

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-8913 of 2019 (O&M)

DATE OF DECISION : 14.08.2020

Rishabh Gautam

...Petitioner

Versus

Union of India & Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Vikram Singh Chahal, Advocate, for the petitioner.

Mr. Umesh P. Wadhwani, Advocate, for respondent-Union of India.

(Presence marked through video conference)

ARUN MONGA, J.

1. This is second foray of the petitioner before this Court, *inter alia*, assailing a letter dated 28.08.2018 (Annexure P-10) issued by respondent No.2 cancelling the offer letter dated 08.01.2018, Annexure P/2, for his appointment on the post of Assistant Sub Inspector(ASI) in Central Industrial Security Force(CISF). He has also impugned an administrative order dated 18.03.2019 (Annexure P-14) informing him that the offer of appointment was valid only for maximum period of six months from the date of issue of the original offer of appointment and that in case of failure to join duty within stipulated time,

the offer would lapse automatically. A *mandamus* has also been sought to revive the appointment of the petitioner and during pendency of the writ petition to restrain the respondents from appointing any other person on the post on which the petitioner was given appointment.

2. The case of the petitioner, in nutshell, is as under :

Pursuant to an employment notice dated 09.01.2016, Annexure P/1, for filling the posts of Sub Inspectors in Delhi Police and Assistant Sub Inspectors in CISF through Staff Selection Commission, petitioner applied and competed in the examination. He was declared successful and thereafter also cleared the physical endurance and medical tests. Till December, 2017 the final outcome of the selection process was not made public. All of a sudden on 20.01.2018, petitioner received a letter dated 08.01.2018 from respondent No.2 vide which provisional offer of appointment as ASI in CISF was given to the petitioner and he was asked to report by 10.02.2018 at the CISF Regional Training Centre, Arakkonam, District Vellore (Tamilnadu). It is averred that the then employer of the petitioner had refused to relieve him without serving and completion of period of the notice of resignation or in the alternative on pain of forfeiture of his salary and security bond. Constrained with financial hardship, the petitioner sent a letter dated 09.02.2018 to respondent No.2 and sought extension in the date of joining. Per petitioner, no reply of his request was received.

On 23.04.2018 petitioner received call up notice dated 13.04.2018 to attend the training of ASI (Exe) and was asked to report by 23.04.2018 i.e. the same date on which the petitioner received the letter. He tried to contact at the place of training in Tamil Nadu but could not succeed. Hence, the petitioner sent an email and letter dated 23.04.2018 and requested respondent No.2 to change his date of training as the petitioner had also to appear in the examination of

Himachal Pradesh Police scheduled to be held on 20.05.2018. According to petitioner, his this request also remained unanswered.

In July, 2018, the petitioner fell ill, was diagnosed with dengue and advised bed rest by the attending doctor. Suddenly, on 06.07.2018 in the evening petitioner again received notice dated 30.06.2018 whereby he was directed to report for training on or before 07.07.2018 at the CISF Regional Training Centre, Arakkonam, District Vellore (Tamilnadu). It was mentioned therein that the letter of appointment would be valid for six months from the date of first offer and would lapse as per letter dated 09.08.1995 of the Department of Personnel & Training (DoPT). Apart from paucity of time, at that time, the petitioner was indisposed and was having extreme weakness. In the circumstances, he immediately sent email as also a letter dated 07.07.2018 again requesting respondent No.2 to change his training schedule. However, in October- 2018, much to his chagrin, the petitioner was shocked to know that vide order dated 28.08.2018, Annexure P/10, respondent No.2 cancelled his appointment. The petitioner submitted a representation dated 14.12.2018 before respondent No.2 which did not fetch any response.

The petitioner earlier filed CWP No. 2053 of 2019 challenging the order of cancellation of his appointment. The said writ petition was disposed of by this Court vide order dated 25.02.2019 Annexure P/13 with a direction to respondents to pass a speaking order taking into account the averments of representation dated 14.12.2018, *ibid.* .

Pursuant thereto, respondent No.2 passed the impugned order dated 18.03.2019 Annexure P/14 informing the petitioner that in terms of DoPT memo dated 09.08.1995 the offer of appointment was valid for a maximum period of six months from the date of issue of the original offer of appointment. Earlier decision dated 28.08.2018 Annexure P/10 for cancellation of his appointment was reiterated. Hence the instant petition.

