

**(2013) 07 DEL CK 0102**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 2643 of 2013**

Badan Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision : 23-07-2013**

**Acts Referred:**

**Citation : (2013) 07 DEL CK 0102**

**Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J**

**Bench : Division Bench**

**Advocate : V. Subramoniam and Mr. Rahat Bansal, for the Appellant; Himanshu Bajaj, CGSC for R-1 to 5, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Gita Mittal, J.—The facts giving rise to the instant petition are undisputed and are within the narrow compass. To the extent necessary, they are noted here in after. The writ petitioner was appointed as Driver in Transport Battalion of the Indo-Tibetan Border Police Force (hereinafter referred to as "ITBPF") on 9th December, 1987 after successfully participating in the direct recruitment test conducted by the respondents. It is stated by learned counsel for the petitioner that because of his outstanding performance and sincerity, the petitioner was promoted as Lance-Naik/Driver. The petitioner was promoted as Naik/Driver in the year 1995. The petitioner was eligible for undertaking the Map Reading Stage II (MR II) course in the year 2006. Our attention has been drawn to the General Instructions issued by the respondents wherein Chapter III, the respondents have considered the functioning of the Indo-Tibetan Border Police (hereinafter referred to as "ITBP") training establishments which are responsible for planning, organising and conducting approved training programmes. In Chapter III para 54, the respondents have prescribed the manner in which the nomination for the courses would be effected. Given the nature of challenge raised in the present writ petition, the relevant extract thereof deserves to be considered in extenso and reads as follows:-

## 54 NOMINATION FOR COURSES

Nominations for the courses will be made either by Directorate General or by Sector Headquarters or by Unit/Training Centres, Eligibility conditions to enable participation in particular course have been prescribed and nominations are finalized in accordance with the provisions contained therein. While making nominations for various courses including foreign course, the following points will be kept in mind:-

- (i) Age
- (ii) Educational Qualification
- (iii) Prescribed Eligibility conditions
- (iv) Special Qualification, if any
- (v) Aptitude of the individual as assessed during Basic/Foundational training
- (vi) General performance of the candidates during Basic Training.
- (vii) Performance during certain specialized courses undergone by an individual
- (viii) As far as possible no officer/SOs/ORs should be detailed for course more than once in a year
- (ix) Recommendations by Sector Dy. Inspectors General are kept in mind.
- (x) Nomination for Instructional courses will be made based on the grading obtained in the specialized courses and aptitude of the candidates for reaching.
- (xi) Nomination once approved by the competent authority will not be surrendered or cancelled except on medical ground or exigency of services in public interest
- (xii) Same person will not be nominated time and again.

2. A special categorisation has been effected in para 55 of the above guidelines, so far as nomination for promotion courses are concerned, the relevant portion whereof reads as follows:-

## 55. NOMINATION FOR PROMOTION COURSES

Due care will be taken while nominating a candidate for any promotional training programme/course. Following points will be kept in mind:-

- (i) It will be compulsory and essential for all incumbents to undergo promotional courses for enhancing professional competence besides the career progression. In case of inability to attend the course due to illness or away on Government duty, such candidates will have to undergo the courses at the first opportunity. Prior permission for cancellation/deferment of such nomination will have to be obtained from Directorate General duly justifying such request.

(ii) Nominations for promotion/Career courses will be made by Directorate General in case of officers and by respective Training Institutions in case of NGOs, strictly as per seniority list circulated by Directorate General.

(iii) Directorate General will specify the cut off date for nomination of candidates for each promotion course.

(iv) Unwillingness given once in writing not to undergo the course in his turn will not be revived.

(v) Candidate once nominated may be exempted by competent authority, that is, the Directorate General only on Medical ground and to be nominated in next immediate course on his being found medically fit to undergo the course.

(vi) Written unwillingness to undergo promotional course in one's seniority will be liable for forfeiture of his promotion to the higher rank and he will have to give an undertaking in this regard. Written unwillingness to undergo the promotional course and the undertaking to forego his promotion to higher rank on this account, will be placed in his service record.

(vii) List of various Mandatory/Promotional courses at different level for General Duty Personnel are given in (annexure-II).

3. It is apparent from the above that it is compulsory and essential for all incumbents to undergo promotional courses for enhancing competence besides career progression and that the nomination for the promotion and career courses has to be made by the Directorate General of the ITBPF.

4. The petitioner has complained that despite his eligibility, for reasons best known to the authorities, he was not nominated for undertaking the Map Reading Stage II course till July, 2010. The petitioner made a representation to the respondent regularly and was finally permitted to appear in the D-List course for the period 12th July, 2010 to 22nd September, 2010 at Pegog (Sikkim). It is an admitted position that the petitioner had undertaken the said course and successfully qualified the same. As a result, for the fault of the respondents, he was not considered for appearing in "D" List test of the ITBPF for promotion to the rank of Sub-Inspector on the due date.

5. It is further submitted that on 12th July, 2011, the respondents issued a seniority list of candidates appointed as sub-inspector who were the batch mates of the petitioner. The petitioner, therefore, made representations dated 18th July, 2011, 20th September, 2011, 19th November, 2011 & 26th December, 2011 to the respondent stating that he has passed the IInd Map Reading Course and he should be promoted to the post of Sub-Inspector, as he has fulfilled the necessary qualification. None of the representations were considered by the respondents. The petitioner thereafter made representation to the Deputy Inspector General, Regional Head Office, ITBP on 2nd February, 2012. The Commandant vide his letter dated 16th February, 2012 replied to the representation stating that the petitioner did not complete the course and,

therefore, his name could not be mentioned in the seniority and that the petitioner is solely responsible for his non-promotion. The petitioner again made representation to reconsider the decision and the Commandant, Transport Vahini, vide his Office Note dated 1st December, 2012 has intimated that the liability of conducting the Map Reading Second Level Course is on the concerned Vahini or Regional Offices and not on Transport Vahini.

