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

Date of decision: 17.09.2024

+ W.P.(C) 3952/2024

JAGMOHAN CHAUDHARY

.....Petitioner

Through: Mr. Ankur Chhibber & Mr. Nikunj
Arora, Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Ms. Bharathi Raju, SPC with Mr.
Venkat Mani Tripathi, Adv.
Insp./GP Janak Raj, SSB.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J (ORAL)

1. The petitioner, who is serving as an Assistant Commandant (General Duty) in the 25th Battalion (Bn), Sashastra Seema Bal (SSB), Ghitorni has approached this Court under Article 226 of the Constitution of India seeking the following reliefs:-

“(a) Issue a Writ of Certiorari for quashing the memorandum dated 29.05.2023 whereby the case of the Petitioner for granting promotion to the rank of Deputy Commandant from the date of his batchmates has been rejected and of the order dated 29.11.2023 whereby the Respondents have denied promotion on not meeting the SHAPE-I medical category on date of eligibility and DPC and of order dated 29.11.2023 to the extent where by the Senior Time Scale despite being



approved from the date of his batchmates have not been extended on ground of not having SHAPE-I category; and

(b) Issue a Writ of Mandamus directing the Respondents to treat the A2 Shape Category as SHAPE-I in terms of Standing Order 04/2008 issued by the Respondents and thereafter hold a Review DPC so as to consider the case of the Petitioner for promotion to the rank of Deputy Commandant and' found fit promote him to such rank from the date on which the Petitioner's batchmates stood promoted and even extend Senior Time Scale with effect from the date it has been granted to the Petitioner, i.e. w.e.f.25.06.2021 as mentioned in the order dated 29.11.2023, and thus grant the same benefit as has been granted by this Hon'ble Court in catena of judgments, with all consequential benefits."

2. To put it succinctly, the controversy that emanates from the facts is that the petitioner joined the SSB as an Assistant Commandant on 24.06.2017, after clearing the UPSC CAPF Assistant Commandant Examination, 2015. Following his induction, the petitioner underwent basic training at the SSB Academy in Bhopal, Madhya Pradesh from June 2017 to August 2018, where he was awarded the Sword of Honour and a trophy for being best in Outdoor Training. Upon completion of the same, he undertook the Commando Course at the Counter Insurgency & Jungle Warfare School in Gwaldam, Uttarakhand, and received the Best Commando Award and also achieved the first position overall.

3. The petitioner was then posted at the 47th Bn, SSB Pantokia, Bihar where he commanded a company of the same battalion stationed at Inarwa, Bihar at the Indo-Nepal border. Thereupon, the respondents issued an order dated 14.06.2019, detailing him for the 2nd Inter Frontier Commando Competition (IFCC), which was scheduled to be held at the Central Training Center (CTC), SSB in Srinagar, Uttarakhand on 17.06.2019. On being



detailed for the 2nd IFCC, the petitioner claims to have delivered an outstanding performance again, securing the top position amongst those candidates shortlisted to participate in the 10th All India Police Commando Competition (AIPCC), which was scheduled for December, 2019.

4. Just prior to the 10th AIPCC, all the shortlisted candidates were detailed for a practice session at the Centralised Training Center (CTC), SSB, Srinagar on 16.10.2019. During this practice session, the petitioner got injured and was taken to S.L.S District Hospital, Bageshwar, Uttarakhand, where he was found to have suffered fractures in his right hand, elbow and the wrist joint in his left hand and was thereafter, on 24.10.2019, shifted to AIIMS, Rishikesh for further treatment.

5. On 26.10.2019, a Court of Inquiry (COI) was convened by the respondents to investigate the cause of the injuries sustained by the petitioner. Vide its recommendations, the COI opined that the petitioner had sustained injuries due to having met with an accident after falling from an obstacle, "High Fence Wire", on 16.10.2019, while performing bonafide government duties. After undergoing medical treatment for the said injuries from October, 2019 to March, 2020 at AIIMS, Rishikesh, the petitioner rejoined duty at the 47th Bn, SSB.

6. The petitioner, on 01.01.2021, was transferred from the 47th Bn, SSB to 25th Bn, SSB, Ghitorni, where he continues to serve. During his annual medical examination on 25.07.2022, he was, owing to the injuries suffered by him in October, 2019 categorized as being in medical category S1H1A2P1E1 for a period of two years. On 23.09.2022, an order was issued by the Frontier Headquarters (FHQ), SSB, New Delhi, listing various Assistant Commandants eligible for consideration for the position of Deputy



Commandant by the Departmental Promotion Committee (DPC) for the year 2023. The Petitioner's name was placed at Serial no.11 in this list, indicating that he was within the zone of consideration.

