

Pramod Kumar Singh Vs. Union of India and Others

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Court : Armed forces Tribunal AFT Principal Bench New Delhi

Decided On : Aug-08-2012

Judge : A.K. Mathur, Chairperson & Lt. Gen. M.L. Naidu, Member

Appeal No. : T.A. NO. 595 OF 2010 & WRIT PETITION (CIVIL) NO. 1252 OF 09

Appellant : Pramod Kumar Singh

Respondent : Union of India and Others

Judgement :

ORDER

1. This petition has been received on transfer from the Bombay High Court after coming into force of the Armed Forces Tribunal as the Bombay Regional Bench of the Tribunal is not functioning because of the lack of Judicial Member. Therefore, this petition has been transferred to the Principal Bench at New Delhi.

2. Petitioner vide this petition has prayed to quash and set aside the order of discharge dated 30.09.2005 and order dated 15.05.2009 being violative of Articles 14 and 21 of the Constitution. The petitioner has also prayed that a direction may be issued to the respondents to re-instate the petitioner in Naval services with full salary and back-wages.

3. The respondents invited applications from young male candidates for enrolment as Matric Entry Recruits (MER) for 2/2002 Batch. The petitioner applied for the

post and after clearing the necessary exam for the said post, received an offer letter dated 10.07.2002 for enrolment in the Indian Navy. He was initially directed by the respondents to report as Naval Sailor at INS Netaji Subhas, Kolkata. Thereafter, he was sent to INS Chilka, Orissa for the necessary training course for a period of six months. Petitioner completed this necessary training course successfully and was allotted Medical Care Department. He was posted on 02.08.2002 as Medical Assistant (MER) at INS ASVINI, Colaba, Mumbai after having successfully completing all necessary trainings required for the said post. The petitioner was allotted No.134264-V after being posted as Medical Assistant.

4. The petitioner after having appointed as a Medical Assistant was required to clear specific course being MA-II Q Course. The Medical Assistant required the specific knowledge of medical terms and English language. The petitioner was required to complete the said course in order to obtain the said knowledge so as to continue to remain in the said post. The petitioner after having joined service on 02.08.2002 reported at the School of Medical Assistants, Mumbai on 30.03.2003 for completion of the basic training at INS Chilka. Though the petitioner was good in all respects but was unable to clear the said course in the first attempt held in October 2003 due to difficulty in grasping the medical terms and also in re-examination held in April, 2004. The petitioner submits that he had a difficulty in grasping the technical medical terms.

5. Since the petitioner was not able to clear the said course, he requested for a change of branch from MER (Medical Assistant) to NMER (Steward/Cook). The petitioner requested his Commander on various occasions for change and he recommended for allowing the change of branch. The petitioner has also submitted that previously also a number of people have been permitted to change the branch. In this connection, the petitioner has also referred to Regulation 278 (i)(a) of Regulations for Navy Part III which states that if a sailor due to reason of incompetency is unable to perform the duties of the lowest rate in his branch, may volunteer for transfer to a different rate and the Commanding Officer shall then forward the application for such change of branch in accordance with Regulation 273. Since petitioner also requested for such a change of branch, his case was also recommended but still he was not permitted to change from MER to NMER.

6. Thereafter, the petitioner has filed a writ petition before the High Court of Patna which was dismissed on 12.02.2007 on account of lack of territorial jurisdiction. Then, the petitioner has filed a writ petition bearing No.2407 of 2007 before the Bombay High Court. The said writ petition was disposed off by the order dated 16.01.2008 with the direction that the petitioner may file an appropriate representation and the same may be disposed off expeditiously. The petitioner filed a representation before the authorities and the same was rejected on 15.05.2009. Thereafter, the petitioner filed this petition before the Bombay High Court challenging that order and raising all the grounds mentioned above. This petition has been transferred before this Tribunal.

7. The petition was contested by the respondents and a reply was filed. The respondents in their reply pointed out that the petitioner failed in MA-II Q Exam and thereafter he was given another opportunity but he could not succeed, therefore, as per Regulation 278 (4) he was found unsuitable, and his services were discharged. So far as his representation with regard to giving him alternative appointment like Steward/Cook is concerned, it is pointed out that it was considered and the same was not agreed to by the respondents, therefore, petitioner could not be offered an alternative appointment.

8. Learned counsel for the applicant argued that as per Regulation 273, the only condition is that if the vacancy is available and case is recommended by the Commanding Officer, then authorities may consider him for grant of an alternative appointment.

9. We have examined the matter in the light of aforesaid provisions. Both these provisions are for persons changing from one trade to another trade in the same pay scales. These provisions do not lay down that person who is willing to go from higher scale to lower scale can also be considered or not. In fact after going through the Regulation 273 as well as Naval Order 8 of 2001, we are of the opinion that there is no prohibition in all these Regulations for offering an appointment for a lower grade to the incumbent if he is not found suitable for the post for which he has been recruited. It is true that in case the person who has failed to qualify for the post for which he has been selected during the training

period, then only the option is to discharge him from the service.

10. Learned counsel for the petitioner does not dispute that the authorities can discharge him if he is not found suitable but at the same time he submits that a sympathetic approach should be adopted and there is no prohibition in any of the Regulations which prohibit offer of appointment to a person to a lower grade. He pointed out a number of cases wherein a similar approach had been taken by the respondents.

11. It is true that authorities can consider the matter sympathetically but the petitioner as a matter of right cannot seek an alternative appointment, if he was not found suitable during the training. The only thing that can be done in the matter is that as the Government has spent money on the training of the petitioner, his case can be considered by the authorities for alternative appointment, if he was found fit. Learned counsel for the respondents submitted that this is a disciplined organisation and only two kinds of lower posts are available i.e. Steward and Cook. For a Cook, one has to have certain training in Cooking but for a Steward there is no prohibition and his services can be utilised for the post of Steward. This is only a matter of mercy petition for a person who has already been recruited and was found unable to complete the training courses on account of shortcomings in the English language.

12. Be that as it may, learned counsel for the respondents has also invited our attention to the proceedings where this case was considered by the Naval HQ after the directions from the Bombay High Court and those proceedings have been placed before us and in that it has been pointed out that since 2004 they are not considering or giving any appointment to the persons who have failed in the tests, as an alternative appointment in NMER grade. It is true that a policy decision has been taken by the authorities in the matter. We do not wish to dispute the policy decision. But looking to the facts of the present matter, we leave to the authorities to consider the matter sympathetically as the Government has already spent a lot of money and time for granting him basic training. The authorities will take a sympathetic approach in the matter and if they found fit, the services of the petitioner can be utilised for any post like Steward etc. This may be done within

three months as it is very old case.

13. With these observations, the petition stands disposed off. No order as to cost.

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