

\$~16 to 18

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

Decided on: 17.09.2015

+ **W.P.(C) 2181/2013**

A.M.PATHAN

..... Petitioner

versus

UNION OF INDIA AND ORS.

..... Respondents

+ **W.P.(C) 3244/2013**

MANOJ KUMAR

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

+ **W.P.(C) 6874/2013, C.M. NO.14898/2013**

DALSHER SINGH

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Through : Sh. N.L. Bareja, Advocate, for
petitioner in Item Nos. 16 and 17.

Sh. Rishi Kapoor and Ms. Manpreet Kaur,
Advocate, for petitioner in Item No.18.

Sh. Jasmeet Singh, CGSC with Ms. Astha Sharma,
Advocate, for UOI in Item Nos. 16 and 18.

Ct. G.B. Sahu, for CRPF/RAF in Item Nos. 16 and
18.

Sh. Rajesh Gogna, CGSC with Ms. L. Gangmei,
Advocate, in Item No.17.

Sh. B.K. Raut, Pairvi Officer, CRPF in Item Nos.
16 to 18.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioners are Constables in the Central Reserve Police Force

(CRPF) having been recruited on various dates. They seek directions that they should be considered for and promoted to the post of Sub-Inspector [hereafter referred to as “SI”]. It is contended that they successfully participated in the Limited Departmental Competitive Examination (LDCE) held for that purpose.

2. The admitted facts of the case are that sometime in January 2010, Standing Order No.1/2010 was issued by the CRPF outlining the eligibility conditions and criteria for its personnel who could compete for the LDCE – to the post of SI. The controversy involved in this case concerns the correct interpretation of the eligibility conditions with respect to the requisite past performance of the candidate. The relevant eligibility conditions, particularly (d) reads as follows:

“Eligibility Conditions:

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- a) Service Eligibility - They should have completed four years of service including basic training on the last date of application.*
- b) Upper age - The upper age limit for appearing in the LDCE will be 32 years as on 1st August.*
- c) Educational - Graduate from recognized university.*
- d) Clean record - They should have minimum Good ACRs of last four years and should have unblemished service records till the issue of offer of appointment.”*

3. It is not in dispute that all petitioners successfully participated and cleared the prescribed examination/test as well as the medical test conducted by the CRPF in accordance with the standards. However, the CRPF was of the opinion that they did not fulfil the eligibility condition, i.e. of

“unblemished service records”. In the case of all petitioners, the CRPF felt that the penalties imposed – of withholding of service benefits of period or periods of overstay as well as the imposition of pack drill or “punishment drill” [in W.P.(C) 2181/2013], severe censure [in W.P.(C) 3244/2013] and the punishment of confinement to lines for a month with the additional direction to punishment drill for 2 hours each day for the period of confinement [in W.P.(C) 6874/2013] rendered them ineligible for promotion.

4. It is contended on behalf of the petitioners that the circumstance of their overstaying could not have been used negatively against them to reject their candidature. They rely upon the decision in *Dhiraj Bhatt v. UOI and Ors.* [W.P.(C) 6738/2012, decided on 27.09.2013]. The contention here was that the petitioners were already inflicted with other deprivations such as loss of pay or loss of service benefits for the period of absence and in these circumstances giving effect to further penalty of punishment drill would be unwarranted given the fact that they had successfully competed in the LDCE. It is also contended additionally that the imposition of “pack drill” is not a recognized punishment. To say so, Rule 27 of the CRPF Rules, 1955 (hereafter “the Rules”) was relied upon by the writ petitioners.

5. The CRPF, on the other hand, contends that given the objectives of LDCE, condition (d) of the Eligibility Conditions, i.e. candidates possessing a clean and unblemished record, has to be construed strictly. It was emphasized here that the petitioners’ eligibility for normal line promotion in accordance with seniority would remain unaffected. However, if they were to be promoted out of turn, as it were, to a post rather higher than the promotional post, more exacting standards are to be fulfilled. Here it is

submitted that the petitioners in W.P.(C) 2181/2013 and W.P.(C)3244/2013, when imposed with the penalty of punishment drill (as the CRPF contends covers the expression “pack drill”) and the penalty of severe censure, there was no protest. It was submitted that the petitioners represented against the penalties only subsequently in the light of their rejection.

