

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

+ **WP(C) No.2627/2011 & CM No.5607/2011**

% **Date of Decision: 24.11.2011**

SI/RO Avdesh Puri Petitioner

Through Mr.Suman Doval, Advocate

Versus

Union of India & Ors. Respondents

Through Mr.D.S.Mahendru, Senior Govt. Counsel

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers may be allowed to see the judgment?; | YES |
| 2. | To be referred to the Reporters or not?; and | YES |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner has challenged the order dated 15th December, 2010, whereby a General Force Court (GFC) was convened and the petitioner was directed to submit three names from the Bn./Sector of the Special Frontier for appointment of any one of them as the defending officer or in case the petitioner was willing to engage a lawyer to represent him in GFC, then the same was allowed as well. It was also stipulated that the date of GFC would be informed to the petitioner by the Special Frontier Headquarter, ITBP. The petitioner also sought an

appropriate writ order or direction against the respondents directing them to act on their promotion letter dated 30th April, 2009.

2. The petitioner contended that he had joined the Indo Tibet Border Police (ITBP) as Head Constable/RO in the year 1983 and on 30th April, 2009 he was given a letter of promotion to the rank of Inspector. According to the petitioner, on account of the disciplinary proceedings pending against him, he has not been conferred the rank of Inspector and he is still working in the rank of Sub Inspector/Radio Operator (SI/RO).

3. The petitioner contended that one Ramesh Chandra alongwith one Kulshetra on 18th February, 2009 had complained against him alleging that despite having four children, the petitioner is enjoying the benefits of the Family Planning allowance on the basis of the false documents submitted by him and that the mark sheet of the Matriculation/11th Class of the petitioner is also forged.

4. On the complaint against the petitioner, a memorandum dated 20th February, 2009 was issued which was replied to by the petitioner by reply dated 23rd February, 2009.

5. According to the petitioner, he had pleaded guilty during his summary trial and, therefore, the sentence of forfeiture of seniority for

the purpose of promotion for a period of one year was awarded to him on 2nd September, 2009. The sentence was imposed on the petitioner under Section 58 of the ITBPF Act, 1992. The petitioner was also sentenced with recovery of benefit of one special increment drawn under the small family norms w.e.f. 27th March, 1991 to 2nd September, 2009.

6. According to the petitioner, he was issued a memorandum dated 25th February, 2010 along with a charge sheet, which contained four specific charges against him. The charges made against the petitioner were that he had signed a document knowing that the document contained false statements; that he claimed monetary benefit under the small family norms with the intent to cause wrongful gain to himself; that he claimed LTC in respect of family members with intent to cause wrongful gain to himself and at the time of enrollment he willfully gave false answers to a question set forth in the prescribed forms of enrollment, which was put to him by the enrolling officer before whom he appeared for the purpose of being enrolled. According to the petitioner, he had appeared for summary trial on 16th August, 2010, however, on the said date the Competent Authority did not assemble and he was informed by the staff that since the petitioner had already been punished vide order dated 2nd September, 2009 no additional orders under Section 58 was required. Thereafter, the two rounds of Record of Evidence had culminated into the order under Section 58 on

2nd September, 2009 and no order on 16th August, 2010 the petitioner received yet another memorandum dated 15th December, 2010 whereby the General Force Court Martial was directed to be convened against the petitioner. Against the said memorandum the petitioner made a representation dated 3rd January, 2011 to the Director General, ITBP through the proper channel requesting that the proceedings be dropped against him. Meanwhile, the petitioner had also challenged the said memorandum before this Court under its writ jurisdiction, however, he withdrew the same with the liberty to file a fresh petition which was recorded by order dated 4th February, 2011. In response to the representation of the petitioner dated 3rd January, 2011 the Inspector General had replied by communication dated 7th March, 2011 that the previous summary proceedings which culminated in the punishment order dated 2nd September, 2009 had been set aside by order dated 23rd November, 2009 on account of procedural errors. Therefore, the petitioner was tried again on the fresh chargesheet on 25th October, 2010, pursuant to which the Record of Evidence submitted its report by the letter dated 9th September, 2010 wherein sufficient evidence was found on the charges framed against the petitioner. Therefore, the petitioner filed the present writ petition requesting that the memorandum dated 15th December, 2010 be quashed. Meanwhile, the petitioner had appeared for the Summary Trial held on 26th May, 2011 and by order dated 1st June, 2011 he was imposed the punishment under Section 58(2)(a) and (c) of the ITB Police Force Act and Rules,

1992. The punishment of forfeiture of seniority for the purpose of promotion for a period of one year and the punishment of recovery of all the benefits/special increment drawn on account of small family norms from 27th March, 1991 till the date of penal deductions was imposed on him.

