

(2019) 03 CAT CK 0139

In the Central Administrative Tribunal

Case No : Original Application No. 629 Of 2018

Deepansu Kumar Gaur S/o Rajbir Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 27-03-2019

Acts Referred:

Citation : (2019) 03 CAT CK 0139

Hon'ble Judges : Nita Chowdhury, J; S.N. Terdal, J

Bench : Division Bench

Advocate : J.S. Mann, Rajive R. Raj

Final Decision : Dismissed

Judgement

1. The applicant has filed this OA, seeking the following reliefs:-

(i) to direct the Respondents produce the correspondence taken place between HQ CE NC and DG (Pers)/EIC(i) regarding extension of time for joining of the applicant; and /or

(ii) to quash the order of cancellation appointment order dated 25-10-2017 (Annexure A-1 (impugned order) ; and /or

(iii) to direct the Respondents to appoint the applicant on the posts of Store Keeper Grade-II(SK-II) (Pay Band-1 Rs.5200-20200/- with GP 1900/-) w.e.f. 19.06.2017 or from any other date as deemed fit by Hon'ble Tribunal in facts and circumstances of the case and grant seniority and make payment of arrears of pay and allowances ; and/ or

(iv) to pass any other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in favour of the applicant and against the Respondent;

2. The relevant facts of this case are that the applicant applied for the post of Store Keeper Grade-II (SK-II) in MES on 14. 6.2015 and having been shortlisted

on the basis of written examination, he was called on 6.6.2016 for original documents verification vide letter dated 16.5.2016. The offer of appointment letter dated 11.11.2016 was issued to the applicant with direction to report for duty to the office of HQ CENC near Udhampur on or before 31.11.2016.

2.1 Thereafter the applicant had written a letter dated 24.11.2016 to the respondents to extend the joining time upto the first week of June 2017 on the ground that since the year 2013, he is undergoing regular study of undergraduate course, i.e., B.Tech (Chemical Engineering) from GGSIP University and he is in 4th year, which is to be completed by May 2017 and he will join the said post in the first week of June 2017. Upon receipt of the said request of the applicant, competent authority considered and granted extension upto 10.2.2017 and ordered that failing which the applicant's appointment letter shall be treated as cancelled and no further representation shall be acceptable, vide letter dated 6.12.2016.

2.2 Thereafter, according to the applicant, since the said extension was not sufficient as he needed extension till 1st week of June 2017, he sent letters dated 4.1.2017, 6.2.2017 7.3.2017 and 25.4.2017 and finally on 19.6.2017 after obtaining medical certificate on 14.6.2017, he reported for joining his post but he was not permitted to enter inside the gate and sent back from the entry gate and was not intimated the formalities regarding joining till date and on 19.6.2017 correspondence took place between the respondents. The application of the applicant was forwarded to E-in-C's Branch, IHQ of MOD (Army), New Delhi for seeking clarification whether extension upto first week of June, 2017 can be granted as requested for the applicant for the reason that he is student of final year B.Tech (Chemical Engineering) and exam will be completed by 31.5.2017. As directed by E-in-C's Branch, applicant's case was reviewed and report was submitted vide CE NC letter dated 14.9.2017 as since there is no provision to extend joining time beyond six month from the date of issue of appointment letter, E-in-C's Branch was apprised accordingly and applicant was also informed vide letter dated 25.10.2017 that as per Govt. of India, Ministry of Personal, PG and Pensions DOP&T letter No.35015/2/93-Estt(D) dt 09 Aug 95, for joining the appointment, maximum six months extension can be granted from the date of issue of appointment letter and since the applicant failed to join within the period granted for this purpose, therefore, his appointment letter stands cancelled.

2.3. Being aggrieved by the aforesaid impugned order dated 25.10.2017, the applicant has filed this OA seeking the reliefs as quoted above.

4. We have heard learned counsel for the parties and perused the material placed on record.

5. Counsel for the applicant submitted that action of the respondents cancelling his appointment letter and intimation vide letter dated 25.10.2017 is belated as stipulated period of extension was already over by 16.5.2017, which is illegal, arbitrary, unjust and unconstitutional, which is violation of Article 14, 16 and 21

of the Constitution of India. Counsel further submitted that adopting of wrong channel by Northern Command resulted into non-consideration of the matter for decision of appropriate authority regarding extension of time for joining and ultimately due to pendency of the same resulting into consequent non-communication of decision to the applicant.

