

(2011) 05 DEL CK 0152
In the Delhi High Court
Case No : Writ Petition (C) 3024 of 2011

Bikram Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-05-2011

Acts Referred:

Citation : (2011) 05 DEL CK 0152

Hon'ble Judges : Pradeep Nandrajog, J; Indermeet Kaur, J

Bench : Division Bench

Advocate : Arvind Nayar, Shubhanshu Singh, Vikas Kumar and Neha Kushwaha, for the Appellant; A.S. Chandhiok, ASG, Ravinder Agarwal, Nitish Gupta, G.S. Parwanda, Sandeep Bajaj for R-1 to 3 in W.P. (C) 3024, 3025, 3031, 3092, 3203 and 3204/2011, Rajat Arora, for R-3 to 5 in W.P. (C) 3024, 3031 and 3204/2011, Rachana Joshi Issar, for R-3 and 4 in W.P. (C) 3025 and 3092/2011 and S.S. Lingwal, for R-4 and 5 in W.P. (C) 3203/2011, for the Respondent

Judgement

Pradeep Nandrajog, J.—On 1.11.2010 Punjab & Sind Bank invited applications from eligible candidates for selection and appointment as Specialist Officer- JMG-Scale 1, expressly stating that the post was in the scale of pay Rs. 14500- Rs. 25700. Seeking permission to compete at the competitive examination to be conducted by Punjab & Sind Bank, Bikram Singh the writ Petitioner of WP(C) No. 3024/2011 applied through the Unit Commandant for his application to be sent to the bank and the Unit Commandant forwarded the same to the bank. It be noted that Bikram Singh had joined service as an Airman on 9.5.2003 and by 9.5.2010 had rendered 7 years' service under the Air Force.

2. In September 2010, Bank of Maharashtra invited applications from eligible candidates for selection and appointment as a Probationary Officer and since neither Satish Kumar Jha the writ Petitioner of WP(C) No. 3092/2011 nor Ajay Kumar Ahirwar the writ Petitioner of WP(C) No. 3025/2011 have disclosed what was the scale of pay notified by the bank for the post in question and have also not filed the Public Notice issued by the bank while inviting applications from the

eligible candidates, we do not know the scale of pay of the post in question. The two applied through the Unit Commandant for their applications to be sent to the bank and the Unit Commandant forwarded the same to the bank and relevant would it be to note that by the time they submitted their applications to the Unit Commandant, the two had rendered 7 years" service under the Indian Air Force.

3. Rajiv Ranjan the writ Petitioner of WP(C) No. 3203/2011 got his application forwarded in August 2010 through his Unit Commandant to the United Bank of India after he had served the Indian Air Force for 7 years. The post he had applied for was that of a Probationary Officer in the United Bank of India in the pay-scale Rs. 14,500- Rs. 25,700.

4. The remaining writ Petitioners i.e. Sudarsan Maharana and Pelleti Hemanth Kumar, after rendering 7 years" service under the Indian Air Force got forwarded through the Unit Commandant their applications for being appointed as a Probationary Officer with Bank of India for the post of Probationary Officer in the pay-scale Rs. 14500- Rs. 25700 and the date on which they so applied was in the month of August 2010.

5. It is thus not in dispute that the 6 writ Petitioners had got their applications forwarded through the Commandant of their respective Unit to the respective banks in the months of August, September and November 2010.

6. The grievance of the writ Petitioners is to the Air Force Authorities not granting the necessary No Objection to them thereby relieving them to join the respective bank inasmuch as the writ Petitioners have successfully cleared the selection process initiated by the respective banks to whom the writ Petitioners had applied for employment.

7. Since the last date by which the writ Petitioners had to join the respective bank had either lapsed or was likely to lapse in the next 4 or 5 days and since respective counsel for the banks told the Court that they cannot keep a post vacant for the writ Petitioners inasmuch as whether joining as a Probationary Officer or as Specialist Officer-JMG, all recruited persons have to undergo training during the period of probation and upon successful completion of training are permanently absorbed in the banks and that training is imparted to a group with specialized teachers in the field imparting training in banking and that the banks would not be in a position to give training to individuals if the writ Petitioners were to join later and that the training was to commence in the month of June 2011, arguments were heard in the writ petitions without awaiting a counter affidavit inasmuch as the facts were not in dispute and thus on facts no response was required. A legal issue arose for consideration and for which the necessary documents were filed by the writ Petitioners. Thus, we have heard arguments on 16.5.2011 and had indicated in the order of said date that judgment would be pronounced on 18.5.2011.

