
(2014) 09 DEL CK 0184

In the Delhi High Court

Case No : W.P.(C) 4399/2014 and CM Nos. 8790 and 15291/2014

H.K. Basoya (Retd.)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2014) 09 DEL CK 0184

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : T.K. Joseph, Advocate for the Appellant; Ankur Chibber, Advocate for the Respondent

Judgement

Vibhu Bakhru, J.—The present petition has been filed by the petitioners impugning an order dated 10.06.2014 passed by the respondents rejecting the representation made by the petitioners on 14.10.2013. By the said representation, the petitioner had requested that the Ex-servicemen empanelled with the Director General of Resettlement under the policy as existed prior to 09.07.2012 to be considered at par with the Ex-servicemen empanelled under the policy after 09.07.2012. The petitioners had earlier filed a writ petition (W.P. (C) No. 2983/2014) challenging the amended policy. By an order dated 12.05.2014, this Court disposed of the said writ petition with a direction to respondent no. 1 to dispose of the representation of the petitioner made on 14.10.2013.

2. Brief facts of the case are that the petitioners are Ex-servicemen and empanelled themselves with Director General of Resettlement (hereinafter referred to as "DGR") for providing security services sponsored by the DGR. Petitioner no. 1 and 2 were permitted to render services through their respective proprietorship concerns, namely, "Shakti Security and FM Services" and "Arrow Manpower Solution". After their empanelment, the petitioners joined together to form a company named "Siona Security and Management Services Private

Limited", which was incorporated under the Companies Act, 1956. The petitioners participated in the said company as directors. Undisputedly, even though the petitioners are rendering security services through their private company, the sponsorship by DGR is determined on the basis of their individual entitlement.

3. In order to rehabilitate Ex-servicemen, the Central Government has formulated a policy where public sector undertakings and other agencies of the state are encouraged to employ security agencies sponsored by DGR. The Ex-servicemen who are interested in providing these services are empanelled by DGR and are sponsored for security services to be provided to the Government and public sector establishments. In order to have an equitable participation of Ex-servicemen in this rehabilitation programme, the DGR has fixed a quota of security guards and the sponsorship is limited to that extent.

4. As per the policy that existed prior to 09.07.2012, an empanelled Ex-servicemen would be entitled to sponsorship of 300 guards, that is, 75 guards per year for four years or till the Ex-serviceman reaches the age of 63 years whichever is earlier. Thus, the maximum sponsorship that an Ex-serviceman could avail from DGR was 300 guards. This sponsorship could also be availed by an empanelled ex-serviceman through an incorporated company.

5. This policy was amended w.e.f. 09.07.2012 by an Office Memorandum no. 28(3) /2012-D(Res-I) . The said memorandum expressly provided that existing private limited companies operating security services would continue till they complete their quota of guards without being permitted to add new Directors. The quota of guards for each sponsored ex-serviceman was fixed to a maximum of 70 guards per year and this sponsorship would be valid up to the age of 60 years. Paragraph 4 of the Office Memorandum dated 09.07.2012 is relevant and is quoted below:

"4. Existing Private Limited Companies already operating security services will continue to function till they complete their quota of guards years, subject to age bar criteria, without being permitted to add new Directors."

Paragraph 15 of the Office Memorandum dated 09.07.2012 is quoted as under:-

"15. Quota of guards

(a) Individual ESMs: The quota for each sponsored ESM will be upto 70 guards year. The sponsorship will be valid for 2 years and extendable up to the age of 60 years. The sponsorship will clearly indicate the date up to which the sponsorship is valid. However, actual sponsorship will depend on demand and there will be no guarantee in this regard. The above figure is the upper limit for the present, which may be amended based on demand, etc.

(b) The empanelment will be renewed every 3 years.

(c) ESM Corporation: DGR will sponsor not more than 1000 Security Guards/

year. The number of guards will not exceed 1000 at any point of time.

