
(2006) 07 DEL CK 0062

In the Delhi High Court

Case No : Writ Petition (C) No. 10646 of 2006

Sandeep Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 07 DEL CK 0062

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : R.S. Kalkal, for the Appellant; Rekha Palli and Saroj Bidawat, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—The petitioner had successfully qualified all the tests i.e. the written test, the physical test and the medical test conducted by the respondents for enrolment as Airmen in the Air Force. He along with other candidates was told in August 2004 that they will be called by the Airmen Selection Board and will receive call letters accordingly. Vide letter dated 11.11.2005 the petitioner was informed to report to No. 2 ASC at Air Force Station, Race Course, New Delhi for enrolment in the category of Group "Y" Trades on 22.12.2005 at 0730 hrs. The call letter has been annexed to the writ petition as Annexure P1. The petitioner was eagerly waiting to report for his duty as per the time indicated in the said letter. However, before the petitioner could report for duty on the date indicated in the letter, he received another letter dated 24.11.2005, which has been annexed to the petition as Annexure P2, wherein it was stated that the letter dated 11.11.2005 is cancelled and he need not report for duty as per the directions given therein. Against this letter the petitioner moved a representation dated 19.12.2005 which was responded to by the respondents vide their letter dated 5.1.2006. Another letter dated 16.1.2006 was also sent to the petitioner stating that the petitioner was a "Wait List"

candidate and the letter dated 11.11.2005 had been issued erroneously. Being aggrieved from the attitude of the respondents, the petitioner through his counsel served a legal notice dated 1.4.2006 requiring the respondents to supply to the petitioner the list of candidates under the provisions of the Information Act, 2005. Thereafter, the petitioner has filed the present writ petition under Article 226 of the Constitution of India praying for quashing of the letter dated 16.1.2006 and further for a direction to the respondents to appoint/enroll the petitioner in Air Force in furtherance to the letter dated 11.11.2005.

2. Notice to show cause was issued by the Court in this petition, in response to which the respondents appeared before the Court and produced the original records. From the records it is clear that the petitioner was in the waiting list at Serial No. 211 and the waiting list had been prepared from the result of the examination. This consisted of the candidates who were in the merit list as well as the candidates who were in the waiting list. The waiting list was obviously to operate after the candidates mentioned in the merit list were appointed. The list was valid till 31.7.2006 as per the own decision and declaration of the respondents. The main reason given by the respondents for cancelling the letter dated 11.11.2005 was that the petitioner had become overage before his enrolment in the Air Force and as per the Air Force Rules, if a candidate became overage at the time of enrolment, the letter requiring him to report for duty was to be cancelled and withdrawn or they were not to be issued at all. The case of the petitioner fell in the former category where the letter had been issued erroneously and was withdrawn in view of the relevant Rules as well as the advertisement issued by the respondents.

3. The advertisement, in furtherance to which the petitioner had applied was in relation to Group "Y" Trades for which the candidate had to be a metriculate with 50% marks in English and within the age specified in the advertisement itself. Clause 9 dealt with the general guidelines and Clause 9(g) of the advertisement reads as under:

(g) Upper age limit as on date of enrolment is 20 years

4. Clause 10 of the said advertisement reads as under:

10. An All India Select List (AISL) will be prepared after completion of the Selection Test and the candidates who figure in the main list of the AISL will be considered for enrolment as per the merit position. This AISL will be valid up to 31 July, 2005. The candidature of candidates whose name figure in the main list of the AISL and who could not be enrolled for reasons like Medical Unfitness and overage will automatically get disqualified.

5. These conditions in the advertisement were issued in furtherance to the Air Force Order (AFO 23 dated 17.10.1997). Thus, the petitioner as well as the respondents are bound by these conditions which in any case were the terms and conditions of the advertisement in furtherance to which the petitioner had submitted his application and the same was entertained by the respondents.

There is no dispute to the fact that the petitioner as on 22.12.2005 would be overage as he would be more than 20 years of age. Under the conditions of the advertisement as well as the Rules, he cannot be appointed to the said post. The contention raised on behalf of the petitioner that the respondents had intentionally and malafidely withdrawn the said letter so that he would become overage in the meanwhile, is without any merit. Out of the waiting list, nearly 41 candidates had become overage despite the fact that the list published was valid up to 31.7.2006. The action of the respondents in issuing the impugned letter dated 5.1.2006 does not suffer from the vice of arbitrariness or malafides. In fact, the action is completely in consonance with the Air Force Rules and conditions of the advertisement inviting application for the job in question. Furthermore, even in the waiting list there are at least 14 candidates above the petitioner who had not been considered for the said post because they had become overage at the time of enrolment. Thus, we cannot even say that the action of the respondents is arbitrary or discriminatory.

6. For the reasons aforestated, we find no merit in this petition and the same is dismissed, however, leaving the parties to bear their own costs.