

Before Tejinder Singh Dhindsa, J.

DHIRENDRA CHHETRI—Petitioner

versus

UNION OF INDIA AND OTHERS—Respondents

CWP No. 20667 of 2012

July 2, 2013

Constitution of India, 1950 - Art. 14, 16 & 226 - Petitioner serving as Junior Engineer with General Reserve Engineer Force (GREF), which is a Border Roads Organization - Petitioner selected as Junior Engineer and asked for a "No Objection Certificate" from GREF - "No Objection Certificate" refused relying on policy dt. 21.5.2010 wherein ban imposed on forwarding applications for outside employment because of shortage of manpower - Petitioner had applied for the post advertised by the Uttarakhand Govt. directly, and the Public Service Commission had permitted him to participate in the selection process - Held, ban on outside employment not without basis as constructing border roads is a sovereign function connected with the security of the State - Decision to impose ban within the domain of the executive - Writ petition dismissed.

Held, that the petitioner has been selected for the post of Junior Engineer (Civil) in the State of Uttarakhand. Instead of putting in his papers

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- (2) 2002(1) RCR (Civil) 489
 - (3) 1984 RRR 432
 - (4) 2003(4) RCR (Civil) 812

with the present employer, the petitioner is insisting on the issuance of the 'No Objection Certificate' from the respondent authorities to facilitate his joining on an equivalent post in his own State for the apparent reason that his claim for admissible benefits in relation to his past service would then survive. The 'No Objection' sought for has been declined by the respondent authorities vide order dated 3.12.2010 in the light of policy dated 21.5.2010. A conjoint reading thereof would clarify that the GRIEF Organization keeping in view the deficiency of manpower has taken a decision to impose a ban on forwarding of applications for outside employment. It has been recited in the impugned order to the following effect:

"Whereas the Border Roads Organization is facing huge shortage of manpower particularly in the grade of Junior Engineer (Civil) while there is a huge target of constructing Roads and Bridges in Border Area particularly on Indo-China border axis."

(Para 7)

Further held, that the decision to ban outside employment in the light of policy dated 21.5.2010, Annexure P3, cannot be construed to be without basis. Such decision would fall within the ambit of policy making which would lie exclusively within the domain of the executive. The scope of judicial review in such matters would be minimal. The petitioner has not been able to make out a case that the policy dated 21.5.2010 is based on extraneous reasons or that such policy lacks any objective.

(Para 8)

Further held, that there is yet another aspect which would hold this Court back from interfering in the matter. GRIEF is a Border Roads Organization. It is engaged in sovereign functions in the nature of construction of roads and bridges in the border areas. The policy dated 21.5.2010 at Annexure P3 relates to the Organizational requirements and which is directly related to the security of the Nation. In such circumstances, this Court in exercise of its writ jurisdiction would not issue directions to a para-military force to issue a 'No Objection Certificate' to an employee which would run counter to a policy decision taken in the interest of the security of the nation.

(Para 9)

R.D. Bawa, Advocate, *for the petitioner*.

D.S. Bishnoi, counsel for the respondents.

TEJINDER SINGH DHINDSA, J.

(1) The petitioner, who is serving on the post of Junior Engineer (Civil) with the General Reserve Engineer Force (for short 'GREF'), has filed the instant writ petition impugning the order dated 3.10.2012, Annexure P14, whereby the respondent- Authorities have declined his request for issuance of 'No Objection Certificate' to join the equivalent post of Junior Engineer (Civil) in Payjal Nigam, Utrakhand. Further challenge is to the policy dated 21.5.2010, Annexure P3, whereby a ban on outside employment has been imposed and in the light of which the impugned order dated 3.10.2012, Annexure P14, has been passed.

(2) Brief facts of the case are that the petitioner is serving with the GREF which is a Border Roads Organization. The petitioner who hails from the State of Utrakhand qualified the three years diploma in Civil Engineering from the Board of Technical Education (UP) in the year 1995. He was selected and appointed on the post of Overseer in GREF on 9.12.1998. The post of Overseer stands re-designated as Junior Engineer (Civil). The Utrakhand Public Service Commission advertised 60 posts of Junior Engineers (Civil) in the Department of Payjal Nigam Dehradun, Utrakhand. The petitioner applied for the same in terms of routing one application to his Department as also submitting another application directly to the Utrakhand Public Service Commission. The Commission acting upon the application that had been submitted directly by the petitioner, permitted him to participate in the selection process and in the final select list, the petitioner has been shown to have been selected for the post of Junior Engineer (Civil) in Utrakhand.