3. Respondent No.2 filed reply contesting the writ petition. Relevant averments are that the petitioner was given provisional offer of appointment dated 08.01.2018 on the post of ASI in CISF with a direction to report for basic training at RTC Arakkonam (Tamil Nadu) with effect from 12.02.2018, which he did not. However, at his request, the petitioner was granted extension time and again, but he failed to report for basic training till 07.07.2018. As a result, his offer of appointment was cancelled on expiry of period of six months from the date of first offer of appointment in view of the DoPT memo dated 09.08.1995. It is pleaded that petitioner's plea of delay in receipt of letters is a lame excuse as every time the letters were not only sent through Postal Department, but the petitioner was also made aware of the developments through electronic mode by emails and calling him on his mobile phone. He failed to join duty on the specified date. Hence, his appointment was rightly cancelled vide order dated 28.08.2018, which was reiterated vide order dated 18.03.2019. Hence, dismissal of writ petition has been sought.
4. Petitioner filed a rejoinder affidavit to the respondents counter/reply and reiterated his case.
5. I have heard learned counsel for the parties and with their able assistance have gone through the record of the case.
6. It emerges from record that letter dated 30.06.2018 Annexure P/8 was issued by the Commandant/Administrator, CISF RTC Arakkonam Post Suraksha Campus, Thakkolam, Distt. Vellore (respondent No. 2) directing the petitioner to report at the said place [CISF RTC Arakkonam Post Suraksha Campus, Thakkolam, Distt. Vellore (Tamilnadu)] latest by 07.07.2018, failing which his appointment would lapse. However, the petitioner did not report there on that date and submitted letter dated

07.07.2018 Annexure P/9 requesting for change of his training schedule to a further batch. The respondents treated this as lapse of the offer and cancelled the petitioner's appointment.

7. Mr. Vikram Singh Chahal, Learned counsel for the petitioner argued that though the petitioner was very keen and anxious for the job, yet he could not join duty on specified dates owing to circumstances and difficulties beyond his control. Elaborating his contention, he submitted that there were extremely short intervals between the receipt of relevant communications and the specified dates of joining compounded by the location of poorly connected and far flung village of the petitioner in the hills of Himachal Pradesh in North India, entailing very long journey time for joining duty at CISF RTC Arakkonam Post Suraksha Campus, Thakkolam, Distt. Vellore(Tamilnadu) in South India and also because of the petitioner's own illness and family problems. In such circumstances, the cancellation of offer of his appointment was an arbitrary and illegal act on the part of respondent No. 2. Learned counsel for the petitioner is fair enough to apprise the Court that by now the petitioner has crossed the maximum age limit for fresh appointment to the post in question. However, he submitted that this cannot not be made a ground for taking away the life time opportunity already offered to the petitioner. Particularly, when his age would be a similar hurdle in future and forever deprive him an opportunity to apply for employment elsewhere in most of the situations.
8. Per contra, Shri Umesh P. Wadhwani, learned counsel for respondent Union of India contended that petitioner had been given sufficient time and opportunity but he had been putting up lame excuses and failed to join duty as required; he himself was at fault and the offer of his appointment was rightly cancelled/treated lapsed. It was also contended that the current

Recruitment Rules now do not permit direct recruitment on the post of ASI in CISF and that the petitioner cannot be appointed at this stage being over-age.

9. Learned counsel for the petitioner, in order to rebut these contentions, submitted that the petitioner's case is to be decided as per applicable Rules and the position prevailing on the date of initial offer of his appointment. The rights which had already accrued on that date could not be taken away by subsequent change of policy.
10. Following questions arise for determination in the case:
 - i) Whether in the facts and circumstances of the case, respondent No. 2 rightly and justifiably cancelled the offer of petitioner's appointment ?
 - ii) Whether supervening event of crossing of maximum age limit ought to be invoked to deny relief to the petitioner ?
 - iii) Whether the petitioner ought to be denied relief because of the changed Recruitment Rules which now do not provide for fresh direct recruitment on the post of ASI in CISF ?
11. As stated above, letter dated 30.06.2018 Annexure P/8 was issued by respondent No. 2 directing the petitioner to report for duty latest by 07.07.2018, This letter implies that up to 07.07.2018, the respondents had treated the offer of the petitioner's appointment as subsisting and intact. It would mean that they had thus accepted the reasons put forward by the petitioner for his inability to join duty before 07.07.2018. It is, therefore, not necessary for this Court to go into the reasons for the petitioner's not reporting for training before 07.07.2018.
12. Adverting now to the letter dated 30.06.2018 Annexure P/8, directing the petitioner to report for duty latest by 07.07.2018, the respondents claim that the said call up notice was sent to the petitioner at his home address by speed

post; its copy was also sent to him through his personal e-mail address on 30.06.2018 itself and the same was found delivered to him on the same day. Further, the petitioner was also informed over his mobile phone on 30.06.2018 to report for duty at RTC Arakkonam on or before 07.07.2018. On this material, learned counsel for the respondents contended that the petitioner had sufficient advance notice and yet he failed to join duty on 07.07.2018, as required.

