

(2011) 12 DEL CK 0047

In the Delhi High Court

Case No : Writ Petition (C) No. 9090 of 2011

Sh. Tejveer Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

Citation : (2011) 12 DEL CK 0047

Hon'ble Judges : G.P. Mittal, J;Anil Kumar, J

Bench : Division Bench

Advocate : Saumyen Das, for the Appellant; S. Fatima, Advocate for Ms. Anajana Gosian, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has sought direction to the respondents to re-consider the case of the petitioner to join the Indian Air Force and to treat the petitioner as if he had joined the service of the respondents in the December,1983 for the purposes of salary and other benefits and to pay to the petitioner salary and other benefits which would have accrued to the petitioner had he been permitted to join the Indian Air Force in December, 1983. The petitioner has also sought grant of compensation for mental harassment and for spoiling his carrier.

2. The petitioner contended that the respondents had advertised in the Uttar Pradesh Rojgar Digest for enlistment to different categories of posts. The petitioner had applied for Group-II Technical post for which the minimum qualification was Matric, Higher Secondary or its equivalent. According to the petitioner, the eligible candidates should have completed Matric/Higher Secondary with Physics or Chemistry or Mathematics as optional subjects.

3. The petitioner asserted that he had passed his matriculation with optional subject Mathematics on 30th June, 1977 and Higher Secondary with optional subject Physics on 26th June, 1981. The age restrictions for enlistment to Group-

II Technical post was that the candidates should have born between 30th June, 1963 and 1st January, 1967 for those who have passed Matric and those who were having Higher Education/Intermediate, two years age relaxation was admissible. Since the petitioner had passed the Higher Secondary with optional subject Physics, therefore, the petitioner was entitled for two years age relaxation.

4. In the application form, according to the petitioner, at item No.7, the petitioner had tick marked "Yes" because he had Physics as a subject in the Higher Secondary/Intermediate.

5. The petitioner was called for preliminary test conducted at Ghaziabad on 20th October, 1982 and after the preliminary test, he was also called for preliminary screening test. The petitioner had also received a call letter dated 15th December, 1982 for the selection test. The petitioner by call letter dated 15th December, 1982 was asked to call original certificate along with recent character certificate and pass port size photo duly attested by a Gazetted officer. After selection test, the petitioner was subjected to preliminary medical examination and he was permitted thereafter, to appear for final selection test. The petitioner was called to report to Air Selection Centre near Race Course, Air Force Station, New Delhi on 31st January, 1983. At the time of final selection, the petitioner submitted all the certificates in original. The result of the final selection test was published. The petitioner contended that he was issued a letter dated 26th March, 1983 intimating him that he has been found suitable for the Electronic Stream II in the Indian Air Force.

6. Thereafter, the petitioner got a call letter dated 28th November, 1983 directing him to report to warrant officer, Air Selection Centre, Race Course, New Delhi on 22nd December, 1983. The petitioner was also informed that he will have to go to Belgaum for necessary training. On 26th December, 1983 he approached the respondents for obtained Railway Warrant. Before issuance of the Railway Warrants, he was however, informed that he was not qualified to be absorbed in Air Force as an Airman.

7. The petitioner therefore made enquiries and sent a representation on 14th February, 1984. Pursuant to his representation, a letter dated 24th February, 1984 was received from the respondents intimating that the petitioner had mentioned his qualification as Intermediate with Mathematics and Science, however, it had transpired that the petitioner had not studied Mathematics in Intermediate, and therefore, the petitioner had not been eligible for selection in the Air Force.

8. The petitioner, thereafter, made various representations since 1984. The petitioner referred to representations dated 10.02.1984, 10.02.1995, 27.11.2006, 19.03.2007, 22.05.2007 and 2.2.2010. The representations of the petitioner were replied intimating him that since the record of the petitioner related to the year 1983, therefore, according to the policy, it has been

destroyed and on the basis of his representations, no relief as prayed by him can be granted.

