
(2014) 05 DEL CK 0364
In the Delhi High Court
Case No : W.P. (C) 7757/2012

Shiv Narayan

APPELLANT

Vs

Department of Personnel and Training and Others

RESPONDENT

Date of Decision : 26-05-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2014) 05 DEL CK 0364

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : Shanker Raju and Nilansh Gaur, Advocates for the Appellant

Judgement

Gita Mittal, J.—The writ petitioner assails an order dated 26th July, 2012 passed by the Central Administrative Tribunal rejecting the Original Application No. 638/2012. The petitioner had sought the following reliefs in his application:-

"(i) Issue appropriate direction to the respondent to restore the service allocation and offer of appointment of the applicant and allocate I.A.S. in Civil Service Examination 2010, on the same rank, position, seniority and consequential benefits arising therein as he would have got as per his original allocation and allow him to join ongoing Phase-1 training for those candidates who have been selected as I.A.S. in C.S.E. 2010 and are undergoing the training in 86th Batch of I.A.S. at Lal Bahadur Shastri National Academy of Administration at Mussoorie.

(ii) Pass- any other orders as may be deemed just and proper in the facts and circumstances of the case including the costs of this original application."

2. The facts undisputed giving rise to the present writ petition are noted hereafter. The petitioner appeared in the Central Services Examination, 2010 (CSE 2010) and secured the 384th rank.

3. The respondents informed the applicant about his allocation to the IAS Cadre vide a letter dated 11th August, 2011, as well as the mandatory components of

the probationary training. It is admitted before us that the petitioner was informed that it was compulsory for him to report to the Lal Bahadur Shastri National Academy of Administration (hereinafter called as "the Academy" for brevity) on or a day before 29th August, 2011. The petitioner was also duly informed by this communication that in case he did not join the foundation course, it would be presumed that he is not interested in joining a service on the basis of CSE- 2010 and further action regarding cancelling his offer of appointment may be taken without any further notice.

4. The petitioner was allotted the Indian Revenue Service (C&CE) in the CSE 2009 examination. At the relevant time, he was undergoing training course at the National Academy of Customs and Narcotics at Faridabad.

5. The petitioner informed the IAS Academy that he was unable to join the 86th Foundation Course by an e-mail dated 26th August, 2011 stating as follows:-

".....I have fallen sick at Warangal and supposed to take relieving from National Academy of Custom and Excise and Narcotics Faridabad since I am in IRS(C&CE) from CSE 2009 Sir due to uncertain ill health I am unable to join on stipulated date of 29th aug for 86th Foundation course. Therefore i request you to kindly suggest me what to do since it may take 3-4 days for relieving if I get well by Monday I talked over telephone to training section at LBSNAA they suggested me to send mail to you."

6. It is apparent from the above that except medical indisposition, no other reason or ground for not joining the 86th Foundation Course was advanced by the petitioner. Of course we will test the veracity of the stated grounds hereafter in this judgment.

7. The petitioner appears to have sent a medical Certificate dated 26th August, 2011 issued to him as an out patient by the Mahatma Gandhi Memorial Hospital, Warangal, Andhra Pradesh, which records that the petitioner had complained of having fever for two days. This certificate does not record as whether the petitioner was unwell or what was the temperature of the petitioner at the time when he had reported for the medical examination. There is nothing on record to support the plea that the petitioner was unwell as claimed.

8. As claimed it appears that despite clearly notifying in the letter dated 11th August, 2011 that the petitioner's candidature would be cancelled, if he did not join, the respondents gave him yet another opportunity to do so. The petitioner was advised through a letter dated 12th September, 2011 to join Phase I of the Professional course meant for the IAS Probationers commencing from 12th December, 2011. This was followed by the reminder dated 11th November, 2011 sent by the Ministry of Personnel, Public Grievance and Pensions notifying the petitioner as follows:-

".....The matter has been re-examined and you are directed to report to LBSNAA positively on 5.12.2011 or a day before. In case you fail to report this

Department shall take necessary action to cancel offer of appointment to IAS without any further correspondence in the matter".

(underlining by us)

9. Keeping in view the urgency of the matter, a second reminder dated 25th November, 2011 was issued by the Academy informing the petitioner as follows:-

"..... that you may report to the Academy on 5th December, 2011 positively for IAS Professional Course Phase-I training, failing which the service allocated to you will be treated as cancelled without any further notice..."

10. We are compelled to make a detail reference to the communications addressed to the petitioner as well as the stated reasons for his not joining the Academy inasmuch as the additional grounds to those laid before the Tribunal are pressed before us.

11. It appears that the petitioner had not at any point of time joined the Academy as directed to do so by the respondents. In these circumstances, the respondents issued the list of Cadre Allocation of 149 IAS Officers of 2010 who had undergone the training.