7. The learned counsel for the respondents on the basis of the reply filed on 12th July, 2011 has contended that the summary trial proceedings conducted earlier against the petitioner was set aside by order dated 23rd November, 2009 on the ground of procedural error. It was, therefore, contended that the petitioner could be tried again and that it would not amount to a de-novo trial. Pursuant to the said order, a fresh charge sheet dated 25th February, 2010 containing four charges was issued against the petitioner. The ROE proceedings were conducted and by letter dated 9th September, 2010 recommendation for holding the General Force Court was made against the petitioner. It is pleaded by the respondents that during the scrutiny by the ROE, sufficient evidence was found against the petitioner on the first and second charge, however, evidence on the fourth charge was found to be insufficient and no evidence was found on the third charge. Thereafter, memorandum dated 15th December, 2010 was issued regarding the convening of the General Force Court trial, however, later on, considering the length of service of the petitioner and the nature of first and second charge, the petitioner was tried summarily on 26th May,

2011 wherein the petitioner pleaded guilty to the two charges and the punishment was imposed which was communicated by order dated 1st June, 2011.

8. Learned counsel for the respondents contended that the General Force Court trial against the petitioner pursuant to the communication dated 15th December, 2010 was not held and rather the petitioner was, thereafter, tried summarily on 26th May, 2011.

9. On account of these facts and circumstances, the learned counsel for the petitioner on instructions does not press the relief of quashing and setting aside the communication dated 15th December, 2010 whereby according to the petitioner, the respondents had sought to convene a General Force Court against the petitioner.

10. The next prayer of the petitioner is to direct the respondents to act on their promotion letter dated 30th April, 2009. The petitioner in his writ petition has contended that he was given a letter dated 30th April, 2009 indicating that he has been promoted to the rank of Inspector. The petitioner, however, has not filed the copy of the letter dated 30th April, 2009.

11. In reply to the allegations made by the petitioner regarding his promotion to the rank of Inspector and communication of letter dated

30th April, 2009, the respondents in their counter affidavit dated 12th July, 2011 have contended that the promotion of the petitioner has been withheld on account of pendency of the disciplinary case. The respondents have also not produced the letter dated 30th April, 2009 or any other letter indicating that the petitioner has been promoted to the rank of Inspector.

12. Despite the specific and categorical pleading that the petitioner was communicated a letter dated 30th April, 2009 promoting him to the rank of Inspector, on the query by this Court as to why letter has not been produced, the learned counsel for the petitioner, Mr.Suman Doval, has contended that the petitioner was communicated orally that he has been promoted to the rank of Inspector by letter dated 30th April, 2009, though the said letter was never received by the petitioner.

13. This is not disputed that the petitioner was tried by the summary trial on 26th May, 2011 and that he has been awarded the punishment of forfeiture of seniority for the purpose of promotion for a period of one year. The said decision was also communicated by order dated 1st June, 2011. Therefore, the period of forfeiture of seniority has not yet expired.

14. In the circumstances, since the penalty of forfeiture of seniority for the purpose of promotion for a period of one year has been imposed

on the petitioner, which period has not expired, the petitioner is not entitled for promotion during the said period of one year from the date of the punishment, i.e. 26th May, 2011. Consequently, the petitioner is not entitled for promotion up till 25th May, 2011. Nothing has been produced by the petitioner to show as to what were the terms and conditions for the promotion allegedly communicated to the petitioner by letter dated 30th April, 2009. The learned counsel for the petitioner has also taken contradictory stand, as in the petition it is contended that letter dated 30th April, 2009 regarding the petitioner's promotion to the rank of Inspector was communicated him, however, during the arguments the learned counsel contended that the petitioner was intimated orally that by the alleged letter the petitioner has been promoted to the rank of Inspector. In the absence of the copy of the said letter it cannot be ascertained as to on what terms and conditions the petitioner was promoted. The respondents have taken a categorical stand that the petitioner is not entitled for the promotion and that his promotion has been withheld on account of the punishment imposed on the petitioner. Learned counsel for the petitioner in the circumstances has not been able to substantiate the claim that the petitioner is entitled to promotion though he is undergoing the punishment of forfeiture of seniority for the purpose of promotion for a period of one year. Consequently, the petitioner is not entitled for the relief seeking directions to the respondents to promote the petitioner in terms of letter dated 30th April, 2009.

15. Considering the entirety of the facts and circumstances, the petitioner has failed to make out any case for the grant of any relief to him. The petitioner is not entitled for any promotion during the period of one year from 26th May, 2011 when the punishment of forfeiture of seniority for the purpose of promotion was awarded to the petitioner. The writ petition, therefore, in the facts and circumstances, is without any merit and it is, therefore, dismissed.

CM No.5607/2011

The order dated 26th April, 2011 pertaining to the above application directing that the petitioner to be not tried at the General Security Force Court pursuant to the memorandum dated 15th December, 2010 is vacated. In any case, the respondents themselves have decided not to convene the General Security Force Court, and the petitioner has also not pressed his claim of quashing the memorandum dated 15th December, 2010 since he has already been tried summarily by the respondents on 26th May, 2011.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

November 24, 2011.

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