13. Learned counsel for the petitioner submitted that this letter sent from Arakkonam, Distt. Vellore (Tamilnadu) by speed post was received by the petitioner only in the evening of 06.07.2018 at his remote and poorly connected village Kot, Tehsil Ghumarwin, Distt. Bilaspur (Himachal Pradesh). He argued that it was impracticable and impossible for the petitioner, after receiving the letter in the evening of 06.07.2018 to travel the long distance from his remote village in Himachal Pradesh so as to reach and join duty at CISF, RTC, Arakkonam, Distt. Vellore (Tamilnadu) on 07.07.2018. Thus, his inability to join duty at Arakkonam, Distt. Vellore (Tamilnadu) on 07.07.2018 was for reasons beyond the control of the petitioner and was attributable to the delay on the part of the respondents and/or the postal authorities. He referred to petitioner's affidavit deposing that he had received this letter only on 06.07.2018 evening. Learned counsel also submitted that the postal delays particularly qua the addressees in remote, poorly connected and far flung rural destinations in hilly areas are quite common. To buttress the contention, he referred to the instance of tracking report Annexure P/12 (colly), which shows that a speed post packet addressed to the petitioner was given to the post office by respondent No. 2 on 21.02.2019 but it was delivered to the petitioner only on 09.03.2019 i.e. after 15 days. Petitioner's affidavit is to the effect that he is not much of a tech savvy person; that he did not have

knowledge of the e-mail; that it is very likely that the e-mail sent by respondent No. 2 went in the 'spam' box instead of 'inbox' and thus the email remained unnoticed. The petitioner has specifically denied that he received any telephone call from the Recruitment Centre informing of the date for joining duty.

14. Respondents have not disclosed on record nor did their learned counsel apprise the Court as to what technology/device/technique and method were used and with what result, for their conclusion and claim that e-mail dated 30.06.2018 was found actually delivered to the petitioner on the same day. It is also not shown who made the telephone call and informed the petitioner of the date for joining duty.
15. In these circumstances, I am not inclined to accept the respondents' stand to the effect that the e-mail dated 30.06.2018 stated to have been sent was actually received by the petitioner, let alone received by him on the same day, and that the petitioner was also informed over his mobile phone on 30.06.2018 to report for duty at RTC Arakkonam on or before 07.07.2018. On the other hand, there seems substance in the stand of the petitioner that he was not aware of the email dated 30.06.2018 and that he was not informed on telephone to report for duty at RTC Arakkonam on or before 07.07.2018. I am inclined to agree to the contention of the learned counsel for the petitioner that his inability to report for duty at RTC Arakkonam on or before 07.07.2018 as required in letter dated 30.06.2018 was for the reasons beyond his control and that the same is attributable to the respondents and/or postal delay. The petitioner cannot be penalized for the same.

16. Consequently, it has to be held that the cancellation of the offer of petitioner's appointment by respondent No. 2 was neither right nor just or fair. Question No. (i) is answered accordingly.
17. For the reasons stated earlier, the impugned order/letter dated 28.08.2018 Annexure P/10 passed by respondent No. 2 cancelling the offer of petitioner's appointment cannot be sustained in law and has to be set aside. Same has to be the fate of the impugned order dated 18.03.2019(Annexure P-14) vide which the petitioner was informed that the offer of appointment was valid only for maximum period of six months from the date of issue of the original offer of appointment and that in case of failure to join duty within stipulated time, the offer would lapse automatically.
18. It would mean revival of the original offer/letter of appointment dated 08.01.2018 Annexure P/2 for his appointment on the post of Assistant Sub Inspector(ASI) in Central Industrial Security Force(CISF). This being the position, I am of the view that the petitioner's case is required to proceeded further in accordance with the criteria/Rules which were in force at the time of issuance of the original offer of appointment dated 08.01.2018.
19. Admittedly, at the time of the issuance of the offer of appointment and even till its cancellation by respondent No. 2 vide letter dated 28.08.2018 Annexure P/10, the petitioner was within the prescribed age bracket and there was provision in the relevant Rules for direct recruitment to the post of ASI.
20. Even otherwise, in the circumstances of the case, the petitioner seems entitled to relaxation in the matter of upper age limit and the stated absence of provision in the changed recruitment rules, for direct recruitment of ASI.

