

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

% **Date of Decision: 2<sup>nd</sup> February, 2011**

+ **W.P.(C) 4971/2010**

RAM LAKHAN ..... Petitioner  
Through: Mr.Ashok Chaitanya, Advocate.

versus

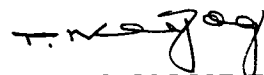
UOI & ANR. .... Respondents  
Through: Ms.Barkha Babbar, Advocate for UOI

**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 Reporter or not?
3. Whether the judgment should be reported in the Digest?

**PRADEEP NANDRAJOG, J.**

For orders, see W.P.(C) No.722/2010.

  
**(PRADEEP NANDRAJOG)**  
**JUDGE**

  
**(SURESH KAIT)**  
**JUDGE**

**FEBRUARY 02, 2010**  
**dk**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Date of Decision: 2<sup>nd</sup> February, 2011**

+ **W.P.(C) 722/2010**

SGT.GEDELA YUGANDHAR ..... Petitioner  
Through: Ms.Rekha Palli, Ms.Punam Singh  
and Ms.Amrita Prakash, Advocates.

versus

UOI & ORS. .... Respondents  
Through: Ms.Sonia Sharma and  
Mr.Asiam Mirza, Advocates for UOI

**W.P.(C) 1751/2010**

SGT. RAKESH KUMAR SINHA ..... Petitioner  
Through: Ms.Rekha Palli, Ms.Punam Singh  
and Ms.Amrita Prakash, Advocates.

versus

UOI & ANR. .... Respondents  
Through: Ms.Barkha Babbar and  
Ms.Jasbir Kaur, Advocates for UOI.

**W.P.(C) 4971/2010**

RAM LAKHAN ..... Petitioner  
Through: Mr.Ashok Chaitanya, Advocate.

versus

UOI & ANR. .... Respondents  
Through: Ms.Barkha Babbar, Advocate for UOI

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**  
**HON'BLE MR. JUSTICE SURESH KAIT**

- 8
1. Whether the Reporters of local papers may be allowed to see the judgment?
  2. To be referred to Reporter or not?
  3. Whether the judgment should be reported in the Digest?

**PRADEEP NANDRAJOG, J.**

2

1. Experience shows to this Court that a fertile area of litigation is generated when policies change and the executive does not take care that the baton is passed on smoothly. He who has witnessed a relay race would strikingly notice the runners passing on the baton very smoothly, neither pushing the next runner nor tripping the other runners and after the baton is handed over, remove themselves from the track. They do so for the reason they know that if they trip any other runner, the team as a whole would be disqualified and if while passing on the baton, the runner who has to run the next leg is pushed too hard or the baton drops, the race would be lost.

2. We wish that the executive learned a lesson to run a relay and when a policy is replaced, care be taken of the distance to be run by two runners on the same track, one completing his leg of the relay and the other commencing his i.e. the next leg of the relay.

3. Experience shows that it is in the transitory stage where lack of policy outlook and vision results in people tripping and insurmountable disputes arising due to persons being disqualified or required to re-run the race.

4. With the preamble aforesaid, let us note the relevant facts as the same would set the field on which would be laid the track for the relay race to be run.

5. Sgt. Gedala Yugandher was enrolled on 3.8.1995 at the W.P.(C) No.722, 1751 & 4971/2010

9

young age of 17 years and 2 months as Air Craftman (catering assistant) i.e. at the lowest rung of the ladder in the Air Force and in the time scale became a Corporal after 5 years. Lest anybody has an issue, we make it clear that he never suppressed his age at the time of appointment and when we expressed surprise of a boy aged 17 years getting public employment, were informed that in the Indian Air Force, Corporals are appointed at said age. He earned a promotion after 13.5 years and became a Sargent and continues to be one even today. It is apparent that Sargent Gedala Yugandher comes from fairly humble background and was compelled to earn for his living at the tender age of 17 years and 2 months. He is otherwise a hard working fellow and not only earns his bread and butter to support not only himself, but his parents. He educated himself further and acquired a graduate degree as also a graduate degree in education i.e. is a B.A., B.Ed.

6. The Staff Selection Commission, Government of India, invited applications from eligible candidates for appointment to various Group-B and Group-C civil posts. Sgt. Gedala Yugandher was desirous of finding a better career in life and thought of competing at the selection process. He submitted an application which was routed through his department i.e. the Indian Air Force which directly transmitted the application to the Staff Selection Commission. This happened on 8.11.2006. A preliminary examination was held on 4.2.2007, which was successfully cleared by him. The main examination was to be held and for which another application had to be submitted. Through his department he got transmitted an

10

application on 23.5.2007 to take the main examination.

