
(2021) 09 DEL CK 0020

In the Delhi High Court

Case No : Civil Writ Petition No. 3626 Of 2021

Sanskar Sharma

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 03-09-2021

Acts Referred:

Citation : (2021) 09 DEL CK 0020

Hon'ble Judges : Manmohan, J;Navin Chawla, J

Bench : Division Bench

Advocate : Indra Sen Singh, Kritika Chhatwal, Rashmi Bansal, Rajat Bhatia, Manpreet Kaur Bhasin

Final Decision : Dismissed

Judgement

Navin Chawla, J

1. This writ petition has been filed by the petitioner praying for a direction to the respondents to issue a joining letter to the petitioner allowing him to join the pre-commission training at the Officers Training Academy (hereinafter referred to as 'OTA'), Chennai as a Gentlemen Cadet against the 6th vacancy allotted to the 25th Course of JAG Entry Scheme.

2. In the Writ Petition it is the case of the petitioner that online applications were invited by the respondents to join the Indian Army under the JAG Entry Scheme 25th Course (OCT 2020) as Short Service Commission (Non-Technical) Course for law graduates (men and women) (hereinafter referred to as '25th Course of the JAG Entry Scheme'), against six vacancies ear-marked for men and two vacancies for women.

3. The petitioner applied against the said vacancies and upon being short-listed, was called to appear before the Service Selection Board (hereinafter referred to as 'SSB') for an interview. The merit list was published by the respondents on 10.11.2020 wherein the petitioner was placed at Serial Number 9 in the order of merit.

4. Eleven candidates, including the petitioner, who were successful at the SSB interview, were subjected to a medical examination wherein two candidates, placed at Serial Numbers 3 and 7 in the merit list, were found medically unfit.
5. The top six candidates on the merit list were required to undergo pre-commission training at OTA, Chennai with effect from 10.01.2021.
6. The petitioner later learnt that the candidate placed at the 6th position in the merit list, namely Mr. Pravesh Naveriya, voluntarily withdrew himself from the OTA, Chennai and was accordingly allowed to leave the Academy on 01.02.2021.
7. The petitioner claimed that on withdrawal of the said candidate, the petitioner should have been issued a joining letter as the 6th candidate in the order of merit. As the joining letter was not issued, the petitioner has preferred the present petition.
8. The learned counsel for the petitioner submits that in the counter affidavit filed by the respondents, it has been admitted by the respondents that the last date for joining the pre-commission training for the candidates who were successful in the 25th Course of the JAG Entry Scheme was 11.01.2021.
9. He submits that it is further admitted by the respondents that Mr. Naveriya had put in his application for resignation on 27.01.2021, which was approved by the Commandant, OTA, Chennai on 28.01.2021, which was the 18th day of the training. He submits that in terms of the instructions dated 26.07.2000, midway induction of candidates at OTA, Chennai is permitted up to three weeks of start of training. He submits that, therefore, as the vacancy had arisen on the 18th day, the respondents should have offered the joining letter to the petitioner in terms of the above instructions. He submits that delay on part of the Commandant, OTA in informing the Directorate Admission of this vacancy cannot prejudice the petitioner as the petitioner had a right to be offered this vacancy.
10. He submits that in fact, though the last day of joining OTA, Chennai was 11.01.2021, the candidates remained in quarantine for 14 days due to COVID-19 and their training actually commenced with effect from 25.01.2021. He submits that therefore; the period of 21 days is to be counted only from 25.01.2021.
11. He further submits that another candidate, namely Mr. Abhimanyu Dhaka, belonging to Non-Technical Entry Group was allowed to join pre-commission training at OTA, Chennai sometime around 21.02.2021 and therefore, the petitioner has been discriminated against.
12. He further submits that in the present case, the petitioner should be allowed to undergo the training against the vacancy of January, 2021 and therefore, it is not a case of carry forward of the vacancy and/or the petitioner joining against the vacancy of another course.
13. In reply, the learned counsel for the respondents submits that the training for the successful candidates commenced with effect from 11.01.2021. The

quarantine period with effect from 11.01.2021 was included in the training period as in this period the training was conducted online through the issue of handouts, precis and distance learning.

14. She further submits that in terms of Paragraph 56(d) of the HQ Army Training Command Letter No.93506/PCT dated 19.07.2018, once the resignation of a Cadet is accepted and approved by the Commandant, the same has to be intimated by signal followed by a letter to be sent to the Recruiting Directorate Army HQ to send the replacement to the Academy within the stipulated joining period, which is 21 days, to prevent wastage of vacancy due to resignation. However, no candidate can join the Academy later than the laid-down period, that is, 21 days from commencement of the course.

15. She submits that in the present case, Mr. Naveriya had put in his application for resignation on 27.01.2021, which was the 17th day of commencement of training. The same was approved by the Commandant, OTA, Chennai on 28.01.2021, that is on the 18th day of commencement of training. However, the said Cadet left the OTA, Chennai only on 30.01.2021 after clearing his dues as per the procedure prescribed in Paragraph 56 of the administrative instructions mentioned hereinabove. She submits that the vacancy, at the earliest, therefore, arose only on the 20th day. On 03.02.2021, the Commandant, OTA, Chennai completed the 'Commandant Report on Resignation' and reported to the Recruiting Directorate General of the vacancy on 05.02.2021, by which time the grace period for reporting of new/reserved candidates was already over. She submits that therefore, the joining letter could not have been issued to the petitioner and was rightly not so issued.