21. There is nothing in the written reply filed by the respondents to the effect that the Recruitment Rules now in force do not permit direct recruitment on the post of ASI in CISF. It was only for the first time during arguments that that this contention was raised.
22. From the time of cancellation of his appointment, petitioner has been agitating against the said order and pursuing his claim. Firstly he approached the respondents with a representation. As they did not provide the relief, the petitioner filed the earlier CWP No. 2053 of 2019 writ petition in this Court, which was disposed of vide order dated 25.02.2019 Annexure P/13 directing the respondents to pass a speaking order taking into account the averments in the petitioner's representation dated 14.12.2018 and the contents of the said writ petition by treating it as a supplementary representation. Thereupon, the impugned order dated 18.03.2019 (Annexure P-14) was passed by respondent No. 2 informing the petitioner that the offer of appointment was valid only for maximum period of six months from the date of issue of the original offer of appointment and that in case of failure to join duty within stipulated time, the offer would lapse automatically. He then approached this Court second time by filing the instant writ petition. It seems that throughout the petitioner has been bona fide agitating for and duly pursuing his claim before the respondents and before this Court.
23. There seems merit in the submission of the learned counsel for the petitioner that he cannot be penalized for the wrongful act of respondent No. 2 for cancellation of the offer of appointment; refusal to restore the appointment and the time legitimately spent by the petitioner in pursuing his remedy before the respondents and in this Court as mentioned above.

24. Law as regards the crossing of age limit in such cases is no more *res integra*. It has been held time and again that becoming overage during pendency of the writ petition will not stand in appointment of the candidate. In case titled ***State of J&K v. Vijay Sharma (SC)*** [\(2005\) 13 SCC 403, the Apex Court clarified that](#) the candidates who had become over age, the age criterion shall not stand in the way of their appointment. Further in the case of ***Anuj Kumar Bharti vs National Book Trust and Another WP (C) No. 7767/2007*** ***decided*** on dated 01.07.2008, Learned Brother Anil Kumar, J. (as he then was) speaking for Delhi High Court held :-

“The petitioner was not over age at the time of his selection and his placement at serial no.2 in the select list/reserve list and during the life of the select list. Therefore, the offer of appointment cannot be denied to the petitioner for appointment to the post of Assistant Director (Production) with respondent No. 1 on this ground. In State of Jand K and Ors (Supra) relied on by the petitioner it was clarified by the Apex Court that in case any of the candidates becomes over age during the life of the select panel, such a reason would not stand in the way of their appointment”

“The petitioner without giving any reason, (sic) the eligibility of the petitioner has to be seen during that time. As the petitioner was not over age at that time, the appointment cannot be denied to the petitioner on this ground also.”

25. Likewise, in ***Manish Thakur v. Rajasthan Public Service Commission And Anr., reported as 2004(1) WLC(Raj.) 260 = RLW 2004(1) Raj. 220*** the Court held that if petitioners became overage during pendency of litigation, they are entitled to get age relaxation.
26. Thus, even if the present age of the petitioner is treated as the basis for revival of the initial appointment letter, still in the facts and circumstances of

the case, he would be entitled to relaxation of upper age limit. On the same

analogy, the petitioner would also get relaxation from the operation of changed recruitment rules which now do not provide for and are silent about direct recruitment of ASIs.

27. As a result, it is held that in the facts and circumstances of the case, the supervening events of crossing of maximum age limit and the change of relevant recruitment rules now not providing for direct recruitment of ASIs shall not stand in the way of the petitioner's entitlement to relief. Questions No. (ii) and (iii) are thus answered in the negative.
28. The petitioner has filed affidavit undertaking that he will not seek/ take any seniority benefit arising out of the initial appointment letter and that he would accept the seniority benefits from the date of joining the training batch by being lower most in the seniority of his selection list.
29. On a query of this Court, Shri Wadhvani, learned counsel for the Union of India sought instructions and informed that at present vacancies for ASI/Exe in CISF are still available with CISF.
30. In the circumstances, to my mind, the ends of justice would be met if the impugned orders dated 28.08.2018 Annexure P/2 and dated 18.03.2019(Annexure P-14) are set aside, thus reviving the initial appointment letter of the petitioner on the post of ASI (Exe) in CISF with direction to respondent No. 2 to give adequately advance notice to the petitioner to join duty and, in terms of petitioner's undertaking, directing that his seniority and other service benefits shall commence from the actual date of his joining duty.
31. Accordingly, the writ petition is disposed of with following directions:

- (a) Impugned orders dated 28.08.2018 Annexure P/2 and dated 18.03.2019(Annexure P-14) are set aside, thus reviving the initial appointment letter of the petitioner on the post of ASI(Exe) in CISF ;
- (b) Respondent No.2 is directed to give adequately advance fresh notice to the petitioner to join duty/training; .
- (c) The petitioner's seniority and other service benefits shall commence from the actual date of his joining duty.
32. Needful as at (b) shall be done within two months from the date of uploading of this order on the website of the Court.
33. Pending applications, if any, also stand disposed of.

(ARUN MONGA)
JUDGE

August 14, 2020
Jiten

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No