
(2014) 08 MAD CK 0281

In the Madras High Court

Case No : Writ Petition No. 18270 of 2013

Comdt. AKS Panwar

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Citation : (2014) 08 MAD CK 0281

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Judgement

T. Raja, J.—The petitioner, who is presently working as Commandant at the Coast Guard Air Station, Chennai, has filed the present writ petition challenging the impugned proceedings viz., (i) the order passed by the third respondent/the Commander, Coast Guard Headquarters Region (East), Chennai, in Ref. OF/0110-X, dated 15.10.2012, (ii) the order of the first respondent/the Defence Secretary, Ministry of Defence, New Delhi, made in SRO 133, dated 17.09.2004 and SRO 86, dated 12.07.2002, (iii) a letter No. NA/1109/2005, dated 29.08.2005, of the Ministry of Defence, and consequently to direct the respondents to extend the benefits of previous military service to the petitioner and thereby to promote him in accordance with the Coast Guard Recruitment Rules (CGRR) and to consider him for promotion to the post of Deputy Inspector General, Inspector General and Director General as per the seniority with retrospective effect from dates on which his juniors were promoted and consequently to pay all the service and monetary benefits.

2. Mr. S. Silambanan, learned Senior counsel appearing for the petitioner submitted that the petitioner joined the Coast Guard as a Direct Entry Officer in the Civil post of Assistant Commandant on 06.01.1985, after 2 years and 23 days of Military service in Indian Air Force. After joining the Coast Guard, he was given basic training and during that period, he submitted an application for counting of his Military service towards civil pension. Accepting the said request, the Deputy Director Pers (OA & amp; R), in his proceedings dated 26.07.2001,

approved the said claim of the petitioner for counting the period rendered between 11.12.1981 and 03.01.1984 in Indian Air Force towards pension. Therefore, learned Senior Counsel pleaded, having allowed the service rendered by the petitioner in the Indian Air Force in the above said period, the second respondent wrongly refused to extend the benefit of previous military service towards promotion as provided in the Coast Guard Recruitment Rules (CGRR) promulgated vide SRO 236, dated 17.09.1982 as amended by SRO 133, dated 14.01.1984 and SRO 69, dated 07.03.1991. The further grievance of the petitioner is that since the CGRR were not published in any of the Coast Guard manuals/books and Policy Letters, there was no means of knowing the benefits available to the direct entry Coast Guard officers about the inclusion of their previous military service. Therefore, he submitted an application under RTI Act and subsequent to his application, the petitioner had received all the manuals pertaining to CGRR, after protracted correspondence/representations for almost three years.

3. It is the further contention of the learned Senior counsel that as per the CGRR and the Coast Guard (Seniority and Promotion) Rules, 1987, it is crystal clear that, in case of Assistant Commandant, who are ex-Air Force Officers or Ex-Army or Ex-Naval, 5 years total service as Commissioned Officer in the Navy or Army or Air Force and as Coast Guard Officer taken together would suffice for promotion to the post of Deputy Commandant. Likewise, in the case on hand, since the petitioner had put in more than 2 years of service in the Air Force, he became eligible on completion of 3 years to be promoted as Deputy Commandant. Similarly, for promotion as Commandant from Deputy Commandant, 8 years of service as Deputy Commandant including at least 2 years in the rank of Deputy Commandant. Therefore, the petitioner would be eligible on completion of 6 years service with 2 years as Deputy Commandant to the post of Commandant, since he has 2 years of commissioned service in the Air Force.

4. Adding further, learned Senior counsel stated that the first respondent, vide gazette notifications SRO 86, dated 03.04.2002 and SRO 133, dated 17.09.2004, altered the promotion policy by applying the military provisions of Performance Appraisal Review Board (PARB) and military merit system of promotion in lieu of the bench mark system and by doing so, the first respondent denied the further promotion of the petitioner. It is further contended that though the petitioner brought the above said issue to the first respondent, the first respondent has neither replied nor corrected the injustice even after submitting number of applications under the RTI Act. On the contrary, the second respondent issued a show cause notice and a letter of caution through the third respondent to the petitioner for submitting the representation to the first respondent.

5. Further, it is contended that since the petitioner was not promoted to the rank of DIG in 2005 and 2006, he submitted representations to take up civil employment outside, but, the same was rejected and thereafter, he subjected to

humiliation on a daily basis. Therefore, he submitted an application under RTI Act asking full information as to why he was overlooked for promotion, with a further request to furnish information and data including the CGRR. But, there was no reply from the respondents.

