

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

% *Date of Decision : March 05, 2015*

+ **W.P.(C) 1322/2015**

VINOD KUMAR PANDEYPetitioner

Represented by: Mr.V.Shekhar, Sr.Advocate
instructed by Ms.Richa Sharma,
Advocate

versus

UOI & ORS.Respondents

Represented by: Mr.Rakesh Kumar, Standing
Counsel for R-1 to R-3 for UOI
with Mr.Tapan Dass, Joint Director
(Legal)
Mr.Rakesh Kapoor, Executive
Engineer for R-4

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The writ petitioner was an employee of the Indian Railways when the Department of Irrigation, Government of Uttar Pradesh invited applications from eligible candidates to be appointed as an Assistant Engineer (Mechanical), and for which the advertisement issued was 'Combined State Engineering Services General Recruitment Examination – 2008'. It is apparent that the advertisement was issued in the year 2008. As an employee of the Indian Railways, the appellant applied for

permission to take the examination through proper channel and was granted the necessary permission.

2. For reasons unknown the result of the examination was delayed. The year 2011 came into being.

3. The General Reserve Engineering Force (GREF) invited applications from eligible candidates to be appointed as an Assistant Executive Engineer (E&M). The petitioner, who was still employed with the Indian Railways, through proper channel applied pursuant to the advertisement issued by GREF and upon being successful was offered appointment to the post of Assistant Executive Engineer (E&M) on May 14, 2011. The petitioner submitted a technical resignation with the Indian Railways and joined GREF.

4. The result of the examination conducted by the State of UP for the post of Assistant Engineer (Mechanical) was declared on January 24, 2014. The petitioner was a successful candidate. The petitioner sought a discharge from GREF which has been denied on two counts. Firstly, that the policy of GREF permits only those persons to leave GREF by submitting technical resignations where appointment is through Union Public Services Commission. The second is that there is a criticality with the Department of Persons in the Engineering Department. There is a deficiency of 46% persons. The tabular data given to the Court is as under:-

<i>S.No</i>	<i>Name of Cadre</i>	<i>Authorized</i>	<i>Held</i>	<i>Deficiency</i>	<i>% of Deficiency</i>
<i>1</i>	<i>AEE (Civ.)</i>	<i>360</i>	<i>157</i>	<i>203</i>	<i>56.39</i>
<i>2</i>	<i>AEE (E&M)</i>	<i>87</i>	<i>47</i>	<i>40</i>	<i>45.98</i>

5. For record we may note that in GREF the petitioner is in PB-III having pay scale ₹15600-39100 with grade pay ₹5,400/-. His employment under the State of Uttar Pradesh would also be in the same pay band, same pay scale and with same grade pay. In other words, there is no monetary issue involved.

6. Whilst it may be true that when the petitioner applied for employment under the State of Uttar Pradesh he was permitted to do so by his then employer : the Indian Railways. But that consent would not bind GREF for the reason the petitioner also applied for appointment under GREF. When appointment was offered by GREF to the petitioner he did not convey the fact that he was accepting the appointment subject to his choice being exercised upon he being offered appointment by the State of Uttar Pradesh. Meaning thereby, the petitioner joined service under GREF without any condition and thereby made himself liable to the service rules and instructions issued from time to time concerning his service under GREF.

7. Ignoring the policy of GREF that it permits only those employees who submit a technical resignation as are employed under the Union through the Union Public Service Commission as per its policy, there is a good reason given by GREF not to permit the petitioner to submit a technical resignation and join the State of UP. The good reason is the deficiency of Engineers in GREF.

8. It is trite that a Government servant does not have an absolute right to chose when he would like to move on to another department or another wing of the Government at his free will. His entitlement to move out is subject to the consent given by the Parent Department by accepting the technical resignation. An employee when joins service is subject to

certain terms and conditions of service and he cannot quit the employment contrary to the terms of the service.

9. Thus, relief prayed for by the petitioner cannot be granted.

10. The writ petition is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 05, 2015
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