8. Pertaining to permission to be granted to Airman to apply for civil posts/ services under the Central and the State Governments and Public Sector

Undertakings, vide Air Force Order No. 14/2008 issued on 19.9.2008, extensive guidelines have been issued and undisputably the case of the Petitioners with respect to the relief sought has to be adjudicated in terms of the said Air Force Order.

9. Relief sought by the writ Petitioners is that a mandamus be issued to the Air Force Authorities to forthwith issue No Objection certificate to them to join the respective bank which has issued a letter of offer to the Petitioners and further to relieve the Petitioners for so joining.

10. Para 1 of the Air Force Order No. 14/2008 reads as under:

Airman/NCs(E), who have completed seven years of service from the date of enrollment, are permitted to apply for civil posts under Central/State Government and Public Sector Undertakings including Para-Military Forces. Non-Govt organizations (NGOs)/Trusts, even if funded by the Government shall not be covered in the permissible category of posts. The categories of posts, corresponding length of service and eligibility are to be determined as given below.

Category

Length of Service

Permissible Categories of civil posts

a

I

7 yrs

(A) Group 'A' or equivalent posts (maximum of the pay scale not less than Rs. 13500, as revised from time to time) (B) Group 'B' or equivalent posts (maximum of the pay scale not less than Rs. 9000 but less than Rs. 13500, as revised from time to time)

B

II

15 yrs

Category- I above and any other post except temporary/contractual post and Private Sector.

c

III

18 years (having submitted unwillingness or denied extension of engagement)

Category I, II above and any other post in Private Sector including temporary/

contractual posts or engagement on deputation.

11. Notwithstanding the imperfect use of language under the caption "PERMISSIBLE CATEGORIES OF CIVIL POSTS" and to highlight the imperfection we may only state that in para (b) pertaining to Category-I one could have simply written: Group "B" or equivalent posts having minimum pay of Rs. 9,000/- and maximum Rs. 13,500/- rather than to say: in the pay-scale not less than Rs. 9,000/- but less than Rs. 13,500/-. Be that as it may, relevant would it be to state that as per para 1 it stands stipulated that minimum 7 years service must be rendered before permission can be granted to an Airman to apply for and proceed to join upon selection, a Group "A" or a Group "B" or an equivalent post. We are not concerned with Category-II and Category-III and thus we do not expand on said categories.

12. Then comes into play para 2 of Air Force Order No. 14/2008, which reads as under:

2. All applications for above categories of posts will be directly forwarded to the prospective employers by the units after verifying the eligibility including criticality of manpower. Application of airmen belonging to critical trades shall be rejected at unit level. However, the condition of criticality will not be applicable to the applicants of Category IA and III above, in whose case the applications will be forwarded despite criticality in their trades. The criticality of trades will be updated by Air HQ twice a year, in June and December and would be intimated to Stns/Units through their respective Command HQs. Airmen who are on deputation to ARC are also eligible to apply for civil posts as per Para 1 above and their applications to be processed through PHS C/O AFCAO, where unit copy of service documents of ARC deputationists are held. Forwarding of applications shall not be construed as acceptance to grant NOC, which shall be issued as per the procedure laid down in subsequent paras of this AFO.

13. Relevant would it be to highlight that the last sentence of para 2 of the Air Force Order makes it clear that forwarding of applications shall not be construed as acceptance to grant NOC, which shall be issued as per the procedure laid down in subsequent paras of this AFO.

14. Paragraph 7 of the Air Force Order becomes relevant in view of the last sentence of paragraph 2 above and it stipulates as under:

7. Application for NOC is to be submitted by the individual after receiving call letter for 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 post.

15. Now the problem. If the person concerned seeks permission to join an organization on a civil post in Group "A" or equivalent, the requirement is that the maximum of the pay-scale has not to be less than Rs. 13,500/- as revised

from time to time and for this post, as per paragraph 2 of the AFO, criticality in the trade has not to be considered. If however, the post is in Group "B", criticality in the trade would be a criteria for not releasing the person concerned. In other words there is no absolute right in an Air Force Personnel to proceed to a Group "B" or equivalent post whereas such absolute right is available qua a Group "A" post, upon the condition of having rendered 7 years service. The fact on which the problem has arisen in the instant writ petitions is the scale of pay on which the Petitioners seek to join i.e. whether the post they are seeking to join is equivalent to Group "A" or is it equivalent to Group "B".

