

Vinit Kumar Vs. Union of India and Ors.

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Court : Delhi

Decided On : Jan-22-2015

Judge : Pradeep Nandrajog

Appellant : Vinit Kumar

Respondent : Union of India and Ors.

Judgement :

\$~10 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of decision : January 22, 2015 + W.P.(C) 187/2015 VINIT KUMAR Represented by: Petitioner Mr.J.S.Mann, Advocate versus UNION OF INDIA & ORS Represented by: Respondents Mr.Sanjeev Narula, CGSC with Mr.Ajay Kalra, Advocate Major Manoj Bos, Adjutant, MRC CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE PRATIBHA RANI PRADEEP NANDRAJOG, J.

(ORAL) 1. Learned counsel for the respondents has produced the relevant record with respect to the issue raised in the writ petition and it is agreed between learned counsel for the parties that formal counter affidavit need not be filed and the writ petition could be decided with reference to the record which has been produced.

2. The undisputed position is that there exists a policy of the Indian Army to recruit Junior Commissioned Officers in the Indian Army under the Relationship Category, meaning thereby certain percentage of appointments is restricted to those

prospective candidates whose father or brother is serving the Indian Army.

3. The petitioner applied for being enrolled as an SOL Clerk in the Indian Army claiming to be the younger brother of Naik Arvind Kumar, who admittedly is serving under the Indian Army as a Naik. The record of the respondents would show that when Arvind Kumar (the person whom the petitioner claims to be his elder brother) joined the Indian Army as a Naik with the Mahar Regiment Centre he disclosed that he was a resident of village Bhainswal in District Shamli, Tehsil Shamli in the State of Uttar Pradesh and that his fathers name was Desh Pal Singh and his mothers name was Kamla Devi. He filed, in proof of his claim, a certificate issued by the Board of High School and Intermediate Education U.P. of having cleared the Intermediate Examination. The said certificate records his name as Arvind Kumar, son of Kamla Devi and Desh Pal Singh.

4. The petitioner submitted a certificate issued on May 27, 2009 by the Board of High School and Intermediate Education U.P. pertaining to the Intermediate Examination - 2009, which not only contains his photograph, but records that he successfully cleared in second division the Intermediate Examination - 2009 and that he is the son of Kamlesh Devi and Desh Pal Singh.

5. Otherwise found eligible for being appointed as an SOL Clerk in the Indian Army, employment is being denied to the petitioner on the ground that he having claimed appointment under the Relationship Category; claiming to be the younger brother of Naik Arvind Kumar, the issue of his relationship with Naik Arvind Kumar required to be considered and since in the certificate submitted by Naik Arvind Kumar his mothers name disclosed was Kamla Devi and in the documents submitted by the petitioner his mothers name is Kamlesh Devi, notwithstanding fathers name being the same : Desh Pal Singh, it could not be said that the petitioner was the real brother of Naik Arvind Kumar.

6. As per the petitioner, a certificate dated July 21, 2014, having affixed thereon the photograph of his mother, issued by the Sub-Divisional Magistrate, certifies that Smt.Kamlesh Devi alias Kamla Devi is the wife of Desh Pal Singh and resides in House No.155, Village Bhainswal, Tehsil Shamli, District Shamli, Uttar Pradesh. The certificate in question is what is popularly known as domicile certificate. The

petitioner claims that the said domicile certificate shows that Kamla Devi and Kamlesh Devi are the same person.

7. The record produced would evince that on November 03, 2014 the petitioner submitted to the Army authorities an affidavit deposed to by the petitioner affirming that he and Arvind Kumar are real brothers, born out of the same woman named Kamlesh Devi alias Kamla Devi. The petitioner also filed a transfer certificate issued by PWML Junior High School, Shamli when he migrated in Class 8 from the school in question, in which the school authorities certified that when he took admission in the school the name of his father recorded was Desh Pal Singh and that the name of his mother recorded was Kamla Devi.