16. She further submits that even otherwise, a vacancy against the resignation post does not arise merely on acceptance of resignation of the Cadet, as in terms of Paragraph 59 of the administrative instructions mentioned hereinabove, a Cadet has an option to initiate the application for reinstatement within 30 days of submission of application for resignation. Further 10 days' time is catered for in Paragraph 59(c) of the administrative instructions for postal delays in receipt of application from the Cadet and thus, the confirmed vacancy would arise only after 40 days of submission of the application for resignation by the Cadet.

17. As far as the case of Mr. Abhimanyu Dhaka is concerned, the learned counsel for the respondents submits that the said Cadet had applied only for the Indian Naval Academy, however, on being declared medically unfit for the same, he applied for the Short Service Commission (SSC) Entry in OTA, Chennai. As his application was rejected, the Cadet filed a writ petition before the High Court of Judicature for Rajasthan Bench at Jaipur, which by a judgment dated 16.12.2020, allowed the petition directing the respondents to consider the candidature of the petitioner for 112th Short Service Commission Course (N.T) for OTA (for men) in the Indian Army through Officers Training Academy (OTA) in terms of the advertisement dated 12.06.2019. It was only in compliance with the said direction that the said Cadet was allowed to join the training at a belated

stage.

18. The learned counsel for the respondents further submits that there is no provision for reserving vacancy for a candidate of one course to the next course and therefore, the petitioner cannot be considered for the next course.

19. We have considered the submissions made by the learned counsels for the parties.

20. It cannot be seriously disputed by the petitioner that the training course commenced on 11.01.2021, albeit due to COVID-19 restrictions, in a restricted manner. The 21-day period, in terms of the instructions dated 26.07.2000, is therefore to be counted from 11.01.2021.

21. As far as the vacancy arising due to the resignation of Mr. Naveriya is concerned, Paragraph 56(d) of the instructions dated 19.07.2018 is quoted hereinbelow:

"56. The following procedure will be adopted for the processing of resignations: -

xxxxxxx

(d) If accepted and approved by the Commandant, HQ ARTRAC will be intimated by signal, followed by letter, with copy to DGMT (MT6), giving the number, name, course serial, date of reporting of the GC/ LC to the Academy, date of resignation, and reasons (in brief) for resignation. A certificate regarding refund of the cost of training and allied charges will also be submitted. This information will also be sent to Recruiting Directorate to ensure that a replacement is sent to the Academy within the stipulated joining period and the vacancy created by the resignation is not wasted. However, no candidate will join the Academy later than the laid down period."

(Emphasis added)

22. A reading of the above instruction would clearly show that where the resignation is accepted and approved by the Commandant, intimation thereof has to be sent to the Recruiting Directorate Army HQ to ensure that a replacement is sent to the Academy within the stipulated joining period and the vacancy created due to the resignation is not wasted. The instructions, however, clearly stipulates that no candidate will join the Academy later than the laid down period. It also stipulates that such intimation has to be sent along with certificate regarding refund of training cost and allied cost. Therefore, mere acceptance of resignation may not be sufficient to consider creation of a vacancy for being filled up from the cadet in the waiting.

23. As far as the late induction period is concerned, the same is provided in the instructions dated 26.07.2000. It states that in the OTA, late induction can be approved only for a period of three weeks. In the present case, though the resignation of Mr. Naveriya was accepted by the Commandant on 28.01.2021, the Cadet left the Academy only on 30.01.2021, after completing all the other

formalities. The intimation of the resignation, therefore, would not have been sent to the Recruiting Directorate Army HQ till 30.01.2021, that is till all formalities were completed. The 21-day period would have expired on 30.01.2021 or 01.02.2021 and therefore, even otherwise the time for issuing a joining letter to the petitioner was not available.

24. The period of allowing induction belatedly is for the benefit of the respondents so as to ensure that no vacancy is wasted. It is settled law that successful candidates, even if there is vacancy, do not acquire any indefensible right to be appointed; their only right is to be considered for appointment, though at the same time the appointment cannot be denied arbitrarily and whimsically (Refer: State of Haryana v Subhash Chander Marwaha, (1974) 3 SCC 220). In the present timeline, it cannot be said that the decision of the respondent not to fill up the vacancy created due to resignation of Mr. Naveriya is in any manner arbitrary or whimsical. It also cannot be said that the Commandant OCA's delay in sending the intimation of vacancy, created on resignation of Mr. Naveriya, created any right in favour of the petitioner.

25. The plea of the petitioner that he be allowed to join the training to the next course cannot also be accepted as the respondents have explained that there is no procedure of carrying forward of a vacancy to the next course.

26. As far as the case of Mr. Abhimanyu Dhaka is concerned, as explained by the respondents in the counter affidavit, the case is clearly distinguishable inasmuch as the said Cadet was allowed to join due to a direction issued by the High Court of Judicature for Rajasthan in the peculiar facts of that case, which are clearly distinguishable from the facts of the present case.

27. In view of the above, we find no merit in the present petition. The same is dismissed. There shall be no order as to costs.