
(2011) 04 DEL CK 0132
In the Delhi High Court
Case No : Writ Petition (C) 5091 of 2010

Jaga Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Citation : (2011) 04 DEL CK 0132

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

Bench : Division Bench

Advocate : Ravi Sikri and Ayushya Kumar, for the Appellant; Virendra Sood and G.D. Parashar for R 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—In the instant writ petition the Petitioner has sought mandamus to quash letter dated 23.07.2010 consequently directing the Respondent No. 2 (CRPF) to accept the request of Respondent No. 3 (CBI) and issue no objection for permanent absorption of the Petitioner in CBI.

2. The facts of the present case in brief are that the Petitioner was appointed as Constable (GD) in CRPF vide his appointment letter dated 18.01.1994.

3. Vide order dated 19.02.2004 Respondent No. 3 (CBI) requested Respondent No. 2 (CRPF) for necessary sanction for deputation of the Petitioner in CBI initially for a period of three years, which was approved by Respondent No. 2 (CRPF). On 11.03.2004 a movement order was issued by Respondent No. 2 (CRPF) with directions to the Petitioner to report to the Superintendent of Police, CBI SC-II, Block No. 3, CGO Complex, Lodhi Road, New Delhi. Pursuant to the aforesaid movement order the Petitioner joined CBI on deputation on 12.03.2004.

4. Thereafter vide letter dated 01.12.2006 the Respondent No. 2 (CRPF) made a request to Respondent No. 3 (CBI) for extension of the deputation tenure of the Petitioner by two years till 11.03.2009. Respondent No. 3 gave their approval on extension of the deputation tenure of the Petitioner vide letter dated 21.12.2006

extending the period till 11.03.2008 i.e. for the 4th year.

5. On 24.09.2007 the Respondent No. 3 (CBI) made another request to Respondent No. 2, CRPF for extension of deputation tenure of the Petitioner for the 5th year vide letter dated 05.10.2007. Accordingly office order dated 01.11.1007 was issued by Respondent No. 3 (CBI).

6. The Petitioner became eligible for permanent absorption in CBI. Accordingly, on 12.12.1007 Petitioner made an application for permanent absorption. Respondent No. 3 (CBI) vide memo dated 12.02.2009 directed the Petitioner and other eligible constables to appear for an interview on 05.03.2009 before the committee constituted by Director CBI. The Screening Committee found Petitioner suitable for permanent absorption in CBI. On the recommendation of the Screening Committee the Director CBI approved absorption of Petitioner in CBI.

7. Here the problem was created by Respondent No. 2 (CRPF) by issuing a letter dated 29.01.2010 to the Respondent No. 3 (CBI) requesting to relieve the Petitioner and three other persons i.e. Sh.S.K. Jadeja, Sh. Parvat Singh and Ms. Jharna Nayak for repatriation to CRPF.

8. On 26.03.2010 the Respondent No. 3 (CBI) addressed a letter to Respondent No. 2 (CRPF) requesting that as the above four persons including Petitioner were found eligible for absorption in CBI by a Screening Committee and that the Director CBI had also approved their absorption as per the recommendation of the Screening Committee. Further, Respondent No. 3 requested Respondent No. 2 (CRPF) to reconsider the matter and convey no objection for absorption of the above mentioned four persons including the Petitioner.

9. Pursuant to the request of Respondent No. 3 (CBI) the Respondent No. 2 (CRPF) granted no objection to Sh.S.K. Jadeja and Sh. Parvat Singh for permanent absorption in CBI, whereas, the Petitioner was discriminated against and NOC was refused to the Petitioner.

10. The Deputy Director (Administration), CBI Headquarter, New Delhi addressed a letter dated 23.07.2010 to DIG, CBI, SC-II, New Delhi to relieve the Petitioner immediately for repatriation to CRPF, pursuant to the refusal by Respondent No. 2 (CRPF) not granting "No Objection" to the Petitioner.

11. Petitioner apprehending that relieving orders would be issued to him approached this Court by filing the present writ petition. A notice was issued vide order dated 30.07.2010 in the writ petition and C.M.10040/2010 an application for stay. On the same day the order dated 23.07.2010 which is impugned in the writ petition was also stayed.

