

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

Date of Decision: 19.08.2015

+ WP (C) No.1359 of 2013

MAHABOOB KHAN Petitioner
Through: Mr. N.L. Bareja, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. S.S. Sejwal, Law Officer & SM/OS Mr.
R.K. Sharma, CRPF

+ WP (C) No.2757 of 2013

GIRRAJ PRASAD GURJAR Petitioner
Through: Mr. N.L. Bareja, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Jasmeet Singh, CGSC with Mr. S.S.
Sejwal, Law Officer & SM/OS Mr. R.K.
Sharma, CRPF

+ WP (C) No.354 of 2014

RAMBIR SINGH Petitioner
Through: Mr. N.L. Bareja, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. S.S. Sejwal, Law Officer & SM/OS Mr.
R.K. Sharma, CRPF

+ WP (C) No.1297 of 2014

YOGESH KUMAR Petitioner
Through: Mr. N.L. Bareja, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Ms. Barkha Babbar & Ms. Dipali Tyagi,
Advocates with Mr. S.S. Sejwal, Law
Officer & SM/OS Mr. R.K. Sharma, CRPF

+ WP (C) No.1803 of 2014

JAGDISH PRASAD JAT Petitioner
Through: Mr. N.L. Bareja, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Jasmeet Singh, CGSC with Mr. Rahul
Raj Malik, Advocate along with Mr. S.S.
Sejwal, Law Officer & SM/OS Mr. R.K.
Sharma, CRPF

+ WP (C) No.6183 of 2015

CT/GD SANDEEP Petitioner
Through: Mr. N.L. Bareja, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. S.S. Sejwal, Law Officer & SM/OS Mr.
R.K. Sharma, CRPF

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

The facts of all six writ petitions are nearly identical the minor differences have been listed in the table below. Since the question of law to be dealt with in all the petitions is the same, this common order shall dispose off each petition accordingly.

S. No.	Name	Date of Impugned Letter	Year of LDCE	Number of days of NQS & period	Post
1.	Mahaboob Khan	12.09.2012	2012	6 days from 30 th January till 4 th February, 2005	SI/GD
2.	Girraj Prasad Gurjar	20.09.2012	2012	15 days from 15.09.2005 to 29.09.2005	SI/GD
3.	Rambir Singh	28.06.2013	2013	(6+13) = 21 days from 03.12.2007 to 08.12.2007 and 22.11.2010 to 04.12.2010	SI/GD
4.	Yogesh Kumar	28.06.2013	2013	1 day on 04.08.2006	SI/GD
5.	Jagdish Prasad Jat	28.06.2013	2013	2 days from 21.05.2007 to 22.05.2007	SI/GD
6.	Sandeep	13.04.2015	2014	64 days	SI/GD

				from 23.08.2006 to 25.10.2006	
--	--	--	--	--	--

1. These writ petitions impugn the abovementioned letters, as listed in the third column whereby the petitioners' appointments to the post of SI/GD through their respective LDCE were rejected on account of them having Non Qualifying Service (NQS) as aforementioned which were treated as Dies Non.

2. The ground for rejection was that the petitioners had several days of Non Qualifying Service (NQS) as aforementioned. The petitioners otherwise were declared to be qualified on all other parameters. Furthermore, it is not in dispute that the said number of days of absence in each case were regularized by way of EOL. Since the petitioners had otherwise qualified in the said examination on all other parameters, they would have been appointed to the said posts of Sub Inspector (General Duty) in CRPF. However, due to the presence of NQS in their service records, their appointment was rejected.

4. It is the petitioners' case that they were never informed about the entries/endorsements of the said number of days of NQS in their service records, which if intimated to them earlier at the relevant time would have caused them to take remedial measures to ensure that apart from the same having been regularised, it would not have become NQS. It is submitted that the petitioners would have instead not availed their other leaves. It is further contended that the entries/endorsements of the said number of days of NQS in their service records is in breach of Rule 32 of the CRPF Rules,

1955.

