
(2013) 02 DEL CK 0201
In the Delhi High Court
Case No : W.P. (C) 6412/2012

CT/GD Satish Chander Rai

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Citation : (2013) 4 AD 56

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

Bench : Division Bench

Judgement

S. Ravindra Bhat, J.

C.M. Appl. 578/2013 (for condonation of delay in filing the counter affidavit)

For the reasons mentioned in the application, C.M. No. 578/2013 is allowed.

W.P. (C) 6412/2012

1. Issue rule. Sh. Amrit Pal Singh, CGSC waives notice and states that the petition can be heard finally since counter affidavit is on the record. The petitioner, in this proceeding, seeks quashing of letter dated 19.06.2012 by which the respondents (hereafter referred to as "the CRPF") rejected his representation in regard to his candidature for the post of Sub-Inspector (General Duty) [hereafter referred to as "SI (GD)"].

2. Briefly the facts are that the said post - SI (GD), under the rules of recruitment governing the Central Reserve Police Force (CRPF), through Notification dated 30.04.2001, is to be filled from amongst three sources - 33% is to be filled by direct recruitment; 50% by promotion from the feeder posts and; 17% from Limited Departmental Competitive Examination (hereafter referred to as "LDCE") - failing which by promotion from feeder posts. The petitioner, who was enrolled in the CRPF as Constable (General Duty) on 11.04.2002, upon being apprised of the advertisement for filling 324 vacancies for the post of SI (GD), applied as a "General" category candidate, in respect of

the 17% LDCE quota, for which examinations were held. The CRPF had notified 324 vacancies, of which 251 were "unreserved" and 73 were "reserved" - 49 earmarked for Scheduled Castes (SC) and 24 for Scheduled Tribes (ST).

3. The relevant Standing Orders, which were duly notified in the examination for LDCE in question, inter alia, states as follows:

4. The petitioner's grievance is that even though he was allowed to compete in the LDCE, and his name notified at Serial No. 2 (he was apparently successful in the written test), his candidature was not, however, processed. He, therefore, represented to the respondents/CRPF and also caused a legal notice to be served, on 28.02.2012. The CRPF, by its letter dated 19.06.2012, impugned in the present proceeding, admitted that he had qualified in the written test but he was eliminated from the stage of checking of records since he had an "Average" ACR grading for the year 2009. The said letter pertinently states as follows:

XXXXXX XXXXXX XXXXXX

REGISTERED POST WITH AD

DIRECTORATE GENERAL, CRPF, CGO COMPLEX,

LODHI ROAD, NEW DELHI-3

(Ministry of Home Affairs)

No. J-II-1/2012-Rectt(SI/LDCE-11)L/N-8

Dated, the 19 June 2012

To,

Col. N.L. Bareja (Retd.), Advocate,

Chamber No. 125,

Patiala House Courts,

New Delhi-110001

Subject: RE-CONSIDERATION OF THE CASE OF 025210987 CT/GD SATEESH CHANDER RAI OF 68 BN CRPF FOR APPOINTMENT TO THE POST OF SI/GD THROUGH LDCE FOR THE YEAR 2011

Please refer to Legal Notice dated 28/02/2012 on the subject cited above.

2. In this connection it is to inform that No. 025210987 CT/GD Sateesh Chandra Rai of 68 Bn. CRPF, appeared in SI/GD LDCE 2011. As per existing instruction a candidate applying for the post of SI/GD through LDCE should have minimum "Good" ACR grading for last four years. Though the petitioner qualified in Written/PST/PET but eliminated from the stage of checking of records/testimonial having average ACR grading for the year 2009.

3. In view of the above, request of CT/GD Sateesh Chander of 68 Bn CRPF for re-consideration of his appointment to the post of SI/GD through LDCE 2011 has been considered by the competent authority but rejected being devoid of merit.

