
(2014) 10 DEL CK 0229
In the Delhi High Court
Case No : W.P. (C) 5073 of 2013

S.A. Ansari (CPL. MD.)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Citation : (2015) 1 AD 490 : (2015) 215 DLT 682

Hon'ble Judges : Najmi Waziri, J; Kailash Gambhir, J

Bench : Division Bench

Advocate : Ganesh Kumar, Advocates for the Appellant; Ankur Chhibber, Advocates for the Respondent

Judgement

1. Kailash Gambhir, J. (Oral)--In the present writ petition, the petitioner has assailed the refusal of the respondents to grant him the requisite "No Objection Certificate" and discharge from service, to enable him to accept and comply with the formalities towards his appointment to the post of Assistant Manager with the IDBI Bank, respondent No. 5 before us. The petitioner joined the Indian Air Force under the joining instructions of the respondent No. 2 on 29th March, 2005 as an Airman and since then he is working with the respondent. The petitioner asserted that as per the joining instructions as stipulated in para 8, the petitioner could apply for the Class I Government job on acquiring the requisite qualifications. Para 8 of the said instructions read as follows:

"8. During your training, stress will be given to English language and by the time you pass out you will be well versed with written and spoken English. If you have the requisite qualification, you can apply for the Class-I Government job."

2. His educational qualification was 10+2 at the time of joining the Indian Air Force. In 2010, the applicant completed his graduation from Indira Gandhi National Open University after taking necessary permission from the Indian Air Force.

3. The submission of the petitioner is that, the respondents keeping in view the

normal aspiration of any person for career progression and progress, issued an Air Force Order being AFO 05/2003, captioned as "Permission to Airmen/NCs(E) to Apply for Civil post/services under Central/State Governments/public sector undertakings" on 9th May, 2003, wherein it was stated that Airmen/NCs(E) who have completed seven years of their engagement including the training period would be permitted to apply for civil posts under Central/State Governments and Public Sector Undertakings.

4. This AFO was followed by another order being AFO 14/2008 issued on 19th September, 2008. This also enabled such personnel who had completed seven years of service from the date of enrollment to apply for a civil post under the Central/State Governments and Public Sector Undertakings.

5. We may also refer to the amended Air Force Order being AFO 16/08 dated 19.9.2008, providing a list of compassionate and other grounds for discharge from service of Airmen before the expiry of their regular engagement.

6. The petitioner being a sincere and diligent person, not only completed his graduation, while in service, but also prepared for the competitive examinations with utmost dedication.

7. The petitioner submits that on 31.5.2012, the respondent No. 2 passed an Air Force Order being AFO 04/12 stating that Airmen/NCs (E) who have completed 7 years of their engagement will be permitted to apply for civil posts under Central/State Governments and Public Sector Undertakings. It is the case of the Petitioner that he had completed the requisite 7 years of service on 29.3.2012.

8. Pursuant to the advertisement published in the month of Feb/March, 2012 for the selection of the personnel for Probationary Officer/Management Trainee posts by the IBPS, the petitioner applied for the said post and undertook the common written exam which he qualified. The petitioner sought a NOC vide application dated 16.4.2013, which was not approved by the respondent No. 4.

9. The petitioner received a provisional letter of offer dated 10.7.2013 from the respondent No. 5 requiring him to report for duty on 21.7.2013 and on receipt of the appointment letter, he submitted an application to the respondent No. 4 seeking permission for discharge from service vide application dated 15.7.2013. The petitioner also contends that no decision thereon is alleged to have taken by the authorities since nothing has been conveyed to him in writing till date.

10. The respondents have contested this petition and the contention raised by them in the counter affidavit is that, in terms of the AFO 04/2012, an individual is eligible to apply for a civil post only on the completion of seven years service. Furthermore, the application of the individual seeking permission to apply for civil employment is to be routed through proper channel i.e. from the Unit of an individual and prior to appearing for the interview, the individual is required to apply for the grant of "No Objection Certificate" (NOC) which is to be issued by the Air Head Quarter. It is also the stand of the respondent that discharge from

the service cannot be claimed as a matter of right and nothing shall interfere with the power of Air Headquarter to suspend, withhold or discharge temporarily or otherwise on compassionate ground or review the same in a particular case. It is also the stand of the respondents that under para 6 of AFO 4/2012, no Airmen/NCs(E) of the Indian Air Force is eligible to apply for civil posts/services under the Central/State Government including PSUs and jobs in private sector without prior permission from the competent Air Force Authority. Applications seeking permission to apply for civil employment are scrutinised by their parent Unit and cases of Airmen/NCs (E) falling in the eligible category as provided in AFO 04/2012 are forwarded to the prospective employer.

11. We have heard the submissions and the counter submissions made by the learned Counsel appearing for both the sides and given our thoughtful consideration to the same.

