
(2010) 01 DEL CK 0368

In the Delhi High Court

Case No : Writ Petition (C.) No. 4782 of 2008

Sharad Singhal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-01-2010

Acts Referred:

Citation : (2010) 01 DEL CK 0368

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Siddharth Singla, for the Appellant; R.V. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has sought a writ of certiorari seeking quashing of final order dated 28th May, 2008 passed by the Central Administrative Tribunal, Principle Bench, New Delhi in OA No. 577 of 2008 whereby Ministry of Home Affairs was directed to consider sending the petitioner for training with the next batch taking into consideration that he has completed the training at Svpnpa with 2006 batch of Indian Police Service officers. The respondents were also directed to take into consideration the plea of the petitioner that he was ready to forego the seniority for one year if he is allowed to join 2007 batch, in case he gets allotted to Haryana Cadre as the petitioner had appeared for Central Services Examination, 2006 with the permission of the competent authority in order to improve his prospects in service.

2. Pursuant to the order dated 28th May, 2008 directing the respondents to consider the case of the petitioner for allotment of Haryana Cadre, the respondents passed an order dated 30th May, 2008 cancelling the offer of appointment of the petitioner to the Indian Police Service made to him by letter dated 1st November, 2007 based on the result of Civil Services Examination, 2006. While passing the order dated 30th May, 2008, it was categorically stipulated that a speaking order has been passed. The order passed on 30th May,

2008 is as under:

1. I am directed to say that on your qualifying the Civil Service Examination, 2006, conducted by the Union Public Service Commission, you were allocated to the Indian Police Service by the Department of Personnel and Training, Government of India.

2. Subsequently, an "Offer of Appointment to the Indian Police Service" was made to you by this Ministry on the basis of our qualifying the Civil Service Examination, 2006 vide this Ministry's letter of even number dated the 01st November 2007. You were requested to convey your acceptance of the "Offer of Appointment to the Indian Police Service", to this Ministry not later than the 15th November, 2007 and report for basic training course at SVP National Police Academy, Hyderabad by the evening of 09th December, 2007, if the "Offer of Appointment to Indian Police Service" was acceptable to you. In response, you had vide your letter dated 10.11.2007 accepted the "Offer of Appointment to Indian Police Service". However, you did not report for basic training at SVP National Police Academy, Hyderabad, on the stipulated date as directed by this Ministry.

3. You had submitted various representations for exemption from the Basic Training Course. The representations were considered in this Ministry and not agreed to. The same was duly conveyed to you. Aggrieved by the decision of MHA, you had filed O.A. No. 577/2008 before the CAT, Principal Bench, New Delhi. This has been disposed of vide order dated 28.5.2008 directing MHA to take a view regarding your request by passing a speaking order. Accordingly, a speaking order has been passed.

4. The Central Government hereby cancels the Offer of Appointment to the Indian Police Service made to you vide this Ministry's letter of even number dated 1st November 2007 based on the result of Civil Services Examination, 2006.

5. You will henceforth, have no claim, whatsoever, for appointment to the Indian Police Service on the basis of the results of the Civil Service Examination, 2006.

3. The petitioner has impugned the order passed on 30th May, 2008 on the ground that this is in violation of the order dated 28th May, 2008 as it is not a speaking order. The petitioner contended that he was selected for IPS on the basis of Central Services Examination 2005 and was allotted Gujarat Cadre in 2006. On allotment of Gujarat Cadre in 2006, he completed basic training at National Police Academy, Hyderabad and he was doing field attachments training in Gujarat. Pursuant to the permission granted by the respondent, petitioner again appeared in the Central Services Examination in 2006 and secured 64th rank and according to him he became entitled in all probability for his home cadre, Haryana, or a nearby State. As the petitioner had completed basic training, he requested for exemption to report on 9th December, 2007 at SVPNPA, Hyderabad. The petitioner was given offer of appointment for the Indian

Police Service by letter dated 1st November, 2007 and he was asked to join the basic training course at SVPNPA Hyderabad by 9th December, 2007, however, the petitioner did not report for the training by the stipulated date.

4. Pursuant to the order of Central Administrative Tribunal dated 28th May, 2008, the respondents reconsidered the plea and contention of the petitioner for exemption from attending the basic course and passed an order dated 30th May, 2008. The petitioner produced the copy of communication dated 30th May, 2008 declining his request for exemption from the basic training course. The communication stipulated that a speaking order has been passed. The petitioner, however, amended the petition contending inter alia that the order dated 30th May, 2008 is not a speaking order and the request and the representation of the petitioner, pursuant to the order of the Tribunal could not be declined by a non-speaking order.

