
(2000) 09 P&H CK 0058
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 12180 of 1998

Mohinder Paul

APPELLANT

Vs

State of Punjab and another

RESPONDENT

Date of Decision : 27-09-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2000) 09 P&H CK 0058

Hon'ble Judges : R.C. Kathuria, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : Mr. Rajive Raina, for the Appellant; Mr. Gurmeet Singh, D.A.G., for the Respondent

Judgement

R.C. Kathuria, J.—In this petition the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents to absorb him on the post of Assistant District Transport with all consequential benefits and for issuance of a writ in the nature of certiorari quashing the orders dated 15.9.1994(Annexure P-5), dated 14.2.1997,(Annexure P-9) declining the benefit of being ex-serviceman and dated 3.3.1997 (Annexure P-11) whereby his claim for absorption as Assistant District Transport Officer was rejected.

2. The petitioner joined the Indian Army on 31.12.1971 as Soldier during proclamation of emergency. He was assigned No. 1 Training Battalion of the Bengal Engineering Group and Centre, Roorkee. During the course of training, two or three soldiers recruited along with him died on account of some mysterious disease. On that account, the Commanding Officer of the Battalion asked the petitioner and others to seek release/discharge from the Army with the assurance that they would be recalled when their services would be needed. Under these circumstances, the petitioner was discharged from the Indian Army on 11.5.1972.

3. After his discharge from Army, the petitioner improved his academic qualifications. In response to an advertisement, he applied for the post of Field

Officer in the Punjab Film and News Corporation Limited (hereinafter referred to as the Corporation). He was selected on 14.9.1979 and joined the Corporation accordingly. Subsequently, the said Corporation was wound up by the Government and the employees serving in the Corporation were given the twin offer either to seek adjustment on an appropriate employment in the State Government or to make a financial arrangement with the Corporation in the nature of golden hand-shake. The petitioner sought adjustment on an equivalent post in the State Government. He was appointed as Clerk by the State Transport Commissioner, Punjab, vide letter dated 27.3.1992 (Annexure P-2B) and joined as such in the office of District Transport Officer, Patiala. Dissatisfied with the posting given to him, he put up a claim that he has a right to be considered for appointment to the post of Assistant District Transport Officer, which post, according to him, is equivalent to the post of Field Officer held by him in the Corporation. He sent representations (Annexures P/4A to P/4D) in this regard to the respondent-authorities. The State Transport Commissioner, Punjab, Chandigarh (respondent No. 2) vide letter dated 15.9.1-994 (Annexure P-5) informed the petitioner that as he was discharged from the Army for the reason that he was unlikely to become an efficient soldier, his case did not fall under the definition of ex-serviceman and for that reason was not entitled to receive any benefit as ex-serviceman.

4. Undaunted by the rejection of his claim, to get confirmation of the reasons for his discharge from the Army authorities he submitted further representations (Annexures P/6A to P6D) to respondent No. 2. In response to these representations of the petitioner, the respondent-Department wrote letter dated 3.4.1996 (Annexure P-7) to the Commanding Officer, Bengal Engineering Group and Centre, (I.T.B.), Roorkee (Uttar Pradesh) seeking clarification from the latter on the points (i) had the petitioner continued serving in Army, would he be eligible for pension, (ii) whether the post held by the petitioner was pensionable, and (iii) whether he had received any pensionary benefits from the Army. In response to letter (Annexure P-7), the Commanding Officer of No. 1 Training Battalion, Bengal Engineering Group and Centre, Roorkee, vide his letter dated 12.4.1996 (Annexure R-1) informed respondent No. 2 that had the petitioner continued in Army, on attaining the age of superannuation, he would have been entitled for pension and all other related benefits. Consequently, as per letter dated 5.6.1996 (Annexure P-8) the respondent-Department ordered that the service of the petitioner in the Army from 31.12.1971 to 11.5.1972 be counted towards pension and benefit in civil service. Thereafter, on 16.3.1998 and 4.5.1998, the petitioner submitted representations Annexure P-10 and P-13, respectively, stating that as benefit of military service had been granted to him by the respondent- Department and he had fulfilled the requisite qualification for the post of Assistant District Transport Officer, which was meant for ex-serviceman, he should be appointed on the said post. However, his claim was declined by the respondent-Department on the ground that in the Corporation he was appointed as Field Officer in the scale of Rs. 950-1800 whereas the scale of

