
(2012) 05 DEL CK 0500

In the Delhi High Court

Case No : Writ Petition (C) No. 2684 of 2012

Havildar S.S.Jena

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 05 DEL CK 0500

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Major K.Ramesh and Ms. Archana Ramesh, for the Appellant; Anil Gautam, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has sought the quashing of order dated 31st May, 2011 passed by the Armed Force Tribunal, Principal Bench, New Delhi in OA No. 700/2010 dismissing his original application seeking the quashing of DGMT, Army Headquarter letter dated 22nd September, 2009 and AEC records letter dated 18th April, 2009. Brief facts to comprehend the controversies are that the petitioner is a Havildar of the Army Education Corps. The petitioner was enrolled in the Army on 3rd June, 1992 and had risen to the rank of Havildar.

2. To educate himself more, the petitioner had sought permission on 18th October, 2003 to pursue MBA from IGNOU, New Delhi by correspondence from January, 2004 to December, 2006 in accordance with the para 4 of Army Order 89/80. Para 4 of the AO 89/80 contemplates that the study programme is subject to the exigencies of the service and no special consideration in the matter of posting and transfer would be allowed, nor would the Army personnel be entitled for any special leave other than what is admissible under the existing order. Under the Army Order 89/80, a candidate is allowed to seek permission to pursue higher studies for academic professional advancement and a certificate is given to this effect. Pursuant to the request made by the petitioner to pursue the

course of MBA, the sanction was granted by letter dated 20th December, 2003. Permission was, however, granted subject to provisions of AO 89/80 as amended vide AO 1/83.

3. Permission letter dated 20th December, 2003 also contemplated that a candidate in the event of passing BT, B.Ed examination will be a post graduate and will not again be detailed for the preliminary test for the post graduate course being held at AEC Training College and Centre. The said permission also categorically contemplated that in case the individual is detailed on a course of instruction his name will not be taken out from the said course on the plea that he has been granted permission to pursue higher studies. Para 4 and 5 of the permission dated 20th December, 2003 are as under:-

4. It may be made clear to the individual who has applied to pursue higher studies for this BT, B.Ed examination that in the event of his passing these examinations he will be a post graduate and will not again be detailed for the preliminary tests for the Post Graduate course being held at AEC Trg College and Centre. In the event of not qualifying in the said examination or deciding not to do so the responsibility for intimating this info will be that of the unit concerned. On receipt of intimation only this office will be in a position to detail the individual concerned for the Preliminary test for the Post Graduate course when he becomes due.

5. In case the individual is detailed on a course of instruction his name will not be taken out from the said course on the plea that he has been granted permission to pursue higher studies. However, the period of the examination, provided the course is not linked with promotion and the month of the examination is intimated to this office- minimum three months in advance.

4. The petitioner alleged that despite knowing that the MBA course is for three years, the AEC records started harassing the petitioner to do an Army course in September 2004 itself. The petitioner further alleged that even in 2005, he was pressurized to undergo an Army course of instruction or submit an unwillingness certificate.

5. The petitioner asserted that thereafter, he gave his unwillingness certificate on 27th December, 2005 but it also stipulated in a clause that the certificate is being issued as he cannot undergo two academic courses simultaneously and that there would be a financial loss to him as it is a private course.

6. The respondents had thereafter, issued a letter dated 26th April, 2007 giving opportunities to the JCOs/NCOs who had already expressed their unwillingness to undergo mandatory/criteria courses to withdraw their unwillingness so that they could come back to the main stream with othe Rs. The petitioner, however, persisted with his unwillingness certificate. The petitioner had stipulated the following in his unwillingness certificate dated 27th December, 2005:-

