

(2015) 08 DEL CK 0334
In the Delhi High Court
Case No : W.P.(C) 8427/2014

Vijay Singh

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 08 DEL CK 0334

Hon'ble Judges : S. Ravindra Bhat and Deepa Sharma, JJ.

Bench : Division Bench

Advocate : Rekha Palli, Sr. Advocate, Punam Singh and Shruti Munjal, Advocates, for the Appellant; Ankur Chhibber, Ruchir Mishra and Mukesh Kumar Tiwari, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioner in these proceedings under Article 226 of the Constitution of India complains of his alleged wrongful denial of permanent secondment in the Directorate General of Quality Assurance ("DGQA"). He contends that he fulfilled all prescribed conditions of criteria, and questions the decision of the Quality Assurance Selection Board ("QASB"), which held a meeting on 11.08.2011. He seeks a consequential direction to the respondents that he should be permanently seconded to DGQA (with all consequential benefits of seniority and continuity in service) on the basis of the criteria prescribed by holding a fresh Board.

2. The Director General of Quality Assurance (DGQA) is an inter-services organization, comprising of personnel from all the armed forces, i.e. the Army, and Indian Navy. Besides, it has its own civilian cadre of employees. The DGQA is under the control of the Department of Defence Production. Apparently, there existed a combined cadre of service officers of the research and development wings of various inspection organizations. These were bifurcated with effect from 01.08.1977. After bifurcation, the revision of the qualifications, requirement for

tenure and permanent intake of service officers in the DGQA were comprised in an OM governing the issue on 28.10.1978. Subsequently, these were refined, in a letter of the Department of Defence Production, dated 09.01.1980. The guidelines for induction and permanent secondment of service officers in the Indian Army of the rank of Lieutenant Colonel in the DGQA were amended on 16.11.2007. The upper age of permanent secondment was prescribed to be 44 years as on 1st April of the year of permanent secondment.

3. The petitioner had, in the meanwhile, on 14.12.1991, joined the Indian Army and was commissioned as a member of the EME Corps. He joined the Controllerate of Quality Assurance at Jabalpur as Deputy Controller of Quality Assurance on 21.12.2008. Subsequently, in March 2011, his spouse was detected with recurrent cancer. By the time he had completed his first tenure on 26.05.2011, the petitioner reported to the Headquarters of the DGQA, New Delhi for a second tenure. His spouse died on 08.02.2013. The petitioner sought for permanent secondment, that is akin to absorption, within the DGQA, by representation, dated 23.08.2013. This request was turned down or rather rejected on 14.10.2013. The respondents contended that the prevailing guidelines contained in the OM dated 23.04.2010 rendered him, i.e. the petitioner ineligible for consideration. The petitioner is consequently before this Court.

4. It is contended by Ms. Rekha Palli, learned senior counsel that the criteria prescribed in the O.M. dated 12.05.2011 could not be insisted upon in the case of the petitioner. In this regard, it is urged that the petitioner ought to have been recommended to the QASB for the quarter ending in December 2010 but rather merely to apply selectively some guidelines, the QASB or the composition and holding of the QASB was delayed till 11.08.2011. The petitioner was treated as disqualified as he was finally superseded in his parent unit in the Indian Army. It is argued in this context that the amendments to the instructions, which had the effect of prescribing that only those officers who were not finally superseded, could be considered for permanent secondment to the DGQA, has been interpreted erroneously and the petitioner was eligible for consideration because he was not permanently superseded when, in 2008, he was seconded for the first time to the DGQA. Learned counsel submits that in the DGQA, the petitioner had earned his first Confidential Roll/Report on 01.06.2009 and had completed two years of regular service on 21.12.2010. He had also completed the basic course of Quality Management in 2009. According to the petitioner, the QASB considered all panel officers working in the DGQA. As the petitioner had completed regular service of two years and had fulfilled the criteria prescribed by the O.M. dated 28.10.1978, as amended from time to time, he ought to have been considered for permanent secondment.

5. Learned counsel highlighted that since the petitioner had completed two years' actual service in the DGQA and earned two ACRs and not achieved the age of 44 years as of 1st April of the year of secondment to the DGQA, he was

eligible and ought to have been considered immediately after 21.12.2010. It was lastly urged that the amendment, which prescribed that those officers rendering ineligible those permanently superseded, was brought in subsequently on 12.05.2011. It was submitted that the relevant condition has been misinterpreted, because it merely insisted that an officer should not be permanently superseded when he is sent on tenure to the DGQA. The petitioner fulfilled that criteria, because he was not superseded permanently in 2008, when his first tenure was approved. Learned counsel submitted that in these circumstances, considering that the petitioner was eligible in December 2010 itself and there were vacancies and further the timely constitution of QASB did not take place, which resulted in the intervening event of the alleged disability prescribed through the amendment of 12.05.2011, he could not have been denied what was justly due to him. Learned counsel relied upon a previous ruling of this Court in *V.K. Jain v. Union of India* [W.P.(C) 561/2003, decided on 03.05.2012].