12. The contesting Respondent filed their counter affidavit stating that as per CRPF deputation policy only those constables who have completed 39 years of age can be allowed for permanent absorption in other department. Since, the Petitioner had not attained the age of 39 years, he was ineligible for same and

thus NOC was not allowed. Further Respondent No. 2 (CRPF) submitted that on receipt of the request of NOC for permanent absorption from CBI authorities, in case of four persons, including Petitioner, the department conveyed NOC to only two persons as they fulfilled the eligibility criteria for permanent absorption, whereas, remaining two candidates including Petitioner were not meeting the age criteria for permanent absorption, as they were short of the minimum age requirement i.e. 39 years and the Petitioner was 2 years short for this.

13. The Petitioner had filed rejoinder and stated in para 2 of the rejoinder that the policy decision cited by Respondent No. 2 (CRPF) for not granting NOC to the Petitioner is a complete sham and eye-wash with a view to mislead this Court inasmuch as many personnel of CRPF have been granted vide order dated 04.03.2011 despite not being 39 years on the date of grant of NOC. He has cited few examples which are as under:

Force No.

Name

Date of Birth

NOC issued on

Age at the time of issue of NOC

910880119

Ct.Prem Kumari

01.02.1971

27.03.2008

37 years

923040168

Ct.Champa

18.05.1969

27.02.2004

36 years

921000178

Ct.Daya Sharma

07.08.1969

27.02.2004

36 years

953356422

Ct. Kaushalya

12.09.1974

May, 2010

36 years

9132252912

Ct.Mahesh Chand Yadav

22.12.1972

31.03.2003

32 years

923020270

Ct.K.Latha

10.09.1972

31.03.2003

31 years

14. The Petitioner further alleged that the Respondent No. 2 (CRPF) had adopted "pick and choose" policy to grant NOC for permanent absorption of personnel in other department as is evident from the annexure filed by the Respondents themselves. Inasmuch as vide letter dated 10.08.2009, the Respondent No. 3 (CBI) had sought concurrence of Respondent No. 2 (CRPF) for permanent absorption of 1 head constable and 7 constables in CBI, including the Petitioner. The Respondent No. 2 (CRPF) vide their letter dated 07.12.2009 accorded concurrence for only 1 out of 8 deputationist namely, Dimple Rani thereafter NOC was granted to 2 more deputationist namely Sh.S.K. Jadega and Mr. Parvat Singh.

15. The Petitioner further has alleged that even otherwise there is no rational reason for fixing the age limit of 39 years for granting NOC and is, therefore, arbitrary and legible to be struck off. Further the Petitioner has submitted that the CBI has been repeatedly making requests for granting of NOC for permanent absorption of the Petitioner as he had become acquainted and familiarize with the working of CBI because of his long association and considering the performance of the Petitioner in CBI. Further, the Petitioner was found eligible for permanent absorption in CBI by a Screening Committee constituted in this regard.

16. Since the Petitioner in his rejoinder mentioned 6 names those who were 31 to 37 years of age and were granted NOC for permanent absorption in CBI, the Respondent No. 2 (CRPF) admitted this fact in their sur-rejoinder by giving vague

reasons of issuing NOC as under:

Sl.No.

Name

Reasons of issuing NOC

1

CT/Mahila Kaushalya

Competent Authority has granted NOC to her on 31/12/2009 on Compassionate Ground due to death of her husband

2.

3.

CT/Mahila K Latha

CT/GD Mahesh C Yadav

Both Individual were granted NOC by this Directorate on 23/06/03 after the approval of Ministry of Home Affairs on the file dated 28.05.2003

4.

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5.

6.

CT/GD Mahila Prem Kumari

CT/Mahila Champa

CT/Mahila Daya Bal Sharma

These Mahila personnel were granted NOC by the Competent Authority after taking into account the special circumstances surrounding each individual's case

17. The Petitioner has relied upon the similar judgment/order dated 20.04.2009 passed in W.P.(C) 1098/2007 and W.P.(C) 1476/2007 in the lead case of Udai Pal v. UOI wherein the Petitioners joined Border Security Force as constables on 10.04.1987. Petitioners were placed among other officers at the disposal of the Intelligence Bureau on deputation. The Petitioner joined I.B. on 24.09.1999. Vide order dated 08.07.2005, I.B. repatriated the Petitioner to BSF with effect from 31.07.2005. The said repatriation order initially was challenged before Central Administrative Tribunal wherein during the pendency of the aforesaid O.A., the repatriation order dated 31.07.2005 issued by the I.B. was stayed by the Tribunal vide order dated 22.07.2005.

