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

+ **W.P.(C) 11263/2015**

VENKATESH

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Vikas Mahajan, CGSC with
Mr. Akash Verma and Mr. Deepak
Goyal, Advocates for R-UOI.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

13.12.2018

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Dr. S. Muralidhar, J.:

1. The Petitioner who is present as an Assistant Commandant (AC) in the Central Reserve Police Force (CRPF) has approached this Court aggrieved by the denial of his promotion as Deputy Commandant (DC).

2. The background facts are that the Petitioner joined the CRPF as a directly appointed Gazetted officer in the 2008 batch on 14th January 2008 and was appointed as AC. Upon completion of his training, he was posted with the 69th Battalion CRPF, Shillong and remained there till December 2012. In January 2013 the Petitioner was posted as an instructor at the Counter Insurgency and Anti-Terrorist (CIAT) School, Silchar. He started started

working there in the capacity of AC (Explosive). On 29th January 2013 while playing badminton during the games period in the evening, the Petitioner was accidentally hit in the left eye by a shuttle cock. Between 30th January 2013 and 8th February 2013 the Petitioner received treatment at the Silchar Hospital. Thereafter he was shifted to the All India Institute of Medical Sciences (AIIMS) in Delhi where he underwent treatment between 9th and 12th February 2013. He continued receiving treatment at AIIMS from 14th to 20th February 2013. The Petitioner reported back to CIAT School, Silchar on 2nd March 2013 after his treatment. Upon return, he was placed in the medical category E-3 i.e. S1H1A1P1E3.

3. A Court of Inquiry (CoI) was held to investigate into the circumstances under which the Petitioner had sustained the above injury. By an order dated 20th April 2013 the CoI came to the conclusion that “Officer has been injured during government duty and his treatment will be done on government expenditure”.

4. On 25th July 2013 the Petitioner underwent an annual medical examination and his permanent medical category was upgraded as E-2.

5. On 21st June 2014 the entire batch of the Petitioner, including the Petitioner was called for promotion for the rank of DC for the vacancy year 2014-15. By a signal dated 19th December 2014 the result of the Departmental Promotion Committee (DTC) held for promotions from AC to DC was announced. The Petitioner’s name did not figure in the list of persons promoted.

6. The Petitioner made a representation in June 2015 pointing out that he was in an E2 medical category and that in terms of a Standing Order (SO) No. 04 of 2008, para 4.17, he would be eligible for relaxation in the medical category for the purposes of promotion as DC.

7. By an order dated 1st April 2015 issued by the Head Quarters, this representation was rejected. The Petitioner made another representation on 15th May 2015 which came to be rejected on 26th August 2015. The reasons that weighed with the Respondents for rejecting his representation read as under:

“03. As per para-4.17 of Standing order 4/2008, the relaxation in SHAPE-I medical category for promotion will be admissible to those personnel only who are wounded/ injured during was or while fighting against the enemy/militant/intruders/armed hostiles/insurgents due to an act of these in India or aboard and officers/men who are wounded/injured during field firings/accidental firings/explosion of mines or other explosive devices and due to accidents while on active Govt. duty in India or abroad. Further as defined in CRPF Act 1949 "active duty" means the duty to restore and preserve order in any local area in the event of any disturbance therein. In the case of officer, he sustained injury while playing badminton which is not covered under the definition of active govt. duty. As such though being sustained injury while on duty he cannot be benefitted with the provision of relaxation provided in para 4.17 of Standing order 4/2008as he was not performing any active Govt. duty as defined in CRPF Act-1949.”

8. Thereafter the present petition was filed. In response to the notice issued in the petition, a counter affidavit has been filed by the Respondents

pointing out that Shape-I category was mandatory for consideration for promotion in the rank of DC. While it is not denied that SO No.4/2008, provides for relaxation of the category, it is contended that the expression “active duty” as defined under Section 2 (A) of the Central Reserve Police Force Act, 1949 (CRPF Act), does not cover the activity of playing badminton. Therefore, though the Petitioner had “sustained injury while on duty” he could not avail the benefit of para 4.17 of SO No.4/2008 as his case was not covered by any of the clauses mentioned therein.

9. It is further submitted by the Respondent that, as per the opinion of the Medical Board, the “disease of the Petitioner is progressive in nature and needs regular follow up. The disease may worsen at any time in his life span. As such, it cannot be construed that the medical category of the Petitioner was Shape-I.”

10. This Court has heard the submissions of learned counsel for both the parties.

11. At the outset, it requires to be notice that while a SHAPE-I medical category is certainly a requirement for consideration for promotion in terms of SO No.4/2008 dated 15th December 2008, the same SO No.4/2008 recognizes certain medical categories that are eligible for relaxation. Para 4.17 reads as under:

“4.17. Relaxation in SHAPE-1 Medical Category

The relaxation in SHAPE-I Medical Category will be admissible to the following two categories of CPMFs personnel to the extent

detailed below:- a. Official/Personnel wounded/injured during war or while fighting against the enemy/militant/intruders/armed hostiles/insurgents due to an act of these in India or abroad will be eligible for promotion while placed in one of the following medical classification:-

i) Individual low Medical Factors

(aa) H2 or E2 opr P2 (Dental) which will be considered at par with SHAPE-1; and;

(ab) A2 or P2 or A3

ii) Combined Low Medical Factors

(aa) H2 and E2 combined and

(ab) H2 or E2 combined with A2, A3 or P2

b) Officers/men who are wounded/injured during field firings/accidental firings/explosion of mines or other explosive devices and due to accidents while on active Government duty in India or abroad will be eligible for promotion in the following SHAPE Categories:-

i) SIH1A2PIE1 (ii) SIH1AIP2E1 (iii) S1H2A1P1E1

(iv) SIH1AIP1E2 (v)SIH2AIP1E2

12. Therefore, it is seen that in terms of para 4.17 (B) (v), a permanent E2 medical category, which is the categorization as far as the Petitioner is concerned, is recognized as one of those medical categories which would be viewed as a relaxation in the Shape-I medical category. The Further question that arises is whether the Petitioner fulfills the requirement to be considered eligible for such relaxation. In other words is the accident suffered by the Petitioner, as a result of which his medical category is E2, “while on active government duty in India”.