6. It is evident from the above discussion that there is not much controversy about the facts. The decision in *Dhiraj Bhatt (supra)* as we read it is confined to the question of justification of rejection of a candidate who holds himself out as an applicant for LDCE on the ground of his having overstayed from leave simpliciter. The Court felt that once such overstayal is dealt with administratively, the question of debarring or holding the candidate ineligible merely on that ground would not be justified. In this regard, the Court observed as follows:

“19. It is an admitted position that the respondents have treated the absence of the petitioner as bonafide when they have adjusted it against the leave admissible to the petitioner. It is accepted that it was not wilful absence which would have invited the consequences set out in the rules. The same has not been treated as misconduct and therefore, no disciplinary action has been taken against the petitioner. No order has also been passed by the competent authority that this period is to be treated as break in service. The same cannot be so treated.

20. So far as participation and the result of the LDCE examination is concerned, we find that as per the scheme of the examination, the respondents have mandated checking of service records as stage one; written examination as stage two; physical measurement as stage three; physical efficiency test as stage four and the medical examination as stage five.

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23. *The requirement as per the scheme of the examination is that the candidate should have completed four years of service including basic training. The stipulation is not that a candidate should have completed four years of continuous service immediately preceding the LDCE. This distinction has been completely overlooked in the matter inasmuch as the petitioner had joined the force as back as on 2nd February, 2006 and therefore, at the relevant time had more than six years of service.*

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25. *The order whereby the petitioner leave was converted from casual leave to earned leave and half day absence treated as leave half pay was not treated as a punishment by the respondents.*

26. *In view of the above discussion, the order dated 3rd May, 2010 to the extent that it cancels the petitioner's casual leave and directs that it be treated as earned leave is not sustainable and is completely set aside and quashed. The said period shall be treated as casual leave and appropriate corrections shall be effected in leave and service record of the petitioner within six weeks.*

27. *We also hold that the direction of the respondents to treat the 16th April, 2010 one day leave half pay without salary and allowances does not tantamount to punishment imposed upon the petitioner. The same was never so treated by the respondents and it cannot impede the petitioner appointment pursuant to the LDC Examination - 2012 in which the petitioner participated or may participate in future."*

7. In the present case, however, the matter did not end with an administrative order dealing with the period or periods of absence of the petitioners. Rather, the CRPF felt that something more needed to be done perhaps given the periods and nature of absence. Consequently, in each of

these cases, a penalty prescribed under Rule 27 was imposed. We do not agree with the petitioner's counsel that pack drill is not contemplated in the Rules. Clearly, para 11 of the Schedule set out in Rule 27 of the Rules alludes to "punishment drill". The further stipulation is that such penalty can be imposed for upto a month. Now a pack drill as this Court was made to understand is a mere direction that the employee would have to undertake the drill with some weights. That does not render the procedure or penalty any less a punishment in accordance with Section 11(3)(b) of the CRPF Act, 1949 (hereafter "the Act"). So far as censure is concerned, there cannot be any doubt that it is a minor penalty given the express stipulation in Section 11(3)(c) of the Act. In fact, the provision itself contemplates severe censure. So far as the petitioner in W.P.(C) 6874/2013 is concerned, during the course of proceedings, CRPF produced the records. Apparently, the petitioner was imposed with "confinement in the quarter guard for a month with additional penalty of two hours' punishment drill". This was on account of his misconduct of deserting the armed escort for some part of the day. In the circumstances, we are of the opinion given this length of time, it would not be appropriate of the Court to examine the adequacy or severity imposed.

8. The Court is conscious of the fact that the candidates who clear the LDCE leapfrogs in a sense because in the normal circumstances, he can expect to be promoted to the post of Havaldar. However, success in the LDCE assures him the position of SI. Understandably, the CRPF is more exacting in requiring the candidates deemed successful enough and fit to occupy the post of SI.

9. In view of the above findings, the Court is of the opinion that the

petitions are lacking in merit. They are accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

SEPTEMBER 17, 2015
‘ajk’

