

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/11/2019

CORAM

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.27301 of 2017

K.G.Balachandar

..Petitioner

Vs.

1. Union of India
rep. by its Secretary to Government of India
Ministry of Home Affairs - PERS II
South Block
New Delhi.
2. The Director General CRPF, CGO Complex
Block I, Lodhi Road
New Delhi 110 003.
3. The Inspector General of Police (PERS - I)
Directorate General, CRPF, CGO Complex
Block I, Lodhi Road
New Delhi 110 003.

..Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of the first respondent and quash the impugned order, dated 21/3/2017 vide UO No.P.VII-5/2012-PERS-D.A.-I dated 21/3/2017 rejecting the retrospective promotion to the petitioner as Deputy Commandant in CRPF from 21/8/2012 on par with his batchmates and consequently direct the second respondent to grant retrospective promotion to the petitioner from 21/8/2012 in the post of Deputy Commandant, CRPF with all attendant benefits within time frame.

For petitioners

... Mr.Ravi Anantha Padmanaban

For respondents

... Mr.Venkataswamy Babu
Special Counsel
for Government of India

ORDER

Para 4.17 of S.O.No.4 of 2008, arises for interpretation, in this writ petition.

2. Petitioner joined the Central Reserve Police Force, on 14/11/2005, as Assistant Commandant, by direct recruitment. Promotional post is one of Deputy Commandant. On 12/8/2011, while undergoing weapon training, petitioner had sustained knee injury, for which he underwent a surgery. Resultantly, he could not take the Pre-Promotional course, for the purpose of promotion. Promotional list for Deputy Commandant was released, on 21/8/2012 and the petitioner's promotion was subject to completion of two promotional courses in Shape - I. Petitioner regained the medical fitness, to complete the course of WT (O), in November 2013 and complete the requisite course, in January 2017. Petitioner wanted to be promoted as Deputy Commandant, claiming retrospective seniority. Petitioner gave repeated representations, for promoting him retrospectively, as Deputy Commandant, with his other batch mates. By an order, dated 21/3/2017, petitioner's representation was rejected, on the ground that injury suffered by the petitioner during training cannot be considered as an active duty and therefore, the condition cannot be relaxed.

3. Petitioner relied on para 4.17 which deals with relaxation of rules regarding achieving Shape - I medical category, which is the requirement for consideration for promotion. 4.17 reads as under:-

"The relaxation in SHAPE - I Medical category will be admissible to the following two categories of CPMFs personnel to the extent detailed below - a. Office/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-I; 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, viz., (i).SIH1A2PIEI, (ii). SIH1A1P2E1, (iii). S1H2A1P1E1, (iv). SIH1A1P1E2, (v). S1H2A1PIE2

4. Respondents have filed a counter. It is stated in the counter that for the purpose of promotion of Deputy Commandant, the petitioner was detailed to undergo Weapon Tactics (Officer) (Pre-Promotional course), from 11/7/2011 to 13/9/2011, at Central Training College, CRPF, Neemuch. At that time, the petitioner's medical category was Shape - I. During the Pre-Promotional course, while doing Battle Physical Efficiency Test (BPET), he sustained knee injury, on 12/8/2011. After treatment, the petitioner regained medical category Shape - I, on 13/8/2013 and completed Pre-Promotional Course, i.e., Weapon Tactics (Officer) Course, in November 2013 and the Quarter Master/Motor Transport Officer Course, in January 2014.

5. It is stated in the counter that as per eligibility conditions prescribed in CRPF Group 'A' (General Duty) Officers Recruitment Rules, 2010, notified, vide GSR No.679 (E), dated 10/8/2010, only Assistant Commandants (with requisite qualifying/eligibility service) who have successfully undergone Pre-Promotional course and having medical category Shape - I are eligible for promotion to the rank of Deputy Commandant. It is stated in the counter that Medical Category Shape I is an essential condition for promotion to all combatised personnel in all groups.

6. Counter also states that as per MHA-UO-No.I-45024/I/2008-Pers.II, dated 27/4/2012, any personnel, who have been recommended as fit subject to SHAPE - 1 Medical Category, will be promoted, as per the recommendations of DPC, if they regain SHAPE - I Medical category, not later than 31/3/2013, for the vacancy year 2012- 2013 in this case) and if the person is unable to regain SHAPE -1, medical category within the vacancy year, his case would be considered afresh in the next vacancy year.

7. It is therefore, stated that the petitioner did not fall in the category and since he had not completed the requisite course, petitioner's case was not considered for promotion for that year, but he was considered for promotion, for the next relevant year and in the subsequent DPC, dated 20/9/2013.

8. The categorical case of the respondents is that the petitioner's case would not come within the provisions of para 4.17 of the Standing Orders. It is reiterated in the counter that by a clarification, dated 28/11/2016, it was stated that Central Reserve Police Force Act, 1949, suggests that only when the Force is deployed to restore and preserve the law and order

situation in any area which is disturbed for any reasons that period can be considered as an active duty. Counter is categorical that injury sustained during BPET, can be considered as active duty.

9. Heard Mr.K.Ravi Anantha Padmanaban, learned counsel for the petitioner and Mr.Venkataswamy Babu, learned Special Counsel for Government of India/respondents.

10. Mr.K.Ravi Anantha Padmanaban, learned counsel for the petitioner placed strong reliance on a Division Bench judgment of the Delhi High Court in Venkatesh Vs. Union of India & Others (W.P.(C) No.11263 of 2015, dated 13/12/2018. Petitioner in that case, was posted in Shillong and was posted as Instructor, at the Counter Insurgency and Anti-Terrorist (CIAT) School, Silchar. While he was playing badminton, he got accidentally hit in the left eye by a shuttle cock. Petitioner achieved Shape - I latter. Petitioner, in that case also sought for an retrospective promotion, which was rejected. Delhi High Court observed as under:-

"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."