4. Please inform your client accordingly.

Sd/-

(M.K. Sinha)

Inspector General

5. Learned counsel for the petitioner urged that the impugned letter is unsustainable because, according to the petitioner's information, no such remark of "Average" was ever communicated to the petitioner. It was submitted that the relevant ACRs for all the previous years right upto 2009 were consistently "Good" or above, and in the circumstances, the respondents were duty-bound, in line with the judgment of the Supreme Court in *Dev Dutt Vs. Union of India (UOI) and Others*, , to intimate the adverse remarks. By taking into consideration such un-communicated adverse remarks, submitted learned counsel for the petitioner, the respondents have acted illegally. It was also argued in addition that the petitioner's grading in his ACR for 2009 cannot be characterized as "Average". Elaborating on this, learned counsel for the petitioner submitted that his ACR grading had never been finalized since the Reviewing Authority had not considered the grading of "Average", awarded for part of the year in question. Secondly, learned counsel submitted that in fact, the ACR for 2009 was in two parts - the first part was for the period 01.01.2009 to 07.10.2009 (hereafter referred to as the "earlier part") - for this period, the reporting authority had recorded "Average". For the later part, i.e. 08.10.2009 to 31.12.2009 (hereafter referred to as "the later part"), the Reporting Officer had recorded "Good". The later part was reviewed and thus that ACR stood confirmed and complete to that extent. However, the ACR for earlier part - 01.01.2009 to 07.10.2009 - was admittedly neither reviewed, nor was communicated to the petitioner. Therefore, this did not even constitute an ACR in the eye of the law, which could have been validly taken into consideration by the respondents for the year 2009. Having regard to these circumstances, stressed learned counsel for the petitioner, the respondents had to consider the complete ACR for a previous year. If they had done so, his candidature could not have been rejected.

6. Learned counsel for the respondents, pursuant to the previous orders, have produced the relevant ACR records. They place reliance upon the Standing Order No. 01/2010, which deals with the subject of "Limited Departmental Competitive Examination (LDCE) for Sub-Inspectors (GD) in CRPF". Learned counsel for the respondents relied upon the description of the various Stages for recruitment process, which is the prelude to the appointment under 17% LDCE quota, and emphasized that in the first stage, as far as the threshold of eligibility is concerned, the applicant has to possess minimum of 4 "Good" ACRs, for the last four preceding years and should have an "unblemished service record". In this

regard, the petitioner, submitted learned counsel for the respondents, did not qualify the said threshold as he did not possess 4 "Good" ACRs for the last four preceding years. The respondents interestingly state in the counter-affidavit as follows:

7. I say that with regard to the contents of para no. 6 of the petition, it is submitted that the petitioner has qualified for the written examination of subject examination. However, as already explained in para no. 06, mere passing of written examination is not sufficient to make him eligible for selection, as the other process of the subject examination is also required to be met by applicant. Hence the submission of the petitioner is not tenable on record.

8. I say that with regard to the contents of para no. 8 of the petition it is submitted that paras 6 and 7 be read as part of this para and the same is not being repeated herein for the sake of brevity.

9-10. I say that with regard to the contents of paras no. 9 and 10 of the petition, it is submitted that the petitioner was awarded weak/adverse Average ACR grading for the period from 01.01.2009 to 07.10.2009 by the reporting officer which was neither reviewed by reviewing officer nor the remarks communicated to the petitioner on record. However, the selection board of the subject examination took the above remarks into account as the subject examination taken above remarks into account as the subject examination was held for a promotional post amongst a considerable no of candidates and candidates with a clear and unblemished record of service would be short listed for final selection. As such the action of the selection board in rejection of candidature of the petitioner from the subject examination is in the right spirit of standing instructions issued on the subject vide standing order No. 01/2010. Hence the action taken by the selection board is in accordance with relevant guidelines existing on the subject only.

7. The respondents further stated as follows:

12. I say that with regards to the contents of para no. 12 of the petition it is submitted that as already stated in the proceeding paras the ACR remark of the petitioner for the period from 01.01.09 to 7.10.09 was neither reviewed by the reviewing officer nor the adverse remark graded in subject report as "AVERAGE" is communicated to petitioner. However, the selection board has taken the same into account during selection process i.e. checking of service records as envisaged vide para 5 of the standing order and rightly rejected his candidature.

