
(2012) 06 DEL CK 0007

In the Delhi High Court

Case No : Writ Petition (C) No. 2492 of 2012

Sh. Anup Kumar Gupta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Citation : (2012) 06 DEL CK 0007

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Jyoti Singh with Ms. Sanjeev Chaswal and Ms. Tinu Bajwa, for the Appellant; Himanshu Bajaj, Central Govt. Standing Counsel with Lt.Commander Varun Singh (Navy), for the Respondent

Judgement

Anil Kumar, J.—The petitioner joined the Indian Navy as a Sailor in the year 2003 and is now working as Leading Store Assistant. Admittedly, he has put in 9 years of service. In October, 2010 while he was posted at INS, Kardip in Andaman & Nicobar Islands he applied for being considered for the post of Assistant Commandant in Central Police Force Organisations, the examinations for which were held in October, 2010. Ultimately, the petitioner was declared successful and was offered appointment as an Assistant Commandant in the Indo Tibetan Border Police Force.

2. Consequent upon this offer, the petitioner applied for clearance for appearing in the examination from the Indian Navy. His application has been rejected by the Indian Navy on the sole ground that he had failed to apply at the proper time and at the right stage and was, therefore, not in accordance with the Navy's declared policy on the subject. According to the respondents, the petitioner was obliged to apply for permission to appear in the selection examination in advance, which he had failed to do. This is the only ground on which the petitioner's application for clearance for appearing in the examination from the Indian Navy had been rejected. 3. In the same context the Integrated Headquarters of Ministry of Defence (Navy), Directorate of Manpower Planning

and Recruitment had also issued a recommendation on 19th March, 2012 recommending ex-post facto approval to be granted to the petitioner for appearing in the Combined Police Force (Assistant Commandant) Examination, 2010. In that recommendation it was also mentioned that as a matter of fact Commanding Officer, INS India had also granted approval to the petitioner vide his communication dated 29th August, 2011, to appear for the same Combined Police Forces Examination to be conducted for the next year i.e 2011. Despite this recommendation of Integrated Headquarters of Ministry of Defence (Navy), Directorate of Manpower Planning and Recruitment; the Commodore Bureau of Sailors declined to grant ex post facto approval for the CPF (AC) Examination, 2010 on 28th March, 2012.

3. After some arguments, and keeping in view the decision of this Court in the case of *Md.Shahbaz Alam v. Union of India & Ors*, W.P (C) No.7353/2011 decided on 11th January, 2012 which is a recent decision by this Court in connection with a similar policy of the Air Force and in which decision, an earlier decision of this Court in W.P(C) No.9088/2008 titled *Cpl N.K.Jakhar v. Union of India & Ors*, decided on 21st October, 2009, and some other cases as well, learned counsel appearing for the respondents submits that notwithstanding the position taken by the Commodore Bureau of Sailors, having earlier declined the grant of ex post facto approval, the respondents would now duly consider the case of the petitioner for discharge from the Indian Navy keeping in view the parameters for discharge as set down in the relevant policy without in any way being influenced by the fact that the petitioner had not applied for approval to sit for the CPF (AC) Examination, 2010 in advance or that ex post facto approval in this behalf has since been declined. He submits that the matter will be considered at its own merits keeping also in view, inter-alia, the fact that due permission was in fact given to the petitioner to appear in the next CPF (AC) Examination, 2011 by the respondents. The statement of respondents counsel is accepted by this Court.

4. Mr. Bajaj ,learned Central Govt. Standing Counsel for the respondents who also appears for the Director General, Indo Tibetan Border Police Force, i.e, respondent No.4 herein, submits that the next training course for all those who had qualified in the CPF (AC) Examination, 2010 and were offered appointments, including the petitioner, is to commence on 11th June, 2012. In the circumstances and on instructions from Lt.Commander Varun Singh Mr. Bajaj further states that the respondents shall decide the question of the discharge of the petitioner from the Indian Navy as aforesaid within one week from today. The outcome thereof shall be duly communicated to the petitioner with a copy to his counsel as well, within two days thereafter.

5. In case the discharge as prayed for by the petitioner is granted by the respondents, the petitioner shall be permitted to join the ITBP training course which is scheduled for commencement on 11th June, 2012 at any time within 10 days of receiving such intimation and no objection for late joining shall be raised in this behalf by respondent No.4.

6. The writ petition is disposed of in the above terms.

CM No.5332/2012

7. Since the main petition has been disposed of, this application does not survive. A copy of this order be given dasti under the signatures of the Court Master to learned counsel for the parties.