

(2005) 12 DEL CK 0038

In the Delhi High Court

Case No : Writ Petition (C) 657 of 2001

Sergerant R.M. Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-12-2005

Acts Referred:

Citation : (2006) 131 DLT 615 : (2006) 86 DRJ 219 : (2007) 2 SLJ 131

Hon'ble Judges : S. Ravindra Bhat, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : M.K. Gaur, Proxy Counsel for U. Srivastava, for the Appellant; Kamal Sawhney, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—Rule DB. With the consent of the learned counsel for the parties, the matter was heard finally.

2. In this writ petition the action of the respondents in discharging the petitioner from the service is with effect from 31st January, 2001 has been questioned. The petitioner claims that he had the right to be extended in the service pursuant to the policies of the respondents.

3. The petitioner joined the services and was enrolled in the Indian Air Force on 2nd January, 1981. He applied for extension and in June, 1999 for a period of six years and it is stated that this application was in accordance with the relevant rules and instructions on the subject. This request was rejected as the petitioner had not passed or qualified in the Junior Warrant Officer's Promotion Examination.

4. He accordingly applied and appeared in the Junior Warrant Officer's Promotion Examination held in April-Sep 2000. The result of the said examination was declared on 16th October, 2000.

5. The petitioner's case for grant of extension of service was rejected by the

respondents in December, 2000 in terms of circulars and policies on the ground that he had qualified after 14 days of delay. As per the policy the airman to seeking extension to pass the examination which is three months from the date of expiry of regular period of service. The relevant portion of the policy reads as follows:-

"(d) Passing of Promotion Examination. Extension of engagement will be granted only to those airman who have passed all parts of their promotion examinations which make them eligible for promotion to their next higher rank. However, those airmen who have already appeared at promotion examinations before submission of their applications for grant of extension or those who are likely to appear at such promotion examinations which will make them eligible for promotion to the next higher rank may be considered for grant of extension of engagement if they pass the promotion examinations three months prior to the expiry of their regular engagement. Airmen who do not attain the rank of Cpl within 15 years will be discharged by AOIC AF Records vide para 12(a) (i) of AFI 12/S/48 as amended by AFI 21/79."

6. In their counter affidavit the respondents have contended that in terms of the policy the petitioner had been afforded no less than 18 chances. He could not qualify in the examination which was a precondition for extension of engagement. It is also claimed that extension is not a matter of right and has to be on the merit conforming to the policy contained in the circular/policy in question which is formulated in the year 1999. It is also claimed that the policy has been applied unilaterally and there is no scope for relaxation; indeed there is no provision to relax the provision for having to qualify in the examination well before the engagement expired.

7. The learned counsel for the respondent has also relied upon a Division Bench judgment of this Court in LPA. No. 416/98 titled as "JWO Shankar v. Union of India" decided on 24th September, 1998 wherein it was held as follows:-

"7. The plea of violation of principles of natural justice has also to fail. Firstly, an extension in service is not as of right. A refusal to extend the service need not comply with principles of natural justice. Still an opportunity of hearing has been given to the petitioner consistently with the directions of the court. The petitioner can hardly complain of violation of principles of natural justice."

The conspectus of the above factors reveal that the petitioner who had been engaged initially engaged on 2nd January, 1981 was facing expiry of his tenure on 1st January, 2001 in terms of Para (d) of the policy he had to qualify well before time and not later than 2nd October, 2000. He did qualify but subsequently. As held by the Division Bench the extension is not a matter of right in such cases and it has to conform the policies and the government would be within its rights to refuse to extend the service. It has also been held that the principles of natural justice did not apply in this case.

8. In view of the above we find no infirmity in the impugned order declining the

extension. The writ petition is accordingly dismissed.