7. Till then, a policy dated 9.5.2003, No.5/2003, was in vogue. As per the policy, persons in the Indian Air Force i.e. Airmen who had completed 7 years of their engagement including training period were eligible to seek permission to apply for civil posts under the Centre/State Government and Public Sector Undertakings.

8. It is apparent that since he had served for much in excess of 7 years, as per the policy in force, the department had no problem in sending his applications to the Staff Selection Commission and leaving the rest to his luck.

9. To his good luck, for which we give not much weightage to, and prefer to pat him on his back for his hard work done, Sgt.Gedala Yugendar came out with flying colours and found himself being issued a letter informing him that having successfully cleared the main examination he should appear for the interview on 27.5.2008. He performed good even at the interview evidenced by the fact that on 31.8.2009 a letter was issued to him offering him appointment to the post of Inspector Central Excise, a Group-B non-gazetted post, but in a pay-band approximately 70% above the pay-band in which he is currently placed as a Sargent.

10. But, he finds his dreams precariously hanging by the cliff, the cliff being a policy dated 1.6.2007 being No.4/2007, which replaces the earlier policy dated 9.5.2003. The new policy requires 15 years service to be completed as an Airman before being eligible to be permitted to apply for civil post under the Centre and the State Government and further requires that

11

permission would be given only if the posts are in Group-A and Group-B (gazetted). In view of the new policy, on 19.6.2008, after the interview was over but before the final selection was completed i.e. 31.8.2009, he was informed that his request to be issued a No Objection Certificate to join a civil post was rejected and he would not be relieved.

11. This has necessitated his filing WP(C)No.722/2010.

12. Sgt.Rakesh Kumar Sinha was enrolled on 13.3.1996 at the young age of 17 years as a Airman (Plant Maintenance Fitter) i.e. at the lowest rung of the ladder in the Air Force and after 5 years was promoted as a Corporal. Lest anybody has an issue qua him also, we make it clear that he never suppressed his age at the time of appointment. He earned a promotion after 13.5 years and became a Sargent and continues to be one even today. It is apparent that Sargent Rakesh Kumar Sinha also comes from fairly humble background and was compelled to earn for his living at the tender age of 17 years. Like Sgt.Gedala Yugandher, he is also a hard working fellow and not only earns his bread and butter to support not only himself but his parents, he educated himself further and acquired a graduate degree.

13. He too was desirous of enhancing his career prospects and submitted an application which was routed through his department i.e. the Indian Air Force which directly transmitted the application to the Staff Selection Commission. This happened on 1.11.2006. He too cleared the preliminary examination held on 4.2.2007. He also routed his application through the department for the main examination which he

12

cleared and received the interview call on 14.5.2008 for the interview to be held on 5.6.2008 and received the final letter offer on 16.10.2009 offering him the post of Inspector Central Excise and unfortunately for him in view of the new policy received his candidature being rejected for being permitted to join a civil post on 8.6.2008.

14. The third writ petitioner Corporal Ram Lakhan, was appointed in the Air Force on 3.2.2000 and continues to be a Corporal. Pertaining to the SSG Combined Graduate Level Examination to be conducted by the Staff Selection Commission he submitted an application dated 21.5.2007 to his Unit which forwarded the same to the Staff Selection Commission on 24.5.2007. He successfully cleared the written exam and vide letter dated 18.5.2008 was called for interview on 27.5.2008. He cleared the interview and was issued a letter dated 31.3.2010 offering appointment to the post of Assistant in the Central Secretariat a Group-B non-gazetted post and in the meanwhile had received a letter dated 10.6.2008 rejected his request on the ground of service exigencies.

15. It be noted that in the letter of rejection it has not been stated that under the new policy he could not be even considered for being relieved.

16. It is apparent that the 3 writ petitioners were fully eligible under the previous policy i.e. the policy dated 9.5.2003 for being released to join a civil post under the Central Government and all 3 have lost out on account of the policy which came into force on 1.6.2007.

3

17. Relevant would it be to note that before the new policy came into force, all 3 had routed their applications to the Staff Selection Commission through proper channel i.e. with the consent and concurrence of the Air Force Authorities. At each stage they took the necessary permission to take the preliminary and the main as also the interview. Unfortunately for them, the selection process was extended and in the meanwhile the new policy came into place.