8. The petitioner was advised to get a correction recorded in the Intermediate certificate issued to him in which his mothers name recorded is Kamlesh Devi, for the reason the name of the petitioners mother is Kamla Devi, and only God knows how, she came to be also called Kamlesh Devi. The petitioner was helpless because the Board of High School and Intermediate Education U.P. has no procedure under which, once having issued a certificate, it can make any correction therein concerning the name of either the mother or the father of the person in whose name the certificate is issued.

9. Realizing that there may be mistakes in documents submitted to it, the Indian Army has made a compendium of the policy circulars concerning recruitment of Junior Commissioned Officers, and one such policy document is a letter No.62554/Rtg 5 (OR) (A) dated December 12, 2011 and an Army Instruction : A/20182/MP8(I of R) (a) dated August 07, 2012, as per which spelling variation of candidates name, fathers name and mothers name may be accepted as long as the name remains the same.

10. With reference to the policy guidelines, the competent authority of the Indian Army has passed an order dated January 17, 2015, which has been produced before us today by the respondents. It reads as under:

4573291P/AK17Jan 2015 HQ Delhi Area (Legal Cell) PIN-900106 c/o 56 APO
TIME BOUND COURT CASE NO.3023/2015 IN CWP NO.187/2015 FILED BY

VINIT KUMAR BROTHER OF NO.4573291P SEP ARVIND KUMAR VS UOI1
Please refer your Sig No.A-2518 dt. 08 Jan 2015.

2. Mr.Vinit Kumar brother of No.4573291P Nk Arvind Kumar participated in UHQ recruitment rally on 01 Jul 2014 conducted by this Centre and had cleared all the mandatory test including the medicals. However, during the scrutiny of documents it was found that the name of the individuals mother recorded in the education certificate differed entirely from the name in the relationship certificate (Photocopies attached as Appces A and B). Name of mother in the relationship certificate is Kamla Devi where in the education certificate is Kamlesh Devi. The candidate was then given time to rectify the above mentioned anomalies which the individual failed to rectify. In this connection please refer Policy Compendium for Recruitment of Junior Commissioner Officers and Other Ranks 2009 as amended time to time vide Integrated Headquarters of Ministry of Defence (Army) letter No.62554/Rtg 5(OR)(A) dt. 12 Dec 2011 and A/20182/MP8(I of R)(a) dt. 07 Aug 2012 (Photocopies attached as Appces C & D). For your ready reference relevant extracts of the same is Para 3 (a)(ii) of Appx C Spelling variation of candidate name, fathers name and mother name may be accepted as long as the name remains same. Similarly, when the surname has been included in one certificate but not included in the other, it may also be accepted as long as the name is same. Under no circumstances an entirely different name in one of the certificates will be accepted.

3. On 02 Dec 2014 this centre received a photocopy of the letter mentioned in the writ petition (64714/Cent/Rtg B (E) dt 02 Dec 2014) brought by the complaints by hand from Recruiting Directorate, the letter was subsequently received by post on 06 Dec 2014. (photocopy attached as Appx E) directing to accept the individual quoting the authority of the Integrated HQ of Ministry of Defence (Army) letter No.A/20105/MP8(I of R) (a) dt 27 Jan 2014. However this letter of 27 Dec 2014 only gives the provision to change/amend the date of birth of a candidate and there is no mention of accepting variations in mothers/fathers name. (photocopy attached as Appx F). This fact was informed to Integrated HQ of Ministry of Defence (Army) vide this Centre letter No.0148/A4 dt 05 Dec 2014 (Photocopy attached at Appx G) and clarification was sought on this from recruiting

directorate. The recruiting directorate directed this Centre to seek clarifications on the subject from Inspector of Records as MP-8 is the final authority on the subject vide their letter No.401108/Rtg B (E) dt. 17 Dec 2014 (photocopy attached at Appx H). On 24 Dec 2014 this centre approached MP-8 for clarifications on the subject vide this centre letter No.0148/A4 dt. 24 Dec 2014 (Photocopy attached at Appx J). The clarification on the subject from MT-8 is still awaited.

