
(2011) 08 DEL CK 0126

In the Delhi High Court

Case No : Writ Petition (C) 2384 of 2011

Kamlesh Kumar Pandey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Citation : (2011) 08 DEL CK 0126

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Prem Lata Bansal and Harshit Tripathi, for the Appellant; A.S. Chandhiok, A.S.G. and S.M. Arif, Sandeep Bajaj for R-1 and 2 and Sunil Kumar, for R-3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Employed as a Constable with CISF, responding to an advertisement issued by the Staff Selection Commission for appointment to post of Sub-Inspector under "Central Police Organizations", Petitioner found his name in the select list prepared by the Staff Selection Commission.

2. Options given in order of preference by the Petitioner were: (i) CISF (ii) BSF (iii) SSB (iv) CRPF and (v) ITBP.

3. Petitioner was intimated that he was selected for the Central Para-Military Force, BSF. Submitting a technical resignation with CISF, Petitioner joined BSF and while undergoing basic training was informed that his appointment was invalid on account of Petitioner being over age when he had applied for the post in question.

4. Petitioner rushed to this Court, admitting that for appointment under BSF he was over age, but claims that he should not be penalized for the default of SSC and thus urges that on said reason his appointment under BSF needs to be restored. It is pleaded that 2 similarly situated persons, viz., Vijay Nath Yadav and Jatinder Singh who were also over age for appointment in BSF are still

retained by the said Central Para-Military Force. Lastly, it is urged that if Petitioner was over age for being appointed in BSF, he ought to have been appointed in CISF.

5. As per response, Petitioner being over age when he applied pursuant to the notification issued by SSC inviting applications for appointment to the post of Sub-Inspector in Central Police Organizations, the mistake not being detected earlier, required corrective action to be taken.

6. Admitting that Vijay Nath Yadav and Jatinder Singh were likewise, by mistake, given appointment in BSF, it is stated that even their appointment has been cancelled. As regards entitlement of the Petitioner for being appointed in CISF, it is stated that in the merit position, Petitioner did not make it for being appointed in CISF.

7. The advertisement issued by Staff Selection Commission (Annexure P-2), vide column No. 4 has clearly specified that age limit was between 20 years to 25 years as on 4.7.2008. Vide serial No. 4(d) it was indicated that Central Government employees who have rendered not less than 3 years' continuous service on regular basis would be entitled to age relaxation of 5 years.

8. It is not in dispute that as of the cut-off date i.e. 4.7.2008, the Petitioner was aged more than 30 years. In spite thereof, for reasons best known to him, he applied for the post in question.

9. It appears that he did so for the reason that in the Central Para-Military Force CISF, the upper age limit, with relaxation, was 35 years.

10. Thus, notwithstanding the error committed by the Staff Selection Commission, Petitioner was fully aware that pertaining to BSF, he was over age and hence ineligible to be appointed as a Sub-Inspector.

11. It is true that even the Staff Selection Commission committed a wrong, probably due to oversight, by intimating BSF that Petitioner has successfully cleared the selection process and thus should be appointed as a Sub-Inspector in BSF. Even BSF authorities were negligent in not checking that the Petitioner was over age.

12. But, all is not lost for the Petitioner. CISF has written to the Petitioner to join back, notwithstanding Petitioner having submitted a technical resignation with CISF, where he was working as a Constable since 2.8.1999.

13. We need to deal with 3 judgments cited at the Bar by learned senior counsel for the Petitioner. The first is the decision reported as 2007 (1) AD (Delhi) 542 Javed Akhtar v. Jamia Hamdard and Anr., the second is a decision of the Andhra Pradesh High Court reported as K. Jagannadham Vs. District Collector, Kurnool and Another, , and the third is the decision reported as Union of India (UOI) and Others Vs. Miss Pritilata Nanda,

14. The decisions were cited in response to the argument of Sh.A.S.Chandhiok,

learned Additional Solicitor General, that those who are ineligible as of the cut-off date have No. right to claim appointment to the post in question. Learned Additional Solicitor General urged that the Recruitment Rules are statutory in character and thus there cannot be any estoppel against a statute. Learned Additional Solicitor General further urged that mistake of a fact cannot bind any person or authority.

15. The decision of the learned Single Judge of this Court in Javed Akhtar's case (supra) pertains to a batch of students admitted in the year 2006 by the first Respondent ignoring that all of them were over age. When this was detected, and after the writ Petitioners have attended classes for a month, admissions were sought to be cancelled.

16. 4 contentions were urged. Firstly, that the Respondent was bound by equitable estoppel and thus prohibited from urging that Petitioners were over age. Secondly, that the policy permitted upper age to be relaxed. Thirdly, it was urged that the policy of fixing the upper age limit was ex-facie irrational and lastly it was urged that as per the rules and Regulations framed by the Indian Medical Central Council, age limit could not be prescribed for the course in question, i.e., "Pri Tib" course.

17. The learned Single Judge held that the fixation of upper age limit was irrational and quashed the upper age limit of 22 years. Observations of the learned Single Judge pertaining to principle of equitable estoppel have to be understood in the peculiar facts of the said case.

18. Decision of the learned Single Judge of the Andhra Pradesh High Court is also distinguishable inasmuch it was not concerned with eligibility under a statutory rule. The learned Single Judge of the Andhra Pradesh High Court was concerned with qualifying mark prescribed by the Service Commission at a typewriting test and not a statutory service or appointment rule.

19. The decision of the Supreme Court in Pritilata Nanda's case (supra) pertains to candidature not being sponsored by the employment exchange and in spite thereof a handicapped person being allowed to participate in the selection process but denied the benefits of the fruits thereof. The Supreme Court held that having accepted the application of the candidate and having permitted the candidates to appear at the competitive examination, it would be a specious ground to deny appointment on account of non-sponsorship by the Employment Exchange. The Court did not find that any law mandated that only those who were sponsored by the Employment Exchange were eligible to compete. The Court noted that sponsorship through the Employment Exchange was merely a requirement of the law which did not prohibit direct applications to be received. In para 8 of the decision the Supreme Court highlighted that though the language of the law made it clear that a government employer is required to notify the vacancies to the Employment Exchange, it was not obliged to recruit only those who were sponsored by the Employment Exchange.

20. Under the circumstances, the Petitioner cannot claim the benefit of a mistake committed by the Respondents and for which we may highlight that the Petitioner was fully aware that he was over age for appointment as a SubInspector in BSF. He also kept quiet and took advantage of the mistake committed by the Respondent. Needless to state, when the mistake was detected, corrective action was required to be taken; indeed has been taken.

21. As regards the plea of the Petitioner that he was not over age for appointment in CISF and should have been appointed in CISF, suffice would it be to state that Petitioner himself has admitted that his first option was CISF. Second option was BSF. From the fact that the Petitioner has not received any offer of appointment under CISF is proof of the fact that people more meritorious than him were higher up in merit position. Though Petitioner may not be over age for appointment in CISF, but being low in the merit position, cannot be directed to be offered appointment in CISF.

22. Highlighting that Petitioner was working as a Constable in CISF when he submitted his technical resignation and that CISF is willing to take back the Petitioner, while dismissing the writ petition and declining relief as prayed for, we direct that upon Petitioner rejoining CISF, it would be treated that he has continued to work in CISF. His seniority and pay would not be affected on account of Petitioner having technically resigned from CISF. The period interregnum Petitioner submitting technical resignation till he rejoins, if he does so within 30 days from today, would be regularized for all purposes including pay and allowances.

23. No costs.