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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 16.11.2015

+ W.P.(C) 8839/2015

SATINDER SINGH

..... Petitioner

Through: Mr Ankur Chhibber, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr Kirtiman Singh, CGSC and
Ms Purna Shah Deo, Mr Waize Ali Noor
and Mr Gyanesh Bhardwaj, Advs.

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 petitioner seeks a direction to the respondents to convene a supplementary Departmental Promotion Committee (DPC) and appropriately consider his claim for promotion to Deputy Inspector General (DIG) in the Central Reserve Police Force (CRPF).

2. The petitioner had earlier approached this Court by filing W.P.(C) No.7093/2013 contending inter alia that the CRPF had overlooked his candidature on the ground of wrongful medical categorization. By a judgment and order dated 19.12.2013, this Court had directed the CRPF to rectify its error after finding that the medical categorization was vitiated.

3. The petitioner, in the meanwhile, was facing disciplinary proceedings since 2008. This culminated in the imposition of penalty of reduction to a lower stage in time scale of pay by one stage without cumulative effect for a period of three months effective from 30.09.2013 to 30.12.2013. As a matter of fact, the petitioner superannuated and retired from service on 31.12.2013. The respondent-CRPF had sought for review of the judgment in so far as it pertained to certain observations. The review petition was accordingly partly allowed on 29.04.2014. The Court noted the rival contentions of the parties and also that the CRPF was bound to take into account the Office Memorandum No.22011/4/91 dated 14.09.1992 which was interpreted by a judgment of the Supreme Court in ***Union of India vs. K.V. Jankiraman*** (1991) 4 SCC 109.

4. The petitioner complains now that his candidature was improperly rejected and relies upon the minutes of the supplementary DPC meeting convened by CRPF on 31.12.2013 to consider his case. Mr Chhibber argues that given the background of litigation, the respondents were duty bound and expected to consider the merits of the petitioner's claim for promotion to DIG rather than feel inhibited by the penalty order which ceased after 30.12.2013.

5. The impugned order, so far as it is relevant for the purposes of this case, reads as follows:-

“3. The DPC was informed that there were 27 vacancies of DIG for the vacancy year 2013-14, for which the zone of consideration was of 44 officers. A DPC meeting was convened for the said purpose on 3.05.2013. Sh Satinder Singh's name was appearing at

Sl. No.1 of the zone of consideration. As a Departmental enquiry was pending against Sh. Satinder Singh on that date, the recommendation of the DPC was kept in sealed cover in his case. Subsequently, a penalty of "Reduction to a lower stage in the time scale of pay by one stage without cumulative effect and without affecting his pension up to 30.12.2013" was imposed on Sh. Satinder Singh on 23.09.2013. The currency of penalty expired on 30.12.2013. Sh. Satinder Singh has represented that he should be considered for promotion on 31.12.2013, as no penalty exists on that date. The DPC has been informed the urgency of holding the supplementary DPC on 31.12.2013 as Sh. Satinder Singh is to be superannuated at the age of 57 years on 31.12.2013 as Commandant and in case he is promoted as DIG on 31.12.2013, his superannuation age will be enhanced by 3 years to 60 years.

4. The DPC was also informed that the Department concerned (MHA) has taken up the case with DoPT for clarification if the recommendation of DPC dated 3.05.2013 can be opened or a review DPC can be convened as the currency of penalty has expired before expiry of the vacancy year (2013-14), for which the officer was considered by the original/main DPC. DoPT has clarified that neither the sealed cover can be opened nor a review DPC can be convened in this case. CRPF has informed that two vacancies exist as on date due to different reasons that the officers already empanelled have not assumed the charge of the post of DIG so far. In view of the availability of the vacancies, a Supplementary DPC has been convened.

5. The Supplementary DPC has been informed that as per para 6.4.2(i) of DoPT's O.M. No. 22011/8/87-Estt (D) dated 9.04.1996, a supplementary can be held only in such cases where fresh vacancy due death, voluntary retirement, new creations etc. arises, which could not be

foreseen and accounted for at the time of placing the material facts before the original/main DPC. In the instant case, no such fresh vacancy has arisen. The vacancy which exist on the date of holding the Supplementary DPC are due to the fact that one officer is to be repatriated from deputation and another officer is to undergo medical examination for regaining the mandatory SHAPE-I medical category. The Supplementary DPC was further informed that there are 12 already empanelled officers (including 2 officers in extended panel) for the vacancy year 2013-14 awaiting for promotion. Therefore, the DPC recommends that Sh. Satinder Singh's case is not covered under the instructions of Supplementary DPC."

6. The previous factual narration would reveal that the petitioner's complaint founded on his allegations about wrongful medical categorization has been pleaded in the previous writ petition. The Court in its review order of 29.04.2014 clarified that the Central Government was bound to follow the Office Memorandum dated 14.09.1992, which was interpreted in **Jankiraman** (*supra*). In **Jankiraman** (*supra*), the Supreme Court held as follows:-

"29. ...In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to

have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalized and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion.”

7. From the law declared in ***Jankiraman*** (*supra*), as extracted above, it is evident that the petitioner had suffered a penalty—though for a brief period. The Office Memorandum relied upon in the impugned order talks of the DoPT clarification dated 09.04.1996 which limits the circumstances in which the supplementary DPC can

be held. In the present case, given that the petitioner was imposed with the penalty what he is really insisting upon is that the orders of the Court meant only one thing i.e. on 31.12.2013 he should have been considered and promoted as if the previous penalties were not in existence at all.

8. In the facts and circumstances of this case, the Court finds no illegality in the approach adopted by CRPF in denying the post of DIG to the petitioner.

The writ petition is without any merit and is consequently dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

**NOVEMBER 16, 2015
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