(3) It has been submitted that the petitioner submitted an application dated 11.6.2012 for issuance of a 'No Objection Certificate' to his present employer i.e. GREF to facilitate his joining on the post of Junior Engineer (Civil) in the Utrakhand State. As the requisite 'No Objection Certificate' was not forthcoming, the petitioner filed Civil Writ Petition No.18013 of 2012 in this Court and the same was disposed of vide order dated 13.9.2012 with a direction to the Director General Border Roads Organization to consider and take a final decision as regards issuance of 'No Objection Certificate' to the petitioner. It is in the light of such factual backdrop that

the impugned order dated 3.10.2012, Annexure P14, has been passed by the Director General Border Roads Organization declining the issuance of 'No Objection Certificate'.

(4) Mr.RD Bawa, learned counsel appearing for the petitioner, would vehemently argue that the action of the respondent-authorities in citing the reason of deficiency of manpower in the Border Roads Organization to decline 'No Objection Certificate' to the petitioner is arbitrary. It has been argued that the petitioner cannot be made to suffer on account of the failure of the respondent-Department in not having filled up the posts as and when required. It has further been submitted that the petitioner has a fundamental right to serve in any Department and anywhere in the country and such right seeking employment outside the present Organization cannot be curbed and curtailed in terms of denial of a 'No Objection Certificate'. It is on such grounds that a prayer for quashing of the policy dated 21.5.2010, Annexure P3, imposing of ban on outside employment has been raised. Still further, a plea of discrimination has been raised by citing the instance of Bhola Prasad holding the rank of Supdt. BR-I who had been granted the requisite 'No Objection Certificate' to join a post outside the Organization. Accordingly, it is submitted that the action of the respondent-authorities is discriminatory and violative of Articles 14 and 16 of the Constitution of India.

(5) Per contra, Mr.DS Bishnoi, learned counsel appearing for the respondents, would refer to the joint written statement filed and would submit that the petitioner had applied for the post of Junior Engineer (Civil) without obtaining prior permission from the respondent-Department. Learned counsel would further submit that the respondent-Department is facing a shortage of manpower, more so in the subordinate category and, accordingly, a ban has been imposed in forwarding applications on outside employment in the light of policy dated 21.5.2010 and such ban is to continue in force till the manpower situation improves. Learned counsel would submit that the petitioner does not have a vested right as regards issuance of 'No Objection Certificate' is concerned and it would always be open for the petitioner to resign from the Organization to avail of an employment avenue in his home State.

(6) Having heard learned counsel for the parties at length and having perused the pleadings on record, I am of the considered view that no interference in this matter would be called for at the hands of a writ court.

(7) The petitioner has been selected for the post of Junior Engineer (Civil) in the State of Uttarakhand. Instead of putting in his papers with the present employer, the petitioner is insisting on the issuance of the 'No Objection Certificate' from the respondent authorities to facilitate his joining on an equivalent post in his own State for the apparent reason that his claim for admissible benefits in relation to his past service would then survive. The 'No Objection' sought for has been declined by the respondent authorities vide order dated 3.12.2010 in the light of policy dated 21.5.2010. A conjoint reading thereof would clarify that the GREF Organization keeping in view the deficiency of manpower has taken a decision to impose a ban on forwarding of applications for outside employment. It has been recited in the impugned order to the following effect:

"Whereas the Border Roads Organization is facing huge shortage of manpower particularly in the grade of Junior Engineer (Civ) while there is a huge target of constructing Roads and Bridges in Border Area particularly on Indo-China border axis."

(8) The decision to ban outside employment in the light of policy dated 21.5.2010, Annexure P3, cannot be construed to be without basis. Such decision would fall within the ambit of policy making which would lie exclusively within the domain of the executive. The scope of judicial review in such matters would be minimal. The petitioner has not been able to make out a case that the policy dated 21.5.2010 is based on extraneous reasons or that such policy lacks any objective.

(9) There is yet another aspect which would hold this Court back from interfering in the matter. GREF is a Border Roads Organization. It is engaged in sovereign functions in the nature of construction of roads and bridges in the border areas. The policy dated 21.5.2010 at Annexure P3 relates to the Organizational requirements and which is directly related to the security of the Nation. In such circumstances, this Court in exercise of its writ jurisdiction would not issue directions to a para-military force to issue a 'No Objection Certificate' to an employee which would run counter to a policy decision taken in the interest of the security of the nation.

(10) Even the plea raised on behalf of the petitioner as regards discrimination is without any force. Such action has been justified in the light of the averments made in the written statement wherein it has been stated that Bhola Prasad while holding a lower post had applied for the post of Junior Engineer (Civil) in the Irrigation Department, whereas the petitioner was seeking 'No Objection Certificate' to join on an equivalent post outside the Organization. Ostensibly, an exception has been carved out only in case of employees as regards issuance of 'No Objection Certificate' wherein such employees would stand to gain by joining on a higher post. The case of the petitioner, admittedly, is on a different footing.

(11) For the reasons recorded above, I find no merit in the instant writ petition and the same is, accordingly, dismissed.

P.S. Bajwa