4. The above mentioned case is not an isolated instance where the candidate has been rejected due to anomalies in the name of father/mother. Making an exception in one case will therefore set a precedent and violate the policy on the subject. Moreover, the name of the mother is entirely different the possibility of plural marriage cannot be ruled out.

5. It is recommended that the policy on the subject may be amended to help such genuine cases.

11. The author of the letter, has obviously been influenced by the letter of para 3 (a)(ii) of the policy guidelines, which has been extracted in the order dated January 17, 2015. But has recognized that instant case was not an isolated case concerning anomalies either in the name of the father or the mother recorded in documents submitted by candidates : the anomaly being that in certificates issued to one person, the name of either the mother or the father was recorded differently vis-a-vis documents submitted by another candidate; both claiming inter-se relationship with each other; of being siblings, born to the same parents. The officer has recommended that the policy on the subject may be amended to help genuine cases.

12. The order dated January 17, 2015 would evince that the competent authority is otherwise satisfied that the petitioner and Arvind Kumar are brothers; but a doubt has arisen, as recorded in paragraph 4 of the order dated January 17, 2015 : possibility of plural marriage being not ruled out.

13. To put in the parlance of law, the respondents have a lurking doubt that, though siblings, the petitioner and Arvind Kumar are uterine brothers. It is trite that siblings born to the same woman but from a different father would be uterine

siblings and siblings born through the same father but different woman would be agnate or consanguine.

14. It appears that the policy of Relationship Category does not entitle uterine or agnate siblings to take the benefit thereof.

15. The issue in the present case is not whether the petitioner and Arvind Kumar are uterine siblings. The issue concerns whether Kamla Devi and Kamlesh Devi are the same person.

16. An issue concerning identity of the person has not to be decided with reference to the spellings of the name. It has to be considered with reference to documents available in which the identity of the person is disclosed.

17. We have on record a domicile certificate of a lady who is the wife of Desh Pal Singh and resides at House No.155, village Bhainswal, Tehsil and District Shamli. It contains her photograph. Her name is recorded as Smt.Kamlesh Devi alias Kamla Devi. It is not uncommon in India for a lady to change her name after marriage and we take judicial notice of said fact.

18. The documents submitted by the petitioner would evince that in the record of previous school in which he was a student, the name of his mother was recorded as Kamla Devi and that of his father as Desh Pal Singh. It appears that either some sloppy clerk typed the name of petitioners mother as Kamlesh Devi when the relevant record was being filled up of the Intermediate High School Examination or perhaps the petitioner, whose mother was named Kamla Devi was also called Kamlesh Devi, having written in the application form that the name of his mother was Kamlesh Devi.

19. Learned counsel for the respondent would concede that but for the aforesaid fact; that whereas in the certificate submitted by Arvind Kumar the name of his mother is recorded as Kamla Devi and in the certificate submitted by the petitioner the name of his mother is recorded as Kamlesh Devi, and in respect of which a doubt arises regarding petitioner being the sibling of Arvind Kumar, the weight of all other documents lean in favour of the view to be taken that petitioner and

Arvind Kumar are not only siblings but are born to the same parents : Desh Pal Singh (father) and Kamla Devi alias Kamlesh Devi (mother).

20. Common sense which is a cluster of life's experience is often more dependable than the rival facts presented by the warring litigants, and thus we decide the writ petition applying the logic and rule of common sense. The weight of various documents in favour of the petitioner cannot be trivialized by only one document; and the experience of life being, as noted above, a prevalent practice in India for a lady to change her name after marriage.

21. Holding that there is enough evidence on record to sustain the claim of the petitioner, we dispose of the writ petition issuing a mandamus to the respondents to process petitioners application for being enrolled as an SOL Clerk under the Relationship Category by treating him to be the real brother of Naik Arvind Kumar.

22. Needful shall be done within eight weeks from today.

23. No costs. CM No.303/2015 Dismissed as infructuous. (PRADEEP NANDRAJOG) JUDGE (PRATIBHA RANI) JUDGE JANUARY 22 2015 rk

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