Assistant District Transport Officer is Rs. 2000-3500 and, as such, his case is not covered under the policy of the Government which provides that the surplus employees are to be adjusted in their own scale or one step up/less scale. Terming the action of the respondent-authorities as unjust, illegal, arbitrary, unconstitutional and violative of the provision of Articles 14 and 16 of the Constitution of India, he has filed this writ petition for the reliefs stated above.

5. The respondents in their written statement, while controverting the stand of the petitioner pleaded that at the time the petitioner was declared as surplus employee of the Corporation, he was working as Field Officer in the scale of Rs. 950-1800. The post of Assistant District Transport Officer, which carries the scale of Rs. 2000-3500 is higher than the post of Field Officer held by the petitioner in the Corporation. Therefore, he could not be considered for a higher post than he was actually holding in the Corporation. It has further been stated that the petitioner was adjusted in the respondent-Department as a Clerk in the scale of Rs. 950-1800, which post was equivalent to the post held by him in the Corporation. At the time of adjustment, he had not submitted any certificate that he was an ex-serviceman. He was adjusted against a post belonging to general category and that the action of the petitioner in claiming the benefit of being ex-serviceman is highly belated. It has been further stated that since the petitioner had accepted the appointment as Clerk with the respondent, he is estopped from claiming the higher post at this stage. It has been further stated that representations of the petitioner for appointment as Assistant District Transport Officer were duly considered and rejected. It was pleaded that as per policy framed by the Government (copy Annexure P-3), the case of the petitioner was covered under "priority category (2)". Under this category, there is no provision for granting the next higher grade to the retrenched employees.

6. Having heard the learned counsel for the parties and going through the records of the writ petition, we have come to the conclusion that there is no merit in this writ petition and the same deserves to be dismissed. Admittedly, after the Corporation was wound up by the Government, the petitioner of his own volition accepted the post of Clerk in the pay scale of Rs. 950-1800. Accordingly, he was appointed by the State Transport Commissioner, Punjab, vide appointment letter dated 27.3.1992 (Annexure P-2B). Thereafter, he joined the said post on 9.4.1992. At the time when the Corporation was wound up, he was holding the post of Field Officer in the scale of Rs. 950-1800, which is equivalent to the post of Clerk. Therefore, there was no disparity in the pay scale at the time when the petitioner accepted appointed to the post of Clerk. In this writ petition, he has pressed his claim for being appointed to the post of Assistant District Transport Officer on two counts. Firstly, that he has been granted benefit of the military service and fulfils the requisite qualifications for the post of Assistant District Transport Officer. Secondly, that the post of Field Officer is equivalent to the post of Assistant District Transport Officer. On the face of the record, the stand of the petitioner is misconceived. The pay scale attached to the post of Assistant District Transport Officer is Rs. 2000-3500. Therefore,

apparently, there is no equation between the post of Field Officer and that of Assistant District Transport Officer. One cannot ignore the fact that the petitioner was absorbed as a surplus employee as per policy of the State Government. He has not laid any data or provided any basis in the writ petition in order to establish that the Government extended discriminatory treatment to him as compared to the employees similarly situated like him. Merely because the petitioner has been granted benefit of military service, that would not per se put his claim on a better footing. The total period of military service rendered by him i.e. from 31.1.1971 to 11.5.1972 works out to be less than five months and the reasons for his discharge from the Army were given as "unlikely to become an efficient soldier." Therefore, the petitioner has failed to establish that the respondents had unjustly declined the benefit claimed in the writ petition to him. Another circumstance which militates against the petitioner is that he had accepted the post of Clerk without raising any objection at that time. Thus, from whatever angle the question is examined, the stand taken by the petitioner cannot be sustained.

For the aforesaid reasons, we find no merit in this writ petition and the same is, accordingly, dismissed.

7. Petition dismissed.