It is certified that I No. 9512036F Rank HAV/ ABC Name SIDHARTHA SANKAR

JLNA of RAJ RIF Centre Delhi Cantt. 10 fully understand the provisions of AEC ROI 02/2000 Under which my claim to the next higher rank will be permanently extinguished as I will not be eligible for further promotion due to not having qualified on up gradation/Criteria course/. Promotion cadre POST GRADUATE COURSE. I also understand that herein after I will not be given further chances to undergo any up gradation/ criteria course/ promotion cadre till my retirement in present rank. Keeping fully aware of the implications of above mentioned ROI. I render on my own accord this unwillingness certificate for which is tantamount to refusal of all future promotions not to undergo the course detailed by AEC Records. This unwillingness certificate is irrevocable under any circumstances if not waived by competent authority under the provisions of AEC ROI 02/2003 (Reasons for permit Unwilling is:

...I am doing M.B.A. (Master of Decree administration) from IGNOU since Jan 2004. I do not want to leave in the middle of the course as it will cause financial loss to me. I had got permission from periods vide letter No. 0065 110001 ERC coord) dt. 20 Dec 2003. I am unable to do two courses simultaneously.

7. Despite the Policy dated 26th April, 2007 permitting the withdrawal of the unwillingness certificate tendered by some of the army personnel, the petitioner submitted a fresh unwillingness letter dated 17th July, 2007. On his behalf, a request was made to the Additional DG AE to re-examine the case of the petitioner in order to give him a chance to come back into the main stream with othe Rs. By letter dated 9th July, 2009 the Commanding Officer, 115 Engineer Regiment, had contended that the petitioner had rendered his permanent unwillingness on the ground that he was unable to do two University Courses i.e. MBA and Post Graduate Courses (AEC Training College & Centre) simultaneously. He had got the permission from the record and only then took admission into three years MBA Course (IGNOU). After completion of one year, he was detailed on preliminary test for PGC 2005-2006 by letter dated 24th September, 2004. However, on his request, his name was deleted. The petitioner, thereafter, was again detailed for the said preliminary course, but as the petitioner had not completed his course, therefore, he was made to sign the permanent unwillingness certificate. Though he had given his permanent unwillingness, however, he was willing to do the course after the completion of his MBA course. After 1 and 1/2 years, the petitioner had submitted willingness certificate duly signed on 1st June, 2007 and on behalf of the petitioner and the AEC records was approached for his detailment for Map Craft Instruction Course, which is essential part of troops training, however, no positive response was received. In these circumstances, the letter dated 9th July, 2009 was addressed by the CO, 115 Engineer Regiment and to the Additional DG AE seeking his indulgence to re-examine the case and give a chance to the petitioner to come back to the mainstream with the other personnel. The CO, 115 Engineer Regiment thereafter, received a communication dated 22nd September, 2009 in response to his letter dated 9th July, 2009 and it was categorically asserted on behalf of the respondents that the petitioner was initially detailed on preliminary test for PG

course 2005-2006 by letter dated 24th September, 2004, however, the petitioner by his letter dated 17th October, 2004 had represented against the detailment contending that he has to undergo his MBA examination and consequently, sanction was accorded and the name of the petitioner was taken off the AEC records.

8. By communication dated 22nd September, 2009, it was further asserted that the petitioner was detailed on the next preliminary test for PG course by AEC records letter dated 28th October, 2005. The petitioner again represented against his detailment on the ground that he was appearing for the MBA examination and therefore, he tendered his unwillingness certificate dated 27th December, 2005. It was further disclosed that since the petitioner gave more weightage to the MBA course and tendered his unwillingness in writing against a bona fide Army course essential for the advancement of his career, therefore, unwillingness submitted by the petitioner twice could not be later on converted into willingness and therefore, the request made on behalf of the petitioner to convert the unwillingness given by him into willingness could not be permitted. The request on behalf of the petitioner for revocation of his permanent willingness was also declined by communication dated 18th April, 2009.

9. Aggrieved by the rejection of his request for revocation of his unwillingness, the petitioner filed an original application before the Armed Force Tribunal, Principal Bench, New Delhi being OA No. 700/2010 on 30th November, 2010. The petitioner sought the revocation of his unwillingness certificate and contended that the respondents are estopped from refusing him for applying for the Army, after they themselves had given him the sanction to pursue the MBA and PGDHRM course from January, 2004 to December, 2006 and after completing these courses, he has genuinely applied to do the Army course. The petitioner contended that the detailment of the petitioner for the Post Graduate course when he was undergoing the MBA course from IGNOU was, in any case, violative of the UGC Rules and the respondents are also amenable to the UGC rules. The petitioner therefore, alleged that declining the petitioner the opportunity to pursue the mandatory course would be declining him promotion in the long run, especially since the petitioner has already obtained his degree in MBA.

