

GAHC030000322018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/36/2018

85077619 HC/GD Lalhmunmawia
Zemabawk, Aizawl

VERSUS

Union of India and 3 Ors
New Delhi

Advocate for the Petitioner : Mr C Lalramzauva Sr. Adv

Advocate for the Respondent : Ms Zairemsangpuii (CGC)

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

JUDGEMENT

Date : 10.03.2023

Heard Mr. A.R. Malhotra, learned counsel for the petitioner and Ms. Zairemsangpuii, learned CGC for all the respondents.

[2.] By filing this writ petition, the petitioner has challenged Signal No. P.VII.99/2012-Estt(6/2011) dated 14.08.2014 (Annexure-6 A) by which his promotion from Head Constable/General Duty (HC/GD) to Assistant Sub-Inspector [ASI (GD)]

along with others mentioned in the Signal was cancelled and the petitioner has prayed for a direction to the respondents to promote him to ASI (GD) with effect from 22.05.2012 in accordance with letter No. PVII.99/2012-Estt(6)/2011 dated 22.05.2012 (Annexure II of the counter affidavit dated 02.09.2022).

[3.] The case of the petitioner in brief is that he was appointed as a Constable in the Central Reserve Police Force (CRPF) in the year 1985 and was promoted to the rank of HC (GD) in the year 2003. As many as 12476 HC GDs were brought on Special 'A' List and they were assigned Force Seniority Serial (FSS) Numbers. The name of the petitioner is listed at Serial No. 4521 with his FSS number as 5146. All HC/GD whose names were included in the list were promoted to the rank of ASI GD vide letter dated 22.05.2016 (Annexure - 2). In spite of his inclusion in the 'A' List, the petitioner was not promoted. He was found to be suffering from Brain Tumor/Cancer and as per the Medical Board proceeding Part-I, the petitioner was categorized as P3 (P) with effect from 26.12.2013. Since then, the petitioner had sufficiently recovered from his illness and the Medical Board found him to be at the Stage of P2 from P3 (P) on 02.01.2016 and he was found fit for civil employment. However, the respondent Nos. 1 to 4 vide the impugned Signal dated 14.08.2014 cancelled his promotion from HC (GD) to ASI (GD). Further, the petitioner was given the benefit of ACP Scheme, 2009 for the month of September, 2016 but the same was wrongly withdrawn in the month of October, 2016. Although he submitted an application dated 03.12.2016 for continuation of the benefit ACP Scheme to him but as no response has been received, the petitioner is

before this Court.

[4.] Mr. A.R. Malhotra, learned counsel for the petitioner by referring to the Special Approved List dated 22.05.2012 annexed to the counter affidavit dated 02.09.2022 submits that the petitioner along with others indicated in the List were to be released on promotion as ASI (GD) and allotted to zones as mentioned against each of the names of the individuals in the List. As per the Special List, the notional date of meeting the eligibility criteria was 01.06.2011 and the name of the petitioner appeared against Serial No. 4521 with FSS No. 5146. By further referring to Paragraph No. 5 of the counter affidavit of the respondents dated 02.09.2022, Mr. A.R. Malhotra, learned counsel submit that the petitioner was found to be in SHAPE-I medical category during AME, 2011. Accordingly, he was brought on Approved List while being posted in the 1st Bn. CRPF. As per the Special Approved List dated 22.05.2012, the petitioner was allotted to Central Zone and further sub-allotted to Eastern Sector. Thereafter, vide Signal dated 16.07.2012, the petitioner was sub-allotted to Durgapur Range where he was asked the Unit of his choice. The petitioner expressed his desire to be posted in the 1st Bn. CRPF, which was stationed in Mizoram as he hails from Mizoram and as such, he was allowed to be retained in the 1st Bn. CRPF for another year. Subsequently, he was further allotted to 165 Bn. CRPF as per Signal dated 01.11.2012. However, the petitioner's promotion to ASI (GD) was cancelled vide Signal dated 14.08.2014 since the medical category of the petitioner became P3 (P) from P1

as on 26.12.2013.

