
(2013) 02 DEL CK 0314
In the Delhi High Court
Case No : W.P. (C) No. 327/2013

Beg Raj Indoria

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-02-2013

Acts Referred:

Citation : (2013) 4 ILR Delhi 2955

Hon'ble Judges : Sudershan Kumar Misra, J;S. Ravindra Bhat, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—In this proceeding, under Article 226 of the Constitution of India, a direction is sought to quash the order dated 11.12.2012 issued by the Assistant Inspector General, CISF (Headquarters) and further direct the respondents to promote the petitioner as Assistant Commandant (Fire) (hereafter called as AC) in the Central Industrial Security Force (CISF). The brief facts are that the petitioner who was appointed as Sub-Inspector (Fire) on 9.11.1991 and confirmed to that post on 13.11.1993. He was later promoted as Inspector (Fire) on 28.7.1997. It is urged that in terms of the updated seniority list of Inspectors (Fire) as on 31.12.2011, the petitioner was placed at Sl. No. 18. Others impleaded as private respondent Nos. 2 and 4 were placed at Sl. No. 20 and 22. The officers at the intervening positions had opted for voluntarily retirement. It is urged that during 2011-12, the petitioner was posted at CISF Unit Anpara Thermal Power Project in U.P. On 24.02.2012, apparently, a list containing names of Inspectors in the zone of consideration, (according to their seniority) was forwarded to all senior Commandants/Commandants. The CISF also, by this letter directed that the medical "SHAPE" certificate valid as on 1.1.2012 in respect of the candidates should be forwarded immediately. In view of this letter, the Assistant Commandant of the Anpara CISF Unit wrote to the petitioner on 9.3.2012 asking him to submit his "SHAPE certificate" on or before 15.3.2012. The petitioner was actually relieved around 13.3.2012 for medical

examination; the Chief Medical Officer, CAPF composite hospital at Allahabad was issued a letter requesting that the annual medical examination (SHAPE) in respect of the petitioner be conducted. The medical examination report (SHAPE) 2012 was duly forwarded in original by the Assistant Commandant of the petitioner's Unit on 19.3.2012.

2. In these circumstances, on 11.12.2012, an order was issued promoting eight officers. This did not include the petitioner. He had, in the meanwhile, represented to the Director General, CISF stating that in 2010 he was given direction by the competent authorities to carry out annual medical examination at the CAPF composite hospital and also issued a movement to carry out that order at the CAPF composite hospital, Allahabad. However, in 2011, he was not given any such order and, therefore, he resorted to medical examination at some other Unit. It is argued that the respondent's omission to consider the petitioner's candidature, and in proceeding to promote officers junior to him, is arbitrary and unjustified.

3. This Court had issued notice on 28.1.2013 and required the respondents to produce the relevant records and also indicate the reasons for rejection of the petitioner's candidature. Today, counsel for the respondents produced an order dated 11.2.2013 issued by the Deputy Inspector General/Pers, rejecting the petitioner's representation. Beside reciting certain other details - not relevant for the purposes of the present order this order rejects the petitioner's representation stating as follows:

NO. E-31016/31/BRI/PERS.II/2013/273

Dated: 11 Feb. 2013

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5. AND WHEREAS, the officer had conducted his Annual Medical Examination for the year 2011 from the Project Hospital of ATPP Anpara which was not acceptable in view of instructions issued vide letter dated 01.04.2010. Since SHAPE certificate duly conducted by CAPF/CISF hospital of the Inspector/Fire for the year 2011 was not available, his name was excluded from the eligibility list for the vacancy year 2012 in view of the instructions contained in DoP & T OM dated 14 August, 2003.

4. Learned counsel argues that the respondents arbitrarily did not consider the petitioner's case for promotion even while proceeding to consider that of others - juniors in the seniority list. It was submitted on the basis of the direction/Circular issued to all Sector IGs and Zonal Heads as well as the Units by the Director General on 28.01.2009 that the controlling officer of the Unit was primarily responsible for getting the AME/Medical Board done in time and the medical examination should be spread throughout the year to facilitate examination of all personnel. Such being the case, the lapse, if any, of the Unit Head in ensuring that the medical certification was done in time, i.e., as on 31.12.2011, cannot

adversely affect the petitioner. It was submitted that in the facts and circumstances of the case, he was asked, for the first time, to get the (Annual Medical Examination-hereafter "AME") done pursuant to the existing instructions in a composite hospital and permitted to move there only on 13.3.2012. The certificate of that Institution was duly issued and even forwarded to the concerned authorities. The DPC/competent authority which considered the cases of all eligible officers rejected his case even though the consideration took place in December, 2012. It was submitted that even if the certificate was dated 19.3.2012, the fact remains that the petitioner had been certified as medically fit for the higher post. It was not as if he was unfit as on 1.1.2012.

