
(2015) 05 RAJ CK 0147
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6981 of 2013

Banshi Lal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Citation : (2015) 05 RAJ CK 0147

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : P.S. Bhati, for the Appellant; A.K. Rajvanashy and D.P. Dhaka,
Advocates for the Respondent

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.

1. The instant writ petition has been filed by the petitioner who was working on the post of Head Constable for promotion on the post of ASI from the date when similarly situated employees were granted promotion on the post of ASI with all consequential benefits. Further, it is prayed that respondents may kindly be directed to grant relaxation from the mandatory condition i.e., two years of mandatory field services (MFS) duty to be rendered in a duty battalion and the petitioner may kindly be afforded the promotion on the post of ASI from the date of his entitlement. The petitioner is claiming his right on the basis of the circular dated 2.6.2012 whereby certain relaxations were provided.

2. In the reply filed by the respondents in para No. 6 the following assertions were made by the respondent, which reads as under:--

"6. That meanwhile, the petitioner submitted a representation in 31.01.2013, addressed to the Director General, GSF and on the basis of which a case was forwarded to SHQ BSF, Jaisalmer (South) by 27 Bn. FSF vide letter dated 02.02.2013. SHQ BSF, Jaisalmer (South) forwarded the case of the petitioner for one time relaxation of two years mandatory field service to Ftr. HQr Rajasthan

vide letter dated 08.05.2013, Ftr HQr Rajasthan forwarded the case to FHQ (Pers Dte) vide letter dated 17.06.2013. Considering the facts and circumstances of the case, Director General, BSF has accorded approval to refer the case to the Ministry of Home Affairs for relaxation in the requirement of two years MFS in respect of the petitioner. Accordingly, a proposal to this effect stands referred to the Ministry of Home Affairs, by FHQ BSF (Pers Dte) vide UO No. 17/58/2013-PERS/BSF/PT-IX/13385 dated 29.11.2013. The decision of the same is still awaited as the case of the petitioner is under consideration with the Ministry of Home Affairs. Thus, in these circumstances, the writ petition filed by the petitioner is liable to be dismissed being premature as the petitioner without awaiting decision on his representation has preferred the present writ petition before this Hon"ble Court."

3. Upon perusal of above reply it is revealed that matter of the petitioner was under consideration during the pendency of the writ petition but the respondents filed additional affidavit before this Court on 24.4.2013 in which it is stated in para No. 4 of the additional affidavit that Ministry of Home Affairs, New Delhi did not agree to the proposal sent by FHQ (Pers Dte) vide UO dated 29.11.2013 and observed that the petitioner failed to complete the requisite Mandatory Field Service knowing fully well that it was a prerequisite for his promotion as such there is no justification for grant of relaxation in requirement of MFS.

4. The learned counsel for the petitioner submits that none of the grounds communicated vide communication dated 29.11.2013 were considered and straightway it is communicated by the Ministry of Home Affairs, New Delhi that petitioner is not entitled for regularization as per the circular.

5. The Addl. Solicitor General Sh. A.K. Rajvanshy filed two documents on 13.5.2015 duly attested by Commandant Law Officer GDE-I, Hqrs Rajasthan FTR Border Security Force, Jodhpur and out of two documents, one document is recommendation letter sent by Director General of Border Security Force under the signatures of Dy. Inspector General (Confdl.), which reads as under:--

"DIRECTORATE GENERAL BORDER SECURITY FORCE (PERSONAL DIRECTORATE)

Subject: RELAXATION IN THE REQUIREMENT OF MANDATORY FIELD SERVICE

May please refer to Border Security Force General Duty Cadre (Non-Gazetted) Recruitment Rules, 2012, which are placed across the file (P-5/C). According to these RRs, two years service in serve Coy of a duty Battalion or two years service in Artillery Regiment is one of the essentially criteria for promotion to the rank of Assistant Sub-Inspector (GD).

2. No. 860057558 Head Const(GD) Banshi Lal was not considered eligible for promotion to the rank of Assistant Sub-Inspr. (GD) w.r.t. to the DPC list-"C" held on 05.05.2011 for the vacancy year 2011-12 due to non-completion of two years service in service company of duty Bn. The individual got promotion to the rank

of HC (GD) w.e.f. 02.07.1999. Considering the Instructional grading i.e., "AX-I" in Platoon Weapon Course and "B" grading in Unit Instructor Drill Course possessed by the individual, he was posted to Subsidiary Training Centre (STC), Chura Chand Pur to impart training on Force level courses to the Force personnel. He remained posted in STC, Chura Chand Pur w.e.f. 04.07.99 to 01.08.2004. Thereafter, he was posted to 27 Battalion BSF, where he remained posted w.e.f. 20.08.04 to 12.02.08 and his services were also utilized as Instructor in Trg Team of Battalion and as Guard Commander of Special Guard for displaying drill at Quarter Guard during the visit of VVIP/VIP and Inspection of Unit by senior officers. He was again posted to training Centre, i.e., STC BSF Udhampur as Instructor to impart training on Force level courses to Force personnel w.e.f. 13.02.08. During his stay in STC BSF Udhampur, the individual submitted an application on 20.07.2011 requesting for his posting to any duty Bn to complete Mandatory Field Service. Accordingly, he was posted to 27 Bn BSF w.e.f. 13.11.2011 and since then he has been performing his duties in Service Coy of duty Bn.