(d) The CPSUs will seek fresh sponsorship/re-sponsorship from DGR, 3 months prior to this date. It will issue a satisfactory performance report if seeking re-sponsorship. For existing private limited security agencies, the date upto which such sponsorship is valid will be clearly indicated and allowed to complete this term. The CPSUs will be informed by DGR in this regard. However no additional director will be permitted.

(One Guard Year is defined as One Security Guard employed for 12 months)."

6. The above referred Office Memorandum was subsequently amended by an Office Memorandum dated 16.01.2013. Paragraph 4 and 15(a) of the said Memorandum was also amended whereby the quota of guards for each sponsored ex-serviceman was increased to 120 guards per year. Paragraph 4 as amended by Office Memorandum dated 16.01.2013 reads as under:-

"All individual security agencies and Private Limited Companies empanelled prior to 9th July, 2012 will be governed by the old guidelines on security agencies in respect of age and cumulative quota of guards without being permitted to add new Directors. Thus security agencies empanelled prior to 9th July, 2012 will be governed by the old rule of 63 years of age/cumulative quota of 300 guards whichever is earlier."

Paragraph 15(a) as amended by Office Memorandum dated 16.01.2013 reads as under:-

"(a) Individual ESMs: The quota for each sponsored Ex- servicemen will be upto 120 guards year. The sponsorship will be valid for 2 years upto the age of 60 years of ESM(0) . However, actual sponsorship will depend on demand and there will be no guarantee in this regard. The sponsorship letter will clearly indicate the date upto which the sponsorship, is valid.

DG (R) , in order to meet the impending requirement of PSUs may enhance the quota of guards based on demand on pro-rata basis under intimation to MoD."

7. The principal grievance of the petitioners is that the persons empanelled after 09.07.2012 would be given a higher quota of guards vis a vis the petitioners who were empanelled prior to 09.07.2012. This according to the petitioners is discriminatory and violative of Article 14 of the Constitution of India. The petitioners have also challenged Paragraph 4 of the revised policy which does not extend the benefit of sponsorship to private companies empanelled prior to 09.07.2012.

8. Essentially, the petitioners have impugned the respondent's revised policy for providing sponsorship for security services to empanelled ex- serviceman. And, the only controversy to be addressed is whether the revised policy violates Article 14 of the Constitution of India as being discriminatory.

9. It is contended that fixing of the cut off date of 09.07.2012 is arbitrary and

discriminatory inasmuch as the revised policy is more beneficial and the petitioners, being empanelled prior to 09.07.2012, are denied its benefits.

10. In my view, the contention of the petitioner is without merit. The petitioners were empanelled under the earlier policy and the benefit of that policy continues to be available to the petitioners at its full extent. Merely because a different scheme that is perceived to be more beneficial, is available to persons empanelled after 09.07.2012, would not justify the allegation of hostile discrimination. It is well settled that "Article 14 forbids class legislation, it does not forbid reasonable classification" (see: *Budhan Choudhry and Others Vs. The State of Bihar*,). To pass the test of Article 14 of the Constitution of India, a classification must fulfil two criteria - "(1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act" (see: *In Re: The Special Courts Bill, 1978*,). These principles are equally applicable to an executive policy.

11. In *Transport and Dock Workers Union and Others Vs. Mumbai Port Trust and Another*, , the Supreme Court considered the validity of a cut off date for increased working hours of typists. Those employees employed after the cut off date were required to work for an additional hour in comparison to the employees appointed prior to the cut off date. The Supreme Court reiterated the principle enunciated above in the following words:

"21. It has been repeatedly held by this Court that Article 14 does not prohibit reasonable classification for the purpose of legislation or for the purposes of adoption of a policy of the legislature or the executive, provided the policy takes care to reasonably classify persons for achieving the purpose of the policy and it deals equally with all persons belonging to a well- defined class. It is not open to the charge of denial of equal protection on the ground that the new policy does not apply to other persons. In order, however, to pass the test of permissible classification, as has been laid down by the Supreme Court in a catena of its decisions, two conditions must be fulfilled: (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) that the differentia must have a rational relation to the object sought to be achieved by the statute in question, vide *Gopi Chand Vs. The Delhi Administration*, (see also *Basu's Shorter Constitution of India, 14th Edn., 2009, p. 81*) .