12. The main contentions raised by the respondents herein were the subject matter of discussion in some of the cases decided by this Court. In Cpl. Sandeep Kumar v. Union of India & Ors., decided by this Court in W.P. (C) No. 4864/2012 vide order dated 21st August, 2012, the petitioner therein was not discharged from service as he did not inform the Department before he submitted his application to the UPSC; and secondly, as on that date, he had not served the Armed Forces for a period of seven years. In this context, while placing reliance on an earlier judgment of the Division Bench of this Court in W.P. (C) No. 8760/2008 titled Pradeep Kumar v. Union of India & Anr., decided on 16th December 2008, the Court held as under:

"13. In an unreported decision dated December 16, 2008 in WP(C) No. 8760/2008, Pradeep Kumar v. UOI & Anr., considering a pari materia policy framed by the Air Force, where the petitioner therein had similarly applied to take the examination for the post of Assistant Commandant in a Para Military Force but had not completed 7 years service but by the time the result was declared and when he sought a discharge, had completed 7 years service, the Division Bench held that the ethos of the policy was that a person should have served Air Force for 7 years before he could seek discharge and thus it hardly mattered whether on the date when he had applied for the job the person had not completed 7 years service; if when the person sought discharge he had served for 7 years, the right to be discharged, for Group "A" posts, would automatically flow.

14. The said view has been reiterated by various Division Benches in the decisions dated October 21, 2009: WP(C) No. 9088/2008, Cpl. N.K. Jhakhar v. UOI & Ors., dated November 30, 2009: WP(C) No. 13420/2009, Cpl. Praveen Kumar v. UOI & Ors., and dated July 28, 2010: WP(C) No. 3257/2010 Cpl., Charan Singh v. UOI & Ors.

15. It may be true that if the petitioner is directed to be discharged by the Air Force Authorities we may be encouraging a breach of discipline and would be

condoning wrong information furnished by prospective candidates while filling up the application forms. On facts we have noted that the petitioner furnished a wrong declaration when he submitted the application form that he had informed his department of so doing: a declaration which is admittedly wrong.

16. But, declarations which relate to a vital information which would have a bearing on public employment i.e. eligibility, declarations pertaining to character, etc. would stand on a footing different than declarations which relate to procedures.

17. Courts often face a dilemma where competing interests clash, but then it is the duty of the Court to solve the same. The dilemma which we face in the instant case is of a young man who stands before us and beseeches us that coming from a humble socio-economic background, standing by his family by taking up a job at a young age of 18 and having served the nation for 7 years, first as an Airman and then as a Corporal with the Air Force, he should be pardoned for a technical wrong information supplied by him and the consequences of he being accountable for an action be factored i.e. he would continue to languish and would retire as a JCO whereas joining CISF as an Assistant Commandant at the age of 26 years (this is the petitioner's current age) his career prospects may take him to the top most post.

18. Aspirations of the youth of this country, and especially of those who come from humble origins need to be nurtured and protected, and in our opinion not sacrificed on the altar of punishments. That apart, what purpose would it serve if we hold it against the petitioner: he would always have a brooding ill will against the system and would always feel cheated in life of not being permitted to achieve what he could by dint of hard-work. He would be a disgruntled Airman and suffice would it be to state that it is better not to have any employee rather than to have a disgruntled employee in the organization.

19. The aspirations of the petitioner, his hard work and his achievements when weighed in the scale with the interest of the organization in the other side, compels us to hold the scale in favour of the petitioner, and we feel that the petitioner deserves a pardon for the wrong committed by him, and thus we dispose of the writ petition issuing a mandamus to the respondents to issue a No Objection Certificate as also a Discharge Certificate and relieve the petitioner from service within a period of one week from today so that the petitioner is able to report for duties to Central Industrial Security Force."

13. This Bench also had an occasion to come across a similar case being W.P. (C) No. 554/2004, titled as Cpl B.S. Siddha v. Union of India and Ors. decided on 18.9.2014 and concurring with the view earlier taken by the Division Benches of this Court in the cases referred above, the petitioner therein was held entitled to the same reliefs. Although, at the time of hearing of the said writ petition of Cpl. B.S. Siddha, the Court was not apprised about the filing of any SLP by the Union of India yet we cannot lose sight of the fact that the respondents, before filing

the Special Leave Petition in the case of Sandeep Kumar, had issued a conditional discharge letter to enable the said Sandeep Kumar to join the Central Industrial Security Forces.

14. In the light of the above discussion and concurring with the view taken by this Court in the cases referred to above and case of the petitioner being identical in all respects, we issue a writ of mandamus directing respondent Nos. 1 to 4 to issue a "No Objection Certificate" as well as a Discharge Certificate so as to relieve the petitioner from his service as Airman within a period of four weeks from the date of this order. This Court also directs the respondent No. 5 to proceed to appoint the petitioner to the post of Assistant Manager that has been offered to him vide letter of appointment dated 10.7.2013. With the aforesaid directions, this petition stands disposed of.