

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.18665 of 2013
Reserved on :19.12.2017
Date of decision:11.01.2018

Bhupinder Singh

....Petitioner

Versus

UHBVNL & another

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Namit Kumar, Advocate, for the petitioner.

Mr.P.S.Poonia, Advocate, for respondent No.1.

Mr.Harish Rathee, Sr.DAG, Haryana.

G.S. SANDHAWALIA, J.

Petitioner seeks writ in the nature of certiorari, under Article 226 of the Constitution of India, for quashing of the order dated 09.05.2013 (Annexure P-3), vide which, the offer of appointment as Assistant Lineman, issued to the petitioner was canceled due to being 70% orthopedically handicapped. Resultantly, writ in the nature of mandamus is sought that the petitioner is ready to join duty, in pursuance of the letter dated 26.10.2012 (Annexure P-2) and to adjust him to some equivalent post with all consequential benefits.

It is the pleaded case of the petitioner that he is an Ex-Serviceman and served the Army for 11 years, 3 months and 14 days and was discharged from duty on 08.01.2001. He belonged to BC-A category being a Sikh (Kamboj) by caste. His character at the time of discharge was assessed as 'Exemplary'. He, in pursuance to the advertisement No.1/11 dated 18.03.2011 (Annexure P-1) against the recruitment of 4131 posts of Assistant Lineman with the respondent-Nigam, applied for the said post and had appeared for interview on 09.06.2012, in consonance of the interview

letter dated 18.04.2012. Resultantly, appointment letter had been issued on 26.10.2012. When he approached the respondents for joining, he was not allowed to join his duties, on the ground that he was 70% orthopedically handicapped. He had sought information wherein reference has been made to the medical certificate issued by the CMO, Kurukshetra and the fact that the orthopedically handicapped person could not be appointed for the post of Assistant Lineman. Resultantly, the present petition was filed, seeking invocation of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995.

The writ petition had been defended by the respondent-Nigam by pleading that there was concealment of handicap while applying for the post of Assistant Lineman in the ESM (BC-A) category. He had never been selected in the Physically Handicapped quota of recruitment for the said post, which was only for deaf candidates and resultantly, the order passed has been justified. The 4131 posts had been advertised vide corrigendum dated 01.07.2011 and there were 110 vacant posts for the said category and 118 were the back-log, for the Physically Handicapped (Partially Deaf). Section 47 would not be applicable as the disability was not after joining the services and therefore, the appointment offer was rightly cancelled.

Respondent No.2-Commission submitted that Power Utilities had reserved 228 posts for Physically Handicapped category (Partially Deaf) as the posts had been identified for the disabled persons.

Accordingly, the respondent-Nigam had not considered persons with orthopedic handicap for the post of Assistant Lineman and he had not been selected in the category of Physically Handicapped Category (Orthopaedically) and that appointment of the petitioner was subject to his medical fitness. Reference was made to letter dated 14.03.2006 (Annexure R-2) of the Director, Social Welfare & Empowerment, whereby exemption had not been given for the post of Assistant Lineman under Section 33 of the Act.

Petitioner filed replication and reiterated that Section 47 would be applicable and therefore, withdrawal of his appointment order was not justified and he could be adjusted against any other post.

Affidavit of the Under Secretary of the Nigam was filed that petitioner could be entrusted the field job only as per the duties of the Assistant Lineman (Annexure R-2/2) and therefore, the petitioner could not be adjusted.

Petitioner had replied to the said affidavit and sought to place on record the information received under the RTI, that he could be adjusted in a clerical job.

After hearing counsel for the parties, this Court is of the opinion that there is no merit in the present writ petition and the same deserves to be dismissed.

The petitioner had separately applied under the ESM (BC-A) category for which, there were initially 20 vacant posts. As per the corrigendum issued, there were 84 + 34 backlog seats for the said

category. A separate category of PHC (Partially Deaf Candidate) for 30 posts, was also available, which, as noticed above, had been increased, as per the corrigendum 110 + 118 backlog were to be filled. The duties of Assistant Lineman are as under:

“The Assistant Lineman is basically a groundsman to help the Lineman. He will be assigned the following duties when posted in operation organisation:-

1. Assisting the LM in the performance of duties at ground carrying the T&P and ladders wherever required.
2. Helping the lineman in the construction of works by carrying material to the location of work, digging of pits, erection of poles and sagging of conductors.
3. Replacement of fuses at the consumers premises.
4. To work on the overhead lines as LM, if so authorised in writing by a gazetted officer for construction and maintenance of lines, mains and services.
5. Any other job when specifically ordered by the JE/SDO.
6. In case ALM is authorised to work as Lineman, then he will perform the duties of lineman, if he is not attached with lineman and is asked to do so by JE(F)/JE(I)/SDO.”

The appointment order was conditional, to the extent that the person had to be physically fit. Clause 5(a) (vi) & 8 read as under:

“5(a) The above offer of appointment is being made to you on a clear understanding that:-

xxxx xxxx xxxx

(vi) You will produce at your cost a health and age certificate required for 1st entry into Nigam's service from the Chief Medical Officer of your Home District if you belong to Haryana State or from the CMO HVPNL Panchkula if you are posted at Chandigarh/Panchkula.

xxxx xxxx xxxx

8. You are required to submit a medical certificate from the

concerned CMO at the time of joining the service.”

Thus, it is apparent that on account of unfitness of the petitioner due to his orthopedically handicap, he was not found suitable for the post of Assistant Lineman and resultantly, the appointment order was withdrawn. The terms of appointment were, thus, conditional and the petitioner having failed to satisfy the same, now, cannot say that the terms were arbitrary or unjustified in any manner. As noticed earlier, the post of Assistant Lineman would involve certain nature of work and for the petitioner, with 70% disability of lower limbs, he is obviously not in a position to do the field work and therefore, cannot be considered to be of any help and use for the work with the Nigam and therefore, the appointment has been rightly withdrawn. The provisions of Section 47 of 1995 Act would not come into play which provides that disability has to be acquired during the service period. The said section reads as under:

“47. Non-discrimination in Government employments.—

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service: Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification,

exempt any establishment from the provisions of this section.”

The petitioner, as noticed, admittedly, never joined and therefore, cannot claim that the disability occurred during the service period nor it is his case that such disability was on account of joining the service and therefore, Section 47 of the said Act would not be applicable. In such circumstances and he has rightly been declined the offer of appointment having not been found physically fit for the said job and therefore, the respondent-Nigam cannot be burdened with the services of the petitioner for a post for which he is not physically fit to perform duties, as he never was an applicant against the other posts advertised of PH (Deaf Category).

Accordingly, finding no merit in the present writ petition, the same is, hereby, dismissed.

11.01.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No