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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : February 11, 2015

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W.P.(C) 8080/2013

JAY PRATAP SINGH

..... Petitioner

Represented by: Mr.Prashant Sivarajan, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Represented by: Ms.Monika Arora, Advocate with
Mr.Abhishek Kumar Choudhary,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. The present writ petition has been filed seeking issuance of a writ of Certiorari for quashing the order dated June 11, 2013, whereby the petitioner's representation for notional pay fixation and grant of seniority in the rank of Assistant Commandant with effect from November 03, 2010 i.e. the date his juniors were promoted stood rejected; as well as for issuance of a writ of Mandamus to implement the judgment dated March 07, 2011 passed by this court in WP(C) No. 1461/2011.

2. The brief facts germane for adjudication of the present petition are that joining duty as Sub Inspector under C.R.P.F. on March 01, 2003, after completing training, petitioner was posted as Sub- Inspector at the 119th Bn. on April 01, 2004 and he remained with the said battalion till April 01, 2005.

The respondents are treating this as service in a duty battalion. This means that the petitioner has served for one year in a duty battalion; as per the respondents.

3. On April 01, 2005, the petitioner was posted at CIAT Silchar, where he remained till March 2007. CIAT Silchar is treated as a training institute and hence service rendered there would not be service in a duty battalion.

4. To be promoted as an Inspector, requires a Sub-Inspector to clear the SSICC course. Petitioner was sent to undertake the course in the month of July 2006. He successfully cleared the same.

5. Earlier itself, realizing that non service in a duty battalion for two years may hamper the promotion of the petitioner, on October 30, 2006, petitioner made a representation requesting that he should be posted to a duty battalion so that when his turn, as per seniority, enures for promotion as an Inspector, he would be having the requisite two years service in a duty battalion. The department did not pay any heed to the said request made by the petitioner and continued to post him at CIAT Silchar till March, 2007.

6. In between, at a DPC which met on January 08, 2007, to consider the candidature of such Sub-Inspectors who fell within zone of consideration and were eligible for promotion to the post of Inspector, petitioner was not empanelled on account of not rendering two years service in a duty battalion. This resulted in persons junior to the petitioner being promoted as Inspectors.

7. Posting the petitioner in a duty battalion in March 2007 and treating the petitioner as having rendered two years service as a Sub-Inspector in duty battalions, petitioner was promoted as Inspector with effect from 6th June 2008.

8. Those who had already been given promotion over the petitioner, earning promotion as Inspector, have earned further promotion as Assistant Commandant with effect from November 03, 2010.

9. Notwithstanding petitioner being deputed to undertake mandatory course required to be successfully completed by Inspectors for promotion as Assistant Commandant and petitioner having successfully cleared the course, petitioner is being denied promotion on account of the reason his eligibility service rendered as an Inspector is being reckoned with effect from June 06, 2008.

10. Aggrieved thereof, the petitioner submitted various representations for redressal of the said grievance, but the same were of no avail and the petitioner then approached this court by way of WP(C) 1461/2011.

11. Relevant would it be to note that way back on October 27, 2009, deciding a bunch of writ petitions; lead matter being W.P.(C)No.21900/2005, Ashok Kumar Vs. Union of India & Ors., a Division Bench of this court held that where the department is at fault in not letting a person complete two years duty in a duty battalion, non-fulfillment of the eligibility condition for promotion requiring two years service in a duty battalion cannot be held against the person concerned.

12. Noting that under the Rules a power of relaxation was vested in the cadre controlling ministry i.e. Ministry of Home Affairs, directions were issued to the paramilitary force concerned to refer the entitlement of various officers for relaxation to be accorded to them for waving the necessity of serving two years in duty battalion; directions were issued to the Ministry of Home Affairs to objectively consider the matter.

