

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 7th July 2011.

+ W.P.(C) No. 1390/2011

VINAY SHARMA Petitioner

Through: Mrs.Rekha Palli, Advocate &
Ms.Amrita Prakash, Advocate

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr.B.V. Nilen, Advocate & Mr.Ashish
Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J (Oral)

1. Heard learned counsel for the parties. Selected as Constable with CISF and joining the force in February, 2006, petitioner remained under training period till 5.9.2006. On successful completion of the training he was deputed to the 1st Reserve Battalion CISF station at Barwaha where the petitioner joined on 8.9.2006.

2. It is apparent that the petitioner started working on 8.9.2006 and his work could be appraised only thereafter.

3. Petitioner worked at Barwaha till 18.11.2006, when he was posted to the CISF unit at Kirandul where petitioner joined on 21.11.2006.

4. One Inspector J.S. Rana was already deputed at Kirandul w.e.f. 4.10.2006. He was the immediate superior officer of the petitioner and was the one who had to act as the reporting officer with respect to the ACR of the petitioner.

5. It may be noted that when the petitioner was at Barwaha, for the period 24.9.2006 till 3.10.2006, Inspector J.S.Rana was at Barwaha. We note that there is a dispute with regards the purpose of Inspector J.S.Rana being at Barwaha. Whereas petitioner states that he was there for some enquiry and not to look after the work of the Unit at Barwaha, respondents would urge to the contrary. We need not decide the said factual aspect for the reasons thereof would be self evident as we further pen our order: for the purpose of this decision we would take against the petitioner and in favour of the respondents by assuming that Inspector J.S.Rana had an occasion to supervise the working of the petitioner for the period 24.9.2006 till 3.10.2006 at Barwaha.

6. When petitioner reported at Kirandul on 21.11.2006, it is not in dispute that Inspector J.S.Rana was already working there but was away on temporary duty from 4.10.2006 till 21.11.2006.

7. Petitioner continued to work at Kirandul till 31.12.2006. The year for which the ACR had to be recorded was 1.1.2006 till

31.12.2006 and thus the necessity arose to pen profile the working of the petitioner and write his ACR.

8. It be highlighted by us that the petitioner had commenced first post in duty on 8.9.2006 and had worked till 31.12.2006. Out of this period, Inspector J.S.Rana could have appraised the petitioner after assessing his working only for the period 24.9.2006 till 3.10.2006 and thereafter from 21.11.2006 till 31.12.2006.

9. It is not in dispute that for the period 4.10.2006 till 21.11.2006 Inspector J.S. Rana was on a temporary duty at DEP-14, and petitioner joined at Kirandul on 21.11.2006.

10. Inspector J.S.Rana rated petitioner's performance as "AVERAGE".

11. For the three subsequent years, petitioner earned the ACR grading "GOOD".

12. The ACR grading for the period 8.9.2006 till 31.12.2006 had an adverse impact upon the further career progression of the petitioner.

13. Being eligible, petitioner took a Limited Departmental Competitive Examination in the year 2010 for the post of Sub-Inspector. Petitioner successfully cleared the competitive examination with marks high enough to place him at a merit position where he would be appointed as a Sub-Inspector. The petitioner cleared the medical examination but could not find letter of offer appointing him to the post of Sub-Inspector being issued inasmuch as the applicable rules requires that those who

clear the limited departmental competitive examination must have a service record: "GOOD".

14. From the facts noted hereinabove, it would be apparent that by the year 2010 came, four ACRs of the petitioner had been written. The first graded him "AVERAGE" and the remaining three successfully rated the petitioner "GOOD".

15. Instant writ petition has been filed by the petitioner *inter alia* urging that CISF, not having any office instructions on the subject, DOPT guide lines dated 22.5.1975 would be applicable and the same requires that the reporting officer should have been acquainted with the work of the official reported upon for at least 3 months during the period covered by the confidential report.