7. Thereafter, the Commandant of the 25th Bn, SSB, Ghitorni, sent a letter dated 28.09.2022 to the Commandant (Pers-I), FHQ, SSB, New Delhi, stating therein that the petitioner's medical category of S1H1A2P1E1 was due to injuries sustained by him during intensive practice for AIPCC at CTC, SSB, Srinagar and had been recognized as being on bonafide government duty. In his communication, the Commandant also referred to Standing Order 04/2008, which provides for relaxation for personnel falling in medical category S1H1A2P1E1 in such situations. However, vide the order dated 29.05.2023, issued by the respondents, the petitioner's name was excluded from the list of Assistant Commandants (GD) who were promoted to the rank of Deputy Commandant (GD), on the basis of the petitioner's low medical category.

8. On 04.10.2023, the petitioner preferred a representation to the Inspector General (Pers), FHQ, SSB, R.K Puram regarding his non-promotion from Assistant Commandant (GD) to Deputy Commandant (GD) at par with his batchmates, despite fulfilling all the eligibility criteria. Subsequently, he submitted another representation dated 05.10.2023 to the Commandant of the 25th Bn, SSB, Ghitorni, who forwarded the same to the Director General, SSB, on 09.10.2023, with a request that the petitioner's case for promotion to the rank of Deputy Commandant be reviewed.

9. Following this, the petitioner submitted two additional representations dated 31.10.2023 to the Director General, FHQ, SSB, requesting a personal interview with him regarding non-grant of promotion



and Senior Time Scale (STS) to him. Vide the memorandum dated 29.11.2023, the respondents communicated to the petitioner that his name had been considered by the DPC for promotion to the post of Deputy Commandant (GD) in the year 2023. However, promotion could not be granted to him because he was not meeting the criterion of medical category SHAPE-I as on the crucial date of eligibility and date of DPC.

10. Being aggrieved, the petitioner preferred the present petition assailing the rejection of his representation dated 04.10.2023, denial of promotion to the post of Deputy Commandant to him as also non-grant of the benefit of STS. In response to the notice issued in the present petition, a counter-affidavit has been filed by the respondents stating therein that the injuries sustained by the petitioner did not qualify as having been suffered while on active duty. It has, therefore, been stated that though the petitioner had sustained injuries while undergoing a practice session, he could not be granted the benefit of relaxation for the purpose of promotion, as his case was not covered by any of the clauses mentioned therein.

11. In support of the petition, Mr. Ankur Chhibber, learned counsel for the petitioner submits that the respondents have failed to acknowledge that the Commandant of the 25th Bn himself had recommended the petitioner for promotion but vide the order dated 29.05.2023, his name was erroneously excluded from the list of Assistant Commandants to be promoted to the rank of Deputy Commandant. He contends that according to the seniority list of Assistant Commandants (GD) issued by respondents, the petitioner was placed at Serial no. 442, whereas his senior, Sh. Harsh Sinha was placed at Serial no. 441, and his junior, Smt. Shweta Thapa was placed at Serial no. 443. By the aforesaid order, Sh. Harsh Sinha and Smt. Shweta Thapa were



both promoted to rank of Deputy Commandant but the petitioner's name had been excluded from the list.

12. He contends that the petitioner sustained injuries while performing government duties. As a result, the petitioner's medical category was affected and he was placed in medical category S1H1A2P1E1 for a period of two years. However, since these injuries were incurred while performing government duties, the respondent could not have ignored their own SO 04/2008, which provides for relaxation in the requirement of medical category SHAPE-I.

13. Learned counsel further submits that the respondents have failed to appreciate that while the issue of promotion was still under consideration, the petitioner's batchmates were granted the benefit of STS w.e.f. 25.06.2021. By the order dated 29.11.2023, the petitioner was also to be granted the benefit of STS along with his batchmates, however, from the date of his regaining medical category SHAPE-I. He submits that the petitioner was fulfilling all the eligibility criteria and ought to have been promoted as a Deputy Commandant and also granted STS along with his batchmates by following SO 04/2008 and therefore, contends that the respondents grossly erred by rejecting his bonafide claim vide the impugned orders dated 29.05.2023 and 29.11.2023. In these circumstances, he prays that the writ petition be allowed.