12. On its website, on 11th January, 2012 the respondents posted a Cadre Selection List of 149 IAS Officers of 2011 Batch who had undertaken CSE Examination 2010 and successfully completed the requisite training. This list did not feature the name of the petitioner. It is only thereafter that the petitioner on 12th January, 2012 intimated his willingness to join the training and requested the respondents to advise a suitable date to him to join. Contents of this communication make an interesting reading and the relevant extracts reads thus:-

".....I could not join the IAS phase -I training programme on the scheduled date of 05.12.2011 due to my ill-health. I want to join the training programme at LBSNAA, Mussoorie on any date. Since I have not received any acknowledgment of above mentioned letters therefore, you are requested to kindly advise me the suitable date of joining so that I can complete my resignation and relieving formalities from my present service, IRS (C&CE)...."

(underlining by us)

13. This letter manifests the irrational manner in which the petitioner has conducted himself and laid the entire blame for his conduct upon the respondents.

14. It is also apparent from a reading of this communication that even this letter does not show any bona fide intention of the petitioner to join the training despite the repeated reminders from the respondents. The period of two weeks which was requested by the petitioner on medical reasons in his letter dated 5th December, 2011 also came to an end on or above 19th December, 2011 without any further communication from the petitioner. It was, in fact, the responsibility

of the petitioner to have approached the respondents, if he had any sincere intention of joining the training at the Academy.

15. The conduct of the petitioner suggests that he was happy to proceed with his training at the Revenue Academy.

16. We are informed that in view of the above, the petitioner filed the application under Section 19 of the Central Administrative Tribunals Act, 1985 at on or about 24th February, 2012 reiterating the aforementioned circumstances that he was unwell stating "ill and under treatment" as a reason for his not joining the training course.

17. The respondents opposed the application on several grounds which reads as follows :-

"12.1 It is submitted that the argument of the applicant herein regarding two vacancies still being available in the IAS and he being willing to join the IAS is redundant in the context of the present case. It is not the will of the candidate that would decide as to at what stage he would join a particular service. Since Cadre allocation of all the candidates from CSE-2010 was dependent on the joining of the candidates, this respondent was left with no option but to cancel his candidature. It has already been submitted by this humble respondent that the candidature of the applicant herein and consequent offer of appointment made to him to join the IAS has been cancelled by this respondent after providing him ample opportunities as he failed to report for joining.

12.2 It is submitted that the argument of the applicant herein stating the fact that this respondent has been sending the candidates midway to undergo the training and even after a few years is also not relevant in the context of this case. The issue right now is not whether he can be sent for training with the candidates of civil service examination 2010 or not. The issue is that his candidature from civil service examination 2010 and the offer of appointment made to him to join the IAS has been cancelled and as such the matter stands closed in respect of the applicant as a candidate from civil service examination 2010, as far as this respondent is concerned. The facts of the cases, which he has quoted in the application are entirely different from the facts of the case of the applicant herein. In those case, the concerned candidate, belonging to PH category have been appointed to IAS in the year 2011-12 on the basis of CSE-2006 in pursuance to the court order upheld by the Hon'ble Supreme Court of India against the backlog of vacancies available in the IAS in PH category.

12.3 It is submitted that as can be seen from the facts of the case given under para 9 above, the applicant herein was given ample opportunities to report for duty/joining the requisite training, meant for the candidates allocated to IAS on the basis of civil service examination 2010 but he did not adhere to the directions given. It is mentioned that recruitment to a service on the basis of a civil service examination is a time bound process, having a chain reaction. In the context of the present case it is submitted that this answering respondent is

required to finalise the cadres to be allocated to the candidates who are appointed to IAS on the basis of their performance in a particular civil service examination up to a particular stage in every possibility because the officers who are undergoing training in LBSNAA, Mussoorie are required to be trained in the local language of the state to which they are allocated and they are to be sent for district training in those States. It is to be appreciated that the applicant here in is trying get benefited out of the act of omission on his part. If this is allowed, it would construe to regularize such act of omission. This particular argument has to be seen in this backdrop that other candidates when they decide to join the IAS are not aware of the cadre to be allocated to them but the applicant herein at the hindsight now knows as to which cadre he might have been allocated and as such is pressing at this juncture to allow him to join the IAS. It is felt that if the request of the applicant is allowed, it will a compromise with the principle of providing level playing field to all the similarly situated candidates, as other candidates of CSE-2010, allocated to IAS did not know at the time of their making decision to join or not to join IAS as to which cadre they would be allocated.

12.4 The issue of allocation of cadres to the officers appointed to IAS is governed by Rule 5(1) of IAS (Cadre) Rules 1954, which is reproduced below: -

"The allocation of cadre officers to the various cadres shall be made by the Central Government in consultation with the State Government or the State Government concerned."

12.5 It may be seen that the rule specifically provides for allotment of Cadre to the cadre officers only. A candidate from a particular civil service examination can be called a cadre officer only after he is appointed to IAS. It is therefore incumbent on the part of this respondent to decide about the appointment to IAS" of the candidates from a particular civil service examination before the cadres in respect of such candidates are finalised. It is further submitted that this particular issue as to whether this respondent should allocate cadres to those candidates only who actually join the service or to all the candidates who were made offer of appointment to the service came for adjudication before this honourable tribunal in original application number 102/2007 filed by Shri Rajesh Kumar Vs Union of India and Ors. This Honourable tribunal through its order dated 2nd January, 2008 in the above-mentioned original application decided that the cadres can be allocated only to those officers who actually join the service.