16. Petitioner would urge that 3 months equal 90 days and Inspector J.S.Rana should have an opportunity to acquaint himself with the work of the petitioner for at least 90 working days.

17. Petitioner highlights that at best, Inspector J.S.Rana could have acquainted himself with the work of petitioner for 10 days from 21.10.2006 till 31.10.2006 and thereafter for 31 days commencing from 21.11.2006 till 31.12.2006, i.e. in all 41 days.

18. Thus, in a nutshell petitioner questions the capacity of Inspector J.S.Rana, being not fully acquainted, to appraise the petitioner in view of the DOPT circular hereinabove noted.

19. Respondents would urge and for which reliance is placed on a circular dated 17.7.1989, as per which where the officer to be reported upon is on a temporary attachment duty for a period of upto 3 months, said period would not be deducted while arriving at the period to be computed, being 3 month's minimum

appraisal period required by the person appraising. The respondent would urge that the reverse would equally be true. If the person to appraise is away for a period of 90 days, the said period would not be required to be excluded.

20. Rules pertaining to procedures have to be read with reference to common sense and not pedantically. As in the instant case, the period which the petitioner has worked under Inspector J.S.Rana totals 41 days, we see no scope for discussion on the controversy with respect to whether Inspector J.S.Rana's temporarily attachment duty from 4.10.2006 was relevant. Our reasons for so holding is that on 4.10.2006, petitioner was not at Kirandul. The petitioner joined Kirandul only on 21.11.2006, this coincides with the date when Inspector J.S.Rana, who was Incharge at Kirandul, returned from temporary assignment at DEP-14, Kirandul.

21. That apart, in the judgment and order dated 8.10.2010, while disposing of W.P.(C) No. 5859/2010, 'UOI & Ors. Vs. Rajeev Bhargava', a Division Bench of this Court speaking through one of us: namely Pradeep Nandrajog, J, had referred to the literature on the subject pertaining to performance appraisal and with reference to the opinion expressed by Late Professor C.K.Prahlad an international renowned subject expert in the field of Human Resource Development and Performance Appraisals, had brought out the pit falls in short term performance appraisals.

22. In a nutshell, it was noted by this Court that late Professor C.K.Prahlad and other subject experts such as Professor Michael Porter have listed many flaws in short term appraisals, which were listed in the book "Human Resource Management" by P. Jyothi and Mr. D.N. Venkatesh, 1st Edition at page 249. One other

shortfall included a short term appraisal for the obvious reason it is extremely difficult to appraise a person's working capability by reviewing the work for an extremely short period of time.

23. It may be highlighted by us that the petitioner is a M.Com and except the teething period spent by him under Inspector J.S.Rana where he earned the appraisal "AVERAGE", petitioner has successfully earned the ACR grading "GOOD" for 3 continuous years.

24. In the circumstances, the peculiar facts of the instant case and as noted above, compel us to declare that for the purpose of looking at the service record of the petitioner, the short term appraisal for the period 8.9.2006 till 31.12.2006 should be ignored.

25. This would compel the respondent to take into account the petitioner's ACR grading only for 3 years and the service rules required 4 year's ACR grading be considered but since the first year's ACR grading is to be ignored and we have no further year to back upon, Doctrine of Necessity would compel the respondent to do as directed.

26. We may note that the service rule requires that the candidate must have a clean record and must have good ACR and unblemished record for last 4 years. We highlight that the rule does not require that for 4 last consecutive years, the ACR grading should be "GOOD". The service rule simply requires the candidate to be having good and unblemished record for last 4 years.

27. In the facts noted above and for the peculiar circumstances noted hereinabove, we dispose of the writ petition issuing a mandamus to the respondents to offer letter of appointment to the petitioner for the post of Sub-Inspector. Petitioner would be entitled to all consequential benefits including seniority as per merit position obtained, except actual back wages for the post in question.

28. No costs.

29. *Dasti.*

PRADEEP NANDRAJOG, J.

SUNIL GAUR, J.

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