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Ajay Kumar Vs. Union of India and ors

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Court : Delhi

Decided On : Jan-16-2013

Judge : S.Ravindra Bhat

Appellant : Ajay Kumar

Respondent : Union of India and ors

Advocate for Def. : Mr. Amrit Pal Singh, Mr. Naresh Kaushik

Advocate for Pet/Ap. : Mr. Anil Singal

Judgement :
$~12 * IN THE HIGH COURT OF DELHI AT NEW DELHI % DECIDED ON:

16. 01.2013 + WP (C) 267/2013, CM APPL.555/2013 AJAY KUMAR ..... Petitioner Through: Mr. Anil Singal, Advocate. versus UNION OF INDIA AND ORS. ..... Respondents Through: Mr. Amrit Pal Singh, Advocate for Resp-1,2 & 4. Mr. Naresh Kaushik, Advocate for UPSC. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT) 1. The petitioner, in this proceeding under Article 226 of the Constitution of India seeks directions for quashing of an Office Memorandum dated 9.8.1995 (issued by the Central Government) and the orders made by the respondents cancelling his appointment to the post of Assistant Commandant in Indo Tibetan Border Police (ITBP).

2. The facts briefly are that the petitioner was selected for the post of Assistant Commandant in ITBP and the appointment letter in that regard was issued on 16.12.2009. He had to join his duties by 13.1.2010. The time for joining duties was extended - at his WP (C) 267/2013 Page 1 request; the respondents directed that he should report for duties by 13.2.2010 by their letter dated 18.1.2010. The petitioner, thereafter, sought further extension of time by an application dated 16.2.2010 and requested that he be allowed to join the next batch for training. It is asserted that this request was in accordance with OM dated 28.8.1997 governing the employer organization. The respondents extended the time and stated, by their letter dated 26.3.2010, that the petitioner had to join by 12.4.2010. Before that date, on 8.4.2010, the petitioner yet again sought for further extension this time for a period of one year since his mother was critically ill. His letter dated 8.4.2010 also enclosed copies of his mothers medical papers. The respondents partly accepted this request and extended the time to join the duties till 15.6.2010. The petitioner was unable to join duties. In this background, on 1.7.2010, the respondents issued a letter/order intimating that his candidature and consequently the offer of appointment stood cancelled. The petitioner states that he fell ill and was hospitalized on 17.7.2010 and after recovery from the illness, he applied on 15.9.2010, requesting that he should be allowed to join the duties. By letter dated 18.10.2010, the respondents rejected the request. The rejection order reads as follows: Sub: Appointment to the post of Assistant commandant (GD) in ITBP. With reference to your application dated 15.09.2010 on the above mentioned subject, it is informed that as per governments instructions maximum six months time from WP (C) 267/2013 Page 2 the date of issue of the original offer of appointment can be granted to a candidate exceptionally. Accordingly, extension in joining time had already been allowed to you up to the maximum limit for joining duty in the ITBP which elapsed on 15.6.2010. Under these circumstances this department is not in a position to reconsider you for appointment, as offer of appointment duly cancelled vide this Dt. General No.1316 dated 1.7.2010 cannot be revived. (T.K. Chakravarty) Sr. Administrative Officer (Pers-I) 3. The petitioner repeatedly and unavailingly, represented to the respondents for revival of his appointment offer. Ultimately, on 8.2.2011, his request was finally rejected. The said letter/communication relied upon an OM dated 9.8.1995 and also stated that there