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31. The policy decision of the Port cannot be said to cause any prejudice to the interest of the personnel recruited after 1-11-1996 because before their recruitment they were clearly given to understand as to what would be their working hours, in case they accept the appointment. In our opinion the introduction of the new policy was a bona fide decision of the Port, and the acceptance of the conditions with open eyes by the appellants and the recruits

after 1-11-1996 means that they can now have no grievance. It is well settled that courts should not ordinarily interfere with policy decisions."

12. The Supreme Court in *Government of Andhra Pradesh and Others Vs. N. Subbarayudu and Others*, , while considering a challenge to the cut off date fixed for entitlement of pension to the teachers on the revised age of superannuation, observed as under :

"5. In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See *State of Punjab v. Amar Nath Goyal*.)

6. No doubt in *D.S. Nakara v. Union of India* this Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in *Nakara* case as observed in para 29 of the decision of this Court in *State of Punjab v. Amar Nath Goyal*.

7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter-affidavit filed by the Government (unless it is shown to be totally capricious or whimsical) , vide *State of Bihar v. Ramjee Prasad*, *Union of India v. Sudhir Kumar Jaiswal*, *Ramrao v. All India Backward Class Bank Employees Welfare Assn.*, *University Grants Commission v. Sadhana Chaudhary*, etc. It follows, therefore, that even if no reason has been given in the counter-affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result."

13. In the present case, a revised policy has been put in place prospectively and the petitioner who had availed benefit under the earlier policy cannot claim to be on par with persons who have empanelled subsequent to 09.07.2014. The ex-serviceman who had agreed to be empanelled under a particular scheme and had perhaps partially availed of the same, cannot seek parity with those to be empanelled under the revised policy. This differentia apart from being real cannot

be stated to be without any rationale. Any change in a scheme must be applicable only to those who accept to participate in it. The prospective implementation of a new policy cannot be termed as discriminatory because it excludes the ex- servicemen who had applied for and accepted the empanelment under the policy that was in vogue prior to 09.07.2012. Such persons could, obviously, be differentiated from persons who had not applied for or accepted empanelment under the old policy.

14. Further, the decision of the DGR not to permit a company to add new Directors also cannot be stated to be arbitrary. The purpose of sponsoring ex-serviceman for providing security services is to rehabilitate them by providing employment. The policy of providing sponsorship for security services to empanelled ex-servicemen is for the benefit of the individual ex- serviceman and not for the benefit of any corporate entity. Under the old policy, the ex-serviceman could join together in a corporate form and their individual entitlement would be available to their incorporated entity. It is clear that even though a company could provide security services, the entitlement would essentially be that of its constituent empanelled ex- serviceman. By virtue of the revised policy dated 09.07.2012, the companies formed earlier by empanelled ex-serviceman would continue to be granted their complete quota of guards. However, the DGR has decided not to permit the earlier companies to add Directors in order to receive the benefit of the revised scheme.

15. As stated earlier, the purpose is to rehabilitate the individual ex- serviceman and not to perpetuate any corporate entity. Permitting the petitioners to add new Directors to their company for claiming additional quota would clearly be a method for the petitioners to secure benefits beyond their entitlement through their corporate entity. In effect, it would permit the petitioners a share in the entitlement of newly appointed directors, which is not the intended object of the scheme and clearly subversive of DGR's policy. Thus, the decision of the DGR not to grant quota on account of addition of Directors is neither arbitrary nor unreasonable and thus, not amenable to judicial review under Article 226 of the Constitution of India.

16. For the reasons stated above, the writ petition and the applications are dismissed.