

\$~14

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

+ **W.P.(C) 5602/2018**

RAM PRAKASH GUPTA

..... Petitioner

Through

Ms. Neela Gokhale, Ms. Shradha
Agrawal, Mr. Ilam Paridi &
Ms. Shruti Dixit, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Through

Mrs. Bharathi Raju, CGSC for
Respondents No.1 & 2
Mr. Indranil Ghosh & Mr. Kunal
Singh, Advocates for Respondent
No.3

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

02.05.2019

%

1. The Petitioner who is an Assistant Engineer with the Border Road Organisation (BRO) is aggrieved by an order dated 11th April, 2018 whereby the BRO has rejected his request for deputation to the Rail Land Development Authority (Respondent No.3) on the basis of a policy dated 22nd February, 2018 which mandates a cooling off period of 8 years after returning from a foreign posting before the person can be sent on deputation.

2. The brief facts are that the Petitioner joined the BRO on 12th February, 1986 as an Overseer. He has completed various postings all over the country. It is stated that in March, 1994 the Petitioner completed the course

of AMIE (Associate Member of the Institution of Engineers) which was equal to the B-Tech.

3. The Petitioner was posted to Bhutan in November, 2012 for a period of two years. Before he could complete the tenure of two years in Bhutan, and within a period of 14 months, he was in January, 2014 posted to the BRO Unit, 83 RCC, Manipur.

4. After waiting for the mandatory cooling off period of three years in terms of OM dated 29th February, 2008, which was applicable at that time, the Petitioner applied to Respondent No.2 on 15th April, 2017 for the post of Manager on deputation basis. He was found eligible in all aspects for the said post. He was called for interview on 26th February, 2018 and was subsequently confirmed for the post of Manager on deputation basis.

5. Meanwhile, a revised policy was issued by the BRO on 22nd February, 2018 which was to be implemented from the date of the issuance of the said letter. In terms of the revised policy, the cooling off period for applying for deputation after a previous deputation of foreign posting was increased from 3 years to 8 years. The case of the Petitioner is that this revised guideline was prospective and did not apply to the case of the Petitioner who had applied for permission even prior to the said policy change.

6. Respondent No.3 i.e. the RLDA by a letter dated 8th March, 2018 informed the Director General (DG) BRO that the competent authority had approved the selection of the Petitioner for the post of Manager on

deputation basis on usual terms. The RLDA i.e. Respondent No. 3 requested the DG BRO to relieve the Petitioner to enable him to join the RLDA.

7. By the impugned communication dated 11th April, 2018, BRO informed the Petitioner that the competent authority had not approved his deputation. The reason given was the cooling off period to apply for deputation for three years for those who had “served in BCA/foreign tenure”.

8. The Petitioner has cited the cases of one Executive Engineer (Civil) Yogesh Chandra Shrivastava, who while on foreign tenure of Bhutan during 2013-15 was directly sent on deputation to the National Highway Infrastructure Development Corporation Limited. Likewise, Gaurav Gupta (Civil) EE also on foreign tenure in Bhutan during 2014-2016 had been sent on deputation to NHAI without completing any cooling off period. Accordingly, the Petitioner claimed that he was being discriminated against.

9. The stand of the Respondents is that the Petitioner’s application for grant of permission was made known to the BRO only by a letter dated 8th March, 2018 addressed by Respondent No.3 to the Petitioner with the copy of the BRO approving the Petitioner’s selection to the post of Manager/Projects, RLDA “on the basis of an advance application of Sh. R.P.Gupta dated 15th April, 2017.” It is pointed out that under revised policy it was not necessary for at least 18 months of deputation in a foreign posting to have been completed for it to be considered as a foreign posting. This was relevant for computing the cooling off period. It is accordingly submitted that no error was committed by the Respondents in applying the revised policy.

10. Secondly, it is pointed out that whether in the old policy or the new policy, the cadre strength was abysmally low. In the circumstances the permission for proceeding to another organisation on deputation had to be refused. It is accordingly submitted that whether under the new revised policy or in the old policy the Petitioner does not qualify for permission for going to Respondent No.3 on deputation.

11. This Court has heard the submissions of learned counsel for the parties. From the documents placed on record, it appears that anticipating the offer of appointment by the Respondent No.3, the Petitioner made advance applications on 15th April, 2017 and 12th December, 2017. However, these advance applications were to no avail because there was no question of the Petitioner's prayer being considered till such time he was in fact offered appointment by the Respondent No.3. This happened only on 8th March, 2018. In the circumstances, it is not the policy which was applicable at the time of making the applications which would be applicable but it is a policy which was in force as on 8th March, 2018 which should apply. Going by the new policy the Petitioner certainly could not be said to have completed the 8 years cooling off period.

12. Even if one were to accept the plea of the Petitioner about the old policy applied, the fact remains that the cadre strength was abysmally low. Therefore the refusal of the permission to be sent on deputation, was justified. .

13. The Court is therefore not satisfied that the Petitioners have made out

any case for interference with the impugned order.

14. The petition is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 02, 2019

mw