16. Save and except for one post where the scale of pay has not been disclosed by the writ Petitioner thereof, all others seek to join a bank in the pay-scale Rs. 14,500- Rs. 25,700. Para 1 of the Air Force Order, refers to Group "A" or equivalent post as a post where the maximum of the pay-scale is not less than Rs. 13,500/- and uses the further expression: "As revised from time to time". The Petitioner's claim that the posts to which they proceed has the maximum in the scale, the sum of Rs. 25700/- and it is apparent that the said amount is not less than Rs. 13500/- and thus they claim an absolute right to be released from service. The Air Force Authorities would allege that when AFO 14/2008 was issued on 19.9.2008, the Government of India circular in vogue, classifying posts in Group "A", "B", "C" and "D", stipulated as under:

S.No.

Description of Posts

Classification

1.

A Central Civil Post carrying a pay or a scale of pay with a maximum of not less than Rs. 13500.

Group ?A?

2.

A Central Civil Post carrying a pay or a scale of pay with a maximum of not less than Rs. 9000 but less than Rs. 13500.

Group ?B?

3.

A Central Civil Post carrying a pay or a scale of pay with a maximum of over Rs. 4000 but less than Rs. 9000.

Group ?C?

4.

A Central Civil Post carrying a pay or a scale of pay with the maximum of which

is Rs. 4000 or less.

Group ?D?

17. It was only on 9.4.2009 that the Government of India issued a revised order with respect to classification of posts, stipulating as under:

Sl.No.

Description of Posts

Classification of posts

1

(a) A Central Civil post in Cabinet Secretary's scale (Rs. 90000-fixed), Apex Scale (Rs. 80000-fixed) and Higher

Administrative Grade plus scale (Rs. 75500-80000); and (b) A Central Civil post carrying the following grade pays:- Rs. 12000, Rs. 10000, Rs. 8900 and Rs. 8700 in the scale of pay of Rs. 37400-67000 in Pay-Band-4, and Rs. 7600, Rs. 6600 and Rs. 5400 in the scale of pay of Rs. 15600-39100 in Pay-Band-3.

Group ?A?

2.

A Central Civil post carrying the following grade pays:- Rs. 5400, Rs. 4800, Rs. 4600 and Rs. 4200 in the scale of pay of Rs. 9300-34800 in Pay-Band-2.

Group ?B?

3.

A Central Civil post carrying the following grade pays:- Rs. 2800, Rs. 2400, Rs. 2000, Rs. 1900 and Rs. 1800 in the scale of pay of Rs. 5200-20200 in Pay-Band-1.

Group ?C?

4.

A Central Civil post carrying the following grade pays:- Rs. 1300, Rs. 1400, Rs. 1600, Rs. 1650 in the scale of pay of Rs. 4440-7440 in 1S Scale

Group ?D? (till the posts are upgraded)

18. The Air Force Authorities would contend that when AFO 14/2008 was promulgated on 14.9.2008 it had referred to the classification of posts with reference to the Government of India classification then in vogue. It be highlighted that with the acceptance and implementation of the 6th Central Pay Commission recommendations, with effect from 1.1.2006, the pay-scales were revised into pay-bands and the actual acceptance and implementation took place around October 2009 with retrospective effect and this is the reason why when

AFO 14/2008 was issued it referred to the scales with reference to the previous scales and further this is the reason why it was made clear that the scale mentioned would be as revised from time to time.

19. Now, one thing is clear. To be entitled to the benefit of the post in Category-I(A) of AFO 14/2008, the essential requirement has to be that the post has to be in a pay-scale maximum of which is not less than Rs. 13,500 as revised from time to time, meaning thereby the corresponding figure/sum as per the Government of India Office Order dated 9.4.2009 would have to be looked into.

20. It was urged by learned Counsel for the Petitioner that we have no material wherefrom it can be gathered that the post to which the Petitioners had applied, as per the advertisement issued, disclosed the pre-revised or the revised scales of pay. We agree. Unfortunately, learned Counsel for the banks could throw no light. But, all learned Counsel were in agreement that in terms of industry level settlement dated 27.4.2010 where all public sector banks and the unions of the employees had hammered out a settlement, pay-scales had to be revised as per the settlement.

21. Thus, one issue of law admittedly gets settled, being that, reference in the pay-scale being not less than Rs. 13,500 pertaining to Group "A" post in AFO 14/2008 is with reference to the pay-scale prior to the implementation of the 6th Central Pay Commission's recommendations and the corresponding sum would have to be worked out with reference to the latest Office Memorandum issued by the Government on the subject and the relevant content whereof has been extracted by us in para 17 above.