5. Learned counsel submitted that even if the medical certification was that a candidate was fit as on 1.1.2012, the authorities were bound to take into consideration later developments and be satisfied that, as on the date the official joined the duties, or at least when the consideration of his case took place, he was fit. In other words, if there were to be a considerable time lag between the date of the certificate and the date when the cases were taken up for judging suitability, there could be likelihood that a candidate or official who was fit at the earlier point of time might actually not be so later. This, argued the petitioner, would lead to anomalous consequences. Counsel highlighted that the approach and order of the CISF in rejecting his otherwise eligible candidature in the present case was arbitrary and needs to be interfered with.

6. Learned counsel for the respondents relied upon the Circular dated 17.9.1998, which, inter alia, states as follows:

September 17, 1998

SUBJECT: Eligibility of officers to be considered for promotion by DPC - Fixing of Crucial Date of

The undersigned is directed to say that where the Recruitment/Service Rules lay down promotion as one of the methods of recruitment, some period of service in the feeder grade is generally prescribed as one of the conditions of eligibility for the purpose of promotion. Vide the Department of Personnel and Training Office Memorandum No. 22011/7/86-Estt (D) dated July 19, 1989, the crucial date for determining the eligibility of officers for promotion has been prescribed as under:

- (i) 1st July of the year in cases where ACRs are written calendar year-wise. 1st
- (ii) October of the year where ACRs are written financial year-wise.

2. The matter has been reconsidered by the Government and in supersession of the existing instructions it has now been decided that the crucial date for determining eligibility of officers for promotion in case of financial year-based vacancy year would fall on January 1 immediately preceding such vacancy year and in the case of calendar year-based vacancy year, the first day of the vacancy year, i.e., January 1 itself would be taken as the crucial date irrespective of whether the ACRs are written financial year-wise or calendar year-wise. For the

sake of illustration, for the panel year 2000-2001 (financial year), which covers the period from April 1, 2000 to March, 31, 2001, and the panel year 2000 (calendar year), which covers the period from January 1, 2000 to December 31, 2000, the crucial date for the purpose of eligibility of the officer would be January 1, 2000 irrespective of whether ACRs are written financial year-wise or calendar year-wise.

3. The crucial date indicated above is in keeping with para 9 of the Department of Personnel and Training Office Memorandum No. 22011/9/98-Estt (D) dated September 8, 1998 which prescribes a Model Calendar for DPCs. In accordance with paragraphs 10 and 11 of the said Office Memorandum, these instructions will come into force in respect of vacancy years commencing from January 1/ April 1, 1999 and will, accordingly, be applicable to all such subsequent vacancy years.

4. These instructions shall be applicable to all services/posts. The Recruitment/ Service Rules may, therefore, be amended accordingly. All Ministries/ Departments are requested to bring these instructions to the notice of all concerned, including Attached/Subordinate Offices, for guidance and compliance.

7. Counsel submitted that in matters pertaining to judging suitability on the basis of medical fitness, the Circular/notice of the Director General, CISF dated 1.4.2010 was binding. The effect of this was that the DPC/competent authority which recommends officials for promotion has to necessarily be presented with the entire material including the Vigilance clearance and the medical fitness certificates as on the first date of the year in which the panel of promotion was to be prepared. This, according to the 1st Circulars, was the of January of the relevant year. In the present circumstances, the panel was to be prepared on the basis of the dossiers and records of all candidates and their eligibility assessed as on 1.1.2012. Since the petitioner could not produce any medical certificate as on 1.1.2012 but produced one of March, 2012 irrespective of whether the consideration took place in the middle or at the end of the year, he was ineligible and could not be considered for promotion. It was submitted that medical fitness is one of the crucial conditions for promotion in a paramilitary force such as the CISF. Having regard to these factors, the denial by the CISF of the petitioner's case for promotion was neither arbitrary nor justified. The said circular reads as follows:

Dated: The 01 April, 2010

To,

All Sector IGs including Trg. Sector, NISA Hyderabad

All Zonal/Plant DIGs including Trg. Centres Director/Medical, CISF Hqrs., New Delhi

All Units headed by Sr. Commandant/Commandant Dy. Commandant/Assistant Commandant

Subject:- HEALTH CARE SYSTEM IN CENTRAL PARA MILITARY FORCES - INSTRUCTIONS FOR MEDICAL EXAMINATION AND CLASSIFICATION OF PERSONNEL OF CPMFS.

In partial modification of this Directorate letter No. E-32012/2005/SHAPE/Pers. II/145 dated 28/01/2009 regarding revised instructions issued for Health Care System, it has been decided that Annual Medical Examination of all Inspectors (Exe/Min/Fire/Steno) of CISF shall be carried out by two doctors at the nearby CISF/CPF Hospitals only and not at PSU Hospitals.

