
(2015) 04 DEL CK 0008
In the Delhi High Court
Case No : Writ Petition (C) 7451/2013

S.K. Ahluwalia

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Citation : (2015) 04 DEL CK 0008

Hon'ble Judges : Pratibha Rani, J.;Pradeep Nandrajog, J.

Bench : Division Bench

Advocate : Ankur Chhibber and Prashant Sivarajan, Advocates for the Respondent

Judgement

Pradeep Nandrajog, J.—The petitioner has filed the instant writ petition praying for issuance of a writ of mandamus directing the respondents to permanently absorb the petitioner in the office of the Director General Quality Assurance (DGQA) as well as for issuance of a writ of certiorari to quash the recommendations of the Assessment Board (QASB) in the meeting held on August 11, 2011 in which the petitioner has not been recommended for permanent absorption in DGQA as also for quashing the posting order dated October 17, 2013 under which, reverted to the Indian Army, the petitioner has been given the place of posting.

2. Brief facts relating to the case are that the petitioner was commissioned in the Indian Army and was sent on deputation to the office of the Director General Quality Assurance on January 28, 2009. During this tenure the petitioner was posted at CQA (AVL), Awadi from January 28, 2009 to November 29, 2011. A second tenure, in continuation of the first, was given to the petitioner by being continued on deputation with DGQA from November 30, 2011 to November 22, 2013 but at the Head Quarter (DQA) (L) Delhi.

3. On completion of the second tenure, after serving for a total duration of 5 years in DGQA, the petitioner was sent back to his parent organization i.e. the

Indian Army since the petitioner had completed the maximum period of 5 years on deputation with DGQA.

4. The grievance of the petitioner is that during his deputation period, the respondents have illegally rejected the claim of the petitioner for permanent secondment in DGQA by erroneously applying the policy dated August 11, 2011. It is the case of the petitioner, who appeared in person, that his case for permanent secondment in DGQA ought to have been considered as per the Policy dated May 12, 2011 or as per the Policy dated November 16, 2007. Thus, as per the petitioner his case for permanent secondment in DGQA could not be considered as per the policy dated April 23, 2010.

5. The petitioner relied upon para B of sub-clause III of the policy dated May 12, 2011, which reads as under:-

"Officers should not have been finally superseded as on the date of acceptance by DGQA on tenure (the date of approval of Board Proceeding for acceptance of officers on tenure by DGQA)" 6. The petitioner argued that having come on deputation to DGQA on January 28, 2009, and on which date he not being finally superseded, the rejection of his secondment on the ground that he was a finally superseded officer was bad in law and needs to be set aside.

7. The petitioner also placed relied upon a decision dated May 28, 2011 of the Supreme Court in Civil Appeal No. 3879/2013 Union of India and Ors. Vs Col. G.S. Grewal, in order to substantiate his case.

8. On the other hand, the respondents vehemently opposed the claim of the petitioner. It was argued by the learned counsel appearing for the respondents that the petitioner had come on deputation to DGQA on January 28, 2009 and had been sent back to his parent department i.e. Army upon completion of 5 years" tenure on November 22, 2013. The case of the petitioner had been considered for permanent secondment based on the Policy dated April 23, 2010 and the same clearly laid down that a finally superseded officer will not be considered for grant of permanent of secondment in DGQA. Therefore, the Board, which assembled on August 11, 2011, rejected the case of the petitioner for grant of permanent secondment.

9. To understand the policies relating to permanent secondment, we had gone through all the policies on the subject. To begin, the first policy relating to permanent secondment in DGQA was issued on October 28, 1978 in which paragraph 4 stated as under:

"(4) Permanent Secondment

Selection for permanent secondment will be made from amongst tenure officers who have done at least two years" service as Major/Lt. Col. or equivalent in the Inspection Organization and who possess the qualifications for the various disciplines laid down in the Annexure "A".

MS/COP/AOA, as the case may be, will be consulted regarding the availability of officers recommended for permanent Secondment."

10. Thereafter, the Policy dated May 04, 1993 was issued in which it was clarified that officer should have a minimum of 2 years service in DGQA and the officer should not have been finally superseded.

11. A letter dated November 16, 2007 was issued wherein it was clearly mentioned that in continuation to OM dated October 28, 1978, the following amendments are made:

"Permanent secondment of the service officers in the DGQA organization shall be restricted to the rank of Lt. Col. Selection of officers for permanent secondment shall be made from amongst the officers in the rank of Lt. Col. with an upper cut off age of 44 years at the beginning of the empanelment year, i.e. the first day of April of the QASB year, who have completed at least 2 years tenure in the DGQA organization and who possess prescribed qualifications for various disciplines enumerated in MOD OM No. 6(3)/91-D (Insp) dated 27.8.91" 12. In the said policy, it has been clearly stated that permanent Secondment shall be restricted to the rank of Lt. Col. and the upper age limit shall be 44 years. The policy does not refer as to whether finally superseded officers could be considered for Secondment or not. It had been argued by the counsel appearing for the respondents that the said criteria remained in force by virtue of policy dated May 04, 1993 which was not amended by policy dated November 16, 2007.