13. The earlier writ petition filed by the petitioner, namely WP(C) 1461/2011 was disposed of vide order dated March 07, 2011, while noting

that the same issue had already been dealt with in Ashok Kumar's case (supra). The operative portion of the order reads as under:

“15. Thus, the writ petition stands disposed of issuing a mandamus to C.R.P.F. to forward the case of the petitioner to Ministry of Home Affairs with a request that Ministry of Home Affairs should exercise its residual power to relax the eligibility criteria requiring petitioner to serve in a duty battalion for two years. Mandamus is issued to Ministry of Home Affairs to consider the said communication sent by CRPF, keeping in view the observations made by us hereinabove. Ministry of Home Affairs would consider relaxing the eligibility consideration requiring petitioner to serve in a duty battalion for two years.

16. Needless to state if the decision of Ministry of Home Affairs is favourable to the petitioner, petitioner's promotion as an Inspector would be reckoned with effect from the date persons immediate junior to the petitioner were promoted as Inspectors. Petitioner would be entitled to all consequential benefits of seniority as Inspector but not the difference of salary. Needless to say, the petitioner would be then considered to be promoted as an Assistant Commandant with effect from the date on which the persons junior to him were promoted, as Assistant Commandants, and if promoted, he shall be entitled to all consequential benefits except actual wages.

17. If the decision is against the petitioner, remedy as per law can be availed of by the petitioner.”

14. In compliance with the order dated March 07, 2011, the petitioner's seniority was re-assigned and he was brought on the approved list in the post of Inspector with effect from January 08, 2007, being the date on which persons junior to the petitioner were promoted.

15. As already noted above, persons junior to the petitioner earned promotion as Assistant Commandant vide order dated November 03, 2010. Thus, the petitioner claims that he ought to have been considered for

promotion as Assistant Commandant, and if found fit was required to be given seniority from November 03, 2010.

16. It is the case of the petitioner that despite the said directions having been passed vide order dated March 07, 2011, he was still not considered for promotion as Assistant Commandant, and therefore, submitted various representations dated July 05, 2011, August 26, 2011 and September 30, 2011 for redressal of the same.

17. The request of the petitioner was acceded to by the respondents, and after considering him for promotion as Assistant Commandant, he was found fit for promotion and vide signal dated January 13, 2012 he was promoted as Assistant Commandant with effect from February 27, 2012.

18. His seniority remaining unchanged, the petitioner submitted a representation dated October 09, 2012 for grant of seniority as Assistant Commandant from the date his juniors had been promoted, and the said exercise was carried out by the respondents by passing an order dated May 13, 2013 to the said effect qua the petitioner and some other similarly situated persons.

19. Still not having got his due, the petitioner was constrained to approach the respondents yet again, this time submitting a representation dated May 31, 2013 for correcting the date of his promotion as Assistant Commandant with effect from November 03, 2010 i.e. the date on which his juniors were promoted and further requested that his pay be notionally re-fixed in the post of Assistant Commandant in terms of the order dated March 07, 2011.

20. The aforementioned representation was rejected vide order dated June 11, 2013, operative part whereof reads as under:

“ 3. Further, Hon’ble High Court vide ibid order has passed orders that the officer if promoted as Asstt. Comdt shall be entitled to all consequential benefits, except actual wages. The

officer has been promoted to the rank of Asstt. Comdt. w.e.f 27.2.2012 and accordingly he has been allowed salary of Asstt. Comdt from the date of promotion. However the officer is not entitled for re-fixation of pay at par with his juniors and to avail financial benefits/ difference of salary/ actual wages etc. from retrospective date either in the rank of Inspector or Asstt. Comdt.”

21. It is the order dated June 11, 2013 that forms the basis of challenge in the present petition.

22. Learned counsel for the petitioner contended that this court, vide its order dated March 07, 2011 had directed the respondents to grant the promotion to the petitioner to the rank of Assistant Commandant with all consequential benefits except actual wages. Consequential benefits would include seniority from the date his juniors were promoted and notional fixation of pay of the petitioner. The same has not been given to the petitioner till date and the impugned order has rejected the same on the ground that vide order dated March 07, 2011, this court had rejected grant of actual wages. Therefore, the stand taken by the respondents is without any basis as non-grant of actual wages only means that the petitioner would not be entitled to the wages which the petitioner would have otherwise earned if he would have been promoted as Assistant Commandant from the date his juniors were promoted but by no set of imagination would exclude notional fixation of pay, and moreover, could not be used as a crutch to deny petitioner promotion from the date that his juniors were promoted.