6. Learned Senior counsel further submitted that, in the Military Service, the promotions are in two stages (i) time based and (ii) merit based. Though the initial promotions are time based, all selective scale promotions are merit based and even in the case where the personnel do not make the grade in the merit based selective promotions, they are given the next rank on time scale basis. Therefore, the Coast Guard being a civil service, such time scale and parallel promotions are not available and Military rules cannot be applied to the Coast Guard so far as human resources matters are concerned. Whiles, in 2002 and 2004, the first respondent, vide gazette notifications, altered the qualifications required and thereby introduced the military Performance Appraisal Review Board (PARB) and merit based promotion system, as a result, the promotion system in the Coast Guard has, therefore, become a mix of Central Civil Services (Pension) Rules and Military Rules.

7. It is also the further case of the learned Senior counsel that the petitioner, having previous military service, is required to exercise the options available to him under Rule 19 of the CCS pension Rules, therefore, the petitioner, in compliance of the said Rule, has exercised the option and thereafter, the respondents processed his claim and thereby counted the previous military service as per the rules in force, hence, from these, it is very clear that the power to exercise the option under Rule 19 rests with the individual and not with the respondents. Therefore, at this later stage, the respondents cannot claim that the petitioner is not entitled to count the said service for the service benefits.

8. Per contra, Mr. K. Mohanamurali, learned standing counsel for the respondents, by filing a detailed counter affidavit, submitted that the petitioner was appointed in the Coast Guard as Assistant Commandant (General Duty) on 06.01.1985 as a Direct Entry Officer through normal recruitment procedure. Prior to his joining, he was employed in the Indian Air Force from 11.12.1981 to 03.01.1984. The petitioner joined the Coast Guard on 06.01.1985, after one year of leaving Indian Air Force, therefore, the petitioner is neither a re-employed officer nor a permanently absorbed officer. Since he is a Direct Entry officer, he cannot claim the benefit admissible to a re-employed or permanently absorbed officer. On the request made by the petitioner, the service rendered by him in the Indian Air Force between 11.12.1981 and 03.01.1984 was counted towards pensionary benefits in accordance with the CCS (Pension) Rules, hence, he cannot claim the benefit of a re-employed or permanently absorbed officer for the purpose of seniority/promotion. Secondly, it was contended that as per the Coast Guard (Seniority & Promotion) Rules, 1987, published vide SRO 6E, dated 26.02.1987, which were applicable till the year 2004, the eligibility criteria of promotion for Coast Guard officers stated thus:

- (a). Assistant Commandant to Deputy Commandant 6 years
- (b). Deputy Commandant to Commandant-2 years
- (c). Commandant to DIG-8 years

In the case of Assistant Commandants, who are ex-Naval or ex-Army or ex-Air Force Officers, 5 years of total service as Commissioned Officer in the Navy or Army or Air Force and as Coast Guard Officer taken together would suffice. In the case on hand, he pleaded, the petitioner, who joined as Direct Entry Assistant Commandant on 06.01.1985, was promoted to the rank of Deputy Commandant after completion of 6 years of service with effect from 17.12.1991 and thereafter, to the rank of Commandant on 01.08.1996, as per the Coast Guard (Seniority & Promotion) Rules, 1987.

9. It is the further submission of the learned counsel for the respondents that as per Rule 10 of the Coast Guard (Seniority and Promotion) Rules, 1987, in the case of permanently absorbed Assistant Commandants, who are ex-Naval Officers, their entire commissioned service shall be counted for promotion to the rank of Deputy Commandant. In the case of re-employed officer, their service from the date of re-employment shall be counted for promotion purposes. But, now the Rules for promotion of Coast Guard officer was promulgated vide SRO 6E, dated 26.02.1987 and thereafter, the same was revised vide SRO 133, dated 17.09.2004. Since the new promotion policy was based on relative merit based selection, the concept of PARB was also introduced vide SRO 86, dated 03.04.2002, hence, the grievance of the petitioner in this regard to get promotion to higher position without reference to the provisions of the Coast Guard (Seniority and Promotion) Rules, 1987, is totally misconceived.