13. Thereafter, the respondents issued yet another policy dated April 23, 2010 in which it was categorically stated that the special merit board has been discontinued by the Army since 2006 and secondly, tenure officers finally non-empanelled will not be considered for permanent Secondment in DGQA.

14. Office Memorandum dated April 23, 2010 reads as under:-

"OFFICE MEMORANDUM

QUALITATIVE REQUIREMENTS (ORs) FOR PERMANENT SECONDMENT

With the approval of Competent Authority, the following guidelines are adopted with immediate effect for consideration of Service Officers on tenure for grant of permanent secondment in DGQA. These guidelines be read in conjunction with MOD OM No. 67952/Q/DGI (Adm-4) 10412/D (Prod) dated 28 Oct 78 as amended, OM No. 21(4)/92/D (Insp.) dated 22 Dec 93 and OM No. 6(1)2007/D(QA) dated 16 Nov 2007:-

(a) On the orders of Central Govt. Special Merit Board has been discontinued by the Army since 2006. Consequently, tenure Officers finally non-empanelled (superseded) will not be considered for grant of permanent secondment in DGQA.

(b) Non-empanelled Officers (Lt. Cols.) who have been granted permanent secondment in the DGQA in the past will be granted only one promotion to the next higher rank of Col. (TS) on completion of 26 years of service. However, such

officers in DGQA can retire as per norms applicable to Permanent Secondment Service Officers in DGQA. An option will be given to such officers, if so desirous, for reversion to the army for their further management. This clause shall also be applicable to those non-empanelled officers who have been granted the rank of Colonel in DGQA.

(c) OM No.F6(1)/2007/D(QA) dated 16 Nov 2007 will be made applicable prospectively for officers inducted on tenure after 16 Nov 07.

(d) OASB for permanent secondment hereafter (with effect from 2011) will be held taking 01st Oct of the year as the cut off dated.

Sd/

(Subhash Chand)"

15. Lastly, the policy dated May 12, 2011 was issued wherein under Clause B (3), it has been specifically stated that : "Officers should not have been finally superseded as on the date of acceptance by DGQA on tenure (the date of approval of Board Proceeding for acceptance of officers on tenure by DGQA)."

16. Relevant part of the policy dated May 12, 2011 needs to be reproduced. It reads as under:-

"OFFICE MEMORANDUM

ORs FOR TENURE and PERMANENT SECONDMENT OF SERVICE OFFICERS OF THE RANK OF LT. COL. (SUBSTANTIVE) IN DGQA ORGANIZATION

1.

2.

3. These revised criteria will be applicable to all Service Officers inducted into DGQA on tenure prospectively from the date of issue of this OM. In the interim period QASBs will be held as per policy in vogue.

4. This supersedes all previous instructions/guidelines issued on the subject.

5. This issues with the approval of Hon"ble Rakesh Mantri."

17. Admittedly, in the present case the policy dated May 12, 2011 cannot be applied for the reason para 3 of the said policy clearly stipulates that : "these revised criteria will be applicable to all service officers inducted in the DGQA on tenure prospectively from the date of issue of this OM."

18. In the present case, the petitioner had been sent on deputation to DGQA on January 28, 2009, thus, the present policy in light of para 3 cannot be applied to the case of the petitioner.

19. The case of the petitioner for grant of permanent Secondment was considered by the QASB held on August 11, 2011 and since he was not covered

by policy dated May 12, 2011, his case was considered as per policy dated April 23, 2010. Under the said policy, a person who had been finally superseded was not entitled to be considered for grant of permanent secondment in DGQA. Admittedly the petitioner had been finally superseded on June 01, 2009 and therefore, as per the above noted policy, was not entitled to be considered for permanent Secondment and was rightly rejected by the QASB.

20. As far as applying the policy dated November 16, 2007 is concerned, the said policy had been superseded by the policy dated April 23, 2010 and when the case of the petitioner was considered for permanent secondment, the said policy being in vogue, the case of the petitioner was rightly considered as per the same.

21. The decision relied upon by the petitioner in the case of Col. G S Grewal (supra) is not applicable in the present case since the issue involved therein pertained to whether a co-ordinate bench of a Tribunal could have taken a different view ignoring the earlier judgment on the said issue by a co-ordinate bench, without referring the same to the larger bench. Even on merits, the case related to a challenge to the policy dated April 23, 2010 wherein the respondents had taken away the right of further promotion of the applicant therein. Notably, in the said pronouncement, the Supreme Court has noted, "in so far as future chances of promotion are concerned no vested right accrues as chance of promotion is not a condition of service." Thus, the said judgment has no applicability in the present case.

22. As far as the claim of the petitioner for quashing the order dated October 17, 2013 relating to his posting in Army, we have been informed that no stay was granted by this Court while issuing notice, but instead vide order dated November 29, 2013, the petitioner was simply given an extension in the date of joining till January 06, 2014. Pursuant to the said order, the petitioner has joined his place of posting; thus, the order dated October 17, 2013 has already been implemented and therefore, cannot be interfered with.

23. No costs.