11. Mr.Venkataswamy Babu, learned SPC for Government of India, would state that Madras High Court would not have territorial jurisdiction, to entertain this writ petition. He would argue that the entire cause of action has arisen outside the jurisdiction of Madras High Court. He would state that just because the petitioner is a permanent resident of Chennai, does not mean that the present writ petition could be instituted in Madras.

12. It must be noted at this juncture that in the counter affidavit, respondents have not taken any objection regarding territorial jurisdiction. In the writ petition, it is stated that while undergoing pre-promotional course, the petitioner was posted at 77th Battalion, Poonamallee, Chennai and while in Chennai, he had been sent to Central Training College, Central Reserve Police Force, Neemuch, where he suffered the injury. In such circumstances it can be said that Since the cause of action arises in Tamil Nadu, this Court have jurisdiction to entertain this writ petition.

13. Learned counsel for the respondents would rely on Section 2 (a) of the Central Reserve Police Force Act, 1949, which defines "active duty" as "the duty to restore and preserve order in any local area in the event of any disturbance therein." According to the learned counsel for the respondent the petitioner cannot be said to be in active duty in order to be entitled to the relaxation which is given in para 4.17 of the Standing Order No.4 of 2008.

14. Paragraph 4.17 gives relaxation for promotion for injuries suffered during field firings/accident firings/explosion of mines or other explosive devices and due to accidents while on active Government duty. Active Government duty cannot be equated with Active Duty. Section 2 (a) defines active duty, and restricts it to mean the period spent to restore and preserve order in any local area, in the event of any disturbance. Paragraph 4.17 of S.O.No.4 of 2008, gives relaxation for promotion for injuries suffered during active Government duty. A person can suffer injury while doing active Government duty in a place where there is no law and order

problem. The scope of para 4.17 of S.O.No.4 of 2008 cannot be restricted by Section 2(a) of the CRPF Act 1949. It cannot be said that pre-promotional training is not a part of active Government duty. Rule 26 (d) (1) of Central Reserve Police Force Rules, 1955, deals with standard of training, the same reads as under:-

"25. Standard of training.-(a) The Deputy Inspector-General shall issue a manual prescribing the standard of training.

(b) The training shall include the following subjects:-

1. Correct wearing of uniform, i.e., clothing and accoutrements.
2. Ceremonial Drill and Guard mounting.
3. Squad, Platoon, Company and Battalion Drill and extended order movements.
4. Weapon training including Tear Smoke and Riot Drill.
5. Physical training.
6. Education and Elementary Law.
7. Intelligence Course.
8. General Police duties excluding investigation and prosecution.
9. Wireless and Motor Transport.
10. Any other subject which may be considered desirable to be introduced in the Force.

(c) The Commandant may depute any member of the Force to undergo a course of training or instruction having a bearing on the Central Reserve Police Force work conducted by the Central Government or the State Government or by any training establishment of the Reserve Police Force or Army Institution or Directorate of Co-ordination (Police Wireless) or any other institution:

Provided that in the case of Sub-Inspectors, Inspectors (Subedars) and Gazetted Officers, the Commandant shall obtain the prior permission of the Deputy Inspector-General, the Inspector-General and the Central Government respectively.

(d) The period of training shall be treated as duty for the purposes of F.R.9(6) (fr) (i)."

15. A perusal of the above would show that training undertaken by an member of the force is treated as duty under FR (9) (6) (b) (i). FR 9 (6) (b) (i) reads as under:-

"FR.9 - Unless there be something repugnant in the subject or context, the terms defined in this chapter are used in the rules in the sense here explained -

(6). Duty -

(b). A Government servant may be treated as on duty -

(i). during a course of instruction or training in India."

16. Perusal of Rule 26 (d) (1) of Central Reserve Police Force Rules, 1955, and FR 9 (6) (b) (i), would show that period spent on training also would amounts to duty. This would mean that any person undergoing training imparted to him by the Government would amount to active Government duty. In view of the above, the irresistible conclusion is that, any injury sustained during the period of training would amount to an injury sustained in active Government duty.

17. It is not the case of the respondents that petitioner does not fall in the Shape categories mentioned in 4.17 (2) (b) (i) of S.O.No.4 of 2008. If the petitioner falls into any one of the categories, mentioned in paragraph 4.17 of the S.O., then the petitioner should be taken as a person, who has sustained injury during active Government duty, in India. The impugned order rejects the case of the petitioner only on the ground that injury sustained during BPET cannot be considered as an active duty. The reasoning of the respondents is clearly wrong. Injury sustained during BPET would amount to injury suffered during active Government duty which is different from active duty.

18. In the above view of the matter, writ petition is allowed. Impugned order, dated 21/3/2017, made in UO No.P.VII-5/2012- PERS-D.A.I, is set aside and the matter is remanded back to the Union of India, Ministry of Home Affairs - PERS-II, New Delhi, first respondent, to see as to whether the petitioner falls, within the various Shape categories, as defined in para 1.75 (2) to be eligible to be considered for retrospective promotion. Respondents are directed to take appropriate decision, within a period of eight weeks, from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government of India
Union of India
Ministry of Home Affairs - PERS II
South Block
New Delhi.
2. The Director General CRPF, CGO Complex
Block I, Lodhi Road
New Delhi 110 003.
3. The Inspector General of Police (PERS - I)
Directorate General, CRPF, CGO Complex
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+1 cc to M/s.Venkataswamy Babu, Advocate Sr.No. 92275
+1 cc to M/s.Ravi Anantha Padmaban, Advocate Sr.No.91750

AKM/22.01.2020/2P-6C /

order made in
W.P.No.27301 of 2017



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