
(2008) 05 DEL CK 0190

In the Delhi High Court

Case No : Writ Petition (C) No. 7460 of 2004

CPL. Jitender Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-05-2008

Acts Referred:

Air Force Act, 1950 — Section 26
Constitution of India, 1950 — Article 14, 226

Citation : (2008) 104 DRJ 517

Hon'ble Judges : J.M. Malik, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Maninder Charya, for the Appellant; Dalip Mehra, for the Respondent

Judgement

A.K. Sikri, J.—The petitioner is aggrieved by the decision dated 11.6.2003 and 14.1.2004 of the respondents vide which his request for the grant of out of turn promotion on account of his having been awarded gold medal while playing for Air Force has been rejected. There is a practice/policy of the respondent-Air Force to grant out of turn promotion to the sports persons who excelled in the field of sports while playing for the Air Force. The petitioner alleges that in spite of the said policy, he is denied out of turn promotion whereas such promotions have been given to other employees/sports persons in the Air Force and therefore, he is discriminated against.

2. The respondents, on the other hand, while accepting that there is such a policy, contend that the case of the petitioner is not covered by the said policy. Whether it is the petitioner or the respondent who is justified in taking the respective stands is the question which needs determination. For this purpose we shall have to traverse the necessary facts as well as the provisions of the concerned policy.

3. The petitioner is a sports person whose field of sport is TAE-KON-DO. He claims that he has exceptional achievements in this field. He is a outstanding TAE-KON-DO player of Indian Air Force and has represented his employer twice

at Nationals level of 1997 and 1999. In the year 1999, while playing at the Nationals level for Indian Air Force, the petitioner won the gold medal in National TAE-KON-DO Championship. As a consequence, he was given a cash incentive of Rs. 10,000/- by the respondent and an out of turn promotion was also recommended by the Chief of Air Staff for his achievements. He also represented to the respondents for grant of an out of turn promotion to the post of Sergeant for his aforesaid achievements. However, to his utter shock and surprise his request was rejected on the ground that the same was not within the purview of the policy in vogue. The petitioner submits that prior to the year 1999, i.e. in the year 1998, JWO R.P. Yadav, who had represented the Indian Air Force in the Nationals held by the TAE-KON-DO Championship and was awarded bronze medal in the said competition, was granted out of turn promotion. Likewise, JWO Ajit Singh, who had won the silver medal in the same discipline in the year 1999 was also given out of turn promotion. The rejection of the claim of the petitioner was, therefore, not palatable to him as he perceived this action of the respondents as discriminatory. He, thus, made further representations to the respondents pointing out the aforesaid cases where the out of turn promotions had been accorded to other persons for their lesser achievement in the same sports. As these representations did not evoke any response, he was constrained to move an application dated 22.1.2003 u/s 26 of the Air Force Act, 1950. This representation, however, has been rejected vide their letter dated 11.6.2003 on the ground that his case does not fall within the purview of the promotion policy in vogue during the relevant period. Aggrieved by this decision, he submitted another representation dated 12.9.2003. In reply, letter dated 14.1.2004 was received categorically rejecting his request to grant out of turn promotion to the post of Sergeant and closing his case. After failing to get the relief administratively, the petitioner has approached this Court by means of present petition under Article 226 of the Constitution of India for quashing of the aforesaid orders dated 14.1.2004 and 11.6.2003.

4. In the counter affidavit filed on behalf of the respondents the explanation as given by the respondents is that the policy for the out of turn promotion to outstanding sportsman dated 20.10.1998 states as follows:

12(a) Air Force Sportsmen who represent Services and participate in recognized national Championships either individually or as a member of the team will be granted out of turn acting paid promotion to the next rank with effect from the date of qualifying in such events, irrespective of their lengths of services or any other qualifications.

5. It is stated that the Air Force Sports Control Board (AFSCB) was affiliated to 22 sports federation through Services Sports Control Board (SSCB) and to some federations directly upto the year 1999. This was done to promote sports and taking into consideration that good talent was available in Air Force in these various disciplines of sports. Upto the year 1999, there were two parallel federations governing Tae-Kon-Do, namely, Indian Tae-Kon-Do Federation (ITF)

and Tae-Kon-Do Federation of India (TFI). The Air Force Sports Control Board was directly affiliated to Indian Tae-Kon-Do Federation (ITF) but in the year 1996 the Services Sports Control Board got affiliated to Tae-Kon-Do Federation of India (TFI) and which was later on recognized by the apex sports governing body, i.e. Indian Olympic Association in the year 1998. The Services Sports Control Board from the year 1998 had started fielding the Services team in the National Tae-Kon-Do Championship held under the aegis of Tae-Kon-Do Federation of India. Thus, from the year 1998 till the de-recognition of ITF in 1999, Indian Air Force represented both the Services team through Services Sports Control Board in the National Tae-Kon-Do Championships by TFI and also directly as Indian Air Force individually in the National Tae-Kon-Do Championships conducted by ITF.