5. According to the policy applicable to the petitioners, any entry of the above nature, i.e., absence without leave or even an entry of punishment in the service record of an individual during the recruit's training period, which is prior to administration of oath is not considered an adverse entry against the said individual in his subsequent career. The petitioners rely upon Habitual Offenders Policy dated 18th December, 1996, Clause (7) of which provides as under:

7. Punishment entries Not to be Counted. The following punishment entries are not to be counted for the purpose of declaring an Airmen / NC (E) Habitual Offender or Potential Habitual Offender necessitating issue of show cause notice or warning letter as the case may be:-

(a) Punishment entries incurred during ab-initio training period. The policy is hence forth applicable only after completion of ab-initio training.

(b) A Black Ink entry and NCs (E)."

6. It is further submitted that the endorsement of the said number of days of NQS was within very short time of their enrolment in the Force as well as prior to administration of oath, which evidently is done on the conclusion of basic training and receipt of satisfactory character/antecedents report from the civilian authorities. The petitioners were duly inducted into the force after administration of oath and meeting of all requisite formalities. Therefore, the said entries could not be considered as an impediment in their career prospects. It is submitted that the LDCE, 2012 and subsequent LDCEs were conducted under the Standing Order No. 01/2010 which was further amended by way of the Addendum/Amendment dated 11th October, 2011 and vide Signal dated 02.12.2011, which provided that the applicant

34

should have minimum good ACRs for the last four years and should have an unblemished service record immediately preceding four years.

7. The NQS referred to and relied upon by the respondents are for periods prior to the aforesaid Addendum/Amendment to the Standing Order. Therefore, assuming that the said period was to be treated as NQS, it would neither be applicable nor relevant under the aforesaid Addendum/Amendments to Standing Order No.1/2010. The said Addendum/Amendment reads as under:

Stage – I Checking of service records

No marks allotted for Stage-I. Applicant should have minimum Good ACRs of last four years and should have unblemished service record until the issue of offer of appointment. The Unit/GC/ office/ institution concerned will certify eligibility of each candidate applied for SI-LDCE and forward nomination along with this certificate to the concerned Sector conducting SI-LDCE.

8. It is further contended that since the entries have been made surreptitiously without notice to the petitioners, they would be of no consequence and they cannot be relied upon or taken into consideration as obstacles in the appointment of the petitioners to the post of Sub Inspector (GD).

9. Refuting the said arguments, the learned counsel for the respondents submits that the denial of appointment to the post of Sub Inspector (GD) was on the basis of the record which revealed that there were several number of days of NQS; that newly enlisted recruits were bound to attend roll call, evening marker, check roll call, etc. as a measure of discipline and to ensure that they may not desert from duties; that while undergoing basic

training, recruits have to adhere to a systematic procedure and that it was incorrect that the petitioners were dining in the B Mess of AWS.

10. After having heard the learned counsel for the parties, a query was put by the Court to the learned counsel for the respondents, whether the petitioners had been intimated of the said NQS entry in their service record and the answer was in negative.

11. This Court is of the view that putting a government servant at a disadvantage by an adverse entry in his service book without intimation to him would be against the principles of natural justice. It need not be re-emphasised that no punishment or adverse entry can be meted out to any person without first giving the person an opportunity to be heard.

12. In the present cases, the petitioners were never informed that certain periods of absence from work were treated as NQS. Although, it is claimed that they were very much within the AWS precincts and were dining in B Mess. Furthermore, the amended Standing Order requires consideration of only the immediately previous four years' ACRs and an unblemished service record, till the issue of appointment letter. It is not in dispute that the petitioners' last four years' ACRs immediately preceding the Limited Departmental Competitive Examination (LDCE) were good and they continued to have unblemished service records thereafter till the impugned letter of rejection, which actually should have been offer of appointment. Therefore, the entry of the aforementioned number of days as NQS is void and meaningless and is unsustainable in law. There being no impediment in the appointment of the petitioners to the posts of Sub Inspector (GD), they ought to be so appointed.

13. In view of the above, the writ petitions are allowed. The respondents

are directed to issue, within two months from today, letters of appointment to the petitioners to the post of Sub Inspector (GD) as per their respective order of merit in their respective LDCE. The petitioners shall be entitled to all benefits, as available to them in law. The petitions are disposed off in the above terms.



NAJMI WAZIRI, J.



KAILASH GAMBHIR, J.

AUGUST 19, 2015

acm