
(2009) 11 DEL CK 0188
In the Delhi High Court
Case No : Writ Petition (C) 13420 of 2009

Praveen Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-11-2009

Acts Referred:

Citation : (2009) 11 DEL CK 0188

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

Bench : Division Bench

Advocate : Arvind Nayar, for the Appellant; Sanjeev Sachdeva and Chitranshul Sinha for Respondent Nos. 1 to 5, for the Respondent

Judgement

Pradeep Nandrajog, J.—Whereas learned Counsel for respondents No. 1 to 5 appeared on 25.11.2009 when the writ petition was listed for preliminary hearing since advance copy was served, noting that none appeared for respondent No. 6 notice was issued to respondent No. 6 returnable for today.

2. None appears for respondent No. 6 inspite of service.

3. Respondent No. 6 is a proforma party and hence we require no pleadings to be completed by respondent No. 6.

4. Learned Counsel for respondents No. 1 to 5 states that all facts have been truthfully and correctly stated by the petitioner in the writ petition and since respondents No. 1 to 5 desire no fact to be brought to the notice of the Court, counter affidavit is not to be filed by respondents No. 1 to 5. Counsel states that the writ petition can be disposed of on the pleadings as contained in the writ petition.

5. Learned Counsel for the parties state that in view of the urgency attracting the prayer made in the writ petition the same may be disposed of today itself.

6. Rule DB.

7. Heard for disposal.

8. The issue is short. As per AFO 14/08 dated 19.9.2008 it is prescribed that a person employed under the Indian Air Force would be eligible for civilian employment after having rendered 7 years" service under the Indian Air Force.

9. The legal issue which arises for consideration is: whether 7 years" period prescribed by the order in question means that before a person applies for a civilian appointment he should have completed 7 years" service under the Indian Air Force or should the order be read to mean that 7 years" service has to be completed when cessation of service takes place.

10. The petitioner was appointed as an Airman on 17.6.2002. 7 years" service under the Indian Air Force would be completed by him on 16.6.2009.

11. There existed a post of Assistant Commandant under CRPF. The post being in a higher pay-scale and of a superior rank vis-?-vis the post held by the petitioner, the petitioner was desirous of joining CRPF as an Assistant Commandant and hence, on 28.5.2008, submitted the requisite application routing the same through proper channel. This means that the petitioner submitted the application to the concerned officer in the Indian Air Force, who in turn forwarded the application to CRPF.

12. Luck smiled upon the petitioner. He was offered appointment as an Assistant Commandant with CRPF with a direction that he should report at the CRPF Academy, Kadarapur, Gurgaon, Haryana on or before 5.12.2009. The letter of offer issued by CRPF to the petitioner is dated 5.11.2009.

13. On 12.11.2009, the petitioner submitted an application to the Indian Air Force praying that he may be relieved so that he could join CRPF.

14. The request of the petitioner to be relieved was under process and since the officers of the Indian Air Force were proceeding at a snail"s pace and 5.12.2009 was fast approaching, the petitioner was constrained to file the instant writ petition. For if, 5.12.2009 was crossed, the letter of offer issued by CRPF would have lapsed and the petitioner would have lost a valuable right.

15. It is unfortunate that till date the request of the petitioner to be relieved has still not been decided by the competent authority of the Indian Air Force. We are just 4 days away from the last date when the petitioner has to join CRPF by reporting at the place notified in the letter of offer.

16. The issue at hand is no longer res integra. It has been decided by two Benches of this Court, one of which is a co-ordinate Bench (Coram: Sanjay Kishan Kaul, J. and Mool Chand Garg, J.). The second decision is by this Bench.

17. Deciding WP(C) No. 8760/2008, a Bench comprising Sanjay Kishan Kaul, J. and Mool Chand Garg, J. held that the requirement of the order in question which prescribes a mandatory service of 7 years means 7 years" service before being entitled to be relieved and not 7 years service when application is made for a

civilian appointment.

18. Same is the ratio of law laid down in the decision penned by this Bench disposing of WP(C) No. 9088/2008.

19. We may note that the petitioner has not applied surreptitiously to CRPF for being appointed as Assistant Commandant. The petitioner has done so with transparency. He has submitted his application through proper channels i.e. through the competent officer under the Indian Air Force.

20. It is apparent that the employer knew that the petitioner was applying for being considered for appointment as an Assistant Commandant under CRPF. If the respondents mandates its policy to be read that no person can apply for a civilian post till he completes 7 years of service under the Indian Air Force then we would expect the respondents not to forward the application of the person concerned who seeks a civilian employment, to the authority inviting applications to the civilian post.

21. At this stage, learned Counsel for respondents No. 1 to 5 states that the Commanding Officer of the petitioner erroneously forwarded the application to CRPF.

22. Be that as it may, since the petitioner has now completed 7 years of service under the Indian Air Force, following the ratio of law laid down in the two writ petitions noted herein above, we allow the writ petition.

23. We direct the competent authority of the Indian Air Force to issue the requisite certificate/letter sought by the petitioner so that the petitioner is able to join service under CRPF. Needful would be done latest by 3rd December 2009 for the reason by 5th December 2009 the petitioner has to report to CRPF.

24. If for some reason the necessary certificate/letter is not issued to the petitioner we direct that the present decision would be treated as sufficient authorization in favour of the petitioner of being relieved from service by the Indian Air Force and in said eventuality we direct respondent No. 6 to accept the joining report submitted by the petitioner pursuant to the present order.

25. Codal formalities can follow.

26. Copy of this order be supplied dasti to learned Counsel for the parties under the signatures of the Court Master today itself.