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

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Date of Decision : March 04, 2015

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LPA 129/2015

ALOK KUMAR

..... Appellant

Represented by: Mr.Alok Kumar, Advocate with
Ms.Manisha Agrawal Narain and
Mr.Neeraj Gupta, Advocates

versus

PAWAN HANS LTD & ANR

..... Respondents

Represented by: Mr.S.K.Taneja, Sr.Advocate
instructed by Mr.Puneet Taneja and
Ms.Kopal Srivastava, Advocates for
R-1
Mr.Vikram Jetly, CGSC for R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

CM Nos.4072-74/2015

Allowed.

LPA No.129/2015

1. The appellant, or may be the counsel for the appellant who drafted the writ petition is responsible for the situation in which the appellant finds himself today, but justice demands that the impugned order be set aside and matter remanded to the learned Single Judge with liberty granted to the appellant to formally amend the writ petition and implead the Indian Air Force as a respondent and make an alternative prayer.

2. The facts which we would be noting hereinafter are not to be treated as an acceptance of the factual position or the legal position, because a narration of said facts is necessary to bring out the real issue which arose for consideration, but the pleadings in the writ petition being faulty and scattered, have escaped the attention of the learned Single Judge; and perhaps additionally for the reason even in the appeal the learned counsel for the appellant failed to capture the relevant facts and project the same coherently. It is just incidental that the real issue was caught by the eye of the Court. Thus, on remand, the learned Single Judge would decide the issues which emerge in light of the existing prayer made in the writ petition as also the alternative prayer which would be made by the appellant after formally amending the writ petition and impleading the Indian Air Force as a respondent.

3. With reference to the letter dated August 02, 2011, offering appointment to the appellant as a General Manager (Operations) by the first respondent, the learned Single Judge has held that the appellant would be required to be treated as on probation for a period of one year. The incidental issue regarding automatic confirmation in service has been held against the appellant by the learned Single Judge. The next issued decided by the learned Single Judge was whether the order terminating the service was stigmatic. The same has been held against the appellant.

4. Whereas the impugned judgment has returned a correct legal position regarding automatic confirmation in service of a probationer as also when would an order terminating service be stigmatic, and to this extent the impugned decision suffers from no infirmity.

5. But on the first issue : whether the appellant was right in urging that his appointment was on a permanent absorption basis or it was on probation,

since the attention of the learned Single Judge was not drawn to all relevant documents, and in respect of which we find that two out of the four relevant documents were placed along with the rejoinder; and further there is complete inchoateness in the pleadings in the writ petition even as regards the two which were filed with the writ petition, the point seems to have been missed.

6. The attention of the learned Single Judge has not been drawn to a letter dated 07.07.2011 (at page 31 of the writ record) addressed by the Deputy General Manager of the first respondent to the Indian Air Force, which reads as under:-

“PHHL/CO/PERS/1499/I/III/395

07.07.2011

*AIR Marsdhal Anil Chopra, AVSM, VM, VSM,
Air Officer-in-Charge Personnel,
Room No.334,
Indian Air Force,
Air Headquarter,
New Delhi-110011*

Sub : Filling up of vacancy of Head of Operation on immediate absorption.

Sir,

Pawan Hans Helicopters Limited, a Government of India Enterprise under the administrative control of Ministry of Civil Aviation is the largest helicopters operator in India and maintains & operates a fleet of 51 start of-the-art helicopters of different make capacity such a MI-172, Bell 206 L4, Bell 407, Dauphin 365N/N3, AS350-B3 Dhruv ALH and Cheeta.

Pawan Hans Helicopters Limited is looking for a professional in the field of its operational activities preferably in the rank of AVM/Air Cmde Officers having Helicopter Pilot background to fill up a vacancy of Head of Operation at the level of GM/Executive Director on immediate absorption basis. QRs

for the position are proposed as under:

QRs : *Pilots with 3000 hrs of Helicopter flying out of which 1000 hrs as Pilot in Command on Helicopter and should have minimum 20 hrs of night flying.*

Scale of pay : *₹51300-73000 in IDA pattern.*

Upper Age Limit : *55 years*

Experience : *15 years of Executive experience out of which two years should at the next below grade or equivalent responsibility.*

It is requested that the vacancy may kindly be given a wide publicity and applications received from the eligible candidates may please be forwarded to us to reach us on or before 15 July 2011.