8. The ACR records produced today bear-out the petitioner's submission with regard to the state of ACRs for the year 2009. The said records reveal that for that year, i.e. for the period 01.01.2009 to 07.10.2009, the Reporting Officer recorded "Average"; however, this remark has not been reviewed by the superior/reviewing authority. For the later part, i.e. from 08.10.2009 to 31.12.2009, the remark recorded is "Good". This has been approved by the reviewing authority. It is thus apparent that for the year 2009, the entire ACR is incomplete. This is

because for the earlier period, i.e. from 01.01.2009 to 07.10.2009, the reviewing authority neither had the opportunity of considering the file, nor indeed did it confirm or disagree with the Reporting Officer's remarks. For the later/shorter period, the ACR finalized is "Good". Despite repeated queries, learned counsel for the respondents could not throw any light as to how in such circumstances, the final ACR is to be reconciled or resolved, and arrived at. The respondents' counsel's reaction was that since the earlier part was "Average", the entire period had to be treated as "Average" as it was for a longer duration than the latter part. This Court, however, does not agree with such an approach. Besides, in circumstances such as the ones in the present case, where, for the earlier part, i.e. from 01.01.2009 to 07.10.2009, the ACR is deemed incomplete, a blanket stereotypical approach of treating the reporting officer's assessment for the earlier portion of the year, as indicative of the whole year's performance, merely on the basis of duration, can lead to inequitable results. For instance, if for a shorter duration, the personnel is deployed on a "hard" posting, or sent to work in an operative command and there he earns a, "Good", or "Better than Good", ACR, that, prima facie, might carry greater weight than a lesser or lower ACR remark for another period which may numerically be for a greater number of months. In any event, this Court does not wish to speculate or pronounce upon that issue, in view of the opinion taken on the facts of this case. The admitted facts are that for the earlier part, the ACR is incomplete, since it was not even considered by the reviewing authority.

9. While on the subject, this petition has highlighted what appears to be an infirmity in the manner of considering applicants under the recruitment process, and the various stages envisioned by the competent authority, i.e., consideration of ACRs for a particular year. Stage-I, which has been repeatedly emphasized during the hearing, and which ultimately proved to be the petitioner's bane, requires 4 years' appraisal and pre-supposes a composite ACR for each of the four years, complete in all respects. This in turn visualizes that if for any one year, the ACR is partly complete and partly incomplete, the authorities have to provide either for reconciliation or resolution of such ACR so that a composite grading is recorded, or provide appropriate Standing Orders in that regard. Neither of this appears to have happened in the present case.

10. As for as the argument of the petitioner that, adverse remarks were not communicated, is concerned, this Court is of the opinion that the said stage has not arisen as yet because, as concluded in the preceding portion of the judgment, the ACR for the year 2009 is incomplete since the earlier part has not been considered by the reviewing authority. In the light of the above discussion, this Court hereby quashes the impugned letter and issues following directions:

(1) The petitioner's ACR for the year 2009 (for the period 01.01.2009 to 07.10.2009) shall be appropriately finalized by the reviewing authority within four weeks from today;

(2) If the ACR for the said period is upgraded to "Good", by the reviewing

authority, the petitioner's case for promotion to the post of SI(GD) shall be processed within four weeks thereafter.

(3) If, after the aforesaid exercise by the Reviewing Officer the ultimate ACR grading falls below the bench mark of "Good", the remark shall be duly communicated directly to the petitioner within two weeks, in order to furnish the petitioner with an adequate opportunity to represent against the grading awarded. The grading finalised in line with the orders disposing of his representation, shall then be duly considered while assessing his eligibility for recruitment. It is also open to the petitioner to seek such remedies as are available to him in law thereafter if he is so advised in the event of any adverse grading.

The respondents are hereby directed to keep one vacancy unfilled in the post of SI(GD) for the next four months, to await final consideration of the petitioner's candidature, pursuant to these directions.

The writ petition is allowed in the above terms. No costs.

Order dasti to both parties.