

(2012) 05 DEL CK 0501

In the Delhi High Court

Case No : Writ Petition (C) No. 1887 of 2012 and CM No's. 4119 of 2012 and 5675 of 2012

Niraj Kumar Rajput

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 04-05-2012

Acts Referred:

Citation : (2012) 05 DEL CK 0501

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : S.R. Kalkal, Col. Retd, for the Appellant; Anuj Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has sought the quashing of order dated 29th February, 2012 stipulating that on the completion of the approved term of deputation in the National Security Guard (hereinafter referred to as the "NSG"), the petitioner of Headquarter NSG (Accounts Branch) is relieved to his parent Department, i.e. BSF, Headquarter New Delhi on 29th February, 2012 and that he has been struck off the strength of the Headquarter NSG w.e.f. 1st March, 2012. The petitioner was also sanctioned 61 days earned leave from 1st March, 2012 to 30th April, 2012. The order also contemplates that after availing the leave, he would report to the DIG (Estt.), BSF Dte, New Delhi-03 for further duties. The writ petition was filed on behalf of the petitioner on 28th March, 2012 and it came up for hearing before this Court on 30th March, 2012. On 30th March, 2012, the learned counsel for the petitioner got the matter adjourned on the ground that he wishes to amend the writ petition and implead the Director General, BSF, the petitioner's parent department, as party to the present petition.

2. Though the petitioner had not filed an application on 30th March, 2012 for the amendment of the writ petition and for impleadment of the Director General,

BSF, however, the petitioner was permitted to amend the writ petition and to file the amended petition along with the amended memo of parties within two days as was prayed by the learned counsel for the petitioner and the matter was therefore, listed for preliminary consideration on 9th April, 2012.

3. The petitioner, however, filed an application, being CM No.4242/2012, seeking amendment to the memo of parties only. Since by order dated 30th March, 2012, the petitioner was permitted to amend the petition, therefore, the application was dismissed as infructuous on 9th April, 2012. Since the learned counsel for the petitioner had filed the memo of parties without filing the amended writ petition, therefore, on 9th April, 2012, the matter was adjourned to 20th April, 2012 at the request of the learned counsel for the petitioner to file the amended writ petition. On 20th April, 2012 the Division Bench did not assemble, and therefore, the matter was adjourned to 24th April, 2012. The petitioner, thereafter, filed an application for amendment of the writ petition, being CM No.4902/2012. Though the Court had permitted the amendments in the writ petition considering the nature of submissions made by the learned counsel for the petitioner on 30th March, 2012, however, since the application was filed and the amendment sought were categorically detailed in para 5 of the application, the application was allowed and the petitioner was again permitted to file the amended writ petition incorporating the amendments sought by the petitioner.

4. Even before filing the application for amendment of the writ petition, the learned counsel for the petitioner had filed a writ petition dated 6th April, 2012, where the specific amendments sought by the petitioner were not incorporated. Therefore, the learned counsel for the petitioner was permitted to withdraw the alleged amended writ petition dated 6th April, 2012 with liberty to file a proper and complete amended writ petition.

5. The matter was thereafter, taken up on 1st May, 2012, however, it was adjourned at the request of the learned counsel for the petitioner, and thereafter it has been taken up for hearing today. Learned counsel for the petitioner, today, again insists that the petitioner is entitled for the relief claimed on the ground that the various persons in the NSG as detailed in Annexure-A at page 39 of the writ petition, have been given the extension. Merely because a number of other personnel have been given extension of deputation period for one more year, would not entitle the petitioner for extension, unless the relevant rule permitting deputation beyond five years is amended and approved. Mere proposal for amendment, which is pending consideration for considerable time, would not entitle the petitioner for extension of deputation for one more year beyond the period of one year in the facts and circumstances.

6. The plea of the learned counsel for the petitioner is also that the petitioner has an old mother who is suffering from cancer in the Gall Bladder since 2009 and is under continuous treatment on the advice of the doctors of the All India Institute of Medical Sciences (AIIMS) and now is under direct treatment at (AIIMS). The petitioner also relied on the medical certificates issued by AIIMS in 2009 and Dr.

Susheela Tewari Govt. Hospital, Haldwani, District Nainital in December, 2011.