10. It is further contended by the learned counsel for the respondent that consequent to the implementation of the Vth pay commission recommendations in the year 2004, the Coast Guard officers cadre was re-structured and a new rank of Commandant (JG) was introduced in between Deputy Commandant and Commandant, as a result, the promotion criteria for various ranks was revised by amending the Coast Guard (Seniority and Promotion) Rules, 1987, vide SRO 133, dated 17.09.2004. As per the revised criteria, an Assistant Commandant must possess 6 years of service for promotion to the post of Deputy Commandant. Similarly, the Deputy Commandant should possess two years as Deputy Commandant and in total 11 years of service for promotion to the post of Commandant (JG), and in the same way, from the post of Commandant (JG) to Commandant, one should possess 2 years of service as Commandant (JG) with 15 years service in total. Likewise, from the post of Commandant to DIG, one should possess 3 years service as Commandant and in total, he should possess 20 years of service. By quoting the above said new promotion scheme, learned counsel contended, the above said new promotion criteria to the rank of Commandant and above was introduced with a view to encourage meritorious and outstanding officers and to improve the quality of the service. Since the new

promotion policy provided merit based promotion to the rank of Commandant and above, the concept of PARB (Performance Appraisal Review Board) was also introduced vide SRO 86, dated 03.04.2002 to ensure that there are no major fluctuations in the overall profile of an officer due to differences in style or standard of different appraising officers and other factors. That apart, the petitioner was already promoted to the rank of Commandant with effect from 01.08.1996 as per the pre-revised promotion policy and again, he was duly considered for promotion to the rank of DIG as per the new promotion criteria of relative merit based selection from the year 2006 onwards, however, he could not be promoted in the five prescribed looks due to his relative low merit. Moreover, his ACRs for the relevant period were duly reviewed by the PARB in the rank of Commandant. Therefore, the grievance of the petitioner against the revised promotion policy and PARB system is totally unjustified and devoid of any merit, since the new system has helped to encourage the meritorious and outstanding officers and has brought competitiveness amongst the officers for promotion to the higher ranks. Besides, the petitioner has not challenged the promotion policy. On that basis, he contended that the grievance of the petitioner is baseless and without any substance.

11. Concluding his argument, it is submitted that the Coast Guard is not a Civil Organisation, but, it is an Armed Force of the Union of India under the Ministry of Defence, therefore, the promotion rules of Coast Guard officers have been framed as per the requirement of service and broadly on the lines of the promotion rules of Naval officers, since both the Coast Guard and the Indian Navy are sea going services. As per the new Rules, he was duly considered for promotion criteria from the year 2006 onwards, however, he was not eligible for promotion to the rank of DIG in 2005, hence, he could not be promoted due to his relative low merit. With these submissions, he prayed for dismissal of the writ petition.

12. Heard both sides.

13. The petitioner was appointed in the Coast Guard as a Direct Entry Officer in the cadre of Assistant Commandant (General Duty) on 06.01.1985 through normal recruitment procedure. Before joining the Coast Guard, he was employed in the Indian Air Force between 11.12.1981 and 03.01.1984. The claim of the petitioner is that though his service rendered in the Indian Air Force for a period of 2 years and 23 days was counted towards pensionary benefits in accordance with the CCS (Pension) Rules, 1972, the second respondent, in his letter dated 26.07.2001, refused to extend the benefit of his previous service rendered in the Indian Air Force towards promotion as provided in the Coast Guard Recruitment Rules (CGRR) promulgated vide SRO 236, dated 17.09.1982 as amended by SRO 133, dated 14.01.1984 and SRO 69, dated 07.03.1991. In this context, it is appropriate to extract the relevant portion of SRO 236, dated 17.09.1982.

(a). promotion Serving Assistant Commandants with 6 years service as Assistant Commandants. In the case of Assistant Commandants, who are ex-Navy or ex-

Army or Ex-Air Force Officers, 5 years total service as Commissioned Officer in the Navy or Army or Air Force and as Coast Guard Officer taken together would suffice.

(b). Transfer/Transfer on Deputation A serving officer of the Executive Branch of Indian Navy with minimum 5 years commissioned service and equivalents in Army and Air Force.

(c). Re-employment A retired/released Naval Officers who has served at least 8 years as a Commissioned Officer and held the rank of atleast Substantive Lieutenant (X) in the Navy or equivalents in the Army and Air Force at the time of retirement/release.

Note:

1. Under Clauses (a), (b) and (c) above, an officer should also possess a minimum of 3 years experience either at sea or in an administrative/training assignment connected with a maritime organisation of the Central Government.