13. Section 2 (a) of the CRPF Act defines ‘active duty’ means the duty to restore and preserve order in any local area in the event of any disturbance therein.

14. The stand of the Respondents is that this expression ‘active duty’ has to be read as administrative genres with the circumstances mentioned in para 4.17 B i.e. a duty which could envisage “field firings, accidental firings, explosion of mines or other explosive devices”. In other words, the Respondents want to narrow down the expression “accidents” to only those accidents of the aforementioned kind and not just about any accident.

15. There is a difficulty in accepting the submission on behalf of the Respondents. A member of the CRPF does not cease to be on active duty only because he is not actually in the line of firing or dealing with mines or other explosive devices. A member of the CRPF continues to remain on duty in whichever post he is - whether it is an anti-insurgency station posting or a peace posting. He is expected to be ready to perform his duty “to restore and preserve order in any local area in the event of any disturbance there”. To elaborate even in a peace station when members of the CRPF are engaged in an activity which is formed part of their assigned duties and suffered an accident, that accident cannot be characterized as not big incurred while on ‘active duty’. It is the preparedness to participate in all activities to restore and preserve order in any local area that is determinative of whether a person is on ‘active duty’ or not.

16. For instance, if in a peace station as part of a regular drill that the

officers have to undertake for maintaining their fitness, an accident takes place which reduces an officer medical category from Shape-I to Shape-II and to be more precise to the E2 permanent medical category. It cannot be said that this is on account of an accident that was not suffered one being on 'active duty'. At any point in time as long as the officer in that station and in that posting, he may be called upon to perform active duties and therefore to restrict the expressions 'accidents' to only those incurred during "field firings, accident firings, explosion of mines" will not do justice to the intention behind providing for such relaxation.

17. Another situation could be that while an officer is in his dormitory or barrack or quarters and there is an accident which occurs and reduces his medical category from Shape-I to Shape-II, can it be said that it was an accident while he was not on 'active duty'? In the considered view of the Court, the answer has to be in the negative. An officer continues to remain on 'active duty' even in such a situation and it will not be justified in characterizing such an accident as having been incurred while not on activity.

18. In a somewhat similar situation in the BSF where a member of the BSF while being posted as a Company Commander was injured while playing a volley ball match with the company troops deployed under him and sustained an injury on his head, this Court held that he had suffered such injury while on duty. In ***Ramesh Fonia v. Union of India ILR 2014 1 Del 171***, this Court rejected the contention of the Respondents that the Petitioner in that case had not suffered the injury while on 'bona fide government duty'

attributed to his service. The Court observed as under:

“38. From the above discussion, the inevitable and only possible conclusion is that the evening games were the integral part of the petitioner’s duties. It is also a fact that the petitioner was not exempted from performance of any part of the assigned duty. The respondents have themselves not treated the petitioner as any special case of low medical category. He was being assigned postings and positions just as any other BSF personnel who was not a low medical category including the hard postings. The respondents recognized the leadership required by a person in the position of a commander. There is no dispute that the petitioner had to motivate the troops towards the acquisition of physical fitness by participation in the games. The same is only possible by the officer leading from the front. It therefore, has to be held that the injuries suffered by the petitioner on 14th of August, 2006 while playing volleyball at the Border Out Post (BOP) Barapansuri (Mizoram) was suffered by him while he was on duty.”

19. Learned counsel for the Respondents then pointed out that the medical condition of the Petitioner might worsen since it was progressive in nature and therefore he may be found unfit for discharging the duties of the DC.

20. The Court clarifies that it is not expressing any opinion on what category the Petitioner should be placed under. The Court is proceeding on the basis that at present the Petitioner has been placed in the E2 permanent category. If in future point in time that medical category gets revised, then obviously it will be open to the Respondents to proceed on the basis of such revised medical category. However, as of now the Petitioner continues to be in the E2 permanent category and in the considered view of the Court, he is entitled to the relaxation which is provided under para 4.17 (B) (v) of SO

No.4/2008.

21. In that view of the matter, rejection of the Petitioner's representation by the orders dated 1st April 2015 and 26th August 2015 is hereby set aside by the Court and a mandamus is issued to the Respondents to pass a fresh order within four weeks giving the Petitioner the relaxation in terms of para 4.17 (b) (v) of SO No.4/2008. The Respondents will also pass the consequential orders for promotion of the Petitioner to the rank of DC from 19th December 2014 the date on which the batch mates were promoted as DC received the said promotion.

22. The consequential orders for fixing the Petitioner's be now issued within a period of four weeks. The Petitioner's pay will also be revised and notionally fixed in the above terms along with his batch mates with all consequential benefits.

23. The Petition is allowed in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

DECEMBER 13, 2018

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