[5.] Mr. A.R. Malhotra, learned counsel submits that according to the respondents, the promotion of the petitioner was cancelled as per paragraph No. 17 of the Standing Order No. 1/2015 dated 12.03.2015, which provides that the personnel who fail to keep up the required standard of efficiency may be removed from respective Approved List. As such, the name of the petitioner along with others mentioned in the Signal dated 14.08.2014 were removed from the Approved List by cancelling their allotment of promotion. He however submits that the Standing Order No. 1/2015 was issued on 12.03.2015 and therefore, the same cannot be the ground for cancelling the promotion of the petitioner earlier in time i.e., vide Signal dated 14.08.2014, even before the Standing Order was issued. He further submits that even if the respondents are to apply the Standing Order No. 6/1999, which was issued on 23.04.1999, there is nothing in the said Standing Order which provides that the personnel should keep up the required standard of efficiency or they will be removed from the respective Approved List. Therefore, the Standing Order No. 6/1999 does not have any application to the case of the petitioner as well.

[6.] Mr. A.R. Malhotra, learned counsel also submits that the petitioner was already released on promotion vide Communication dated 22.05.2014 and that the Approved List having been exhausted, the petitioner cannot be removed in the manner it was done vide the Signal dated 14.08.2014. Under the circumstance, Mr. A.R. Malhotra, learned counsel submits that the writ petition may be allowed, as

prayed for.

[7.] Ms. Zairemsangpuii, learned CGC on the other hand submits that the petitioner did not have the medical condition to be promoted since he was medically categorized as P3 on 26.12.2013. By referring to the Special Approved List dated 22.05.2012, the learned CGC submits that all the promotions were subject to the condition that the individuals are free from vigilance angle and no departmental enquiry/prosecutions of criminal charges was pending against them and that they are not undergoing punishment of withholding of increment etc,. It was therefore to be ensured that the personnel were free from vigilance angle and medically fit as per SO. 04/2008 before relieving them on promotion movement of personnel, which was to be completed within a month's time from the date of issue of the letter. The learned CGC by further referring to Standing Order No. 04/2008 at paragraph No. 4.13 submits that it was mandatory for the purpose of promotion for all combatised personnel to be in medical category of SHAPE-I and therefore, since the petitioner was not in SHAPE-I, his promotion had to be cancelled. She submits that as per the last Medical Board Report as on 02.01.2016, the petitioner was found to be in the medical category of P2 (P) and as such, he is not eligible to be promoted to ASI (GD). She further submits that the petitioner is otherwise already enjoying a pay scale which is at par or equivalent to the pay of SI (GD) through the ACP Scheme and therefore, the writ petition being without merit, the same should be dismissed.

[8.] I have heard the submissions made by the learned counsels for the rival

parties and I have perused the materials available on record. As may be noticed, the name of the petitioner figured in the Special Approved List, who were to be released on promotion from HC (GD) to ASI (GD) to the allotted zones as mentioned against their names. The petitioner's name is found at Serial No. 4521 and he was allotted Central Zone. The List has been issued on 22.05.2012 wherein, it is indicated that the promotions are subject to personnel being free from vigilance angle and medically fit as per SO. 04/2008. The notional date of meeting the eligibility criteria was given as 01.06.2011. It appears that the petitioner was further sub-allotted to Eastern Sector and thereafter, again sub-allotted to Durgapur Range. Before deciding his posting to Durgapur Range, the petitioner on being asked, he opted to be retained in the 1st Bn. CRPF which was within the State of Mizoram. The proposal for re-allotment within the Special Sector/Neemuch Range and his further allotment to 1st Bn. CRPF on promotion as ASI (GD) was forwarded to ES headquarters vide Signal dated 11.08.2012. Accordingly, the petitioner was allowed to be retained in 1st Bn. CRPF for another year and his transfer order deferred accordingly. Subsequently, he was further allotted to 165 Battalion on promotion as ASI (GD) vide DIG, Range Durgapur Signal dated 01.11.2012. After his sub-allotment to 165 Bn. CRPF, he could not be relieved due to the expiry of AME i.e., SHAPE – I as on 17.10.2011 as he was under medical treatment. On 10.09.2012, he petitioner went to the Unit Hospital of 1st Bn. CRPF on account of his illness and from where he was referred to Greenwood Hospital at Bawngkawn, Aizawl. From there he was further referred to CH CRPF, Guwahati on