3. In accordance with the provisions in BSF GD Cadre (Non-Gazetted) RRs, 2012 (P-5/C), period of employment as Inspector in National level Training Institution including BSF Academy will be treated on 50% of the required field service but the same is not applicable for Subsidiary Training Centre or in Trg Team of Battalion.

4. Having not been promoted as ASI, w.r.t. the DPC List-"C" held for the vacancy year 2011-12, Head Const (GD) Banshi Lal has submitted a representation, addressed to the DG BSF, requesting therein to consider his case for promotion to the rank of Assistant Sub-Inspr (GD) w.r.t. the above DPC, which was under consideration with this HQ for want of certain informations from his Battalion.

5. In the meantime, the individual has filed a writ petition No. 6981 of 2013 before Hon"ble Rajasthan High Court praying therein to grant promotion to the rank of Assistant Sub-Inspector (GD) in parity with his immediate junior i.e., with effect from 05.04.2012, relaxing the condition of two years" service in service Coy of duty Bn in the light of MHA UO Note No. I-45020/7/2012-Pers-II dated 02 June 2012 (P-7/C) read with Corrigendum issued vide UO Note No. 1I-45020/7/2012-Pers-II dated 14.08.2012 (P-8/C), whereby powers have been delegated to the DG of the CAPF concerned to consider cases of personal who could not be posted to Duty Battalion due to exigency/requirement of CAPFs in the interest of the work of the Force or due to other technical reason/grounds, for granting waiver/relaxation in the Mandatory Field Service. The Court has granted 04 weeks time to file Counter Affidavit on the matter.

6. It may be seen that the services of Head Const (GD) Banshi Lal were utilized as Instructor in Training Centres as well as in Battalion to impart training to Force personnel, which is specialized in nature, in the best interest of the Force. It may not be out of place to add here that before introduction of rank of ASI (GD) in BSF, a Head Const was being considered for promotion to the rank of Sub-Inspr

(GD) and at that time, the individual was not falling within the zone of consideration for promotion to the Rank of Sub-Inspr (GD). But, due to introduction of intermediary rank of ASI (GD) in BSF, he fell within the consideration zone for promotion to the rank of ASI (GD) due to bulk promotion as there were 12070 posts of ASIs (GD) were to be filled up by promotion. Thus, this was also one of the reason of non-completion of MFS by the individual.

7. In the backdrop of above facts, the case of the individual has been carefully examined and it is found that the services of Head Const (GD) Banshi Lal were utilized in the best interest of the Force as Instructor in Subsidiary Training Centres and Battalion and falls under the category mentioned in para 5 (i) of MHA UO Note No. I-45020/7/2012-Pers-II dated 02 June 2012 (P-7/C). As such, the claim of Head Const (GD) Banshi Lal merits consideration.

8. As per Rule 15 of BSF GD Cadre (Non-Gazetted) RRs, 2012 (P-5/C), power to relax any of the provisions in the RRs is vested with the Central Government.

9. In view of the above, MHA are requested to convey relaxation in the requirement of mandatory field service i.e., two years service in service Coy of duty Bn, in favour of No. 860057558 Head Const (GD) Banshi Lal, under the provisions of Rule 15 of the BSF General Duty Cadre (Non-Gazetted) RRs, 2012 (P-5/C) and in the light of instructions contained in para-5 (i) of MHA UO Note dated 02 June 2012 (P-7/C) to consider his case for promotion to the rank of ASI (GD) w.r.t. the DPC held on 05.05.2011 so that an appropriate counter affidavit could be filed before the Hon"ble Rajasthan High Court. An early decision is requested please.

10. This has the approval of the DG BSF.

Sd/- (Kuldeep Saini) Dy. Inspector General (Confdl) 29 Nov 2013

Sd/- MHA (Pers-III)

No. 17/58/2013-Pers/BSF/Pt-IX 13385

Dated 29 Nov 2013"

6. Similarly, the second document submitted by the Addl. Solicitor General, reads as under:--

"CF-3232237/13 Ministry of Home Affairs (Pers. III Dest)

BSF's note on Pre-pages-01-2/n, regarding in the requirement of mandatory field service in favour of Shri Banshi Lal, Head Constable of 27th Bn. For his promotion to the rank of Assistant Sub-Inspector (GD), refers.