10. The plea of the petitioner was contested by the respondents before the Armed Force Tribunal, contending, inter-alia, that after the petitioner had given his unwillingness undertaking not once but twice, though in terms of communication dated 26th April, 2007, he was entitled to withdraw his unwillingness, however, he did not avail the said opportunity, therefore, now the petitioner cannot turn around to contend that he be allowed the withdrawal of his unwillingness to pursue the Army course and that now he should be allowed to attend the Army course.

11. The Tribunal considered the pleas and contentions of the parties and categorically relied on the undertaking given by the petitioner on 20th December, 2005 which was specifically incorporated in the said order, which is as under;-

It is certified that I. No. 9512036F Rank HAV/AEC Name SIDHARTHA SANKAR JENA of RAJ RIF Centre Delhi Cantt-10 fully understand the provisions of AEC ROI 02/2000 Under which my claim to the next higher rank will be permanently extinguished as I will not be eligible for further promotion due to not having qualified on up gradation/criteria course/promotion cadre POST GRADUATE COURSE. I also understand that here-in-after, I will not be given further chances to undergo any up gradation/criteria course/promotion cadre till my retirement in present rank. Keeping fully aware of the implications of above mentioned ROI, I render on my own accord this unwillingness certificate for which is tantamount to refusal of all future promotions not to under go the course detailed by AEC Records. This unwillingness certificate is irrevocable under any circumstances if not waived by competent authority under the provisions of AEC ROI 02/2003 (Reasons for permt Unwilling is I am doing M. B. A. (Master in Business Administration) from IGNOU since Jan 2009. I do not want to leave in the middle of the course as it will cause financial loss to me. I had got permission from Records vide letter No. 0065/100/ERC (Coord) dt 20 Dec 2003. I am unable to do two course simultaneously.

Here mention the cause of unwillingness and authenticated proof document may evidence of the same be enclosed with this certificate for record.

Signature No. Name Signed in my presence of this 27th Dec 2005 day of Tuesday.

Unit:

Dated (Signature of OC Unit with Rank and Name) Office Seal.

12. The Armed Force Tribunal thus, took into consideration condition 5 of his undertaking dated 20th December, 2005 categorically stipulating that he knows that in case he does not go for the Army mandatory course, he would be incurring loss to the same effect. When the petitioner had given the undertaking he knew the consequences of tendering the unwillingness certificate, which he had given in his own hand writing on 20th December, 2005. It was also noted that the petitioner had given his undertaking twice and therefore, if he had declined to go for the necessary course then he is also liable to endure the ramification of such a refusal for all future promotions. The Tribunal also held that the petitioner knew the ramification of giving the unwillingness certificate, and therefore, he cannot be permitted to contend otherwise subsequently. In para 7 of the order dated 31st May, 2011, the Tribunal had held as under:-

The argument of learned counsel for the petitioner appears to be justified that once the permission has been accorded by the respondents, it is not proper on the part of the respondents to detail the petitioner for another Army mandatory course. We could have accepted this argument of learned counsel for the petitioner but for the condition "5" of letter dated 20.12.2003 which has been quoted above clearly says that in case he does not go Army mandatory course, he is likely to incur loss to the same effect. He has given in writing that he knows the consequences of the unwillingness certificate, which he has given in his own

hand on 27.12.2005. The petitioner has done MBA for his future prospects but the Army expects him to undergo this compulsory course for the benefit of the Army. Therefore, once he has declined to go for the necessary course, then he has to incur the loss by giving an unwillingness certificate which tantamount to refusal of all future promotions. Therefore, at the time of giving undertaking which he has given with all sense of responsibility, he knew it very well as to what can be the consequences of unwillingness certificate and he thought it proper to pursue the MBA course. Therefore, now he cannot be permitted to blow hot and cold. He knew very well that pursuing the MBA course and not undergoing the Army mandatory course may be treated as an unwillingness and which may result in non promotion in the Army.

