

(2018) 09 CAT CK 0158

In the Central Administrative Tribunal

Case No : Original Application No. 2030 Of 2018, Miscellaneous Application No. 3743 Of 2018

Virendra Kumar Mishra And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 10-09-2018

Acts Referred:

Citation : (2018) 09 CAT CK 0158

Hon'ble Judges : L. Narasimha Reddy, Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : D.S. Chaudhary, Onkareshwar

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J

MA No.3743/2018.

1. This MA is filed with a prayer to expedite the hearing of the OA. Since the OA is taken up for hearing, it is not necessary to pass order in this MA.

OA No.2030/2018.

2. The applicant joined the Indian Navy as a Sailor on 30.01.2002. While continuing in the service of Navy, he came to be selected to the post of Senior Scientific Officer Grade-II in Electronics discipline in the Ministry of Defence, Department of Defence Production; by the Union Public Service Commission.

3. On a request made by the Director General Quality Assurance, the Commander, SSO (Admn.), Indian Navy addressed a letter dated 30.01.2016 to the effect that neither any disciplinary proceedings are pending against the applicant, nor are contemplated. After satisfying themselves that the applicant is otherwise fit to be appointed, the respondents issued an offer of appointment dated 22.07.2016 to the applicant for the post of Senior Scientific Officer Grade-II on temporary basis, and required him to report for duty by 05.09.2016. The

applicant addressed a letter dated 12.08.2016 to the 2nd respondent with a request to him to extend the date of joining till 02.02.2017 since he would be relieved from the Navy Service only on 31.01.2017. However, the 2nd respondent extended the time of joining only up to 05.10.2016 through letter dated 26.08.2016.

4. The Commanding Officer in the Navy, under whom the applicant was working addressed a letter dated 07.09.2016 to the 2nd respondent stating that the applicant was working on an important assignment, pertaining to the installation of a state of the art PCB designing/repair and Circuit Simulation Lab, and that the time of his joining duty in their organization may be extended till the 2nd week of February, 2017. Similarly, the Chief Quality Assurance Establishment (WE) addressed a letter dated 19.09.2016 requesting the 2nd respondent to allow the applicant to join duty by 02.02.2017. However, the 2nd respondent extended the time only up to 21.01.2017 vide communication dated 16.11.2016. Once again, the Commanding Officer in the Navy informed the 2nd respondent that the applicant would be relieved only on 31.01.2017, and the reporting time be extended up to 01.02.2017 as an exceptional case. The applicant was ultimately relieved from service of Navy on 31.01.2017.

5. When the applicant reported on 01.02.2017, the 2nd respondent refused to take him to duty. He approached the 3rd respondent, i.e., the UPSC, in this behalf. They expressed their inability to do anything in the matter. In the meanwhile, the 2nd respondent passed an order dated 31.01.2017 canceling the order of appointment. The same is challenged in this OA.

6. The applicant contends that in spite of his repeated requests, the Navy authorities did not relieve him by stating that the assignment of going on important project was about to complete, and though the authorities of the Navy also requested the 2nd respondent to extend the joining time up to 01.02.2017, the time was granted only up to 21.01.2017, and the offer of appointment was cancelled because of just ten days delay for reporting to duty. He further contends that the delay was neither willful nor deliberate, and it was on account of the reasons beyond his control, and there is no justification for the 2nd respondent in passing the impugned order.

7. A detailed counter affidavit is filed on behalf of 2nd respondent opposing the OA. It is stated that though the applicant was granted several extensions, he failed to report for duty, and left with no alternative, the impugned order was passed. It is also stated that the representation dated 01.02.2017 submitted by the applicant for revival of the offer of appointment was forwarded to the competent authority, but the same was not accepted in view of the instructions issued by the DoP&T.

8. The arguments on behalf of the applicant were advanced by Shri D. S. Chaudhary, learned counsel and those on behalf of the respondents were advanced by Shri Onkareshwar, learned counsel.