2. Brief background of the case is that No. 860057558 Head Const (GD) Banshi

Lal was not considered eligible for promotion to the rank of Assistant Sub-Inspector (GD) w.r.t. to the DPC list "C" held on 05.05.2011 for the vacancy year 2011-12 due to non-completion of two years mandatory field service in service company of duty Bn. As prescribed in BSF GD Cadre (Non-Gazetted) RRs.

3. He got promotion to the rank of HC (GD) w.e.f. 02.07.1999. Considering the Instructional grading in Platoon Weapon Course and Unit Instructor Drill Course possessed by the individual, he was posted in Subsidiary Training Centre (STC)/27th Bn where his services were utilized as Instructor due to exigencies of services which were in the interest of the work of the Force. BSF has mentioned that now he is performing his duties in Service Coy of duty Bn w.e.f. 13-11-2011. As per BSF GD Cadre (Non-Gazetted) RRs 2012 (Page-5/c). period of employment as Instructor in National Level Training Institution including BSF Academy will be treated as 50% of the required field service but the same is not applicable for STC or Training Team of Bn. AS such h was not considered eligible for promotion to the rank of ASI (GD).

4. Aggrieved, he has filed a WP (C) No. 6981 of 2013 (pages 23-62) in the Hon'ble Rajasthan High Court praying therein to grant promotion to the rank of Asstt. Sub-Inspector in parity with his immediate junior with reference to the DPC held on 05-05-2011, relaxing the condition of two years service in service Coy of duty Bn in the light of MHA UO Note dated 2 June, 2012 and dated 14-08-2012 (Page -791-8/c) whereby powers have been delegated to the DG of the CAPF concerned to consider cases of personnel who could not be posted to Duty Battalion due to exigency/requirements of CAPFs in the interest of the work of the Force or due to other technical reason/grounds, for granting waiver/relaxation in the Mandatory Field Service. The Hon'ble High Court has granted 04 weeks time to file Counter Affidavit on the matter.

5. BSF has stated that the services of Shri Banshi Lal were utilized as Instructor in Training Centres as well as in Battalion Training Team to impart training to Force personnel, which is specialized in nature, in the best interest of the Force, Further, due to introduction of intermediary rank ASI (GD), he fell within the consideration zone for promotion to the rank of ASI (GD) as there were 12070 posts of ASIs (GD) which were to be filled by promotion. Thus, this was also one of the reasons of non-completion of Mandatory Field Service by the individual. DG, BSF has recommended for grant of relaxation in favour of petitioner so that the incumbent could be promoted to the rank of ASI and appropriate reply could be filed in the High Court.

6. As per the extant instructions service rendered in the BSF Academy will be treated as 50% of the required field service but the same is not applicable for STC or Training Team of Bn. Since Shri Banshi Lal remained posted in the STC the service is not counted as field service. He also failed to complete the requisite Mandatory Field Service knowing fully well that it is a prerequisite for his promotion, there is no justification for grant of relaxation of requirement of mandatory field service. If agree, it may induce indiscipline in the force and

attract similar requests.

Sd/- (Prem Narain Saxena) Consultant (Per-III) 20/03/2014

Sd/- Dir (Pers)

Sd/- JS(P-II)

Sd/- Director

Sd/- US (Pers. II)

Sd/- DIG (Confd), BSF"

7. I have perused the recommendations made by the Dy. Inspector General (Confidential) made upon the representation filed by the petitioner.

8. It emerges from the documents annexed with the petition that none of the ground for consideration incorporated by the Dy. Inspector General (Confidential) in the forwarding letter were taken into account in the order-sheets so as to grant two years relaxation. It is a case in which different authorities gave different opinion for the purpose of granting relaxation of two years for field service. On the one hand, the Dy. Inspector General (Confidential) has incorporated sound reasons to grant relaxation of two years field service for promotion under the circular and on the other hand, without application of mind, the authorities rejected the claim upon the note-sheets without passing formal order. In my opinion, the grounds and reasons incorporated in the recommendations by the Dy. Inspector General are justified to grant relaxation of two years filed service for promotion to the petitioner.

9. In view of the reasons mentioned in forwarding note dated 29th Nov., 2013 based on record, the petitioner is entitled for relaxation of 2 years field service for promotion. Although the petitioner has been promoted subsequently w.e.f. 10.1.2014, but the respondents are directed to reconsider his case of petitioner for promotion after granting relaxation of 2 years field service as provided in the circular dated 2.6.2012 and consider the case of the petitioner for promotion on the post of ASI from the date his juniors were promoted strictly in accordance with law within a period of two months from the date of receiving the serviced copy of this order.

10. According this writ petition is allowed in above terms.