5. The plea of the petitioner was that the order dated 30th May, 2008 was not a speaking order reflecting complete non-application of mind and consequently the petitioner is entitled to challenge the same in the writ petition without impugning the same before the Central administrative tribunal though the validity of said order was not considered by the tribunal while passing the order dated 28th May, 2008. Consequently to the plea of the petitioner, an additional affidavit of Ms. Inderjeet Kaur, Director (Police), Ministry of Home Affairs was filed. It was stated that the petitioners has not brought correct facts to the notice of the court and has not filed the speaking order dated 30th May 2008, passed in compliance with the order of the Tribunal dated 28th May, 2008. A copy of the order dated 30th May, 2008 was also filed along with the additional affidavit. Despite the opportunity granted to file the response to the additional affidavit, response was not filed on behalf of petitioner.

6. The respondents referred to the order of the tribunal dated 28th May, 2008. The relevant portion of the order is as under:

however, we have to also recognize that the allotment of cadre is not bound with the training course starting in the SVPNPA. The respondents have not pointed out to any rule to show that the allotment of cadre should follow the start of the training. It seems that the cadre could be allotted any time before the training starts or even after the training starts. In the present case, the allotment of the cadre, as has been contended by the respondents, has been delayed due to reasons beyond the control of the respondents. We may point out that the applicant is also not responsible for delay in the allotment of cadre. Further, it is true, as we have noted earlier, that there is no provision for exemption from training in the probation rules and also that the applicant does not have an indefeasible right to seek exemption from training. However, the MHA could consider sending the applicant for training with the next batch in view of the fact that the applicant has completed the training at SVPNPA with the 2006 batch of IPS. This is especially considering the averment made before un on behalf of the applicant that he would be willing to forego the seniority for one year if he is

allowed to join the 2007 batch, in case he gets allotted to Haryana cadre. We are saying this because the applicant had appeared for the CSE, 2006 with the permission of the competent authority in order to improve his prospects in service. Getting allotted to his home cadre, although not a right, is yet legitimate aspiration. Under the circumstances, we feel that MHA may consider his request sympathetically. We, however, leave it entirely to MHA to take a view in this matter by passing a speaking order. With these observations, OA 81/2008 becomes infructuous.

7. Pursuant to petitioner qualifying the Civil Service Examination 2006, the offer of appointment contemplating joining the service not later than 15th November, 2007 and reporting for basic training course at SVPNPA, Hyderabad by 9th December, 2007 was given. Despite the categorical communication to join the basic course at Hyderabad, petitioner did not report for basic training although his request for exemption from joining the basic course had already been declined.

8. The respondents also relied on the observation of the Principal Bench, Central Administrative Tribunal, that there is no provision in the probation rules for exemption in training and the petitioner does not have any indefeasible right to seek exemption from training. The respondents relied on the facts that the Rules 2(e) and 2(ee) of Indian Police Service (Probation) Rules, 1954 as it existed prior to 5th February, 2000, had a provision for exempting a probationer which was omitted vide amended notification dated 5th February, 2000 and, therefore, there was no provision for exemption from basic training course under the Rules.

9. While declining the representation by order dated 30th May, 2008 pursuant to the directions given by the Tribunal by its order dated 28th May, 2008, the respondents also noted that the petitioner was ready and willing to forego his seniority and that the petitioner was granted permission to appear for CSE-2006 by the competent authority. It was asserted that the promotion granted to the petitioner to appear again for CSE-2006 got discharged when he failed to join the basic training course pursuant to offer dated 1st November, 2007 whereby he had to convey his acceptance of offer of appointment not later than 15th November, 2007 and was to report for basic training course by 9th December, 2007. It was categorically contended that similar exemption sought by another candidate was declined in similar circumstances and consequently the petitioner is not entitled for any preferential treatment and thus the request of the petitioner for exemption from undergoing the basic training course has again been declined by 30th May, 2008.

10. In the circumstances, the plea of the petitioner that the order dated 30th May, 2008 does not disclose application of mind and has been passed mechanically is contrary to the record and the order dated 30th May, 2008. Cogent reasons have been given by the respondents that there is no rule granting exemption from basic training and the rule under which exemption could be granted to the probationer had been repealed since 5th February, 2000 and

that the petitioner has not been discriminated inasmuch as similar request in case of other candidates seeking exemption from basic training have already been declined. Thus the plea of the petitioner that the order has been passed mechanically without application of mind cannot be accepted nor the petitioner is entitled to succeed on this ground.

11. In the circumstances, there are no grounds to interfere with the order of the Tribunal dated 28th May, 2008 pursuant to which order dated 30th May, 2008 has again been passed by the respondent considering the representation made by the petitioner. Even though the petitioner was not responsible for delay in allotment of cadre, however, there is no provision for exemption from basic training in the probation rules nor the petitioner can claim any indefeasible right to seek exemption from training.

12. Therefore, we do not find any illegality or such irregularity which will entitle petitioner for interference with the order of the Tribunal. For similar reasons, there are no grounds to interfere with the order dated 30th May, 2008 passed by the respondents declining the request of the petitioner for exemption from the basic training course.

13. For the foregoing reasons, the writ petition is without any merit and it is, therefore, dismissed. Parties are however, left to bear their own costs.