12.6 It may be appreciated that the above issue is of great sensitivity and comes under the domain of policy-making by the executive. It is so because if a candidate who actually does not join a service is not considered for allocation to Cadre, he would be creating an opportunity for a lower ranked candidate to get a cadre of higher preference in that category. The government of India in accordance with the ratio of this honourable tribunal, as stated in its order dated 2nd January 2008, as mentioned above has decided that it will allocate cadres to

those officers only who actually join the service.

18. After detailed consideration of the contentions of both the sides, the Tribunal rejected the prayer of the petitioner by passing impugned judgment dated 26th July, 2012. Before us, it is again reiterated that the petitioner was unwell and therefore, unable to join the course on the stipulated date. This plea of the applicant being unwell has been considered in para 9 of the judgment dated 26th July, 2012 passed by Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 638/2012 which is extracted as follows:-

".....9. On the other hand, the applicant sought exemption to join the training on the ill health ground. A close perusal of the medical certificate of Mahatma Gandhi Memorial Hospital, Warangal (enclosed at page 16 of the OA), shows that the applicant was detailed as Out Patient. He had fever and was prescribed certain medicines on 26.08.2011. To a question raised by the Bench, learned counsel for the applicant informed that the applicant was attending his training programme as a Probationer in IRS (C&CE) at Faridabad and did not take leave during the reported period of his ill health. This being so, it would be inferred that if the applicant was fit to undergo his programmes in the Institute meant for the IRS (C&CE), how he was medically unfit having ill health to undergo Foundation Course and Professional Course training meant for IAS. These facts would manifest that the applicant himself did not want to join the IAS but wanted to continue in his Service in IRS (C&CE). If the applicant himself had given up his right by not joining the Foundation Course and thereafter the Phase-I Professional Course meant for the IAS, despite the three reminders sent by 1st and 2nd respondents from August, 2011 to November, 2011, it would be beyond any stretch of imagination that he was suffering from fever and deep throat infection for all these months and was simultaneously attending his duties as IRS (C&CE) Officer in Faridabad. We are, therefore, not convinced with the ground taken by the applicant for not IAS training programme in the Academy. The is the principal ground taken as a plea by the applicant in the OA that he could not join the training programme. The said contention does not convince us to interfere in the matter of the cancellation of the applicant's appointment to IAS."

(Emphasis supplied)

19. Before us, learned counsel for the petitioner has vehemently urged that the respondents could not have called upon the petitioner to join the Foundation Course without having effected the Cadre Allocation. The respondents have explained the same in para 12.5 and 12.6 of the counter affidavit which have been extracted above. In addition thereto, no such objection was raised by the petitioner at any time till now. His sole contention was that he was unwell and therefore, unable to pursue the training. Therefore, it is too late for the petitioner to advocate or espouse this as a ground for challenging the action of the respondent.

20. The petitioner has by his conduct waived any objection premised on such

ground especially in the light of the repeated letters written to the respondents till as late as on 5th December, 2011.

21. We have extracted above the observations of the Tribunal on the conduct of the petitioner to the effect that he was advocating a false ground of ill health to support his failure to join the course whereas, he was actually pursuing the training with the Revenue Academy.

22. Even in the petition before the Tribunal, the petitioner has claimed that he was unwell. The conduct of the petitioner certainly dis-entitle him to grant of any relief.

23. Learned counsel for the respondent has placed reliance on pronouncement dated 7th October, 2013 in W.P.(C) No. 2544/2012 in Shankar Lal Kumavat v. Union of India.

24. In fact with regard to non allocation of cadre before proceeding to foundation Cadre in Shankar Lal Kumawat, this court has observed as follows:-

".....33. If the petitioner had any grievance because of non allocation of cadre before he went to the Foundation Course, he should have made grievance of the same. He did not make any grievance. For certain good reasons the respondents had amended the para No. 9 of the Policy dated April 10, 2008, on April 21, 2011. We wish to bring out the amendment as brought about by Policy dated April 21, 2011...."

25. In the instant case also as noted above, the petitioner has made no grievance at all with regard to non allocation of the cadre before going to Foundation Course at any point of time in his several communications sent to the respondents. He certainly cannot do so either before the Tribunal or at this later stage.

26. It is noteworthy that the writ petitioner seeks to join the civil services and seeks allocation to the Indian Administrative Services, where the conduct and integrity of the aspiring candidate has to be of the highest level. Such conduct of the petitioner seeking repeated exemptions from the training programme on false medical grounds to avoid the requirement made by his employers cannot be justified. There is no equity in favour of the petitioner as well.

27. For all these reasons, the writ petition is dismissed.