was no provision for reconsideration of his case which had been rejected, and consequently led to the lapse of his offer of appointment. The petitioner had challenged the final rejection of his request through the order dated 8.2.2011 in an earlier proceedings in WP (C) 4208/2012. In those proceedings, the respondents had relied upon the OM of 9.8.1995. The petitioner sought and was granted liberty by an order dated 26.7.2012 to withdraw that writ petition. He now challenges the cancellation of his appointment as well as the legality of the OM of 9.8.1995. The said OM states as follows: New Delhi, the 9-8-1995 OFFICE MEMORANDUM Subject: Candidates recommended by the UPSC/SSC for WP (C) 267/2013 Page 3 appointment to Central Civil Services and the post- delay in joining revival of offer of appointment after their cancellation - determination of seniority. . The undersigned is directed to say that according to DP & T O.M.No.9/23/71-Estt.(D) dated 6.6.78 (copy enclosed) an offer of appointment issued by different Ministries/Departments, should clearly indicate that the offer would lapse if the candidate did not join within the specified period which shall not exceed two or three months. If, however, within the period stipulated, a request is received from candidates for extension of time, it may be considered by the Ministries/Departments and if they are satisfied, an extension for a limited period may be granted but the total period granted including the extension during which the offer of appointment will be kept open, should not exceed a period of nine months.

2. The Staff Side of the Departmental Council (JCM) of DOP&T have demanded that direct recruits may be allowed a maximum of three months for joining instead of nine months provided for in the O.M. under reference so as to avoid delay in preparation and issue of select/seniority list. The matter has been examined in consultation with the UPSC and it has been decided to reduce from nine months to six months the maximum time upto which an offer of appointment can be kept to open. In other words, an offer of appointment should clearly specify the period (which shall not normally exceed one or two months) after which the offer would lapse automatically if the candidate did not join within the specified period. If however, within the specified period, a request is received from the candidate for extension of time, it may be considered by the Ministries/Departments but extension beyond three months should not be granted liberally and it may be

granted only as an exception where facts and circumstances so warrant and in any case only upto a maximum of six months from the date WP (C) 267/2013 Page 4 of issue of the original offer of a appointment. An offer of appointment would lapse automatically after the expiry of six months from the date of issue of the original offer of appointment.

3. Subject to the above modifications the other provisions contained in the OM dated 6.6.78 should be followed scrupulously.

4. As is evident from a plain reading of the impugned OM, it contains a reference to the previous set of instructions contained in the OM dated 6.6.1978, inter alia, which states as follows: No.9/23/71-Estt.(D) Government of India Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training New Delhi, dated the 6th June, 1978 Subject: Candidates recommended by the UPSC for appointment to Central Civil Services and the post delay in joining revival of offers of appointment after their cancellation determination of seniority. xxxx xxxx xxxx ..It has come to the notice of the Government that in certain cases, the candidates recommended by them for appointment take long time to join and there have also been cases where offers of appointment take long time to join Departments after they had been cancelled and in spite of the long delay in joining the candidates were allowed the benefit of seniority on the basis of their initial selection. The question whether WP (C) 267/2013 Page 5 in such cases it would not be desirable to depress the seniority of the candidates who are appointed on the result of the of the selections by interviews/examination was considered by the Government in consultation with the UPSC and it has been decided that the following procedure may be adopted now. This procedure will be applicable both in case of (a) selection through interview and (b) examinations. (i) (ii) (iii) (iv) WP (C) 267/2013 In the offers of appointment issued by different Ministries/Departments, it should be clearly indicated that the offer would lapse if the candidates did not join within a specified period not exceeding two or three months. If, however, within the period stipulated, a request is received from the candidates for extension of time, if may be considered by the Ministries/Departments and if they are satisfied, an extension for a limited period may be granted but the total period granted including the extension during which the offer of appointment will be kept open, should not