6. In this background, the petitioner has filed the instant writ petition challenging the letter of rejection dated 16th February, 2012 contending that the respondents have failed to act in accordance with their Standing Orders dated 22nd July, 1992 & 10th October, 1995 and failed to consider the fact that the petitioner was denied opportunity to undertake "D" List test and the earlier courses on the due dates for the fault of the respondents whose responsibility was to nominate him for the same. The petitioner prayed for direction to the respondents for grant of seniority to the petitioner and promotion for the post of Sub-Inspector on the date when his juniors were promoted.

7. Just as the stand taken in the communications made to the petitioner, the respondents defend the present writ petition on the ground that the petitioner never approached them when he was not nominated for the course and that, therefore, the fault lies upon the petitioner. To say the least, this stand of the respondents is in the teeth of the clear stipulation in the aforementioned guidelines. It is clearly the responsibility of the respondents to nominate a personnel for the course under the General Instructions issued by the respondents which have been reproduced hereinabove. It is not disputed that the respondents are exercising administrative control over the appointments and assignment on which the personnel are deputed. This being the position, the ITBP which is the Uniformed Force, strict discipline is required to be maintained not only by the officers/jawans manning the various postings but also by the administration which is responsible for effecting the nominations. The responsibility for the same cannot be transferred or shifted to the personnel themselves. It remains that of the administration, especially in the present case.

8. Our attention has also been drawn to the Standing Order No. 1/92 dated 22nd July, 1992 which provides for "Promotion of Seniority of Combatised Personnel of the Force". The relevant extracts thereof reads as follows:-

2. After a careful examination of the matter, it has been decided that seniority of such personnel who are otherwise/eligible but could not be detailed for the requisite promotional course or appear in the promotion test, due to their unavoidable involvement in the under mentioned Force commitments will be protected, subject to the condition that they qualify in the concerned promotional course/promotion test in the first attempt. They will be allowed to claim their seniority from the dates on which their juniors are promoted. However, financial benefits will accrue to them only from the dates of taking over charge of the new posts.

- (a) Force level/international mountaineering expeditions including detailment as L.O. for Foreign Mountaineering Expeditions.
- (b) Un-avoidable/un-foreseen/operational made scale deployment of the Force including during General Elections.
- (c) West Zone Police tournaments, All India Police Games, All India Police Duty Meet National/International Sports Meets.
- (d) Postings/deployment at Indian missions abroad.
- (e) Any other peculiar circumstances for which the matter will be decided on merits of the individual case at the Directorate General.

(Emphasis supplied)

9. This Standing Order was passed because the ITBPF was aware that on account of circumstances beyond control owing to unavoidable Force commitments, many times the Force personnel are unable to undergo promotional courses or appear in the promotion tests as per their seniority/turn. In this background, a uniform policy for protection of seniority of such affected personnel was required and had been so framed. It is apparent from the above that seniority of the ITBPF personnel who are otherwise eligible but could not be detailed for the requisite promotional course or appear in the promotion test on account of unavoidable involvement in the Force commitments subject to the condition that they qualify the promotional course in the first attempt and their seniority is also to be protected from the date of their juniors were promoted.

10. In the instant case, it is undisputed that the petitioner was not permitted to undertake the promotional courses on the due dates not for any fault attributable to the petitioner but purely because he was not nominated for the same. It is not for the petitioner to question the working of the respondents who were bound to do justice so far as nominating their personnel for the above courses on due date is concerned. The respondents unreasonably and unfairly did not do justice to the petitioner even when he repeatedly represented to them.

11. Given the prescription of Standing Order No. 9, the petitioner cannot be faulted inasmuch as it is an admitted position that he was never nominated for the course and refused to undertake the same but was prevented from participating by the respondents who failed to nominate him for the same. It is undisputed before us that juniors to the petitioner were not only nominated but duly promoted on the due dates of the promotions from Head Constable/Driver to Sub-Inspector. In this background, there is certainly merit in the challenge laid by the petitioner to the failure of the respondents to grant him the benefit under Standing Order No. 1/92 dated 22nd July, 1992 on the ground that he fully meets the requirements thereof. Even otherwise, the petitioner was entitled to be nominated for the "D" List test on the date when his immediate junior was so nominated and thereafter promoted.

12. It is on record before us that the petitioner has successfully completed all requisite courses on the first attempt granted to him.

The petitioner is, therefore, legally entitled to protection of his seniority in the post of Sub-Inspector. This would be in consonance with the spirit and intendment of Standing Order No. 1/1992 as well.

We, accordingly, direct as follows:-

(i) The respondents shall pass an order deeming the petitioner to have been promoted to the post of Sub-Inspector on the date his immediate juniors were promoted and ensure maintenance of his seniority accordingly.

(ii) In view of the prescription of Standing Order No. 1 of 1992, the petitioner shall not be entitled to financial benefits.

(iii) Appropriate orders in terms of the directions passed by us shall be made within six weeks which shall be informed to the petitioner.

(iv) This writ petition is allowed in the above terms.