2. In this regard, I am directed to forward the letter of ADG/Med CPMFs New Delhi, sent vide U.O. No. I-06/ADG (Med)/CPFs/AME/2010/222 dated 18/3/2010 to this Directorate with copies to all Director/Medical in which directions have been issued for arranging medical examination of Inspectors in CISF on receipt of requires from CISF authorities.

3. This order will be effective with immediate effect.

8. The question which this Court has to decide is whether the petitioner was unfairly or arbitrarily overlooked for promotion to the post of AC (Fire). The respondents primarily rely upon two Notifications dated 17.9.1998 and 1.4.2010. The earlier 1998 Notification issued by the Government states that the crucial date for determining eligibility of officers for promotion in 1st the case of financial year based vacancies year would be January immediately preceding such vacancy year and in the case of calendar based vacancy year, the first date of the vacancy year, i.e., 1st January itself would be taken as a date "irrespective of the ACRs which are written financial year wise or calendar year wise". This Circular, however, does not deal with the crucial date on which the medical certificate has to be furnished; nor does it postulate that the medical certificates as on the date of the year of the panel relevant for the consideration alone to the exclusion of the other certificates would be taken into consideration. The respondents, submission broadly appears to be that medical fitness being a crucial ingredient in the suitability parameters of an officer of the CISF, the cutoff date indicated to judge eligibility would automatically apply in respect of the certificates issued. The second Notification, i.e., of 1.4.2010 nowhere mentions about the date or dates as on which the medical certificates are to be furnished. It, however, importantly states that AME of all Inspectors of the CISF should be carried out by two Doctors at the nearby CISF/CPF hospitals and not at PSU hospitals. Now, these two, in the opinion of the Court, do not by themselves assist in a proper determination of the dispute. What is important is the DG, CISF's Circular/directions dated 28.1.2009 which specifically deal with the question of healthcare system. The said Circular/directions first cites two earlier instructions of the MHA, Central Government dated 31.7.2007 and 29.10.2008 and thereafter provides for various eventualities. The said Circular reads as follows:

Dated: 28/01/2009

To,

All Sector IGs including Director NISA Hyderabad

All Zonal/Plant DIGs including Trg Centres

All Units headed by Sr. Commandant/Commandant

Dy. Commdt/Asstt. Commandant

SUB: HEALTH CARE SYSTEM IN CENTRAL "PARA MILITARY FORCES - INSTRUCTIONS FOR MEDICAL EXAMINATION AND CLASSIFICATION OF PERSONNEL OF CPMFS.

A copy of instructions for medical examination and classification of personnel of CPMFs received vide MHA UO No. I-45024/3/2004-Pers. II dated 31/07/2007 & 29/10/2008 and UO No. I-45024/1/2008/Pers. II dated 29/10/2008 are forwarded herewith for information and necessary action.

2. Above instructions issued by MHA will be effective in CISF w.e.f. the year 2009. However, keeping in view the immediate medical set up available in CISF the following instructions are issued for strict compliance in addition to MHA's instructions:

i) It will be the responsibility of the Controlling Officer/Unit Incharge to get the AME/Medical Board done in time.

ii) The medical examination can be spread throughout the year to facilitate medical examination of all personnel posted in a Unit in phases. A proper monitoring mechanism to ensure personnel undergo AME at the appointed time will be created at the Unit level.

iii) The medical examination for all NGOs will be conducted by the Medical Officer of the Unit concerned and in case of PSU by Authorized Medical Officer (AMO) of PSU. In case of PSUs, the respective CISF Unit Incharge will ensure that SHAPE medical categorization system is properly followed by PSU AMOs, while conducting medical examination of CISF personnel. In the event of non-availability of MO/AMO, the case should be sent to nearby CISF/CPF Hospital. In case of further clarification, Director (Medical), CISF may be approached.

iv) Annual Medical Examination of all GOs will be conducted by two doctors at the nearby CISF/CPF Hospitals only and not at PSU Hospitals.

v) A copy of Annual Medical (AME) report under SHAPE system will be kept in the personal file of the individual (GOs/NGOs) and year wise entry be made in the Service Book. A copy of AME Report in respect of GOs (Commandant and above) will also be sent to the CISF Directorate (Pers Branch) for record through concerned IGs.

vi) In the case of Gazetted Officers, the DPC for promotion are held under the aegis of UPSC. As per the instructions of DOP & T, only those officers who are

found in SHAPE-I category will be considered eligible for promotion.

vii) DG, CISF will have full powers to constitute a Review Medical Board either on justified request/appeal of a Lower Medical Category (LMC) Force personnel or in respect of any personnel of the Force, in case the DG is satisfied that the medical category of the personnel shown in the Annual Medical Examination is contrary to his/her general health during the preceding years.

viii) If there is any deterioration in the medical categorization of an empanelled Officer after the DPC and before his actual promotion, the promotion will be withheld.

ix) Persons on deputation/foreign service etc. should also present themselves for medical examination at the appropriated time for determining their SHAPE-1 Medical Category at any CISF/CPMF establishment. Persons on deputation with CPOs including NSG/SPG will get their AME done in there respective organizations or at any CISF/CPMF Hospital as per the CISF proforma and guidelines.