exceed a period of nine months. The candidates who join within the above period of nine months will have their seniority fixed under the seniority rules applicable to the service/post concerned to which they are appointed, without any depression of seniority. If, even after the extension(s) if any granted by the Ministry/Departments, a candidate does not join within the stipulated time (which shall not exceed a period of nine months), the order of appointment should lapse. An offer of appointment which has lapsed, should not ordinarily be revived later, except in exceptional circumstances and on grounds of Page 6 public interest. The Commission should in all cases be consulted before such offers are revived. In a case where after the lapsing of the offer, the offer is revived in consultation with the Union Public Service Commission as mentioned in sub-para (iv) above, the seniority of the candidates concerned within the prescribed period of none months; and if the candidate joins before the candidates of the next selection/examination join, he should be placed below all other of his batch. If however, the candidates joins after some or all the candidates of the next selection/examination have joined, he should be: (v) (a) (b) In cases of selection through interview, placed at the bottom of all the candidates of the next batch. In the case of examination, allotted to the next years batch and placed at the bottom. The Ministry of Finance are requested to bring the above instruction to the notice of all concerned. Sd/(N. RANGARAJAN) Deputy Secy. To the Govt. of India 5. It is argued on behalf of the petitioner that the overall effect of the two memoranda, as interpreted by the respondents, is to deny the appointment altogether without exception in the event the period of six months or more has elapsed from the date of the original appointment letter. Counsel relied upon certain subsequent communications issued by the Government of India, Ministry of WP (C) 267/2013 Page 7 Home Affairs, notably dated 28.8.1997, and communications/orders of the BSF to say that there is nothing inviolate as regards the time period of six months. Counsel emphasized that the instructions allow certain circumstantial flexibility to the authorities to permit the candidate to report for duty even after six months. The only consequence in such cases is that the candidate would lose seniority and would have to join the subsequent batch for training. It was submitted that having successfully completed the rigors of selection process and having been determined suitable to hold the post, the respondents ought not to lightly

undermine the petitioners entitlement to the post, by narrowly construing time limits not specifically provided for in the concerned Recruitment Rules but generally prescribed in nonstatutory guidelines.

6. Counsel for the respondents, appearing on advance notice, urged that there is nothing arbitrary in adopting uniform and nondiscriminatory standard in mandating that selected candidates who are offered appointment should report for duty within a specified period and also prescribing outer time limits for the appointment authorities to extend the time for such reporting. It was contended that selection of suitable candidates is often an ongoing process and that if a successful candidate is allowed an indefinite length of time to report for duties, the timeline for his training would get disturbed and even the management of the cadre for determination of seniority and ranking would become unwieldy.

7. Counsel argued that adopting a non-discriminatory approach WP (C) 267/2013 Page 8 and fixation of a reasonable time period of not more than six months for each candidate to report for duty would curtail the wide discretionary power which the appointing authorities would otherwise possess and exercise in an unguided manner. On the facts, learned counsel argued that the petitioner has approached the Court belatedly. Counsel highlighted the fact that even on the earlier occasion, the petitioner was well aware that his candidature stood rejected/cancelled in July, 2010 but approached the Court with his grievance only in the year 2012.

8. At the heart of the controversy in the present case is whether the respondents action in telling the petitioner that his offer of appointment stood cancelled/withdrawn after acceding to his request for extension of time for reporting for duties on three separate occasions is arbitrary and whether the guidelines invoked by them are unjustified and discriminatory.

9. The OM of 6.6.1978 stipulates a uniform rule that the total period granted, including extension during which an offer of appointment would be kept open, should not exceed nine months. That outer limit was amended as it were by paragraph-2 of the OM dated 9.8.1995. Clause (iii) of the 1978 Memorandum clearly states that if after extension granted by the concerned appointing authority, a candidate concerned does not join within the stipulated time, the order of

appointment should lapse. In the present case, the offer of appointment clearly lapsed on 15.6.2010, i.e., the last extended date given to the petitioner to report for duty. This was also communicated to him by letter dated 1.7.2010. This Court WP (C) 267/2013 Page 9 does not discern any arbitrariness in the respondents approach in applying OM dated 6.6.1978 as amended by the OM dated 9.8.1995.