22. We may note that on 22.5.2009 the Air Headquarters had issued a clarificatory order in harmony with what we have observed herein above.

23. Thus, the only relief which the Petitioners can obtain is requiring a direction to be issued to the respective bank to forthwith convey to the Air Force Authorities whether the pay-scale referred to in the advertisements issued by the respective bank and pursuant where to Petitioners applied were the pre-revised or the pay-scales after revision, and if the pay-scales were pre-revised, the corresponding scale post-revision. Thereupon, Air Force Authorities would do the needful and if the information provided is that the scales of pay were pre-revised, by taking into consideration the revised scales of pay, if the posts are a Group "A" post in the pay-scale maximum of which is not less than the sum equivalent to Rs. 13,500/-, post revision, to grant the necessary No Objection to the Petitioners without considering the criticality of the trade; and if the information provided by the bank is that the advertisements referred to the revised scale of pay, issue of criticality would be considered and if not found critical to the trade in which the respective Petitioner is working, to issue the necessary No Objection Certificate.

24. But before we issue the formal directions, we deal with a four-fold submission urged by Sh. Arvind Nayar, learned Counsel for the writ Petitioners.

With reference to a decision dated 2.2.2011 authored by one of us, namely Pradeep Nandrajog, J., deciding a batch of writ petitions, lead matter being Sgt. Gedela Yugankar v. UOI and Ors. WP(C) No. 722/2010, learned Counsel urged that considering AFO 14/2008, on the principle of legitimate expectation, relief was granted to the writ Petitioners therein and thus counsel claims parity on the principle of legitimate expectation.

25. The argument is mis-founded inasmuch as legitimate expectation of the writ Petitioners in the batch of writ petitions decided vide decision dated 2.2.2011 was considered in light of the fact that said writ Petitioners had applied when AFO Order No. 4/2007 dated 1.6.2007 was in force. They had cleared the written examinations by the time AFO No. 14/2008 had come into being and we had noted that the said writ Petitioners had commenced the relay race under the terms of AFO No. 4/2007 and had a legitimate expectation that they would be permitted to complete the relay race under the said AFO and thus had held that the revised AFO 14/2008 could not defeat their legitimate expectation. We have highlighted herein above that the instant writ Petitioners have commenced their relay race after AFO 14/2008 had come into effect on 19.9.2008 and AFO No. 4/2007 had stood superseded.

26. Our observations pertaining to the applications being forwarded by the Unit Commanders being the foundation for legitimate expectation in the said decision have to be read in light of the clarification we have penned in the preceding paragraph 25 herein above and not as widely projected by learned Counsel, that merely because the Unit Commandant forwarded the application would give birth to a legitimate expectation. Second reason to distinguish the said judgment is that the issue raised therein was when would the date on which 7 years minimum service required to be rendered has to be reckoned, which is not the issue in the instant writ petitions.

27. Learned Counsel made a second submission and for which reference was made to two decisions of a Bench of which one of us, namely Pradeep Nandrajog, J., was a member of, being the decision dated 3.2.2011 in WP (C) No. 505/2011 Brajesh Jaiswal v. UOI and Ors. wherein pertaining to a Probationary Officer in the Central Bank of India and WP(C) No. 7482/2010 Abhishek Kumar Singh v. UOI and Ors. in which another officer who desired to join Life Insurance Corporation of India, a mandamus was issued to forthwith issue No Objection Certificates notwithstanding the applicable pay-scales for said posts were Rs. 14,500- Rs. 25,700 i.e. the same as in the instant writ petitions (save and except one in which applicable pay-scale is not known) and thus counsel would submit that instant writ Petitioners are entitled to be treated at par, more so for the reason the department had implemented the mandamus issued qua said two persons.

28. Sh.A.S. Chandhiok, learned ASG fairly conceded that the department was at fault by not considering the material now placed before this Court with respect to the pay-scales mentioned in AFO 14/2008 with reference to the pre-revised pay-

scales and not drawing attention of this Court to the Government of India order dated 9.4.2009, relevant extracts whereof have been noted in para 17 above as also ignoring that the Air Force Authorities had issued a clarificatory order on 2.5.2009 and thus learned Counsel would urge that merely because, in the past, Air Force Authorities acted under a mistaken notion, would be no ground to plead estoppel against the Air Force Authorities.