A careful reading of the above SRO depicts that an Assistant Commandant, who is serving in the Coast Guard, should have six years of service for promotion to the post of Deputy Commandant, however, in the case of Assistant Commandant, who is an Ex-Naval or Ex-Army or Ex-Air Force Officer, 5 years of total service as Commissioned Officer in the Navy or Army or Air Force along with Coast Guard service to be taken together for his eligibility to become Deputy Commandant. Further, the note appended in the above said SRO would speak that an officer should also possess a minimum of 3 years experience either at sea or in an administrative/training assignment connected with a maritime organisation of the Central Government. Therefore, if we apply the above said SRO, in the case on hand, the petitioner became eligible on completion of 3 years of service as Assistant Commandant in the Coast Guard in December, 1987, itself, since he had already put in 2 years and 23 days of service in the Indian Air Force.

14. As highlighted above, the petitioner, after leaving the Indian Air Force, joined the Coast Guard Service as Assistant Commandant on 06.01.1985 and thereafter, he submitted an application for counting of his previous service rendered in the Indian Air Force for a period of 2 years and 23 days towards civil pension. On receipt of the application, the Deputy Director Pers (OA & R), in his order dated 26.07.2001, took into consideration the past service rendered by the petitioner in the Indian Air Force between 11.12.1981 and 03.01.1984 for calculating the pensionary benefits and while doing so, the said official made necessary entry in the petitioner's service book regarding counting of former Air Force service. Though the said official made necessary entry in the petitioner's service book, unfortunately, the respondent has not furnished/produced the petitioner's service book either to the petitioner or before this Court. In this regard, it is more pertinent to extract Rule 19 of the Central Government Civil Pension Rules, which is stated thus:

19. Counting of military service rendered before civil employment:

(1) A Government servant who is re-employed in a civil service or post before attaining the age of superannuation and who, before such re-employment, had rendered military service, may, on his confirmation in a civil service or post, opt either----

(a). to continue to draw the military pension or retain gratuity received on discharge from military service, in which case his former military services shall not count as qualifying service; or

(b). to cease to draw his pension and refund--

(i). the pension already drawn, and

(ii). the value received for the commutation of a part of military pension, and

(iii). the amount of retirement gratuity including service gratuity, if any, and count previous military service as qualifying service, in which case the service so allowed to count shall be restricted to a service within or outside the employee's unit or department in India or elsewhere which is paid from the Consolidated Fund of India or for which pensionary contribution has been received by the Government:

Provided that---

(i). the pension drawn prior to the date of re-employment shall not be required to be refunded,

(ii). the element of pension which was ignored for fixation of his pay including the element of pension which was not taken into account for fixation of pay on re-employment shall be refunded by him.

(iii). the element of pension equivalent of gratuity including the element of commuted part of pension, if any, which was taken into account for fixation of pay shall be set off against the amount of retirement gratuity and the commuted value of pension and the balance, if any shall be refunded by him.

EXPLANATION. --- In this clause, the expression which was taken into account means the amount of pension include the pension equivalent of gratuity by which the pay of the Government servant was reduced on initial re-employment, and the expression which was not taken into account shall be construed accordingly.

A mere reading of the above rule vividly depicts that a Government servant, who had re-employed in a civil service and who had rendered military service, is entitled to count the previous military service as qualifying service. Therefore, when the past services rendered by the petitioner before joining the Coast Guard was admittedly counted as defined in the above said Rule, I have no hesitation to hold that the case of the petitioner is squarely covered by Rule 10(2) of the Coast Guard (Seniority and Promotion) Rules, 1987.

15. Therefore, in these circumstances, what this Court finds very hard to agree with the contentions of the respondent is, the introduction of PARB system and new promotion policy based on relative merit based selection, vide SRO 86, dated 03.04.2002. The previous promotion policy introduced in the year 1982, vide SRO 236, states that in the case of Assistant Commandant, who is an Ex-Naval or Ex-Army or Ex-Air Force Officer, 5 years of total service as Commissioned Officer in the Navy or Army or Air Force along with Coast Guard service taken together, would suffice for promotion to the post of Deputy Commandant. In the case on hand, it is not in dispute that the petitioner, who was appointed as Assistant Commandant in the Coast Guard on 06.01.1985 as a Direct Entry Officer, was governed, at the relevant time, by SRO 236, dated 17.09.1982. In the light of such admitted position, there cannot be any justification in invariably applying the SRO 86, dated 03.04.2002 in the case of the petitioner, therefore, the misplaced argument of the learned counsel for the respondent on the basis of the new promotion policy, would not advance the case of the respondent any further, since the Rule 10(2) of the Coast Guard (Seniority and Promotion) Rules, 1987, has been completely overlooked. In this context, it is more appropriate to extract the said Rule:

10 (2) Counting of previous service for promotion of Defence Service Officers:-

(a). Permanently absorbed.-(i) In the case of Assistant Commandants who are ex-Naval Officers, their entire Commissioned service shall be counted for promotion to the rank of Deputy Commandant.