9. It is a matter of record that the applicant has been selected by UPSC for the post of Senior Scientific Officer Grade-II, and that the 2nd respondent issued an offer of appointment dated 22.07.2016. The date for reporting to duty was fixed as 05.09.2016. The applicant was working as a Sailor in the Indian Navy, and at the relevant point of time, he was associated with an important and strategic work. Obviously for that reason, he was not relieved for a long time, and thereby join the newly appointed post within the stipulated time. However, before the stipulated date, he made a request for extension of time. That request was acceded to, and it was extended up to 05.10.2016. Once this fact was brought to the notice of the Commanding Officer in the Navy, he addressed a letter dated 07.09.2016, which reads as under:-

"The Director General of Quality Assurance

(for Dy Director/Adm-6A)

Directorate General of Quality Assurance

Dept of Defence Production

Ministry of Defence

Adm-6A, Room No.69,

H-Block, Udyog Bhawan PO

New Delhi 110 011.

RECRUITMENT TO THE POST OF SENIOR SCIENTIFIC OFFICER GRADE-II
VIRENDRA KUMAR MISHRA, MC EA (R)-II, 181688-B.

1. Refer to the following:-

(a) Your letter No.98226/12-13 & 13-14/DGQA/ADM-6A/131 dated 22 Jul 16 and 26 Aug 16

(b) Commodore Bureau of Sailors dated ADM/0101/181688-B dated 30 Jan 16 (Not addressed to all).

2. Virendra Kumar Mishra, MC EA (R) has been provisionally selected for the post of Senior Scientific Officer Grade-II in Electronics Discipline vide DGQA letter mentioned ibid dated 22 Jul 16 with joining date on or before 05 Sep 2016 which has been extended to 5 Oct 16 vide your letter ibid dated 26 Aug 16. Presently, the sailor is posted as Faulty Master Chief, Faculty of Training Project (FTP) in Electrical Technology School at INS Valsura, Jamnagar.

3. The installation of state of the art PCB designing/repair and Circuit Simulation Lab is in progress in the establishment and is scheduled to be completed by end Jan 2017. The sailor has been involved in the project right from inception to implementation. The absence of the sailor is crucial for completion of project. The sailor's contribution would definitely result in long term benefit to the

organization. It is pertinent to mention that the relief of the sailor is expected to join the organization in the second week of Jan 2017.

4. The release formalities of the individual are already underway and his movement to Release Centre, Commodore Bureau of Sailors, Mumbai is scheduled in mid Jan 2017. The discharge formalities would be completed in all respects by 31 Jan 2017. The sailor is committed to join your prestigious organization immediately on being released from active service latest by 02 Feb 2017.

5. In view of the above, it is requested that the sailor may be granted further extension to join QAE (WE) Bangalore with an amended joining date by 02 Feb 2017.

/sd/

Prabhat Mishra

Commander

Officer-in-Charge

Electrical Technology School

For Commanding Officer.

Obviously by taking note of the importance of work that was assigned to the applicant in the Navy, the 2nd respondent extended the time, but only up to 21.01.2017. It appears that he was feeling the restraint against the extension beyond six months. The subsequent correspondence in this regard even by the Naval authorities did not make much of difference, and ultimately when the applicant reported to duty on 01.02.2017, on being relieved on 31.01.2017, he was informed that the offer of appointment was already cancelled.

10. In all fairness to the applicant, the 2nd respondent has also made every effort that is available to him in the law, to revive the offer of appointment. When the UPSC was approached in this behalf, they replied as under:-

"To

Dated the 17th March, 2017

Sh. P. P. Pudgal

Deputy Director

Ministry of Defence,

Department of Defence Production,

Directorate General of Quality Assurance,

Adm-6A, Room No.69,

H-Block, Udyog Bhawan, PO,
New Delhi 110 011.