5.1 Counsel further submitted that had his further request for extension of time for joining the post was placed before the competent authority in time, his request would have been approved by the competent authority.

5.2 Counsel further submitted that extension of time upto 26.2.2017 was not sufficient as the applicant needed extension of time till 1st week of June 2017 and as such once again sent letters dated 4.1.2017 and 6.2.2017 to the respondents re-iterating his requirement of final year examination.

6. On the other hand, learned counsel for the respondents submitted that applicant was selected as SK-II during the recruitment drive for the years 2012-13 and 2013-14 and applicant was allotted Chief Engineer, Northern Command vide letter dated 4.10.2016 and accordingly applicant was given offer of appointment to the said post vide letter dated 11. 11.2016 with direction to join at HQ Chief Engineer, Northern Command on or before 30.11.2016 wherein it was clearly mentioned in para 4 of the said letter that "The offer of appointment shall automatically stands cancelled and this letter will become null and void, if you do not report for duty by the specific date given in the letter and in the absence of any intimation from you." Thereafter request was received from the applicant vide his application dated 24.11.2016 to extend the joining time upto first week of June 2017. Consequent upon the same, competent authority considered his request for extension and granted extension upto 10.2.2017 as per the existing policy issued by DoP&T OM No.3501/2/93-Est (D) dated 9.8.1995 according to which any extension for more than 6 months cannot be granted to anyone including the applicant and the applicant is insisting for special treatment in violation of the guidelines/policy issued vide aforesaid OM by the DoP&T. The relevant portion of the said OM reads as under:-

"it has been decided to reduce from nine months to six months the maximum time upto which an offer of appointment can be kept to open. In other words, an offer of appointment should clearly specify the period (which shall not normally exceed one or two months) after which the offer would lapse automatically if the candidate did not join within the specified period. If however, within the specified period, a request is received from the candidate for extension of time, it may be considered by the Ministries/Departments but extension beyond three months should not be granted liberally and it may be granted only as an exception where facts and circumstances so warrant and in any case only upto a maximum of six months from the date of issue of the original offer of a appointment. An offer of appointment would lapse automatically after the expiry of six months from the date of issue of the original offer of appointment."

6.1 On the strength of aforesaid, counsel for the respondents submitted that it is abundantly clear that extension beyond three months cannot be granted in normal circumstances. However, even in exceptional cases, extension beyond six months cannot be granted but only upto six months. Applicant was granted extension of time for joining upto 10.2.2017 by the competent authority vide letter dated 6.12.2016 wherein it is specifically mentioned that on failure to join on or before 10.2.2017, his appointment letter shall be treated as cancelled and no further representation shall be accepted.

6.2 Counsel further submitted that applicant had been given sufficient opportunity for joining as his joining time was extended from 30.11.2016 to 10.2.2017 as per the existing policy issued by the Govt. of India from time to time on the subject. He further submitted that applicant is asking for special treatment of his case by violating the Government policy for his personal benefits, which cannot be granted. Accordingly, once he failed to join department in the stipulated/extended time, his appointment letter was cancelled by appointing authority in accordance with rules on the subject.

6.3 Counsel for the respondents also submitted that vide letter dated 2.2.2017, the applicant's application for further extension was forwarded to E-in-C's Branch, New Delhi for further necessary action as he was seeking extension more than six months, i.e. till 1st week of June 2017 on the ground of his final year B.Tech (Chem Engg) being completed on 31.5.2017. Counsel further submitted that as directed by E-in-C's Branch, applicant's case was reviewed and report was submitted vide letter dated 14.9.2017. Since there is no provision to extend joining time beyond six month from the date of issue of appointment letter, E-in-C's Branch was appraised accordingly.