(ii). In the case of Deputy Commandant who are ex-Naval officers, their entire commissioned service shall be counted for promotion to the rank of Commandant (Junior Grade)

(iii). In the case of Commandants (Junior Grade) who are ex-naval officers, their entire commissioned service shall be counted for promotion to the rank of Commandant.

(iv). In the cast of Commandants, who are ex-Naval officers, their entire previous service, if any, in the rank of Commandant shall be counted for promotion to the rank of Deputy Inspector General.

(v). In the case of Deputy Inspector Generals, who are ex-Naval officers, previous service in the rank of Captain, Indian Navy, shall be counted in full for promotion to the rank of Inspector General.

(b). Re-employed.-In the case of re-employed officers their service from the date of re-employment shall be counted for promotion purposes. Note.-Extraordinary leave granted on medical certificate or due to the inability of the individual to join duty on account of civil commotion or for the purpose of prosecuting studies certified to be in public interest shall be reckoned as qualifying service.

(emphasis supplied)

A mere reading of the above provision makes it clear that, in the case of Assistant Commandants, who are ex-Naval Officers, their entire Commissioned service shall be counted for promotion to the rank of Deputy Commandant. Therefore, when the Rule is very clear that, in the case of Assistant Commandants, who are Ex. Naval officers, their entire commissioned service shall be counted for promotion to the rank of Deputy Commandant, the misplaced argument of the respondent that the above said provision cannot be applied to the petitioner since he is neither a re-employed officer nor a permanently absorbed officer has to be repelled, as it smacks of arbitrariness among the officers having been appointed through direct appointment, re-employment and permanent absorption. Hence, it is very clear that the provision of Coast Guard (Seniority and Promotion) Rules, 1987, gives special consideration to the Ex-Naval officers for counting their previous service for promotion to the higher post, therefore, without there being any specific provision denying the said benefit to the direct entry officers like the petitioner, in my considered opinion, the impugned proceedings of the respondent are running contrary to Rule 10(2) of the Coast Guard (Seniority and Promotion) Rules, 1987.

16. Moreover, the request of the petitioner for counting his past services towards seniority and pension as provided in the Coast Guard Recruitment Rules (CGRR) promulgated vide SRO 236, dated 17.09.1982 as amended by SRO 133, dated 14.01.1984 and SRO 69, dated 07.03.1991, was partly considered by the Deputy Director Pers (OA & R), vide his order dated 26.07.2001 granting the benefit of counting his previous services towards pension, but, they have not extended the same for seniority and promotion, therefore, he submitted a representation seeking permission to leave the Coast Guard Service in order to take up civil employment outside, but, the same was rejected. In my view, the said rejection order, denying to count his past services for seniority and promotion, cannot have any justification especially when they took into consideration for granting civil pension.

17. That apart, an amendment brought under SRO 86, dated 12.07.2002 and another amendment brought under SRO 133, dated 17.09.2004 cannot take away the accrued rights of the petitioner for his promotion to the higher post, since the above said amendment came into force after a period of more than 17 years and 19 years of entry into service respectively by the petitioner. It is trite law that any amendment introduced subsequently cannot supersede or over right the accrued rights of the parties, therefore, the said amended rules cannot be adversely applied to the petitioner alone, although the same can be applied to the subsequent recruits.

18. In these facts and circumstances of the case, this Court finds no justification whatsoever in denying the counting of the previous service rendered in the Indian Air Force as stated above for the purpose of promotion and seniority. Therefore, as highlighted above, since the petitioner should have been promoted

to the post of Deputy Commandant in December, 1987 itself, instead of 1991, the respondents are directed to promote the petitioner to the post of Deputy Inspector General, Inspector General and further onwards, by taking into account his previous service rendered between 11.12.1981 and 03.01.1984 in the Indian Air Force, as per the seniority with retrospective effect from the dates on which his juniors were promoted, with consequential monetary benefits. The respondents are directed to complete the said exercise within a period of six weeks from the date of receipt of a copy of this order.

With the above directions, the writ petition is disposed of. No Costs.