18. Unfortunately for them there exists a decision of a Division Bench of this Court reported as 2008 IV AD (Delhi) 313 Sgt.Sachin Kumar Praveen & Ors. Vs. UOI & Ors. which has considered the legal effect of the policy dated 1.6.2007 and with reference to para 5 of the policy dated 9.5.2003 has held that the critical date would be when issue of No Objection Certificate i.e. NOC is considered when interview call letter with a specified date is considered by the department and has thus taken a view that the date when a right would be vested in the Airman would be the date when request for NOC is considered on the basis of the interview call. It was held that if by the date request for No Objection Certificate to be issued was considered (after letters for interview were received by the candidates and submitted to the department) the new policy was in place, entitlement to be issued a No Objection Certificate had to be as per the new policy. As we have noted, the cut-off date being 1.6.2007 i.e. the date of the new policy.

19. On facts of said case, it may be noted that the writ petitioners therein were similarly situate as the 3 writ petitioners herein and thus at first blush, one would be

14

tempted to dismiss the writ petitions, but we do not do so for the reason we note that the principle of legitimate expectation was not advanced before the Division Bench evidenced by the fact that there is no reference to the same in the said decision.

20. The facts of Sgt. Gedela Yuagandhar's case and Sgt. Rakesh Kumar Sinha's case would bring out that their selection process had commenced with the preliminary examination being completed by 4.2.2007 and in respect whereof they had obtained the consent of their department to sit at the examination and which consent was given by the department in the month of November 2006. In other words, they had commenced their journey for a better and a prosperous career when the policy of the year 2003 was in place. Their relay race had begun and the rules of the race were the policy of the year 2003. The race which they had run was in three legs. The first leg was the preliminary examination, the second leg was the main examination and the third leg was the interview. The first leg of the relay had been completed and the second leg of the relay had commenced inasmuch as their applications for the main examination were forwarded by the Department on 23.5.2007 and 25.5.2007. As they were running the second leg of the relay, the policy changed.

21. It is unfortunate that the Department remained oblivious to the fact that the rules of the game were being changed during the currency of the game. We find this happening in each and every case when policies change. Those who know the science of occult i.e. horoscope understand of the effect of

being in a cusp. Those born on dates falling in the cusp are presumably sharing the fate of the preceding and the succeeding sun signs. They are treated differently. Their fate is read on different principles. We wish that the bureaucrats also learn a little from the science of horoscope and make provisions for the cusp. We wish that the bureaucrats spend some time in the field and see how relay races are run. After all, the experience of life always enriches all fields regulating human behaviour and the law.

22. What does the principle of legitimate expectation tell us?

23. As held in the decisions reported as 1993 (1) SCC 71 FCI vs. M/s.Kamdhenu Cattele Feed Industries, 1993 (3) SCC 499 Union of India & Ors. vs. Hindustan Development Corporation and the decision reported as 2010(4) SCC 192 Jasbir Singh Chhabbra & Ors. vs. State of Punjab & Ors. legitimate expectation may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the Government activities. By and large legitimate expectation arises in situations of expectancy which are in normal course expected, though not guaranteed by way of statutory rights. The right under legitimate expectation may not be an absolute right but ensures the circumstances in which the expectation may be denied or restricted. A case of legitimate expectation always arises when a person represents or by past practice arouses expectation which would be within its power to fulfil.

24. So understood, the doctrine of legitimate expectation,

16

which is a facet of reasonableness and relates itself to Article 14 of the Constitution of this country, when read in the facts of the instant 3 cases and in particular the first 2, makes it plain upon this Court that having permitted the petitioners to commence the relay under the policy of the year 2003 the department would be bound to honour their legitimate expectation that they would be permitted to complete the 3 legs of the relay race which they had to run as per the policy of the year 2003 and not change the rules of the game midway. We emphasize that 2 of the 3 petitioners had in fact completed the first out of the 3 legs of the race before 1.6.2007 and had commenced even the second leg of the race prior to said date. The third had commenced the run of the first leg.

25. We may note that, against the decision of the Division Bench of this Court, the writ petitioners therein had laid a challenge before the Supreme Court where the authorities of the Indian Air Force made a concession that they would be relieved to join Civil Services and hence the Petitions for Special Leave to Appeal were disposed of by the Supreme Court vide order dated 4.12.2009 making it clear that the concession before it would not be treated as a precedent.

26. We are conscious of the fact that we are taking a view which is reaching a destination contrary to the destination reached by a Co-ordinate Division Bench of this Court, and lest we be accused of breaching judicial discipline by not referring the matter to a larger Bench, would highlight that the comity of brotherhood of the Court has not been breached by us for

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the reason we note that, since no argument was advanced before the Division Bench on the issue of legitimate expectation of the petitioners, the same was not considered therein and it can be said that on the said point the decision is akin to a per incuriam decision.