7. Perusal of the certificates produced by the petitioner, however, reveal that the prescription produced by the petitioner in respect of the treatment of his mother from AIIMS are of the year 2009 of the Out-patient department. The latest medical papers of the mother of the petitioner, filed by the petitioner, is that of Dr. Susheela Tewari, Govt. Hospital, District Nainital, dated 17th December, 2011. In other words, nothing has been placed on record by the petitioner, despite repeated opportunities to do so, to demonstrate the nature of the treatment the petitioner's mother is currently undergoing at AIIMS. All that has been placed before the Court shows that the petitioner's mother was operated for cancer of the gall bladder some years ago, and that she is now an out patient. Till 17th December, 2011, she was being treated at a Government Hospital at Haldwani in Nainital when she was referred to AIIMS for, "follow up". Nothing has been filed to show the nature of the "follow up", if any, at AIIMS.

8. Despite the repeated queries from this Court, the learned counsel for the petitioner has failed to file any documents in support of his plea to show that the mother of the petitioner is still undergoing treatment at AIIMS. Instead of replying to our queries on this aspect, learned counsel for the petitioner, however, has kept on insisting that since a number of other persons have been granted extension of tenure of deputation for the 6th year and extension for one more year is pending approval from the concerned authorities, therefore, the petitioner is entitled for extension of his period of deputation for the 6th year. It has also been contended that the respondents cannot adopt a pick and chose policy which could lead to discrimination.

9. Learned counsel for the petitioner has also urged that the Director General, BSF, cannot exercise his powers as Head of the Parental Department in an arbitrary manner so as to transfer the petitioner from Delhi where the petitioner's mother is being treated for cancer.

10. Learned counsel for the petitioner is unable to show any documents on the basis of which it can be inferred that the petitioner is entitled for extension of his deputation tenure for the 6th year in accordance with the rules. Learned counsel has also failed to show or annex any record of her current medical status or treatment that she is undergoing at present at AIIMS. In the circumstances, the petitioner is not entitled for extension of deputation for one more year on any of the grounds raised by him.

11. This Court has endeavoured to appreciate the case of the petitioner on repeated occasions. So much so, that we granted opportunities to the learned counsel for the petitioner to amend the writ petition and to produce appropriate documents, which has not been done. In these circumstances, when this Court expressed its dissatisfaction in the manner in which the petition has been handled, the counsel for the petitioner states that he does not wish to argue anything further. This has been recorded at the instance of the learned counsel

for the petitioner.

12. Learned counsel has then stated that he does not wish to continue with the argument not only in this case, but in future also he would not appear before this court. Such a statement by the learned counsel for the petitioner is clearly not in the best traditions of the Bar. It is an expression of the counsel's personal dissatisfaction towards this Court which is unacceptable. Learned counsel for the petitioner then states that he has not shown any disrespect to this Court. However, the conclusion drawn by this Court is to the contrary, based on the conduct of the learned counsel for the petitioner. Mr. Kalkal is a retired Army Officer who regularly appears in matters concerning the armed forces before this Court. He has taken up the profession of law after his retirement and does not appear to practice in any other branch of law. In this matter, Mr. Kalkal appears to have adopted a style which merely consists of aggressive repetition and heckling. He has refused to place any relevant records which might go to demonstrate the current state of the petitioner's mother's health and the medical necessity for his mother to remain at Delhi. We are also convinced that what has emboldened Mr. Kalkal to take this approach, and, on finding that it is not succeeding, to state that he will not appear before this Court in future, is merely the fore-knowledge that one of us is due for retirement soon after the court reopens after the summer break, which would naturally occasion the dissolution of this Division Bench. Such conduct is to be deprecated, and we record our displeasure. Such an approach on the part of counsel is neither helpful to his client, nor to himself, nor does it promote the cause of justice.

13. In the entirety of the facts and circumstances, the petitioner is not entitled to the reliefs claimed by him, i.e., extension of his deputation for a further period of one year, i.e., for the 6th year; and that he should not be repatriated to the BSF HQs, his parent department. The petitioner is also not entitled to continue on account of the alleged treatment of the mother of the petitioner at the AIIMS as no record has been produced by the petitioner despite opportunity to him. The writ petition is, therefore, dismissed. All the pending applications are also disposed of.