6. It is further explained that the petitioner won the Gold Medal in the National I.T.F. Tae-Kon-Do Championship-1999 in 71-80 Kg. weight category of Boys above 18 years in colour belt division Sparring held on 27th to 29th November 1999 and held under the aegis of the Indian Tae-Kon-Do Federation. The AFSCB on its own forwarded the case of the sportsmen who had represented IAF in the Nationals conducted by ITF in August 2000 for cash incentive and out of turn promotion to the Air Headquarters. The Air Officer-incharge Administrative for further processing the case of the petitioner along with the other sportsmen-airmen for the cash incentive and out of turn promotion as per the existing policy, recommended it for the approval of the CAS and after the approval of the same on 20.2.2000 by CAS and it was forwarded to the AFRO for the necessary further action as per the policy in that regard as AFRO is the personnel department which examines and awards promotion to the eligible airmen. The petitioner got a cash incentive of Rs. 10,000/- as award but his recommendation for the out of turn was rejected after detailed examination of the policy vis-vis the facts of the case by the AFRO vide its letter dated 16.8.2000 to AFSCB stated that since the petitioner had represented Air Force and not Services team in Nationals, therefore, as per the policy at that time he is not eligible for the out of turn promotion.

7. It is further explained that the petitioner who represented Indian Air Force in National Tae-Kon-do Championship-1999 held under the aegis of Indian Tae-Kon-Do Federation was ineligible for the out of turn promotion for two reasons. Firstly, the petitioner represented IAF and not the services team which was the criteria laid down by the out of turn promotion policy as mentioned above and secondly, the federation to which IAF was affiliated through AFSCB was de-recognized by Indian Olympic Association in the same year 1999 which led to the petitioner's participation as null and void for the out of turn promotion. It is further submitted that since the Services Sports Control Board fielded as Services team for National Championships conducted by the Tae-Kon-Do Federation of India in the same year, therefore, no out of turn promotion was granted to the other airmen who had participated or represented IAF, namely, CPL Rajashekhar, CPL Singh KP and Sgt. Patel SM along with the petitioner on the same grounds. And just to promote the sports person in IAF a cash incentive

of Rs. 10,000/- was given to them as an award.

8. The respondents have also asserted that the petitioner cannot claim similarity between his case and the cases of JWO R.P. Yadav and JWO Ajit Singh. In this behalf, it is stated that till the year 1999 there were two parallel federations running the Tae-Kon-Do discipline, namely, TFI and ITF. AFSCB was affiliated to the ITF and was participating directly at Nationals level. The SSCB, which is the apex sports body for the three services, was not affiliated to ITF nor participated in the National Tae-Kon-Do Championships till 1998. The SSCB got affiliate to TFI in 1996 which was also later on recognized by the Indian Olympic Association in the year 1998. The above-mentioned airmen participated in the Championships through AFSCB conducted by the ITF during 1996 and 1997. And though these airmen who had won the medals in the Championships at National level were also not entitled to out of turn promotion as per the existing policy, as mentioned above but they were granted out of turn promotion as SSCB did not field any Services team till 1998 and the ITF was a duly recognized federation at that time and the participation by IAF personnel through AFSCB was, therefore, considered equivalent to the participation through SSCB. On this basis it is submitted by the respondents that the decision of not to grant out of turn promotion to the petitioner is neither arbitrary nor violative of Article 14 of the Constitution of India.

9. Learned Counsel for the petitioner submitted during arguments that the stand taken by the respondents in the aforesaid counter affidavit was factually incorrect.

10. It is clear from the aforesaid stand taken by the respondents, in the counter affidavit, that as per the policy in vogue, in order to get out of turn promotion, it is necessary for the sports persons working in the Air Force to represent "Services Team", i.e., combined team of the Army, Navy and Air Force and not Indian Air Force alone. It is stated that the petitioner could not be given out of turn promotion as he did not represent services team but represent IAF. Additional reason given is that the federation to which IAF is affiliated through AFSCB was de-recognized by the Indian Olympic Association in the same year 1999 which led to the petitioner's participation as null and void for the out of turn promotion.

11. In so far as the first reason is concerned, it is not denied that JWO Ajit Singh and JWO R.P. Yadav were granted out of turn promotion despite having played for Air Force under the banner of ITF and they had not represented the Services team. It is, thus, stated in the counter affidavit that strictly speaking even they were not entitled to out of turn promotion. However, the justification behind giving out of turn promotion to those two personnel is that the Services team did not field any player in Tae-Kon-Do in the year 1996-97 Nationals and the ITF, under the banner of which above players played, had not de-recognized, which was de-recognized only in the year 1999 when the petitioner played under its banner.

