
(2004) 07 DEL CK 0069

In the Delhi High Court

Case No : Writ Petition (C) No. 6141 of 2003

Jai Kishan Bansal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 14-07-2004

Acts Referred:

Citation : (2005) 2 SLJ 507

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : M.L. Verma, for the Appellant; Rajesh Mahajan, for the Respondent No. 1 and Vibhu Shankar, for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Rule.

With the consent of the parties, writ petition is taken up for hearing and disposal.

Petitioner Shri Jai Kishan Bansal was working with Indo Tibetan Border Police (in short "ITBP") as a Head Constable/Plumber in the pay scale of Rs. 3200-4900. The Delhi Metro Rail Corporation Ltd. (in short "DMRC")-respondent No. 2 issued a circular dated 22-24/6/2002 to the parent department, i.e. I.T.B.P. Tigri Camp notifying their requirement of "Supervisor or Non-Supervisor" in their organization. Petitioner applied in response to the circular and appeared before the Screening Committee of respondent No. 2 and was selected.

2. Petitioner with the consent of his parent department i.e. ITBP, was posted on deputation with respondent No. 2 for a tenure of three to five years vide office order No. DMRC/Estt/1573/1574/1575/2002 dated 23rd September, 2004 in the pay scale of Rs. 4000-6000. Annexure P-2 gives the list of selected candidates. It carries the stipulation that deputation tenure will initially be for three years, extendable up to five years, with a chance of permanent absorption in DMRC. Petitioner had joined on 20.9.2002 as Maintainer-II in the grade of Rs. 4000-6000.

3. Petitioner in this writ petition seeks a direction to respondent No. 2 not to repatriate the petitioner to his parent department, prior to the expiry of his tenure, Directions are also sought to stay the action of repatriation of the petitioner to his parent department.

4. The writ petition had come up before this Court on 23.9.2003, when notice to show cause was issued to the respondents and repatriation of the petitioner was stayed till the next date of hearing. Respondent No. 2 moved C.M. 11734/2003 contending that the petitioner stood repatriated on 14.8.2003. The order of repatriation was also claimed to be served on 28.8.2003. It was stated that the petitioner's parent department was also informed about the repatriation of the petitioner on 15/16.8.2003. It is averred that petitioner stopped coming to the office of respondent No. 2 from 17.8.2003. On 21.10.2003, Court directed that service record of the petitioner be transferred to his parent department.

5. The question which arises for consideration in this writ petition is whether the premature termination of deputation tenure by respondent No. 2 is arbitrary and mala fide as contended by the learned Counsel for the petitioner and if so, whether the same can be sustained ?

6. Mr. M.L. Verma, learned Counsel for the petitioner in support of the petition submits that the petitioner is sought to be victimized for airing and seeking redressal of his legitimate grievances, Mr. Verma submits that the petitioner in view of stipulation in the memorandum of 6.9.2002 Annexure P-2 sought from respondent No. 2 higher grade of Rs. 5500-9000. This the petitioner did in view of following stipulation :

"The selected candidates, if they have completed more than 5 years of service in the present grade will be given the next higher grade with an option to draw their present pay plus deputation allowance, as admissible, or pay of the grade now offered in DMRC xxxx."

7. Mr. Verm'a submits that the petitioner was accordingly claiming next higher grade as applicable in his parent department. Respondent No. 2 disputed this interpretation and submitted that a deputationist has the option for his parent office pay plus deputation allowance but has no claim for a grade which though falls in his normal line of hierarchy in his parent office but to which he has not been promoted there. It is the next higher grade in the DMRC which he may claim. Respondent No. 2 thus contends that the claim of the petitioner for being granted the grade of Rs. 5500-9000 was misconceived and could not have been granted.

8. Be that as it may, the merits of this controversy need not detain us. Respondent No. 2's record was called for. The record of the petitioner was brought by Mr. S.K. Sinha, DGM and Mr. N.P. Singh, Chief Law Officer. It is seen from the record that respondent No. 2 has reached a conclusion that retention of the petitioner in their service was not conducive to the maintenance of discipline and decorum within the company. Perusal of the record and the nothings show

that petitioner made representation to the Lt. Governor and tried to bring about political influence. Further it is noted that petitioner also made representations with regard to clearance not being given for a proposed course to the General Manager, by passing the proper channel. It is further pointed out that the petitioner made representation to the DGM/R&T for fixation of his pay in the next grade as per the cadre structure of his parent department. Subsequently, he addressed the communication to General Manager.

9. Denial of permission to join the part-time course is sought to be justified on the ground that the petitioner was an experienced senior plumber and administrative exigency required his presence in different shifts. The respondents have also denied any mala fides in grant of similar permission to a junior plumber, who could be spared based on job requirements. It is further stated that the petitioner had also been reprimanded and asked to desist from such activities, yet representations continued to be made from his father as also from his mother.

10. Petitioner who was working in a Para Military Force and had gone on deputation to DMRC i. e. respondent No. 2 which is executing time bound jobs of public interest. It was expected of him to have worked in accordance with a sense of discipline imbibed from the Para Military Force where the standards are far more stringent. In this case, he sought assistance of the Lt. Governor and political functionaries for getting higher pay scale. Representations were also made by his parents. Representations were made without conforming to proper channel.

11. In these circumstances, the respondent No. 1 exercise of discretion in prematurely terminating the deputation tenure of the petitioner cannot be said to be arbitrary or mala fide exercise of discretion. No facts or grounds have been disclosed revealing any apprehension of any bias or mala fide on the part of respondent No. 2.

12. Reference may also be invited to the judgment of the Supreme Court in Kunal Nanda Vs. Union of India and Another, where the Court has observed as under :

"The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation."

13. In view of the facts in Paras 8, 9 and 10 and discussion as recorded, petition merits dismissal. The order dated 23.9.2003, by which the repatriation of the petitioner was stayed, was modified to the extent that the record of the petitioner be transferred to his parent department. In view of the peculiar facts where the stay against repatriation was continued, the Explanation for the delay entailed in joining ITBP deserves to be sympathetically considered.