18. Finally the aforesaid matter came before this Court in the shape of rolling

stone. The matter was finally adjudicated on 20.04.2009 and the Respondents were directed to formulate such a policy, whereunder, such type of issues do not raise again and again within 3 months from the date of said judgment and thereafter compliance report in respect of the same be sent to this Court and the matter was disposed of.

19. The Respondents therein had filed C.M. No. 10293/2009 for the clarification that the Standing Operating Procedure 02.07.2007 and absorption of BSF personnel in other organization is not commented upon thus it is not clear whether in spite of existence of said policy framed in compliance of order of this Court passed in a case of Shyam Singh Vs. UOI and Ors. requires the Respondents to frame another policy or the Respondents need to review the said policy or the said policy satisfied the requirement of formulation of such a policy where the responsibility of questioning the NOC by BSF regarding absorption of its personnel in other organization does not arise again and again.

20. On the aforesaid application order dated 21.08.2009 was passed as under:

21.08.2009 Present: None for the applicant.

Ms. Ruchika Mittal with Mr. Surjeet Kumar Singh, Advocates.

C.M. No. 10293/2009 in W.P.(C) No. 1098/2007 Our judgment dated 20.04.2009 is very clear and no clarification is required. Obviously, the Respondents should consider bringing the Standing Operating Procedure 12.07.2007 in tune with the observations made by this Court in the aforesaid judgment by making necessary amendments, if needed. This application is disposed of accordingly.

21. We are informed the Central Government had filed SLP before Supreme Court in the case of Udai Pal (Supra) but the same was dismissed.

22. In the instant case, we have perused the case of six constables which Respondent No. 2 (CRPF) has given the reasons for issuing NOC in spite of the fact that all six are under age of 39 years on the date of grant of NOC. Against Sl. No. 1 Ct./Mahila Kaushlya, NOC was granted to her on 31.12.2009 on compassionate ground due to death of her husband. For Sl. No. 2 and 3 Ct./Mahila K. Lata and Ct./GD Mahesh Yadav, both were granted NOC on 23.06.2009 after approval of Ministry of Home Affairs on file dated 28.05.2003; whereas Sl. No. 4,5, and 6 Ct./GD/Mahila Prem Kumari, Ct./Mahila Champa and Ct./Mahila Dayabal Sharma respectively were granted NOC by competent authority after taking into account the special circumstances surrounding each individual's case.

23. We see that the age of 39 years is not the hard and fast rule and the Respondents are flaunting their policy as and when they feel in a favourite case.

24. The Petitioner has completed more than 7 years with Respondent No. 3 (CBI). There has been request again and again by the Respondent No. 3 (CBI) to Respondent No. 2 (CRPF) to issue NOC to the Petitioner as he had passed through the screening and was found eligible for absorption in CBI by Screening

Committee and further approved by Director, CBI for absorption, we are of the considered opinion that the Petitioner is entitled for NOC.

25. We, therefore, quash the order dated 23.07.2010 and direct the Respondent No. 2 (CRPF) to issue NOC in favour of the Petitioner within 4 weeks from the date of the receipt of this judgment.

26. We have come across a number of cases where no proper policy for absorption has been formulated by the paramilitary forces and we note that pick and choose and favouritism has been noticed while granting NOC for absorption in other departments. Though vide judgment/order dated 20.04.2009 the Respondents including Ministry of Home Affairs were directed to formulate a proper policy so that it stops giving birth to such type of writ petition. But as we have been informed no policy has been formulated by the Ministry of Home Affairs till date.

27. Though the Court should not interfere in the policies being formulated by the Government or any department of the Government but, when the Court see that there is a margin of discretion, favouritism and corruption then the Court cannot oversight such type of defective policies. The direction already passed in W.P. (C)1098/2007 and further passed clarificatory order but, we see no policy has been formulated. We again direct the Respondent No. 1 (Ministry of Home Affairs) to formulate the policy applicable to all the paramilitary forces within 2 months of the receipt of this order. A copy of this judgment be sent to the Secretary, Ministry of Home Affairs.

28. The writ petition is allowed.

29. No costs.