12. Learned Counsel for the petitioner argued that both the reasons given by the respondents justifying the promotion of the said two persons are factually erroneous. She submitted that both Air Force as well as Services team took part in the Tae-Kon-Do Nationals, i.e. Air Force under the banner of ITF wherein JWO Ajit Singh participated for Air Force and the Services Team under the banner of WTF took part in the Tae-Kon-Do Nationals by ITF and WTF respectively. Thus, despite the fact that Services Team had participated under the banner of WTF separately, while JWO Ajit Singh had participated under the banner of ITF for Air Force, Ajit Singh was granted out of turn promotion. A specific averment to this effect is made in the rejoinder filed on behalf of the petitioner. During arguments learned counsel for the respondent could not deny this which would show that reason given for out of turn promotion to JWO Ajit Singh is not correct.

13. Ms. Maninder Acharya, learned Counsel for the petitioner, also refuted another limb of the respondents' contention, i.e. ITF was duly recognized body till 1998 when JWO Ajit Singh and JWO R.P. Yadav participated under its banner but was de-recognized in the year 1999. In the rejoinder affidavit, it is specifically stated that the respondents have not placed on record any documents to show its de-recognition from the date it was de-recognized. At the time of arguments learned Counsel produced certificate dated 17.11.2006 issued by Tae-Kon-Do Association of India (ITF) as per which, Indian Olympic Association never recognized ITF even though it has been writing to them since 1991. On the strength of this certificate she argued that when ITF was never even recognized by the Indian Olympic Association, question of its making such a statement and denying the benefit to the petitioner does not arise. We may note that we had heard arguments in this case on 1.4.2008 and had listed the case for 7.4.2008 for directions/clarifications as we wanted to give opportunity to the respondents to explain the aforesaid position. On 7.4.2008 when the matter was taken up, learned Counsel for the respondents could not contradict the aforesaid statement of the petitioner. It, thus, clearly demonstrates that reason to justify the grant of out of turn promotion to JWO Ajit Singh and denying the same to the petitioner herein does not have any proper foundation. Under these circumstances, we are inclined to believe the submission of the learned Counsel for the petitioner that it has been the consistent policy of the respondents to award the players/participants with the out of turn promotion and incentive in case of their winning the medals, irrespective of the fact whether they played under the services team or under Air Force banner. No doubt, the specific provision contained in the policy talks of Air Force sportsmen "who represent services", the fact remains, that promotions have been accorded to those who had not played under the services team but under the Air Force banner. Further, what is startling is that JWO Ajit Singh was granted out of turn promotion even when he had one bronze medal under ITF banner and represented Air Force team. On the other hand, the petitioner is denied this benefit even when he won gold medal in 1999 Nationals. The case of the petitioner is, therefore, at par with that of JWO Ajit Singh in so far as participation is concerned and the petitioner

has performed even better than JWO Ajit Singh in so far as the result of the competition is concerned. It is also to be borne in mind that though on the one hand the respondent states that participation of the petitioner under ITF banner was null and void because of alleged de-recognition, at the same time the respondents have recognized his achievement in the said competition by rewarding him with cash incentive. Thus, his participation is not treated as null and void, as alleged by the respondents in the counter affidavit. Once the achievement in the same competition is recognized for the purpose of cash incentive, how it could be ignored for the purpose of promotion is a mystery for which the respondents could not provide any satisfactory answer. We may also note another glaring event which has happened in the meantime. In the letter dated 20.6.2002 it has been mentioned that the policy has been amended in order to include the sportsmen who had represented Air Force team as well and not necessarily the services team. Thus, distinction between the services team and Air Force Team is dispensed with and there appears to be laudable reason for the same, namely, a sports person, who represents his own employer itself, namely, Air Force should not be deprived of out of turn promotion in case he comes out in the competition with flying colours. In view of the above, following two aspects are clearly discernible:

(a) JWO Ajit Singh and JWO R.P. Yadav were similarly situated persons as the petitioner who were given out of turn promotion under the same policy even when in comparison their achievements were inferior to that of the petitioner. Therefore, it appears that irrespective of the policy, which is only administrative in nature prescribing that the concerned sports person who represent services team, the respondents have been giving out of turn promotions even to those who were representing Air Force team as well.

(b) The respondents have themselves clarified the policy by making necessary amendment, which is affirming the practice hitherto adopted, by including the sports persons who had represented even the Air Force team as well.

14. We are, therefore, of the opinion that the petitioner would be entitled to the same treatment as meted out to the aforesaid two persons. Consequentially, the benefit of out of turn promotion be given to the petitioner as well.

15. In these circumstances, we set aside the orders dated 14.1.2004 and 11.6.2003 and issue mandamus to the respondents to consider the case of the petitioner for grant of promotion to him on the basis of his having won gold medal in Tae-Kon-Do in the 1999 Nationals. Appropriate orders in this behalf shall be passed within two months from the date of this judgment giving promotion to the petitioner from the date he would be entitled to the same. However, having regard to the nature of the case, we are of the opinion that the pay of the petitioner shall be notionally fixed and he would be entitled to the seniority from the date of his promotion but shall not be entitled to arrears of pay.

16. Parties shall bear their own costs.