In the absence of CISF MO/AMO PSU at a particular station, the medical examination conducted by any other CPMF Hospital is valid.

9. It would be apparent from a joint reading of the above Circulars dated 28.1.2009 and 1.4.2010 that whilst the AME of every non-gazetted officer has to be carried out as part of the routine exercise, the primary responsibility of ensuring timeliness in that regard rests with the concerned Unit Head (as is apparent from paragraph 2(i) of the 2009 Circular). It provides that the "medical examination can be spread throughout the year" to facilitate medical examination of all personnel posted in a Unit in phases. The later Circular/directions of 1.4.2010 only states that the AME certificates of PSUs would not be accepted and the medical examination has to be conducted by two Doctors at the nearby CISF/CPF hospitals. Facially, therefore, none of the instructions relied upon by the respondents mandate an ironclad rule that medical certificates obtained during the year of the operation of the panel but before the date of consideration, cannot be taken into account. None of the instructions also spell out in inflexible terms that a later medical certificate - which otherwise describes or certifies the fitness of the official and fulfills the requirement of being issued by the institution mentioned in the 1.4.2010 Circular-cannot entertained at all.

10. The respondents relied upon the CISF Assistant Commandant (Fire) Group "A" Fire Cadre Post Recruitment Rules, 2012. These Rules, framed u/s 22 of the CISF Act, spell out the cadre strength in respect to the post and also mention that it is a selection post. The essential qualifications are prescribed; 95% of the cadre is to be filled by promotion. The rules are silent with regard to the medical fitness eligibility condition or even the date or dates with effect from which they would be considered. However, there can be no gain saying that medical fitness, to hold the post, would be a relevant criterion in a paramilitary force such as the CISF. Nevertheless, the respondents, insistence that the certificate relied upon by

the petitioner had to be overlooked, in the opinion of this Court, is not only illogical but arbitrary. While exigencies of service may warrant insistence that all dossiers/documents should be available, yet the fact remains that if in a case such as the present one, the medical certificate is made available on a later date, the non-consideration of the candidate on that ground alone is unreasonable.

11. In the present case, the petitioner was made aware of the obligation to get himself medically examined only in March, 2012 and permitted to go to the nearby authorized medical Institution in terms of the Notification dated 1.4.2010. He could get the certificate, but only to be told that in the selection process held nearly nine months later, his candidature was overlooked because the relevant date for the purposes of the medical certificate was as on 1.1.2012. The rigid adherence to such time frames which are otherwise not mandated in law, in fact, in the opinion of the Court, undermines the objective for which they are created in the first instance. The objective of ensuring that a medical certificate is on the record is to ensure that the concerned authority recommending promotion is satisfied that the official fulfills the health parameters. One of the startling results which would ensue is that a candidate found fit as on 1.1.2012 - who is recommended for promotion on the basis of such a certificate may develop a later serious health condition that may, in fact, disqualify her/him to hold the promotional post, yet irrespective of such intervening circumstances, the promotion committee or the competent authority would be duty bound to ignore that intervening fact and recommend the case for promotion, leading to highly anomalous results. Similarly, it passes one's comprehension if the medical certificate issued on a later date would not pass muster and would be ignored on the rationale that the official was not fit as on the cutoff date (in this case as 1.1.2012). In other words, the objective of imposing the requirement of placing a medical certificate on record is for the authority to be satisfied that besides other parameters, the official recommended by it for promotion is physically and medically fit to hold it. The interpretation placed upon the relevant Circulars and guidelines, to overlook the petitioner's case for promotion, was unjustified. This Court is satisfied that since the petitioner's Unit Head recommended that he get himself examined medically only in March, 2012 and not on an earlier date, he cannot be faulted and deprived of his legitimate right to be considered. The primary obligation to ensure that these tests are done on an annual basis and periodically is with the Unit Head in terms of the Circular dated 28.1.2009. The petitioner's candidature for promotion to the post of AC (Fire) was, therefore, arbitrarily rejected.

12. In view of the above findings, a direction is hereby given to the respondents to consider the petitioner's case for promotion to the post of AC (Fire) in terms similar to what was done in cases of his juniors as on the date of their consideration and if found fit, pass such consequential orders. The entire process shall be completed within four weeks from today. The results thereof shall be communicated to the petitioner directly. The Petition is allowed in the above terms. No costs.