Thanking you,

Yours faithfully

*Sd/-
(R.B.KUSHWAHA)
DGM (P&HRD) ”*

7. The letter informs the Indian Air Force that the first respondent desires to fill up the vacancy of Head of Operation on immediate absorption, and does not indicate that the officer appointed would be on probation.

8. The attention of the learned Single Judge has not been drawn to a letter dated August 05, 2011 (at page 32 of the writ petition) addressed by the Indian Air Force to the first respondent on the subject of the Indian Air Force making available an officer to fill up the vacancy of General Manager (Operations) in the first respondent on immediate absorption basis, which letter reads as under:-

5 AUG 11

*Shri R.K.Tyagi
Chairman & Managing Director
Pawan Hans Helicopters Limited
Corporate Office
Safdarjung Airport
New Delhi-110003*

**FILLING UP OF VACANCY OF GENERAL MANAGER
(OPERATIONS) IN PHHL ON IMMEDIATE
ABSORPTION BASIS**

Dear Shri Tyagi

1. Please refer to PHHL letter No. PHHL/CO/PERS/1499-I/522 dated 02 Aug 11.

2. This HQ is in agreement with the general terms and conditions proposed by the PHHL for immediate absorption of an IAF Air Officer as General Manager (Operations) in PHHL. However the following points, may kindly be ensured/clarified:-

(a) It must be borne in mind that the officers shortlisted by the IAF for the post and the officer selected for the post represent the very best of the IAF as a repository of operational experience and management at all levels. This has been ensured by the IAF in ‘national interest’ so that the aviation industry in general and PHHL in particular gets benefited by the services of this extensively experienced IAF officer.

(b) It is extremely important to note that the current understanding is on employment of the officer as GM (Ops.) i.e. the officer would be heading the overall flying operations of PHHL and directly coming under the CMD of PHHL.

(c) The emoluments of the Air Officer in his present rank/seniority should be protected in his new appointment. The ‘pay in band’ should be commensurate with his 30 years of service with IAF. This must include the ‘Grade Pay’, ‘Military Service Pay’ and ‘Flying Pay’ which he is presently drawing or

the Air Officer be compensated in lieu thereof.

(d) The other allowances mentioned in the offer letter require to be clarified and intimated.

3. May I request necessary action and early response on the aspects as brought out above.

With warm regards,

Yours Sincerely

Sd/-”

9. The attention of the learned Single Judge has next not been drawn to a letter dated August 05, 2011 (at page 220 of the writ petition), which has been written by the Indian Air Force to the appellant, which reads as under:-

“Tele : 23010231/7356

*Air Headquarters
Vayu Bhawan
New Delhi-110106*

Air HQ/22028/P Hans/PO-2(A)

05 Aug 11

*Air Cmde A Kumar
CFTO
HQ TC, IAF,
JC Nagar Post
Bangalore – 560006*

**FILLING UP OF VACANCY OF GENERAL MANAGER
(OPERATIONS) IN PHHL ON IMMEDIATE
ABSORPTION BASIS**

1. Reference is made to your letter No.TC/S 14901/19/FT dated 14 Jul 2011.

2. PHHL have intimated that you have been selected for the post of General Manager (Operations). Two copies of the offer of appointment are enclosed herewith for your information and

necessary action.

3. *You are required to intimate acceptance of the terms and conditions offered by duly signing and returning the duplicate copy of the offer letter, for onward transmission to PHHL. You are required to report for duties on or before 01 Sep. 2011.*

4. *Since the offer of appointment to the post of General Manager (Operations) is on immediate absorption basis, you will be required to seek Permanent Separation from Service (PSS) prior to joining the new post.*

*Sd/-
(S.K.Singh)
PDPO-2*

Encl : As stated.

10. The letter of August 05, 2011 has obviously been written after letter offering appointment as General Manager (Operations) was issued to the appellant by the first respondent.

11. Paragraph 4 of the letter dated August 05, 2011 gives birth to an issue : whether the Air Force Authorities were given to understand that reference by the first respondent to the appellant being appointed ‘*on immediate absorption basis*’ would mean a permanent absorption or not in the first respondent; and this is the way the appellant understood the same, because in paragraph 4 of the letter the Air Force Authorities have clearly written to the appellant that he would be required to ‘*seek Permanent Separation from service (PSS) prior to joining the new post*’.