14. On the other hand, Ms. Bharathi Raju, by justifying the actions of the respondents, seeks dismissal of the writ petition by contending that the petitioner was rightly held ineligible for promotion and for grant of STS due to his low medical category i.e. S1H1A2P1E1, in which category he was placed for two years w.e.f. 25.07.2022. She draws our attention to the



relaxation clause provided at paragraph 4.14(b) of MHA's UO dated 31.07.2007 and submits that the relaxation envisaged under the said clause can be granted only when the disability is due to injuries caused while on 'active government duty'. The injuries sustained by the petitioner, she contends, were during practice and therefore, did not fall under the ambit of 'active government duty' for grant of relaxation in the required medical category SHAPE-I for consideration of his case for promotion. Her plea being that though the injuries sustained by the petitioner were attributable to 'bonafide government duties', the same could not be termed to be while on an 'active government duty'. She, therefore, prays that the writ petition, being without any merit, be dismissed.

Analysis and conclusion

15. Having considered the submissions of the learned counsel for the parties and perused the record, we may begin by noting the aspects on which the parties are *ad idem*. The first and foremost fact on which the parties are not at variance is that the petitioner had sustained injuries while undergoing an intensive practice session in connection with AIPCC (during training) and was, therefore, not in medical category SHAPE-I, when he was considered for promotion with his batchmates. The incident was opined to be purely accidental and unfortunate, despite alertness shown by the petitioner. It was also found that nobody could be held responsible for the said injuries. It is also an admitted position that the COI had recommended that the injuries suffered by the petitioner be treated as being attributable to government service. The Medical Board had also placed the petitioner in medical category S1H1A2P1E1 for two years w.e.f. 25.07.2022 due to 'left distal end radius fracture with terrible triad right elbow'.



16. Thus, from the record and the submissions made by the learned counsel for the parties, it is evident that the limited challenge in the present petition is as to whether the petitioner was entitled to the benefit of the relaxation clause as provided in paragraph 4.17(b) of SO 04/2008 dated 15.12.2008, which relaxation could be granted only when injuries were sustained, while being on ‘active government duty’.

17. Before us, the learned counsel for the petitioner has vehemently contended that SO 04/2008 dated 15.12.2008, which is based on MHA’s UO dated 31.07.2009, providing for relaxation from medical category S1H1A2P1E1 to medical category SHAPE-I was squarely applicable to a case like the present, where the injuries were suffered by the petitioner while performing ‘active government duty’ during training for a competition being a part of government duty. In support of this submission, the learned counsel placed reliance on the following decisions of this Court in:

- i) *Venkatesh vs. Union of India & Ors.* in W.P.(C) NO.11263/2015.
- ii) *Kuldeep Kumar vs. Union of India & Ors.* in W.P. (C) No.2233/2018.
- iii) *Ramdayal vs Union of India & Ors.* in W.P.(C) No.870/2021.

18. In order to appreciate the aforesaid plea raised by the petitioner, it would be apposite to refer to paragraph 4.13 of the SO 04/2008, which not only makes it mandatory for Force personnel and officers to be in medical category SHAPE-I for being considered for promotion but also provides that in case, they are temporarily unfit, they will be considered for promotion after they regain medical category SHAPE-I with their seniority being protected. The same reads as under:-

“4.13 Mandatory for the purpose of promotion



Medical Category SHAPE-I will be an essential condition for promotion of all combatised personnel in all groups/ranks/cadres in the CPMFs. In case of those whose illness is of permanent nature and who are not SHAPE-I, they will be considered for promotion by DPC but will be declared unfit for promotion, even if, they are otherwise fit for promotion. In case of those personnel, whose illness is of temporary nature, after considering their cases for promotion –along with others, if they are otherwise fit, the DPC will grade them as 'fit for promotion' subject to attaining SHAPE-I medical category. As and when they regain the SHAPE-I medical category, they will be promoted as per recommendations of DPC. But they will not be entitled to back wages. However they will retain their seniority.”

