

(2011) 06 DEL CK 0045
In the Delhi High Court
Case No : Writ Petition (C) 6447 of 2011

Shashi Kant Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-06-2011

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 26(2)

Citation : (2011) 06 DEL CK 0045

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : P.I. Jose, for the Appellant; D.S. Mehandru, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—A legal issue arises for consideration and with consent of learned Counsel for the parties the writ petition is heard for final disposal at the preliminary hearing inasmuch as counter affidavit is not required.

2. Challenge is to Annexure P-9, rejecting Petitioner's technical resignation from Border Roads Organization on the ground that when necessary approval was granted to the Petitioner to seek employment under the State of Uttar Pradesh and the requisite No. Objection Certificate was issued, there was enough manpower with Border Roads Organization, but now due to large scale work undertaken for construction of roads in border areas, services of the Petitioner cannot be dispensed with. An additional reason given is that Petitioner has gained experience in the strategic works being executed at the Indo-China Border.

3. Relevant facts are that employed with Border Roads Organization as an Engineer, in December 2005 the Petitioner desired to compete at the examination proposed to be conducted by the Irrigation Department of the State of Uttar Pradesh to appoint Engineers and at that time the Petitioner got his application forwarded through his employer i.e. Border Roads Organization. Necessary No. Objection Certificate was issued on 17.2.2006 recording therein that Border

Roads Organization had No. objection if Petitioner joined the Irrigation Department of the State of Uttar Pradesh and for which it was indicated that the Petitioner would be relieved, if appointment was offered, by the State of Uttar Pradesh.

4. The Petitioner succeeded at the competitive examination, but unfortunately the result came under a cloud when some unsuccessful candidates questioned the selection process. Appointments were kept on hold. Judicial process came to an end in the year 2011, when the challenge to the selection failed and at that stage a letter of offer was issued to the Petitioner. Now, Border Roads Organization has refused to accept the technical resignation submitted by the Petitioner, taking a stand as afore-noted in para 2 above.

5. The issue has to be sorted out with reference to sub-rule 2 of Rule 26 of the CCS Pension Rules which stipulates that a resignation shall not entail forfeiture of past service if it has been submitted to join, with proper permission, another service; whether temporary or permanent, under the Government where service qualifies.

6. It is not the case of the Respondents that the Petitioner would not be entitled to have his case considered under sub-rule 2 of Rule 26 of the CCS Pension Rules, but would urge that the rule does not cast any obligation on the Respondents to accept the technical resignation and that if there are sufficient grounds, in public interest, the technical resignation can be rejected. It is urged that shortage of manpower and Petitioner's experience for road construction at the Indo-China Border are good grounds to reject the technical resignation submitted by the Petitioner.

7. We find that pertaining to technical resignations, OM No. 3379E-III(b)/65 dated 17.6.1965 has been issued and suffice would it be to state that guidelines issued in exercise of the Executive power supplement the rules on subjects not covered by the rule. The Office Memorandum in question reads as under:

(1) When resignation a technical formality and when it subsists. - A Government servant intending to apply for a post or posts outside his parent office/department under the Government of India should have his application forwarded through the Competent Authority under whom he was serving at the time of applying for the post. Such an authority should either forward the application or withhold it according as the exigencies of public service may indicate but it should not forward the application conditionally, for example, that in the event of the applicant coming out successful, he will be required to resign his post before taking up the new one. Once the application has been forwarded unconditionally and the person concerned is offered the post applied for, he should be relieved of his duties to join the new post as a matter of course and the question of his resigning the post held by him in such circumstances should not arise. Accordingly, the amended article is intended to cover the cases where even though the applications were forwarded by the Competent Authority, the

applicant had been asked for one reason or the other to resign his post before taking up the new one. The above position holds good whether the Government servant held the post in permanent or temporary capacity before resigning the post.

Situations may arise where the application of a Government servant was not forwarded and the Government servant resigned his appointment of his own volition with a view to his taking up the new post or where it was not possible to forward his application in the public interest but the Government servant had volunteered to resign his post or where the conditions of service in an office demand as a matter of policy that the Government servant should resign his post in the event of his taking up another post outside. In all such cases, it has been held that resignation of public service will subsist and entail forfeiture of past service.

It has been decided that in cases where Government servants apply for posts in the same or other departments W.P.(C) No. 6447/2011 Page 3 of 4 through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new posting treating the resignation as a "technical formality". The pay in such cases may be fixed under FR 27.

8. Suffice would it be to state that while applying to the Irrigation Department for the post, the Petitioner got his application forwarded through the Competent Authority under whom he was serving and the requirement of manpower had to be considered at said stage by the Competent Authority and not at a later stage. The instruction clearly states that once the application has been forwarded unconditionally and the person concerned is offered the post applied for, he should be relieved of his duties to join the new post as a matter of course. The Competent Authority granted the sanction.

9. Thus, public interest i.e. retention of the government servant in the parent service has to be considered at the stage when the No. Objection Certificate is sought and not after the person obtains employment to another civil post.

10. We dispose of the writ petition quashing the impugned communication dated 4.5.2011 and issue a mandamus to the Respondents to forthwith accept Petitioner's technical resignation and relieve him from service, so that the Petitioner, who has already joined the Irrigation Department of the State of Uttar Pradesh, can have his pensionable service accorded its due benefit.

11. Needful would be done within 4 weeks from today.

12. No costs.