

(2011) 03 DEL CK 0070
In the Delhi High Court
Case No : Writ Petition (C) 2515 of 2010

Brig. V.Jaikumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Citation : (2011) 03 DEL CK 0070

Hon'ble Judges : Suresh Kait, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Brijesh Kalappa and Divya Nair, for the Appellant; Amit Chadda, Snigdha Sharma and Mishra, JAG, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Petitioner Brig.V. Jaikumar was commissioned in the Corps of Signals in 1976 and held a number of important assignments including Regimental, Instructional, Foreign and Staff. As per him, over the years he has specialized and acquired skill in the operationalization of new state of art systems including the technical, managerial, training and organizational aspects.

2. National Security Guards (NSG) was set up in the year 1984 and is a fully deputationist force. It draws man power from the army and Central Para-Military Forces such as BSF, CRPF, ITBP and CISF.

3. The post of DIG (Communication) in NSG was lying vacant and on 17.10.2008 the Petitioner was taken on deputation for a period of 3 years as DIG (Communications) NSG. Petitioner took charge on 3.11.2008. The deputation had to last for a period of 3 years. But, could be curtailed prior thereto.

4. As per the Petitioner he was able to conceptualize an information system that would meet NSG's operational needs and the concept paper was not only reviewed but even accepted with commendation by the Director General NSG. As per the Petitioner, post infamous terrorist attack in Bombay on 26.11.2009, setting up of regional hubs of NSG was approved and this increased the

requirement of communication and information support system. Petitioner claims to have worked over-time to ensure that the regional hubs were put in place in the minimum time possible.

5. As per the Petitioner, when he was on leave he learnt that the file was being processed for his repatriation without following the process of the matter being considered in the office of the Director General. As per the Petitioner, on 18.3.2010 one Brig.A.K. Dixit was appointed, on deputation, as DIG (Communications) NSG.

6. On learning about the order dated 18.3.2010, Petitioner submitted a representation to the DG NSG, on 26.3.2010 and receiving no response sent representations to the Ministry of Home Affairs seeking intervention. He heard nothing in response and thus was constrained to file the above-captioned writ petition.

7. The main grievance of the Petitioner is that the pre-mature repatriation has caused a stigma on his career. As per the Petitioner, there are no valid reasons to repatriate him and the probable reason of his taking extra leave, was not a justifiable ground to repatriate him.

8. From the pleadings made in ground No. 'B' and 'C' of the writ petition, it is apparent that the Petitioner knew the reason why he was being pre-maturely repatriated evidenced by the fact that the Petitioner has tried to explain his repeated travels away from Delhi and his repeatedly taking leave.

9. We shall elaborate upon this a little later, but would note the response filed to the writ petition.

10. As per the Respondents vide notification dated 10.11.2008 it was clearly stipulated as under:

The competent authority is pleased to appoint IC-31644 F Brig. Venugopal Jaikumar, SIGS of Army to the NSG as DIG (Comn.), HQ, NSG in the scale of `16,400-20,000 (pre-revised) on deputation basis w.e.f. 03/11/2008 (FN). The period of deputation of above officer in the NSG shall be for a period of three years from the date of assumption of charge of the post or until his retirement or superannuation from Army service, whichever is earlier or till further orders and the officer will be governed in terms of MHA's letter No. 3/1(i)/(ii)/84-NSG dated 28.05.1985 as amended from time to time.

While on deputation with the NSG, the officer shall be governed in accordance with the provisions contained in NSG Act 1986 and the rules made there under. The deputation of above officer shall be subject to pre-mature repatriation on unsuitability, indiscipline, exigencies of service as well as other unforeseen factors so demand.

11. Not denying to the contributions made by the Petitioner while on deputation to NSG, it is stated that of the 54 equipments sanctioned by the Government of

India, only 20 equipments were in the preliminary stages of procurement. Though not expressly pleaded in the counter affidavit, a conjoint reading of paras 11 to 14 of the counter affidavit would evidence that the justification pleaded by the Respondents for the decision to pre-maturely repatriate Petitioner is the Petitioner taking excessive leave and managing travel to either Hyderabad, Bangalore, Chennai or Trivendrum so that he could meet his ailing wife who, during course of hearing of the writ petition, as we were informed, is stationed at Hyderabad.