23. It is also urged that for no fault on his part, an anomaly in pay had resulted, inasmuch as the petitioner was drawing basic pay in sum of ₹16,660/- whereas his juniors are drawing ₹17,550/-, for the reason that pay of Assistant Commandant falls in PB-3 starting from ₹15600-39100 with Grade Pay of ₹5,400/-. The petitioner has been granted the starting scale of

₹15,600/- with effect from the date from which he has been actually promoted and not from November 03, 2010 and so if the increments earned by his juniors during the said period are added to the basic pay, then even the petitioner would be drawing the same sum of ₹17,550/-.

24. Per contra, it is contended by the respondents that the petitioner ought not to be accorded back-dated promotion as Assistant Commandant from November 03, 2010 for the reason he had completed the requirement of 2 years' service in duty battalion only on February 27, 2012, and immediately upon completion of the same, stood promoted as Assistant Commandant. It is also submitted that as per the letter dated July 04, 2012 issued by the Directorate General, CRPF the power of relaxation in respect of mandatory field service would be inapplicable to the petitioner. Lastly, it is urged that by virtue of the fact that in the order dated March 07, 2011 it was directed that the petitioner, if promoted, shall be entitled to all consequential benefits except actual wages and thus, the petitioner would not be entitled to re-fixation of pay at par with his juniors in order to avail the financial benefits/difference of salary from the retrospective date.

25. Suffice it to state that as already noted by us in the order dated March 07, 2011 as well as in the decision in Ashok Kumar's case (supra) the petitioner had no option but to serve wherever he was required to be posted. Moreover, force personnel have no say in the matter of posting and therefore, it is the department who is at fault in not letting a person complete two years duty in a duty battalion, despite the same being a pre-condition of mandatory field service for grant of promotion. Non-fulfillment of the eligibility condition for promotion requiring two years service in a duty battalion cannot be held against a person concerned as the same is the sole prerogative of the department. As regards the power of relaxation to be

exercised by the Ministry of Home Affairs, as per the letter dated July 04, 2012, the perusal of the said letter would reveal that services rendered in NSG/SPG/NDRF would be treated as service rendered in a field unit for the purpose of promotion. In the instant case, the petitioner was posted on deputation with the SPG at the time when the batch-mates and persons junior to the petitioner earned promotion as Assistant Commandant by virtue of the order dated November 03, 2010. Therefore, the respondents cannot deny the benefit of back dated promotion to the petitioner on the ground that the same was given to him only upon completion of two years service in duty battalion. Vide impugned order dated June 11, 2013, it is observed that in light of the directions given by this Court that the petitioner, if promoted as Assistant Commander, shall be entitled to all consequential benefits, except actual wages and for this very reason he would not be entitled to re-fixation of pay at par with his juniors from a retrospective date.

26. The same reveals a total non-application of mind in as much as the import of the order dated March 07, 2011 in denying actual wages to the petitioner was on the principle of 'no work no pay' and the same could not have been treated by the respondents as a ground to reject the notional pay fixation of the petitioner. It is not a case where the petitioner has claimed back wages or arrears of pay, in which case the stand taken by the respondents may have been justified. As a natural consequence of being considered and subsequently being found fit for promotion, the petitioner would undoubtedly be entitled for promotion from the date on which his juniors were promoted, i.e. from November 03, 2010 as well as notional fixation of pay in the rank of Assistant Commandant from the said date.

27. The petition is allowed and the prayers made are granted. Needful shall be done within 12 weeks.

28. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 11, 2015
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