19. We may now refer to paragraph 4.17 of the aforesaid Standing Order, which provides for relaxation of the requirement to be in medical category SHAPE-I in certain situations. The same reads as under:-

“4.17 Relaxation in SHAPE-I 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 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:-

(i) S1HIA2PIE1 (ii) S1HIAIP2E1 (iii) S1H2AIP1E1

(iv) S1HIAPIE2 (v) S1H2AIP1E2”

20. From a cumulative reading of the aforesaid clauses, it is evident that medical category SHAPE-I is an essential condition for promotion of all combatised personnel in all groups, ranks, cadres in the Central Armed



Police Forces. Taking into account that Force personnel/officers may suffer injuries while on duty, the respondents have themselves laid down a large number of categories where relaxation can be granted vis-a-vis the requirement of being in medical category SHAPE-I for promotions. Further, the SO 04/2008 also makes a provision for restoration of seniority of those combatised personnel, who are promoted after regaining their medical fitness.

21. Learned counsel for the respondents has raised a specific objection to the petitioner's claim for grant of relaxation under paragraph 4.17 of the SO 04/2008 by submitting that the expression 'active duty' has to be read with the circumstances as envisaged under clause 4.17(b) i.e. a duty involving accidents connected with field firings/accidental firings/explosion of mines or other explosive devices and not to any other accident.

22. To deal with the said contention of the respondents, it would be relevant to refer to the decision of this Court in **Venkatesh vs. Union of India & Ors. (supra)**, wherein this Court while interpreting paragraph 4.17 of SO 04/2008 observed that a narrow meaning could not be provided to the said clause so as to include only those accidents occurring in field firings, accidental firings, explosion of mines or other explosive devices. This Court, therefore, emphasized that a wider meaning was required to be given to the expression 'accidents' in aforesaid paragraph 4.17(b). The relevant extracts of this decision read as under:

"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.”

23. In view of the aforesaid dictum of law, it is evident that a member of the Force does not cease to be on ‘active duty’ only because he is not effectively on field, dealing with mines or other explosive devices. He continues to remain on ‘duty’ in every post he is assigned with, whether it be a field duty or a peace posting. He is commanded to perform his duty ‘to restore and preserve order in any local area in the event of any disturbance there’. Therefore, when a Force personnel is engaged in an activity which forms part of his assigned duties and suffers an accident even in a peace station, the said accident cannot be said as not to have suffered while being on ‘active duty’. As a result, no restrictive meaning can be provided to the circumstances of being on ‘active duty’ as appearing in Standing Order dated 15.12.2008.

24. In the instant case, it has not been disputed by the respondents that the practice undertaken by the petitioner in connection with AIPCC was an



integral part of petitioner's duties and he had to mandatorily perform the said assigned duty. It is further an admitted position that the petitioner while undergoing training programmes had received various commendations, having given an outstanding performance while being detailed at the 2nd IFCC Competition. Accordingly, he was shortlisted to participate in AIPCC with other selected personnel. Further, the petitioner had suffered injuries while undergoing a practice session, which has been considered as bonafide government duty attributable to service and therefore, it cannot be said that the injuries sustained by him due to which he was placed in medical category S1H1A2P1E1 was not while on active government duty as envisaged under paragraph 4.17(b)(i) of the Standing Order. We, therefore, have no hesitation in accepting the petitioner's plea that he was entitled to relaxation in his medical category under paragraph 4.17(b) of SO 04/2008.

25. For the aforesaid reasons, the impugned orders dated 29.05.2023, 29.11.2023 along with impugned memorandum dated 29.11.2023, holding the petitioner to be ineligible for grant of relaxation, are unsustainable and are accordingly, set aside. The writ petition is allowed by directing the respondents to hold a review Departmental Promotion Committee to consider, within six weeks, the case of the petitioner for promotion to the post of Deputy Commandant after granting him due relaxation in terms of 4.17(b) of SO 04/2008 dated 15.12.2008. In case upon reconsideration, he is found fit to be meeting all other eligibility criteria for promotion as Deputy Commandant, he will be promoted to the said rank of Deputy Commandant w.e.f. 29.05.2023, the date when his batchmates were promoted to the said post. He will, however, be granted only retrospective seniority and notional pay fixation and will be entitled to the actual pay of the post of Deputy



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Commandant from the date he assumes charge of the said post. Further, after grant of relaxation in medical category SHAPE-I, the respondents will also extend the benefit of Senior Time Scale to the petitioner w.e.f. 25.06.2021, when his batchmates were granted the said benefits. The exercise in terms of this order will be completed within 12 weeks.

26. The writ petition is, accordingly, disposed of in aforesaid terms.

(SHALINDER KAUR)
JUDGE

(REKHA PALLI)
JUDGE

SEPTEMBER 17, 2024
ss/by/SU