9. The petitioner further pleaded that according to the policy of the respondents, the retention period of attestation papers of Airman and main documents held by them, in case of accepted recruits and rejected recruits, is 25 years which fact was also confirmed by the respondents by reply dated 2.2.2010. According to petitioner the respondents were, therefore, totally negligent in destroying the record and has thus caused immense harassment to the petitioner.

10. The petitioner has contended that he had completed Matric with Mathematics and since minimum qualification for the post was matriculation and he had studied Mathematics, Chemistry and Physics as optional subject, therefore, he was eligible. He had mentioned his higher qualification only to obtain the age relaxation. The petitioner contended that in the application form, there were only two columns: 1) for mathematics/physics and 2) for Arts/Commerce. He had put a tick mark on "Yes" on the column for mathematics/physics because he had physics as a subject in Higher Secondary/Intermediate. The petitioner contended that he had not concealed any information nor given any wrong information.

11. The petitioner in the circumstances, has challenged his non-selection in the year 1983 on the ground that the application form had contradictory contents because in the application form it was clearly mentioned Mathematics/physics and as the petitioner had physics in Intermediate, he had to tick mark as "Yes" and, therefore, the petitioner had not given any wrong information. The petitioner also challenged the action of the respondents of destruction of the record contrary to their own policy.

12. The petitioner also pleaded that as per High School certificate, his age was one year 22 days more, but as the petitioner had also qualified Intermediate, therefore, he was entitled for 2 years age relaxation, and therefore, he was selected and only at the time of giving Railway Warrants for proceeding to Belgaum, his selection was cancelled. The petitioner contended that if he had intimation of cancellation of selection given to him at initial stage, the petitioner would have completed his ITI course and would have adjusted himself in another service. The petitioner in the circumstances has claimed that he has been mentally harassed and he has claimed compensation.

13. Regarding the cancellation of selection on 26th December, 1983 when he had approached the respondents for collecting his Railway Warrants and as to why the writ petition has been filed in November, 2011 almost after twenty eight years, the only explanation given in the writ petition is that the petitioner had been making representations.

14. Learned counsel for the respondents who has appeared on an advanced notice has emphatically contended that the petition is highly belated and the relief claimed by the petitioner cannot be granted on account of delay and latches. It is contended by the learned counsel for the respondents that the

representation of the petitioner dated 14.02.1984 regarding cancellation of his selection was duly replied by letter dated 24.2.1984 and therefore, no reason for the petitioner to keep on making representations thereafter without seeking any legal recourse, if any, available to him, has been given. Learned counsel has contended that though the selection was cancelled in December, 1983 and the representation was also declined by letter dated 24.2.1984, however, the petitioner made his first representation according to the allegation made in the writ petition on 10.2.1994 and no explanation for making another representations after 10 years has been given. According to him the petition is liable to be dismissed and the petitioner is not entitled for any relief.

15. The petitioner in the present case has slept over his rights for almost twenty eight years. The contention of the petitioner that he was not in a position to prosecute his matter on account of his financial condition as contended by the learned counsel cannot be accepted as nothing in this regard has been averred in the writ petition. The inaction of the petitioner from February, 1984 onwards till the filing of the present writ petition in November, 2011 is not justifiable on any of the grounds averred in the petition. The only ground raised is that he had been making representations.

16. It has been held in a number of cases by the Supreme Court as also this Court that stale claims should not be entertained by the Courts and failure to make out grounds to condone the delay in seeking remedy in law is sufficient to oust the petitioner. In this connection, reference may be made to the following precedents:

- (i) Rajalakshmiah v. State of Mysore AIR 1967 SC 993
- (ii) Jagdish Narain Maltiar Vs. The State of Bihar and Others,
- (iii) C.B.S.E. Vs. B.R. Uppal and Others,
- (iv) Savitri Sahni Vs. Lt. Governor, NCT of Delhi and Others,

In this view of the matter, this Court is not inclined to exercise its power of judicial review to entertain the present claim of the petitioner which is hopelessly barred by delay and laches and the writ petition is, therefore, dismissed. The parties are, however, left to bear their own costs.