

Shyam Kumar vs Union Of India And Ors on 17 January, 2019

Author: S. Muralidhar

Bench: S.Muralidhar, Sanjeev Narula

\$~5

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 11656/2017 & CM Appl.No. 47380/2017 (stay)

SHYAM KUMAR

..... Petitioner

Through

Mr. Ankur Chibber, Advocate

versus

UNION OF INDIA AND ORS.

..... Respondents

Through

Mr.R.V.Sinha & Mr.A.S.Singh,

Advocates

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% 17.01.2019

1. The Petitioner has come to the Court aggrieved by an order dated 9 th November, 2017 issued by the Assistant Commandant (Ministry) for the Directorate General, Frontier HQ of the Border Security Force („BSF), North Bengal, rejecting the application/letter dated 9th October, 2017 and 14th October, 2017 by the Petitioner seeking permission to join as Constable (GD) having been selected for that post pursuant to the selection held in 2016.

2. The facts in brief are that pursuant to the notification dated 19th January, 2015 for recruitment as Constable (GD) in the Central Armed Police Forces („CAPF), the Petitioner was successful in the selection process having cleared the written examination, the physical standards/efficiency tests and the medical test. The admitted position is that when the final list was declared on 6th February, 2017 the Petitioner figured at Sl.No. 44 and this position merited post allocation with the BSF. According to the Petitioner, he kept waiting for the call letter but it never came. It is also stated that it may be right that the Respondents had sent the letter of appointment by post, but it may have received by his brother who was living in the same village and with whom he was having strained relations. It seems that on one occasion, the brother returned the letter with the endorsement „refused . The Petitioner made a written representation to the Respondents dated 9th October, 2017 regarding the same. This representation was rejected by the impugned letter dated 9th November, 2017.

3. When the petition was heard on 16th January 2018, records were produced by the Respondents which showed that the letter of appointment dated 12th April, 2017 was dispatched to the Petitioner at his residential address at Village Devsarai, Post Office Maghra, Police Station Deep Nagar,

District Nalanda, Bihar.

4. The Court further noted that the first reminder dated 6th May, 2017 was dispatched to the Petitioner through speed post on 12 th May, 2017 and the second reminder dated 21st May, 2017 was also dispatched on 24th May, 2017 through speed post. The Court has seen the dispatch register and concluded that indeed the above dispatches had taken place. The Court also noted that the third reminder had been returned to the postal authority with the remarks „refused receipt . A photocopy of the envelope with the above endorsement has been enclosed with the counter affidavit of the Respondents. At that stage, the counsel for the Petitioner relied on an OM dated 11th November, 2010 issued by the Department of Personnel & Training („DOPT), Government of India and submitted that the Respondents could have extended the time for joining by a period of three months up till a maximum period of six months from the date of the issuance of original offer of appointment. The Court then directed the Respondents to obtain instructions whether there was any vacancy left in the post of Constable (GD).

5. On 1st February, 2018 the following order was passed by the Court:-

"1. This order is in continuation of the order dated 16.01.2018, on which date after noting the submissions made by both sides, learned counsel for the respondents was directed to obtain instructions in the first instance, on the vacancy position with respect to the subject post i.e. Constable (GD).

2. Today learned counsel for the respondents hands over a letter dated 11.12.2017 addressed by the Commandant (Recruitment) to the DIG, (Recruitment), DG, CRPF, CGO Complex, New Delhi indicating inter alia the revised vacancy position for the recruitment of Constables (GD) for the Exam, 2017. In other words, the said letter indicates that there are vacancies on the post of Constable (GD).

3. In the above circumstances, we have enquired from learned counsel, for the respondents if the respondents are willing to consider the request of the petitioner for appointing him to the post of Constable (GD), but without any consequential benefits. Learned counsel for the respondents states that he may be permitted to obtain necessary instructions.

4. List on 20.02.2018."

6. On the next date i.e. 20th February, 2018 the Court was informed by the Respondents that the Petitioner s request would not be acceded to, in terms of policy. The Respondents were then permitted to file counter affidavit.

7. The stand taken in the counter affidavit is that a request for extension of period for joining has to be made within six months of the letter of appointment and in the present case there was no such request made even by the application dated 9th October, 2017. It is further submitted that the vacancy reported to the Court will be treated as vacancy for the subsequent year and hence it will

next year's vacancy. As far as the present case is concerned, in para 5 of the reply it is confirmed that the vacancy has been transferred to the subsequent year. Mr. Chibber points out that even in 2019 there are vacancies that are sought to be filled up.

8. The only question that arises is with regard to the Petitioner's version that whether on account of the quarrel in his family, his brother did receive the offer of appointment and the reminder but did not communicate the same to the Petitioner and that the Petitioner's brother had in fact refused to accept the third reminder.

9. In order to make good the above submission the Petitioner refers to a copy of the complaint given by him to the Police, i.e. copy of the information submitted to the Chief Judicial Magistrate by way of Petition No. 1628/2016. In the impugned letter dated 9th November, 2017 there is no indication that the Respondents have actually dealt with the above explanation of the Petitioner. There should be some good reason to disbelieve the Petitioner when he says that on account of the quarrel of the family and in particular with his brother, the Petitioner himself did not receive the communication sent by the Respondents. There is nothing in the counter affidavit filed by the Respondents to suggest that the Petitioner is not speaking the truth and that he is probably taking unfair advantage of his own lapse. The Petitioner having qualified for the post of Constable (GD) in the BSF after the Physical Efficiency Test („PET ") and Physical Standard Test („PST ") would not want to give up that post. In other words, if indeed he had received either the original offer of appointment or the reminders it is highly unlikely that he would not report for duty.

10. In the circumstances, the Court is inclined to accept the explanation offered by the Petitioner for his failure to respond to the offer of appointment made on three occasions. In that view of the matter, the Court directs the Respondents now to accommodate the Petitioner in the subsequent vacancies for the year 2019. It is made clear that his appointment as Constable (GD) will only from the date he actually joins subsequent to this direction by the Court and for the purpose of seniority, it would be the same. This order has been passed in the peculiar facts and circumstances mentioned above and will not constitute a blanket direction for every matter where similar relief is being sought.

11. The petition is disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 17, 2019 mw