27. There is yet another facet, which compels us to charter a completely different route to reach the destination we have reached, independent of our reasoning hereinabove with respect to the decision of the Division Bench of this Court in Sgt. Sachin Kumar Praveen's case (supra). The same is the latest revised policy dated 19.9.2008 being AFO 14/2008 as per which airmen/NCs having 7 years' service would be eligible to be permitted to apply for civil posts under Central/State Government for Group 'B' or equivalent posts, maximum of the pay scale whereof is not less than ₹9,000/- but less than ₹13,500/- as revised from time to time. They are also eligible for Group 'A' posts or equivalent posts maximum of the pay scale of which is not less than ₹13,500/-. It be noted that all the petitioners have been selected for civil posts in the pay scale ₹9,300-34,800/- and it is apparent that they are fully eligible under AFO 14/2008. As per para 7 of the policy, application for NOC is to be submitted after receiving call letter for the interview or after the result of written test where selection is based on success in written test only. We have already noted hereinabove that Sgt. Gedala Yugandher and Sgt. Rakesh Kumar Sinha were issued the letters of offer on 31.8.2009 and Corporal Ram Lakhan was issued the letter of offer on 31.3.2010. By the time they were to be relieved by

18

the department, the new policy of 19.9.2008 had come into force. Needless to state service to be rendered before being eligible to apply for civil posts is 7 years under this policy.

28. A contention has been urged that due to exigencies of service the three petitioners cannot be relieved. The exigency projected is lack of manpower.

29. The argument has not much strength to stand on for the reason Annexure P-1, being the respondents office order dated 21.3.2007, annexed with W.P.(C) No.722/2010 contains an admission: *'The Sgt.-Level Bulge affecting the airmen cadre and its detrimental effect on the cadre as a whole is a well known fact'*. The fact that two petitioners could earn a promotion from the rank of Corporal to Sargent after 13 years is proof of the bulge; that the 3<sup>rd</sup> petitioner continues to languish as a corporal even after 10 years reinforces the said proof.

30. Since we had commenced our journey with a prelude, we end with an epilogue.

31. The 3 petitioners joined service as Corporals at a very young age of 17 years. They joined at the lowest rung of the Air Force. They obviously did so because their families could not afford to educate them and there was a pressing need for the young lads to earn money which was urgently needed by the family. They have rendered blameless service. We are told that none of them has ever been punished by the department. They not only worked but educated themselves. They have dreams of a better life and why not. The State owns a responsibility to not only nurture but encourage its

9

children and these 3 young lads need a pat on their back for having acquired further educational qualifications while earning. They have proved their worth by competing at the Civil Examinations conducted by the Staff Selection Commission; 2 of them have earned an appointment to the post of Inspector of Central Excise and the 3<sup>rd</sup> as an Assistant in the Central Secretariat Service. We see no reason why the State should not let them venture into better pastures. Would it not be a waste of their talent to retain them, one in the lowest rung of the ladder and the other two, one notch above? What loyalty would the Indian Air Force expect from them if they are forced to work at a salary which is about half of what they would earn in their new place of posting? We think none. The 3 young men would certainly be frustrated and this would not be in the interest of their organization. Service jurisprudence recognizes the necessity of opening better service avenues as the prospects of bettering ones service acts as an incentive and results in public good for the reason an employee with incentive puts in his best. This explains a large number of decisions where Courts have directed promotion avenues to be created in single cadre posts. This is the reason why the Fifth Pay Commission recommended implementation of Assured Career Progression Schemes.

32. The writ petitions are accordingly allowed. The orders/letters communicating rejection of the No Objection Certificate to the petitioners are quashed. A mandamus is issued to the Air Force Authorities to forthwith issue the required No Objection Certificates to the petitioners to enable

20

them to join the new services. We also issue a mandamus to the respective department where the petitioners have to join i.e. the Custom & Excise Department, Government of India (pertaining to petitioner Gedela Yogandhar and Rakesh Kumar Sinha) and the Department of Personnel and Training or whichever Ministry is the Nodal Ministry for the Central Secretariat Service qua the third petitioner i.e. Corporal Ram Lakhan, to honour the said No Objection Certificates and permit the petitioners to join the respective departments, with their seniority and pay protected; except no back-wages to be paid.

33. Needful would be done by the Air Force Authorities within one week from receipt of a certified copy of this order and by the other authorities who have to take consequential action within further one week thereafter.

34. No costs.

35. Dasti. *~*

*Pradeep Nandrajog*  
**(PRADEEP NANDRAJOG)**  
**JUDGE**

*Suresh Kait*  
**(SURESH KAIT)**  
**JUDGE**

**FEBRUARY 02, 2010**

**dk**