12. As regards the plea of the Petitioner that a proper procedure was not followed to process the file in which decision was taken to curtail the deputation of the Petitioner, with reference to Annexure R-5, it has been highlighted that the decision was taken by the Director General NSG. It stands highlighted that even as per the claim of the Petitioner, the decision for repatriation has to be taken by the Director General NSG.

13. At the heart of the matter is the issue of the Petitioner taking excessive leave and managing to travel down south to meet his ailing wife.

14. We eschew reference to the repeated visits made by the Petitioner to the 4 major capital cities in the south, being Hyderabad, Bangalore, Chennai and Trivendrum for the reason we have no material wherefrom we can gather that the tours were unjustified and would only state that between 24.11.2008 till 31.8.2009, Petitioner made as many as 11 trips to the said towns and remained outside Delhi for a period of 31 days.

15. As regards the leave taken by the Petitioner from 29.12.2008 till 2.1.2010 i.e. in the short span of his deputation being one year and four days, we find that the Petitioner remained on personal leave for 121 days. Removing 52 Saturdays and 52 Sundays, which are non-working days and excluding the gazetted holidays; with respect to the 240 working days which remain, we find that the Petitioner took personal leave for 121 days.

16. As per the Respondents, work was suffering and hence the Petitioner was repatriated.

17. Now, a person on deputation does not have any settled or vested right to remain on deputation for any specified tenure. Even where a tenure is mentioned, for good administrative reasons, the same can be curtailed. As regards the Petitioner, and as noted hereinabove, the notification under which he was taken on deputation makes it expressly clear that the tenure of 3 years stipulated as the period of deputation is liable to be curtailed.

18. Annexure R-5 is the note approved by the Director General NSG and brings out that the frequent temporary duties managed by the Petitioner to visit a city in the south and his taking excessive leave was curtailing the effective contribution to the organization and hence it was decided that the Petitioner be repatriated to his parent cadre.

19. Law pertaining to judicial intervention in a case of deputation is clear. If the term of deputation is liable to be curtailed, only upon proof of mala-fide, can a writ court interfere if the deputation is curtailed. If objective facts are shown to the court on which the subjective satisfaction has been taken by the competent authority, the writ court cannot go into the merits of the decision taken. In other words, it is not the decision but the decision making process which falls for scrutiny of a court.

20. Tested on the anvil of the legal jurisprudence as above extracted, we find no mala-fide on that part any officer in taking a decision to pre-maturely repatriate the Petitioner to his parent department. An objective fact; of Petitioner taking excessive leave has been shown to us. The subject satisfaction of the authority concerned that the said excessive leave taken by the Petitioner is hampering the growth of the organization, has to be the subjective satisfaction of the authority concerned and the court cannot substitute the subjective satisfaction of the court on the issue. Suffice would it be to state that it is the man in charge of the administration who gets a feel of the manner in which organizational work suffers on account of a particular employee taking excess leave. It is only the man on the seat who can subjectively assess the same and none else. This is inherent in every organizational set-up.

21. Now, that the Petitioner had leave to his credit and he justifiably took the same, is neither here nor there. The issue is whether the organization to which Petitioner went on deputation was feeling hampered with the fact of the Petitioner availing and exercising his right. We must emphasize that the leave which the Petitioner was availing had been accumulated by him while in service of the Army. While on deputation he was encashing his leave balance. He could do so. But, the organization to which he was on deputation would be justified in saying: Use the ATM of your parent banker and not our ATM; i.e. was justified in telling the Petitioner to go back to his parent department and while serving there encash the accumulated leave and not that work under NSG and encash the leave which was accumulated while serving under the Army.

22. The repatriation of the Petitioner is not premised on any misdemeanour or a stated inefficiency and thus we see no scope for the Petitioner to be weary of the repatriation being a stigma on his competence. As learned Counsel for the Petitioner very rightly stated that the Petitioner has a commitment to his wife who is married to him for over 25 years and being a patient of acute arthritis needs the comfort of her husband and we find that the personal commitment of the Petitioner, which he is entitled to honour, has come into conflict with the exigencies of the requirement of NSG to have with it a person who can devote more time so that the communication system in the various hubs of NSG can be put in place. The two rights stand independent of each other and we see no scope whatsoever for a stigma to be cast either upon the Petitioner or his career.

23. The writ petition is dismissed, but we refrain from imposing any costs.