6.4 Counsel further submitted that as per the existing provision, 20% Reserve Panel is drawn while recruiting the candidates against LRS. In case any individual fails to join by given date as specified in appointment letter, the candidate from Reserve Panel is offered such appointment to fill up the vacancy. Hence, action of respondent no.3 is strictly in accordance with rules on the subject. Applicant is well aware that his appointment letter is valid upto 10.2.2016 even then applicant failed to join within stipulated time. Counsel also submitted that aforesaid DoP&T guidelines are available in public domain and the same was also explained to the applicant when he visited the respondent no.3 and the applicant's request of special treatment in violation of policy cannot be considered by respondents.

6.5 So far as contention of the applicant that respondents have adopted the wrong channel is concerned, counsel submitted that respondents have taken action as per the existing policy issued by DoPT OM dated 9.8.1995 on the subject and the applicant's insistence of special treatment as per his convenience and for his personal benefits leaving aside the Government Policies, at the cost of other selected candidates in reserved panel, cannot be accepted.

7. After hearing the aforesaid submissions of learned counsel for the parties and after perusing the pleadings available on record, we accept the contentions of learned counsel for the respondents, as it is admitted fact that period for joining was extended by the respondents upto 10.2.2017 and the fact that extension of time for joining beyond six months is not permissible as provided in the DoP&T's OM dated 9.8.1995. Hon'ble Delhi High Court in the matter of Ajay Kumar and others vs. UOI in WP(C) No.267/2013 had upheld the OM dated 9.8.1995 and had observed as under:-

"10. As far as the question of legality of the Office Memorandum dated 9.8.1995 goes, the respondents' arguments, in the opinion of the court, are merited and substantial. It goes without saying that every offer of appointment should be finite in point of time, more so, in case of a public appointment. The recruiting agency and the competent authority are duty bound to follow transparent selection processes consistent with the dictates of Article 14 of the Constitution of India which mean that vacancies for various posts should be advertised, the last date for entertaining applications clearly notified and the written test or other mode adopted for selection and notified well in advance. Once this stage is over, the result - in the form of a select list - is again duly notified to the concerned candidates or publically. This is followed up by an offer of appointment to all successful candidates. The need to indicate a time within which or a date by which the candidate should report for duty needs to be hardly emphasized.....

11. This Court sees neither arbitrariness nor discrimination in regard to the stipulation of a fixed period within which a successful candidate has to report for duties to his post. As discussed previously, if discretion is allowed to individual appointing authorities, the resultant chaos would throw out of gear the entire process of filling up of vacancies and jeopardize the management of a cadre. Besides, each department or agency in the government would be clueless about the number of vacancies it possesses and indeed the number of successful candidates who are waiting in line to join at a given point of time. It is quite likely that a large number of posts would remain unmanned and unfilled awaiting individual predilections of selected candidates who would join according to their convenience. To avoid such anomalous and possibly disastrous eventualities, a uniform approach was directed by the OM of 6.6.1978 as modified by the later Memorandum of 9.8.1995.

12. Although the above observations are dispositive of the present case, the Court also notices that the petitioner approached the respondents with a representation after his appointment lapsed, for the first time, on 15. 9.2010; he appears to have made repeated representations and finally elicited their response in 2011. During the hearing, his counsel urged with certain vehemence that in terms of the OM dated 28.8.1997, the petitioner could still be accommodated in a later training batch. This Court is of the opinion that such submission is based on the misreading of the OM dated 28. 8.1997. It does not and cannot be read as permitting something which is contrary to the OM of

6.6.1978; the allusion to those who report after four weeks clearly means those who report within the overall period of six months or at worst those whose lapsed appointments are allowed to be revived on the ground of their falling within the "exceptional" category in "public interest". It was not - and perhaps justifiably so - the petitioner's case that his is an exceptional case; certainly, we see no elements of public interest, underlining his claim for being accommodated in a subsequent batch.

13. For the forgoing reasons, the Court is of the opinion that the petition lacks merit; it is accordingly dismissed with no order as to costs.

8. In view of the above facts and circumstances of the case and having regard to the aforesaid judgment of the Hon'ble Delhi High Court in the case of Ajay Kumar (supra), this Court is not inclined to give any relief as prayed for by the applicant in this OA and as such the present OA being devoid of merit is dismissed. There shall be no order as to costs.