13. The petitioner has now challenged the order of the Armed Force Tribunal, Principal Bench dated 31st May, 2011, inter-alia, on the ground that once the respondents had given the permission to pursue a three year MBA course, obtaining an unwillingness certificate two years after the official sanction on 20th December, 2003, to obtain an unwillingness certificate on 27th September, 2005 was an act of malice with the intention to disturb his studies. Since the purpose of the official sanction was to permit the petitioner to study for three year MBA course and as there is no time limit to pursue Map Craft Instructors course which can be done at any time, therefore, permission for the same could not be declined to the petitioner. The petitioner contended, in the circumstances, that the respondents ought to have allowed him to undergo the Map Craft Instruction Course. The petitioner emphasized that the unwillingness certificate rendered by the petitioner was under compulsion and it was not out of his free will and that it was only tendered since he was in the middle of a three year MBA course for which he was already paid the requisite fees from his own resources. The petitioner has also contended that there was no tearing hurry for the petitioner to do the only course remaining that is Map Craft Instructors Course which is mandatory for promotion and also since the said course was only for a duration of 2 and 1/2 months. Referring to the unwillingness certificate given by the petitioner, it is also contended that the unwillingness certificate does not contemplate that he was not interested in the Map Craft Instructors Course but due to the load of two courses to be pursued simultaneously, he had given his unwillingness certificate. On these grounds, the petitioner has sought quashing of order of the Tribunal dated 31st May, 2011.

14. This Court has perused the writ petition, copy of the original application filed before the Tribunal and the documents produced along with writ petition, and heard the pleas and contentions of learned counsel for the petitioner, and the learned counsel for the respondents, Mr. Anil Gautam, who has appeared on advanced notice and has contended that at the time the petitioner was detailed for the Army course, the petitioner had not completed his MBA, and that he was not a post graduate and so he could not be exempted for the same.

15. There is no rule or regulation pointed out by the learned counsel for the

petitioner on the basis of which it can be inferred that the detailment of the petitioner was contrary to any rule or regulation and could not be done by the respondents. Merely because the petitioner was granted permission for three year MBA course in 2003, the petitioner cannot be permitted to state that he should not have been detailed for the Army course. When the petitioner was detailed for Army course, the petitioner made a specific choice and exercised the option and submitted his unwillingness certificate for Army course. The plea of the petitioner for estoppel also cannot be accepted in the facts and circumstances. The petitioner was given an option for the Military course, however, the petitioner opted to continue with his MBA course. By making such a conscious decision to continue with his MBA course and not to opt for Military course, the petitioner took the advantage of the option given to him and completed his MBA course. In the circumstances, on account of these facts, it cannot be inferred that the petitioner was compelled to give his unwillingness. It is not that the petitioner had given his unwillingness in 2005 alone. Since the respondents had also given one more chance to the JCOs and NCOs to withdraw their unwillingness in order to come back to the main streams with othe Rs. However, by communication dated 26th April, 2007 despite of this option to withdraw the unwillingness, the petitioner had given a fresh unwillingness which was communicated to the concerned authorities on behalf of the petitioner by communication dated 17th July, 2007. The petitioner, therefore, cannot be allowed to contend that he was compelled to give unwillingness.

16. In the circumstances, the order of the Tribunal holding that since the petitioner gave his option consciously regarding his unwillingness to do the Army course, and he knew that on account of the option exercised by him, he was likely to incur certain losses, the petitioner cannot now be allowed to turn back and be detailed to do the mandatory Army course. In the circumstances, learned counsel for the petitioner has failed to show any irregularity, illegality or any perversity in the order of the Tribunal so as to require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition in the facts and circumstances is without any merit and is liable to be dismissed. The writ petition is, therefore, dismissed.