18.09.2012 for Neurological opinion. CH CRPF in turn referred him to GNRC Hospital, Guwahati for further treatment where he was operated on 29.05.2012 and discharged on 10.01.2013 with an advice to have medical rest for 60 days. He was again admitted in CH CRPF, Guwahati with effect from 22.02.2013 to 01.03.2013 due to left CP angle tumor with obstructive hydrocephalus and DM-II. Review Medical Examination was conducted by the Medical Board of CH CRPF, Guwahati on 03.06.2013 where he was medically categorized as P3. Thereafter, a review medical examination was conducted again by the Medical Board of CH CRPF, Guwahati on 24.12.2013 and he was medically categorized as P3 (P).

[9.] From the materials available on record, it is nowhere seen that the petitioner pursuant to the Special Approved List for release for promotion to ASI (GD) dated 22.05.2012 has joined in the promotional post. Having opted to remain in the 1st Bn. CRPF, permission was granted for his retention for 1 (one) year until he was sub-allotted to 165 Bn. CRPF. The Communication dated 22.05.2012 also provides that the Special Approved List for promotion is subject to the personnel being free from vigilance angle and medically fit as per SO. 04/2008. SO. 04/2008 at Clause 4.13 provides that medical category of SHAPE – I will be an essential condition for promotion of all combatised personnel in all groups/ranks/cadres in the Central Para Military Forces. The petitioner may have been in SHAPE – I as on 01.06.2011 i.e., the notional date of meeting the eligibility criteria but however, on account of the developments and uncertainty in the place of his posting, followed by his condition,

his medical category deteriorated and he came to be medically categorized as P3 by the Medical Board on 03.06.2013 and even after the review made by the Medical Board on 24.12.2013, he was found to be medically categorized as P3 (P). As a result, the allotment of promotion given to the petitioner as ASI (GD) was cancelled on 14.08.2014.

[10.] The decision as above in my considered view is only what logically followed on account of his medical condition. Issuance of a notice prior to the cancellation of the allotment of promotion would have been ideal but non-issuance of the same by itself is considered not sufficient for interfering with the impugned order as no prejudice is caused to him and in view of clause 4.13 of Standing Order No. 4 of 2008. Nowhere in the records available has it been revealed that the petitioner joined the post to which he was promoted i.e., ASI (GD). The petitioner belongs to the Central Para Military Force Organization, where fitness of the personnels is undoubtedly the paramount consideration for further promotion and even for retention in the service in view of the nature of the task assigned to the organization. Therefore, when there is no dispute to the fact that the medical category of the petitioner was P3 (P) as on 24.12.2013 and without any materials to show that he has achieved the medical category of SHAPE – I subsequently, the respondents in my view cannot be directed to promote him to the rank of ASI (GD) despite the shortcomings.

[11.] However, notwithstanding the above finding, it is provided herein that it would be incumbent upon the respondent authorities concerned to re-assess the

medical fitness of the petitioner in accordance with the relevant guidelines and upon such examination, if the petitioner is found to be fit for being promoted to perform duties including non-combat duty or civil employment, he should be promoted accordingly. Such an exercise should be carried out as expeditiously as possible and in any event, within a period of six (6) months from the date of receipt of a certified copy of this Order.

[12.] With the above observations and directions, the writ petition is disposed of.
No cost.

JUDGE

Comparing Assistant