
(2011) 05 DEL CK 0403

In the Delhi High Court

Case No : Writ Petition (C) 4969 of 2010

Rajender Singh and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Citation : (2011) 05 DEL CK 0403

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

Bench : Division Bench

Advocate : Ravi Sikri, for the Appellant; Anil Gautam in W.P. (C) 4969/2010, D.S. Mahendru in W.P. (C) 7312/2010 and Saqib, for R1 and R2 in W.P. (C) 2173/2011, for the Respondent

Judgement

Pradeep Nandrajog, J.—Petitioners Rajender Singh and Pan Singh who have joined in a common action in WP(C) 4969/2010 were employed as Constables with ITBP and the latter earned promotion firstly as Naik and thereafter as Head Constable. Both were permitted to proceed on deputation to Intelligence Bureau where they desire permanent absorption which is accepted by the Intelligence Bureau but refused by ITBP and as per the Respondents rightly, inasmuch as none of them meets the eligibility criteria prescribed by ITBP to permit absorption of ITBP Force Personnel in other organizations.

2. Jaswinder Singh the writ Petitioner of WP(C) 7312/2010 is similarly situate as Rajender Singh and Pan Singh. He too is a Constable in ITBP and being permitted to proceed on deputation with Intelligence Bureau seeks a right to be absorbed in said organization which has no objection to the same, but ITBP objects on the same reasoning as forms the basis of the opposition to the claim of Rajender Singh and Pan Singh.

3. Petitioner Omvir Singh is a Constable Driver with CRPF and being permitted to proceed on deputation with Central Bureau of Investigation claims a right to be permanently absorbed in said organization, which has to no objection, but CRPF refutes the right by pleading his not meeting the eligibility norms as per its policy

permitting its Force Personnel to be absorbed in other organizations.

4. Let us deal first with the case of Omvir Singh.

5. It is not in dispute between the parties that the policy framed by CRPF permits its Force Personnel to be permanently absorbed in a borrowing organization provided the person is above the age of 39 years. Further, the right is not absolute and notwithstanding the Force Personnel crossing the age of 39 years while still on deputation will not be permitted to seek permanent absorption in the borrowing department and for which we find no criteria well-defined in the policy as the guiding factor on which permission would be granted or refused.

6. Omvir Singh was born on 28.7.1974 and would acquire the age of 39 years in the year 2013 and prima facie it can be said that having not attained the age of 39 years he would not be eligible as per the policy framed by CRPF, but unfortunately for CRPF, it is not treating the age of 39 years stipulated by it under the policy as sacrosanct and admittedly has permitted as many as 6 force personnel aged between 31 years and 37 years to be permanently absorbed in other organizations, names whereof have been disclosed in para 1(iv) of the writ petition, to which there is neither a denial nor a satisfactory explanation rendered as to why said 6 force personnel were permitted to be permanently absorbed in other organizations notwithstanding they being less than 39 years of age.

7. The problem which Omvir Singh is facing is that his wife is a patient of cancer and is under treatment at Delhi and his presence besides his wife at Delhi has become his necessity.

8. Surely, his case cries out for grant of discretion under the policy to him and keeping in view the fact that 6 persons below the age of 39, being aged between 31 years to 37 years, have been permitted to be absorbed in the borrowing department we see no reason why CRPF authorities should be so finicky qua Omvir Singh.

9. We accept his claim.

10. As regards the other three writ Petitioners, it may be noted that the policy for absorption in the borrowing department framed by ITBP is slightly different than the one framed by CRPF. The policy framed by ITBP permits absorption of its force personnel in other organizations upon completion of 40 years of age or being in low medical category. The rationale of permitting absorption in the borrowing departments of those force personnel who are in low medical category is premised on the fact that ITBP performs duties mostly in high altitude areas and those in low medical category cannot be made to perform functions in said areas. Indeed, the policy is laudable.

11. Petitioner Rajender Singh was born on 14.7.1971 and would complete the age of 40 years on 14.7.2011 and apparently is a whisker away from the said date. The problem which he is facing is of low medical category and as pleaded

by him in para 1(v) of the writ petition, which averment has not been categorically denied, he met with an accident while on duty in the year 2001 and as a result the L4 vertebrae got fractured. He claims to be in low medical category. As per the counter affidavit his having suffered an accident and an injury is not denied, but his being in low medical category is questioned as not being satisfactorily established from the documents on which he relies and in respect of which defence we can only submit that the latest medical opinion obtained by Rajender Singh being the opinion dated 28.4.2011 has been issued by the medical board consisting of 3 doctors, Dr. R.S. Hansdac, Dr. Prashant Mishra and Dr. Ateek Ahmed of ITBP and as per which he suffers from a physical disability being "Rotator cut tear (L) shoulder with low back ache" and he has been placed in low medical category P3(P).

12. His co-Petitioner Pan Singh was born on 1.1.1959 and it is apparent that on 1.1.2011 he crossed the age of 52. He pleads that at said age it is obvious that his age would be a handicap and for which he pleads that the policy of permitting those above the age of 40 years to be permanently absorbed in the borrowing department is proof of recognition of the fact that past the middle age of 40 years one's utility in a high altitude area is diminished.

13. Both of them have an issue that 13 other force personnel were permitted to be permanently absorbed in the borrowing department and for which we find no satisfactory response as to what distinguishes those 13 from the said 2 Petitioners.

14. Thus, we hold that both Rajender Singh and Pan Singh, the first on account of his being in low medical category and the latter on account of his age are entitled to be permanently absorbed in Intelligence Bureau.

15. Jaswinder Singh was born on 4.3.1971 and completes the age of 40 years on 4.3.2011. He has no handicap and unlike Omvir Singh has no pressing family problem which necessitates his continued presence at Delhi. He does not suffer from any handicap which places him in low medical category and his only claim is with respect to 13 force personnel to whom ITBP accorded sanction for permanent absorption in the borrowing department.

16. It is true that qua said 13 force personnel we find no justification given by ITBP, but we decline relief to Jaswinder Singh inasmuch as he does not stand at par with Rajender Singh and Pan Singh, whose facts, as noted herein above, cave out an exception in their favour to be granted relief. On the issue of parity with the 13 force personnel we may only state that there cannot be equality in a wrong and a wrong cannot give birth to an enforceable right, but cannot restrain ourselves to write that nepotistic orders or acts of favouritism at the Executive level not only give birth to litigation, but those who lose the battle at the Court would always be left with a bitter taste in their mouth and what more reminder we need to give to the Executive that it does not serve public interest any good to have disgruntled employees. We hope that the Executive follows good

management policies and at the foremost would be transparency in its functioning and especially when discretionary power has to be exercised.

17. WP(C) No. 4969/2010 and WP(C) No. 2173/2011 are allowed. Mandamus is issued to the Respondents of the 2 writ petitions in terms of the prayer made in the two writ petitions and the office orders refusing the permanent absorption of the writ Petitioners therein are quashed. WP(C) 7312/2010 is dismissed.

18. CM No. 4618/2011 in WP(C) 2173/2011 and CM No. 9826/2010 in WP(C) No. 4969/2010 are disposed of as infructuous.

19. No costs.