Subject : Recruitment to 12 posts of Senior Scientific Officer Grade-II (Electronics) in Directorate General of Quality Assurance, Department of Defence Production, Ministry of Defence.

Ref : Your Letter No.98226/12-13 & 13-14/DGQA/Adm-6A/131 dated 15th February, 2017

Sir,

Please find enclosed herewith a representation dated 09.03.2017 from Shri Virendra Kumar Mishra on the above mentioned subject.

2. There is no action on the part of the Commission after issuance of Recommendation Letter. The letter sent by you does not indicate as to what action is being sought from UPSC. The department may refer to provisions contained in para 4.4 of DoP&T's "Instructions and Guidelines" issued vide OM No.20011/1/2008-Estt (D) dated 11.11.2010 and take necessary action accordingly.

Encl : As above.

Yours faithfully,

(RAJ KUMAR VARSHNEYA)

UNDER SECRETARY

UNION PUBLIC SERVICE COMMISSION

PH NO.011-23387296."

The 2nd respondent continued to make efforts to get the order revived and provided ample justification for this purpose. Initially, a letter dated 20.06.2017 was addressed to the UPSC. When a suggestion was given to provide a detailed justification, the Deputy Director for DGCA addressed a letter dated 18.12.2017 to the 2nd respondent in this behalf. The justification ultimately was provided in the letter dated 28.12.2017. The merit of the applicant and his immediate necessity to organization was decisive. The letter reads as under:-

"MINISTRY OF DEFENCE (DGQA)

Dte of Quality Assurance (Naval)

RECRUITMENT TO 12 POSTS OF SENIOR SCIENTIFIC OFFICER GRADE-II (ELECTRONICS) IN DIRECTORATE GENERAL OF QUALITY ASSURANCE, DEPARTMENT OF DEFENCE PRODUCTION, MINISTRY OF DEFENCE.

1. Reference DGQA/Adm-6B letter No.98226/12-13 & 13-14/DGQA/Adm-6A/131 dated 18 Dec 17.

2. The detailed justification in support of the recommendation for revival of offer of appointment as an exceptional case and in public interest is as follows:-

(a) Virendra Kumar Mishra, MCEA (R)-II , is a highly experienced sailor of the Indian Navy and familiar with naval ships, equipments and stores. As such, he is most suited to handle quality assurance of naval equipments and stores having already witnessed their utility and functioning first hand as a serving soldier.

(b) The individual was slated to join CQAE (WE), Bangalore which undertakes inspection of complex Electronics systems and Communication systems of the order of 1500 Crores per annum. Availability of the incumbent with the domain knowledge and experience on Naval systems in the light of existing shortages of Group ?A? offices would help achieving the delivery of state-of-the-art systems for installation on board Indian Naval Ships under construction at various shipyards. This would further ensure timely availability of Combat Naval Platforms for early induction and operational deployment in furtherance of our National Security objectives.

(c) Considering that, fresh recruitment activity has a long gestation period, availability of already selected ex Naval sailor of requisite experience is considered extremely beneficial in the larger interest of National Security and in public interest wherein the time for further recruitment and large amount of money to the exchequer would get starved.

3. In view of the above, it is strongly recommended that Virendra Kumar Mishra, MCEA ®-II be given an opportunity to join DGQA and appointment be offered without any delay."

Once the respondents were convinced that the applicant would be of much use to the organization, and his failure to join duty on 21.01.2017 was on account of reasons beyond his control, viz., on being associated with an important project in the Navy, the other formality should not come in the way. We are convinced that the offer of appointment issued to the applicant deserves to be revived on the justification pleaded by the respondents themselves.

11. We, therefore, allow the OA, and direct that the offer of appointment dated 22.07.2016 issued to the applicant which was cancelled through order dated 21.01.2017 shall stand revived with immediate effect, and the applicant shall join duty within a period of one week from the date of receipt of communication from the respondents in this behalf. There shall be no order as to costs.