

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 28.10.2009

+ **W.P.(C) 1126/2007**

RAMESH CHAND Petitioner
Through: Mr.B.K. Mishra, Advocate.

Versus
UOI & ORS. Respondents
Through: Mr.Ravinder Aggarwal,
Advocate for Respondent Nos.1
to 3.
Mr.Anil Mittal, Advocate for
Respondent No.4.

WITH

+ **W.P.(C) 4392/2007**

DHURENDRA KUMAR TOMAR & ANR Petitioners
Through: Mr.B.K. Mishra, Advocate.

Versus
UOI & ORS. Respondents
Through: Dr.Ashwani Bhardwaj for
Mr.Jitender Chaudhary,
Advocate for Respondent Nos.1
to 4.
Mr.Anil Mittal, Advocate for
Respondent No.5.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

PRADEEP NANDRAJOG, J. (ORAL)

1. Both writ petitions raise common questions of law and fact and hence are being decided together.
2. Rule DB. Heard for disposal.
3. Ramesh Chand, Dhurendra Kumar Tomar and Din Bandhu Gupta were admittedly working as Superintendents under Border Road Organization (BRO).
4. All three applied through proper channel for being considered for appointment to the posts of Junior Engineer when applications were invited by UP Irrigation Department through the UP Public Services Commission.
5. All three were selected and empanelled for being appointed as Junior Engineers in the UP Irrigation Department, as per list of successful candidates published by UP Public Services Commission.
6. All three applied for being relieved by the Border Road Organization i.e. submitted technical resignations.
7. The reason for the three submitting technical resignations is the requirement of law so that the petitioners could have continuity of service for purposes of pension and counting past service rendered under Border Road Organization.
8. The immediate head of the three petitioners i.e. the Chief Engineer (Project) issued a no objection certificate to Ramesh Chand on 04.01.2006 permitting him to take up the new

assignment under UP Irrigation Department. Petitioners Dhurendra Kumar Tomar and Din Bandhu Gupta were likewise issued the no objection certificates on 05.01.2005 and 11.11.2005 respectively.

9. All three joined services under UP Irrigation Department but faced a problem, for the reason, the technical resignations submitted by the three were rejected.

10. All the three joined UP Irrigation Department. It is apparent that they did so lawfully.

11. With the refusal of the acceptance of the technical resignations submitted by them, the effect would be that all three would be losing the benefit of past services rendered under Border Road Organization or alternatively would be compelled to rejoin under Border Road Organization.

12. As per the counter-affidavits filed, the respondents state that as per policy decision dated 09.05.2006, the petitioners cannot be relieved. It is urged by learned counsel for the respondent BRO that the policy was framed keeping in view the manpower required under BRO.

13. Suffice would it be to state that unless made expressly retrospective, a policy has to be applicable prospectively. Even if it is made retrospective in operation, a policy cannot override a vested and a settled right.

14. As noted hereinabove, the three petitioners were granted

no objection certificates to join service under U.P. Irrigation Department by their departmental heads on 05.11.2005, 11.11.2005 and 04.01.2006 i.e. dates when the policy dated 09.05.2006 was not even born.

15. We note that by the time when the policy was framed, the petitioners had already joined services under UP Irrigation Department and under interim orders passed by this Court are continuing to work under UP Irrigation Department.

16. We dispose of the petition directing the Border Road Organization to accept the technical resignations submitted by the petitioners and communicate the acceptance to the petitioners with a copy thereof to the UP Irrigation Department. Needful would be done within a period of 12 months.

17. No costs.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

OCTOBER 28, 2009
sb