12. We note that as a matter of fact, the appellant sought permanent separation from service.

13. In view of the letter dated August 05, 2011, the appellant wrote a letter on August 17, 2011 (at page 212 of the writ petition) which reads as

under:-

“PERSONAL APPLICATION

Air Cmde Alok Kumar (16988-F) F(P)

*CFTO
HQ Training Command
Indian Air Force
Bangalore- 560 006*

17 Aug 11

*AOC-in-C
Training Command, IAF
Bangalore – 560 006*

**PREMATURE SEPARATION FROM SERVICE FOR
SELECTON AS GENERAL MANAGER (OPERATIONS) IN
PAWAN HANS HELICOPTER LIMITED ON IMMEDIATE
ABSORPTION BASIS**

Sir,

- 1. Reference is made to Air HQ Signal No. PO/282 dated 13 Jul 11 Air HQ/22028/P Hans/PO-2(A) dated 05 Aug 11, Air HQ/PO/300 dated 25 Jul 11 and PHHL/CO/PERS/1499/1 dated 02 Aug 11. (Copies annexed)*
- 2. I have been selected for the post of General Manager (Operations) in Pawan Hans Helicopter Limited (PHHL) vide their letter of office of appointment on immediate absorption basis. The selection has taken place after volunteering my name (as asked by Air HQ) followed by detailment for interview by Air HQ with PHHL on 29 Jul 11.*
- 3. As per the conditions of PHHL and Air HQ, I need to seek Premature Separation from Service (PSS) for immediate absorption in PHHL. Further, vide order of appointment, I am to report for duties on or before 01 Sep 2011 to PHHL.*
- 4. I therefore request that, I may be granted PSS by 31 Aug 11 to enable me to accept the offered appointment of PHHL. For this I will ever be grateful to the Service. I am enclosing*

*required documents duly filled up and signed as per the HRP
Part I/PO/PSS/04/2011 dated 05 Aug 11.*

*Yours Sincerely,
Sd/”*

14. The attention of the learned Single Judge has not been drawn to either letter dated August 05, 2011 or the letter dated August 17, 2011. The letters referred to in the pleadings had a passing reference made thereto.

15. Nobody pleaded before the learned Single Judge that a Government servant, who joins service with permission of the department in either, another government department or a public sector undertaking or a government company, if kept on probation, retains the lien on the post held in the parent department because if the probation is not followed by a confirmation, the person concerned is not left high and dry. In said eventuality the person reverts to the parent department.

16. In the instant case the appellant was left with no lien on the post held by him with the Indian Air Force.

17. Nobody brought to the attention of the learned Single Judge that what happens to the service rendered by the appellant with the Indian Air Force regarding pension.

18. The problem has arisen because of inartistic drafting and not impleading the Indian Air Force, which would be a necessary party on the alternative prayer which we permit the appellant to make : of he being re-inducted in the Indian Air Force if the relief prayed for in the writ petition are denied.

19. The learned Single Judge would at the remanded stage permit the appellant to amend the writ petition and implead the Indian Air Force as a respondent. The appellant would be permitted to amend the writ petition so

that the pleadings have a proper structure, and we note that in respect of the same, the learned counsel for the appellant expresses apology for the casual drafting done in the writ petition. The four letters we have noted above, though a part of the writ record, have only a reference made thereto in the pleadings, without an inference regarding the same being pleaded. It is trite that regarding documents, contents thereof need not be reproduced in the pleadings, but the effect thereof has to be pleaded.

20. We are informed by learned counsel for the first respondent that notwithstanding the writ petition being dismissed on February 03, 2015, the services of the appellant have not been discontinued and that the same were continued because of the interim order passed in the writ petition in favour of the appellant, which stands vacated as a consequence of the impugned order.

21. We reiterate once again that we have not expressed any opinion on the merits of the controversy and the facts noted by us hereinabove are not to be treated as any expression on the merits thereof, for the reason the recording of the facts is to bring home the point that an issue arose with reference to the documents which has escaped the attention of the learned Single Judge because of the inchoateness of the pleading in the writ petition.

22. Disposing of the appeal at the preliminary stage itself, since counsel for the first respondent has appeared on advance copy of the appeal being served and argued to support the impugned order, we set aside the impugned order dated February 03, 2015. We restore W.P.(C) No.5049/2014 for adjudication afresh, extending the benefit of the interim order in favour of the appellant till decision afresh.

23. At the remanded stage the learned Single Judge would permit the appellant to amend the writ petition and also implead the Indian Air Force as

a respondent.

24. The writ petition be listed for directions before the learned Single Judge on March 11, 2015 and by said date the appellant shall file the amended writ petition with a formal application seeking amendment.

25. No costs.

CM No.4071/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 04, 2015
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