
(2012) 08 DEL CK 0303

In the Delhi High Court

Case No : Writ Petition (C) No. 4410 of 2012

Rajeev Kumar

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0303

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : S.S. Pandey, for the Appellant; Himanshu Bajaj, Advocate for R-1, 4, 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

(Oral) CM No. 10817/2012

1. For the reasons stated in the application, the delay in filing counter affidavit stands condoned. The application is allowed.

W.P.(C) 4410/2012

1. Heard learned counsel for the parties. Issue pertains to the entitlement of the petitioner to be discharged from service under the Indian Air Force with respect to Air Force Order No. 14/2008.

2. Merely turning 18 years of age, the petitioner joined service, as an Airman, under Indian Air Force on July 11, 1995. Earning time bound promotion to the post of Corporal in the year 2000, petitioner earned further promotion as a Sergeant in the year 2009 and continues to be a Sergeant today. As per terms of engagement, the petitioner would superannuate from service on rendering 18 years service and this would be on July 10, 2013.

3. Apart from Group "A" posts and certain category of posts in Group "B"

services under the Union, the Air Force Order in question permits personnel to apply for civilian posts under the Government of India on rendering 15 years service but on the subject of their entitlement to be discharged from the Indian Air Force, prescribes a limitation of the requirement of the Force to keep with it the Force personnel, a concept which emerges from the use of the expression "keeping in view the criticality in the trade". But, upon rendering 18 years service, no such issue of criticality arises for consideration because of the fact that unless the Force personnel gives acceptance to serve for another two years, the person concerned has to be discharged as a matter of right.

4. An advertisement was issued by Union Public Service Commission, inter alia, for the post of Extra Assistant Director in the Directorate of Co-ordination (Police Wireless), Ministry of Home Affairs. It was published in the Employment News 14-20 August, 2010. Applications were invited from eligible candidates to apply for the post in question.

5. By said date, the petitioner had rendered 15 years service. He applied to UPSC for being considered as a candidate for one of the six posts advertised, and needless to state got his application forwarded through proper channel i.e. through his Commanding Officer who granted the necessary approval for the same to be forwarded. Thereafter the petitioner took the application by hand and submitted to UPSC.

6. Luck smiled on the petitioner when he was informed by UPSC of being selected. Candidature of the petitioner as an empanelled candidate was sent by UPSC to the Ministry of Home Affairs so that the Directorate of Co-ordination could issue the necessary letter of appointment. But before a formal letter of appointment could be issued, as per the requirements of law a character and antecedents verification was required as also medical fitness verification by the present employer. Since the petitioner is working in the Indian Air Force, the same was required to be done by the Commanding Officer of the petitioner.

7. On March 7, 2012, a letter was addressed by the concerned officer in the Ministry of Home Affairs to the petitioner requiring him to provide copies of verification of character and antecedents as also pertaining to his medical fitness.

8. On May 15, 2012, a letter was addressed by the Government of India, Ministry of Home Affairs, under the signatures of its Joint Director, to the Air Force Authorities requesting that verification pertaining to the character and antecedents as also medical fitness of the petitioner may be forwarded to it for further action. A reminder was sent on June 26, 2012.

9. The Air Force Authorities did not respond, compelling the petitioner to try and seek a discharge by taking a plea that he had young children whose upbringing was adversely affected due to his wife being employed as a school teacher at Meerut. A course of conduct chartered by the petitioner, which counsel for the petitioner fairly concedes being a desperate attempt to get over a situation. The situation was the department not willing to forward information pertaining to the

petitioner, and the reason thereof; as stands projected in the counter affidavit filed is that there is criticality in the trade and as per the policy, the petitioner does not have an unfettered right to be discharged from service till he renders service for 18 years.

10. Now, on the petitioner serving till July 10, 2013, an unfettered right would accrue to him to be discharged from Indian Air Force. No issue of criticality would arise.

11. We note that the procedures of the Government are fairly lengthy. Aforesaid facts bring out that after the Ministry of Home Affairs receives the character and antecedents verification as also medical fitness pertaining to the petitioner, the matter would be processed and only thereafter a letter offering appointment would be issued to the petitioner. As per the normal practice in the Government, whenever a person who is already in Government service is issued a letter offering appointment he is normally granted three months' time to join. Law gives a right to the person concerned to seek extension by another three months, meaning thereby, between when the letter of appointment is issued and the person is required to join, six months interregnum period lapses.

12. Today is 28th August, 2012.

13. The critical date with which we are concerned i.e. the date by which the petitioner would serve the Air Force for 18 years is July 10, 2013. It has to be kept in mind that if the petitioner continues to serve in the Indian Air Force if the instant matter is decided against him, he would superannuate on July 10, 2013. He would be 36 years of age. He would be on pension, and which we understand would be Rs. 10,000/- per month. If he joins the new post, he would serve till the age of 60 years and from the current pay band Rs. 5200-20200 would be placed in the pay band Rs. 9300-34800. Having joined service in the Air Force at the age of around 18 years, acquiring skills while serving the Air Force, we feel that it would be a waste of talent for the nation if the petitioner is to make sit at home at the age 36 years. Not only would the petitioner suffer but even the nation would suffer.

14. The problem faced by the respondents can easily be overcome if we direct that the respondents would do the necessary character and antecedents verification as also medical fitness, which of course would have to be based upon the service record of the petitioner, and forward the same to the Ministry of Home Affairs. This exercise is likely to take about a month or so. Thereafter, the matter would be processed by the Ministry of Home Affairs for completion of further formalities which would be codal in nature resulting in the letter offering appointment being issued within about another month thereafter. The petitioner can seek deferment of the date of joining, which as noted hereinabove would be a period of six months after letter offering appointment is issued, and in this manner the futuristic journey to be walked upon would certainly reach the destiny date i.e. July 10, 2013. The petitioner would then have served the Air

Force for 18 years.

15. We dispose of the writ petition directing the Air Force authorities to do the needful with respect to the letter dated May 15, 2012 Annexure P-10 i.e. check up the records and forward character and antecedents of the petitioner as also medical fitness of the petitioner to the Government of India, Ministry of Home Affairs, Directorate of Co-ordination (Police Wireless), Block No. 9, CGO Complex, Lodhi Road, New Delhi-3.

16. Rest to follow as per law.

17. No costs. Dasti.

CM No. 9135/2012

Since writ petition stands disposed of, instant application whereunder interim orders are prayed for is dismissed.