

(2022) 03 DEL CK 0112

In the Delhi High Court

Case No : Civil Writ Petition No. 4113 Of 2022

Gurinder Bir Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 10-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 03 DEL CK 0112

Hon'ble Judges : Suresh Kumar Kait, J Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : hashank Kumar, Shalini Nair, Abha Malhotra, Hemandra Singh, Kaadambari

Final Decision : Disposed Of

Judgement

C.M. No.12254/2022 (exemption)

Exemption allowed, subject to just exceptions.

Application stands disposed of.

W.P.(C) 4113/2022 and C.M.12253/2022 (Interim relief)

1. The present petition has been filed by the petitioner under Article 226 of the Constitution of India praying as follows:

"i. Issue writ in the nature of mandamus or any other writ/order/direction to the Respondent Nos. 2-4 to forward the application of the Petitioner for appointment to the post of Assistant Manager (Legal) on deputation basis in Respondent No.5 – NHAI, as prescribed in the Notification issued by Respondent No.5 (Annexure P-2),

ii. Direct Respondent No.5 to consider and process the application of the Petitioner, along with supporting documents, in terms of the Notification issued by Respondent No.5 (Annexure P-2), even if it receives the forwarded Application

of the Petitioner from Respondent Nos. 2-4 after 11.03.2022,

iii. Pass any other order which this Hon'ble Court may deem fit."

2. Learned counsel for the petitioner submits that the petitioner has applied for the post of Assistant Manager (Legal) on deputation basis in respondent No.5/ National Highway Authority of India (NHAI) through his parent department i.e., the Border Security Force (BSF)/respondent Nos.2 to 4. However, the said application of the petitioner, which was forwarded to the BSF on 21.02.2022, has till date not been forwarded by the BSF to NHAI as required by applicable rules.

3. On the other hand, learned counsel appearing on behalf of respondent Nos.1 to 4 submits that there is no absolute obligation upon the said respondents to forward an application in every case; and in any case, when they receive an application from an individual, the same has to be forwarded to the concerned department for approval before forwarding it to the organisation to which the applicant is seeking deputation.

4. Learned counsel appearing on behalf of the petitioner has relied upon paragraph 6 of Department of Personnel & Training (DoPT) Guidelines dated 23.12.2013 which states the circumstances in which an application should not be forwarded by the parent department. Para 6 of the said guidelines reads as under:

"6. CIRCUMSTANCES IN WHICH APPLICATION SHOULD NOT BE FORWARDED

Application of a Government servant for appointment, whether by direct recruitment, transfer on deputation or transfer, to any other post should not be considered/forwarded, if-

(a) (i) he is under suspension; or

(ii) disciplinary proceedings are pending against him and a charge sheet has been issued; or

(iii) sanction for prosecution, where necessary has been accorded by the competent authority; or

(iv) where a prosecution sanction is not necessary, a charge-sheet has been filed in a Court of law against him for criminal prosecution.

(v) where he is undergoing a penalty-no application should be forwarded during the currency of such penalty.

(b) When the conduct of a Government servant is under investigation (by the CBI or by the Controlling Department) but the investigation has not reached the stage of issue of charge-sheet or prosecution sanction or filing of charge-sheet for criminal prosecution in a court, the application of such a Government servant may be forwarded together with brief comments on the nature of allegations and it should also be made clear that in the event of actual selection of the Government servant, he would not be released for taking up the appointment, if

by that time any of the situations in (a) above arises.”

5. Admittedly, the case of the petitioner does not fall under para 6 of DoPT Guidelines dated 23.12.2013.

6. In view of the above, respondents Nos. 2 to 4 are directed to forward the application of the petitioner after verification of certificates of the petitioner preferably by tomorrow i.e. 11.03.2022 by 06.00 p.m.; and in the event of any unavoidable procedural difficulty, then in any case within 03 working days from today.

7. We further direct NHAI/respondent No.5 to accept the petitioner’s application even if the BSF fails to forward the application to them within time; and to give a grace period of upto 7 (seven) days for receiving such application.

8. The writ petition is disposed-of with the above directions.

9. Pending application, being C.M. No.12253/2022, also stands disposed of.

10. It is however made clear that the present order has been passed in the specific facts of this case.

11. A copy of this judgment be given dasti to learned counsel for the parties under the signatures of Court Master.