10. As far as the question of legality of the Office Memorandum dated 9.8.1995 goes, the respondents arguments, in the opinion of the court, are merited and substantial. It goes without saying that every offer of appointment should be finite in point of time, more so, in case of a public appointment. The recruiting agency and the competent authority are duty bound to follow transparent selection processes consistent with the dictates of Article 14 of the Constitution of India which mean that vacancies for various posts should be advertised, the last date for entertaining applications clearly notified and the written test or other mode adopted for selection and notified well in advance. Once this stage is over, the result in the form of a select list is again duly notified to the concerned candidates or publically. This is followed up by an offer of appointment to all successful candidates. The need to indicate a time within which or a date by which the candidate should report for duty needs to be hardly emphasized. This is because if a given candidate applies for more than one post, either in the same recruitment process or in a different one, and is selected, he gets a choice for opting for one of them. Often candidates who might be successful later in a recruitment process - lose interest on account of a better offer elsewhere or upon their having obtained employment before the result is notified. In other words, the time for reporting signifies both, the candidates willingness to join duty WP (C) 267/2013 Page 10 and at the same time complete the acceptance of the offer of appointment from his end resulting in a contract of service. If this part were to be open ended, recruiting agencies would be groping in the dark as to the total number of candidates who finally elect to join duties. This will lead to anomalous and chaotic results such as inability to advertise future vacancies for the succeeding recruitment process. The OM of 6.6.1978 precisely sought to address and cater to these factors and initially mandated by clause (iii) an outer limit of nine months within which the offer of appointment could remain valid. The later OM of 9.8.1995 shortened that period to six months. The rigor of this norm is, to a certain extent, softened by clause (iv) of

the OM of 1978 which states that in exceptional circumstances and on grounds of public interest, a lapsed offer of appointment can be revived. The OM of 28.8.1997, only states that candidates to the post of Assistant Commandant in BSF, CRPF and ITBP have to report to the concerned training academy on the specific date and that those who report for joining on or before the specific date as also those who report within four weeks of the specific date can be allowed to join the training whereas those who report after four weeks would be allowed to join with the next training batch. At the same time, this Memorandum carefully and explicitly states that in such cases persons who report beyond four weeks would not be entitled to seniority which would be depressed in terms of the provisions of Memorandum of 6.6.1978. The reference here is clearly to clause (v) of the said Memorandum of 1978. WP (C) 267/2013 Pag

11. This Court sees neither arbitrariness nor discrimination in regard to the stipulation of a fixed period within which a successful candidate has to report for duties to his post. As discussed previously, if discretion is allowed to individual appointing authorities, the resultant chaos would throw out of gear the entire process of filling up of vacancies and jeopardize the management of a cadre. Besides, each department or agency in the government would be clueless about the number of vacancies it possesses and indeed the number of successful candidates who are waiting in line to join at a given point of time. It is quite likely that a large number of posts would remain unmanned and unfilled awaiting individual predilections of selected candidates who would join according to their convenience. To avoid such anomalous and possibly disastrous eventualities, a uniform approach was directed by the OM of 6.6.1978 as modified by the later Memorandum of 9.8.1995. The Memorandum relied upon by the petitioner of 28.8.1997, in no way, detracts from the instructions and contents of the two previous Office Memoranda. Both are clearly reasonable and non-discriminatory.

12. Although the above observations are dispositive of the present case, the Court also notices that the petitioner approached the respondents with a representation after his appointment lapsed, for the first time, on 15.9.2010; he appears to have made repeated representations and finally elicited their response in 2011. During the hearing, his counsel urged with certain vehemence that in terms of the OM

dated 28.8.1997, the petitioner could still be WP (C) 267/2013 Page 12 accommodated in a later training batch. This Court is of the opinion that such submission is based on the misreading of the OM dated 28.8.1997. It does not and cannot be read as permitting something which is contrary to the OM of 6.6.1978; the allusion to those who report after four weeks clearly means those who report within the overall period of six months or at worst those whose lapsed appointments are allowed to be revived on the ground of their falling within the exceptional category in public interest. It was not - and perhaps justifiably so - the petitioners case that his is an exceptional case; certainly, we see no elements of public interest, underlining his claim for being accommodated in a subsequent batch.

13. For the forgoing reasons, the Court is of the opinion that the petition lacks merit; it is accordingly dismissed with no order as to costs. S. RAVINDRA BHAT (JUDGE) SUDERSHAN KUMAR MISRA (JUDGE) JANUARY 16 2013 /vks/ WP (C) 267/2013 Page 13

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