6. Sh. Ankur Chhibber, learned counsel for the respondents urges that unlike the three armed forces, the DGQA is an organization with its own cadre structure. Those absorbed or permanently seconded from the Indian Army have significant differences in respect of terms and conditions; for instance, those seconded permanently cannot go back to the Army; their retirement age is fixed at 59 years, unlike in the case of Army officers, whose retirement age depends upon the rank held by them. Furthermore, the cadre of DGQA also comprises of civilian officers, which is not the same in the case of the Army or Navy. It was argued that the mere circumstance that the QASB did not assemble till a particular date, would not imply that the date of consideration and the eligibility conditions applicable as of a particular date prior to the point of time of consideration would be relevant. Emphasizing that the Petitioner did not fulfill the pre-condition, i.e. as an officer who was not finally superseded, it was submitted that there is no right to be permanently seconded; no promotion is involved in such placement. It was further argued that unlike in *V.K. Jain's* case (*supra*), the precondition of not being superseded has existed from as far back as in 1993. He also points out to para 3 of the OM dated 12.05.2011 to say there was no error or mistake in regard to application of the eligibility terms in the present case. Mr. Chibber, learned counsel also argued that the so-called delay in holding the QASB has not admittedly been questioned as *mala fide*; the allegations of deliberate inaction are, therefore, baseless.

7. The factual discussion in the preceding paragraphs reveals that the Petitioner's grievance is with respect to non-permanent secondment to the DGQA. It is not disputed that he holds a permanent commission in the Indian Army; he had been seconded earlier to the DGQA. When his turn for consideration arose, and he was actually considered- on 11.08.2011, it was discerned that he had been permanently superseded in the Army. That was treated as a disqualification for permanent secondment. He urges that the QASB deliberately did not meet till August, 2011 and was awaiting amendment to the

guidelines applicable in such cases. It is urged that the relevant criterion was introduced on 12.05.2011, and in fact does not disqualify him. There could possibly have been some grievance on that score; however, the respondents urge that this is not a reasonable submission because that bar or disqualification has been in place from 1993. A copy of the said guidelines has been produced; the relevant part of the said guidelines, dated 04.05.1993 by the Central Government, Ministry of Defence No. 21 (4)/92/D (Inspection) listed the criteria to be adopted for Permanent Secondment of Officers to DGQA. One of the criteria was "(b) the officer should not be finally superseded". The Office Memorandum relied upon by the Petitioner, dated 16.11.2007 does not in any way supersede this condition; rather it is concerned with amending other conditions. This disability was reiterated in the Office Memorandum of 12.05.2011. So far as the second argument, i.e. that the petitioner's eligibility needs to be reckoned as from the date of his tenure (i.e. secondment for the first time in 2008) goes, undoubtedly, para 1(b)(iii) of the OM dated 12.05.2011 supports this contention. However, para 3 of the same OM renders that condition inapplicable to officers existing on tenure. It states: "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 QASB, will be held as per policy in vogue." Therefore, the basic ineligibility stipulated from 1993 onwards continued. In these circumstances, it cannot be said that the Petitioner had an actionable grievance.

8. This Court is also of the opinion that permanent secondment is not akin to promotion. It is dependent upon fulfillment of requirements of that organization, i.e. the DGQA. That the petitioner could not be accommodated because he did not fulfill one of the essential conditions, (i.e. as an officer not superseded finally), cannot mean that the Court would hold that vacancies for permanent secondment existed earlier and consequently they had to be filled by applying the criteria prescribed at a particular point of time. There was no statutory compulsion to hold the QASB at specific periodic intervals, which the Court could then have considered as mandatory, to reconstitute a perceived injustice. The petitioner was admittedly a finally superseded officer; he was considered in August, 2011. Although the OM dated 12.05.2011 facially rendered him eligible, the same document expressly stipulated that it did not apply to him. There are no pleadings to indicate that the petitioner is the victim of bias or hostile discrimination.

9. For the above reasons, this court is of opinion that the writ petition lacks merit. It is, therefore, dismissed.