Force. He continued as such and was promoted after fulfilling all the eligibility criteria as laid down in the General Duty Cadre. The fact remains that despite he continued in General Duty Cadre, the petitioner was performing the duties in the Engineering side. It is not in dispute that the petitioner fulfils the requirements for his absorption in Engineering Wing of the Border Security Force. It is also not in dispute that the petitioner was on deputation since the year 1993 in the Engineering Wing when the policy decision was taken to absorb the persons, who were on deputation in the Engineering Wing. In pursuance of that policy, the petitioner also applied for his absorption in the Engineering Wing. During the pendency of his representation, it so happened that an SCOI was initiated. In this enquiry, involvement of the petitioner was also suspected. On further enquiring into the matter, three other transactions came to light which needed to be enquired into and additional three SCOIs were initiated. On conclusion of the enquiries, in three of the SCOIs, which were subsequently initiated, the involvement of the petitioner was not found and nothing incriminating had come against him. In the first SCOI, the petitioner was conveyed the Director General Displeasure to him. This order was dated 05.07.2005. The representation of the petitioner against this Director General Displeasure is still pending with the respondents.

7. The reason assigned for not considering the case of the petitioner for deputation was two fold, one, the period of his deputation had come to an end and two, he had SCOIs pending against him. Both these reasons do not hold the field for the reason that the petitioner was continuing on deputation since the year 1993 and on each occasion, he has been granted extension in the Engineering Wing. He continued as such on deputation when the policy was formulated for absorption of the deputationists, who fulfil their required qualifications and other eligibility conditions. In pursuance of the policy decision, the petitioner applied well in time. It is not in dispute that on the date of his submission of the representation for absorption, the petitioner fulfilled all the requirements for absorption as per the policy decision. The delay, if any, was on the part of the respondents in considering the representation of the petitioner as per the policy decision. This cannot be made thus a ground for rejecting the claim of the petitioner by stating that since the normal tenure of his appointment had come to an end on 05.06.2004, his case for absorption cannot be

considered. A perusal of Annexure P-19 dated 20.07.2004, which is the order rejecting the claim of the petitioner for absorption would show that this was the only ground, which was conveyed to the petitioner for non-consideration of the claim of the petitioner. However, in the written statement, which has been filed by the respondents, an additional ground was pressed into service that there were SCOIs pending against the petitioner and, therefore, his claim for absorption could not be considered. These SCOIs, which were initiated against the petitioner, cannot be made a ground for non-consideration of the claim of the petitioner and rejecting it as the said SCOIs came to be concluded in the year 2005 whereas the repatriation was on 20.07.2004. These four SCOIs, which were initiated, and were enquired into. It would not be out of way to mention here that on a specific question put to the counsel for the respondents as to whether any charge-sheet was issued to the petitioner or was any enquiry held against him, the counsel, on instructions received by him from the officials present in Court, answers in the negative. The result of the SCOIs showed that only in the first SCOI, the petitioner's some casualness is stated to be found, for which Director General Displeasure was communicated to him in July, 2005. Against the said order of Director General Displeasure, the representation of the petitioner is still pending and no decision thereon has been taken till date. This again could not have been made the reason for non-consideration of the claim of the petitioner for absorption on deputation. The claim of the petitioner for absorption as per the policy decision of the respondents should have been considered either from the date of his representation or from the date, the cut off date was fixed for submission of the representation of the employees by the respondents. Both the grounds, which have been pressed into service by the respondents for non-consideration of the claim of the petitioner, cannot be sustained for the above reasons. The claim of the petitioner as far as the basic principle involved for absorption is concerned, is squarely covered by the judgments, which have been relied upon by the counsel for the petitioner i.e. Rakesh Kumar Kanda and Ors. (supra), R.K. Srivastava (supra) and Balbir Singh Sandhi (supra).

8. In this view of the matter, the impugned order dated 20.07.2004 (Annexure P-19) and the consequential order dated 13.08.2004 (Annexure P-21) cannot be sustained and deserve to be set aside.

9. Accordingly, the present writ petition is allowed. Orders dated 20.07.2004 (Annexure P-19) and 13.08.2004 (Annexure P-21) are hereby quashed and a direction is issued to the respondents to consider the claim of the petitioner for absorption in the Engineering Cadre within a period of three months" from the date of receipt of a certified copy of this order.