29. We agree. There cannot be any equality and a wrong can never be a foundation of a claim for equivalence. Further, if it is found that in the past a party was acting under a mistaken belief it cannot give birth to a plea of estoppel in the mouth of a 3rd party. Estoppel is founded when a person shows that acting bona fide upon the representation of the opposite party the person concerned has altered his position, thereby estopping the party making the representation from resiling from or withdrawing the same.

30. The Petitioners may feel discriminated against, in that a few of their colleagues have sneaked past on equivalent posts, but this would be their feeling and not the opinion of the law inasmuch as if some persons are wrongly permitted to sneak across and the error of permitting them to sneak across is detected, thereby not permitting others to sneak past, would not amount to discrimination in the eyes of the law. It is trite said that what a common man perceives to be wrong need not necessarily be wrong in the eyes of the law and vice-versa what a common man perceives to be right need not necessarily right in the eyes of the law.

31. The third submission urged was that the Ministry of Finance (Department of Financial Services) had issued a notification on 13.7.2010 notifying the Regional Rural Banks (Appointment and Promotion of Officers and Employees) Rules 2010 in which various categories of posts were notified in the Regional Rural Banks and all posts in Scale I to Scale V were classified as group "A" posts and that the posts to which Petitioners have been issued letters of offer are in Scale I i.e. are group "A" posts.

32. The submission has no legs to stand on for the reason there may be a different criteria for categorizing posts in the banking sector vis-?-vis their categorization for civil services. What is of relevance is para 1 of the Air Force Order No. 14/2008 where group "A" post is not the sole criteria but only such group "A" posts the maximum of the pay scale whereof is not less than Rs. 13,500/- as revised from time to time. Thus, for the purposes of para 1 of the Air Force Order No. 14/2008 the essential condition has to be that the maximum of the pay scale for the post has to be not less than Rs. 13,500/- as revised from time to time. We have already discussed hereinabove the effect of the figure "Rs. 13,500/-" being qualified by the expression "as revised from time to time".

33. Last submission urged that this probably was the last chance for the Petitioners to take a competitive examination for a Group "A" post or an equivalent post and thus in equity the Petitioners be allowed the relief prayed for.

34. Our sympathies for a cause, cannot determine the course of the law. If the Petitioners are not entitled for something in law, on our misplaced sympathies, we cannot create a right.

35. Entitlement of the Petitioners is governed by a policy and which we note is AFO 14/2008. It was not disputed by learned Counsel for the Petitioner that under the Air Force Act, the Petitioners are obliged to serve till the age of superannuation and that other than AFO 14/2008 they have no enforceable right to seek a premature discharge from service and since we have interpreted AFO No. 14/2008 by holding that the sum of Rs. 13,500/- referred to in column-3 pertaining to Group "A" posts is referable to the pre-revised pay-scales and the language of the AFO No. 14/2008 itself makes it clear that the reference to said sum would be as revised from time to time, there is no escape but to conclude by holding that the only relief which the Petitioners would be entitled to would be to issue a mandamus as discussed in para 23 above and thus we dispose of the writ petitions directing the respective banks in each of the writ petitions to forthwith convey to the Air Force Authorities whether the pay-scale referred to in the advertisements issued by the respective bank and pursuant where to Petitioners applied were the pre-revised or the pay-scales after revision, and if the pay-scales were pre-revised, the corresponding scale, post revision. Thereupon, Air Force Authorities would do the needful and if the information provided is that the scales of pay were pre-revised, by taking into consideration the revised scales of pay, if the posts are a Group "A" post in the pay-scale maximum of which is not less than the sum equivalent to Rs. 13,500/-, post revision, would grant the necessary No Objection to the Petitioners without considering the criticality of the trade and if the information provided by the bank is that the advertisements referred to the revised scale of pay, issue of criticality would be considered and if not found critical to the trade in which the respective Petitioner is working, to issue the necessary No Objection Certificate. The banks would convey the information to the Chief of the Air Staff at Air Headquarters New Delhi within a period of 3 days and within 4 days thereafter the Chief of the Air Staff would convey the further decision to the Petitioners and needless to state reasons would be indicated therein. If any Petitioner is found eligible to be appointed the necessary discharge certificate would be issued within further 1 week thereof and in such circumstance time shall be suitably extended by the bank concerned to enable the said Petitioner to join under the bank concerned by taking into account the time fixed by us hereinbefore.

36. No costs.