

(2011) 09 DEL CK 0193

In the Delhi High Court

Case No : Writ Petition (C) 1393 of 2011

D. Jayachandra Naidu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Citation : (2011) 09 DEL CK 0193

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Ankur Chhibber, for the Appellant; Ashwani Bhardwaj, for the Respondent

Judgement

Pradeep Nandrajog, J.—Joining BSF on 13.6.1985, Petitioner was attached to the 82nd Bn. where he served till November 1997, on which date he was attached to the 19th Bn. In March 1999 Petitioner was posted in the office of the Deputy Inspector General Police CRPF at Hyderabad.

2. Clearing the promotional course in November 2000 and being eligible to be promoted as a Head Constable, Petitioner earned promotion as a Head Constable in May 2001.

3. As per service rule applicable, Petitioner became eligible to be considered for promotion as a Sub-Inspector after having worked for 5 years as a Head Constable.

4. The problem which has arisen is that while working as a Head Constable and found to be a very good instructor, Petitioner was posted at RTC-II, a non-duty battalion posting, where the Petitioner remained till the year 2008. In view of his experience and expertise as an instructor Petitioner was sent on deputation to the National Police Academy at Hyderabad.

5. Service Rules require that for promotion the Petitioner should have worked in a duty battalion for 2 years. As a Head Constable Petitioner has not worked in a

duty battalion for 2 years.

6. As per the Petitioner his merit is standing in his way to earn a promotion. Petitioner states that if he was found to be very good instructor, it is not the fault of the Petitioner, on the contrary it must earn him a credit. If the department chose to keep him as an instructor and not post him in a duty battalion, he cannot be penalized.

7. Petitioner relies upon orders passed in other cases where similar benefit was given to similarly situated persons.

8. In the counter affidavit filed it is stated that the Petitioner is not similarly situated inasmuch as when he was sent for promotional course which he had to clear before being promoted as a Sub-Inspector he gave in writing that he would not claim promotion with effect from the date his batch mates were promoted and thus it is stated that the said undertaking of the Petitioner binds him.

9. As regards the undertaking in question, we would highlight that to earn promotion as a Sub-Inspector, Head Constables have to clear the promotional course. The department was not even sending the Petitioner to undertake the promotional course as he had not rendered service in duty battalion for 2 years. Thus, Petitioner is correct when he says that he gave the undertaking under compulsion.

10. At the heart of the matter lies the legal principle which we have highlighted repeatedly in various judgments. The legal principle is that where the service rule requires an employee to render a particular kind of service before the employee can earn a promotion, it casts an obligation on the employee to ensure that the employee is given a posting where the particular kind of service can be rendered.

11. The department knew that the Petitioner has to serve in a duty battalion for 2 year before he could be promoted as a Sub-Inspector and thus it was the obligation of the department to post the Petitioner in a duty battalion for at least 2 years.

12. We need to emphasize that when Petitioner was on deputation to the National Police Academy he repeatedly wrote that he should be repatriated and posted to CRPF. CRPF did not write to the National Police Academy that Petitioner be repatriated and on the contrary acceded to the request of the National Police Academy to extend the deputation of the Petitioner, whose relieving was not only refused, but extension in deputation was sought by the National Police Academy stating that due to shortage of instructors it was not in the interest of the Nation to relieve Petitioner from the Academy.

13. We may note the latest communication of the National Police Academy which is dated 2.6.2011. It reads as under:

To,

The Director General,

Central Reserve Police Force,
CGO Complex, Lodhi Road,
NEW Delhi.

Sub:

Request for Extension of deputation in respect of HC (GD) D.Jaya Chandra Naidu
of CRPF -Reg.

Sir,

1. Please refer to DIGCENT (Estt) Directorate CRPF Signal dated 01.04.2011 (copy enclosed) regarding repatriation of No. 850820729 HC (ADI) D.J.C.Naidu of RTC Avadi, who is on deputation to this Academy.

2. The above Head Constable has completed his initial period of 3 years deputation period on 18.03.2011. But due to shortage of instructors in the Academy, we are unable to relieve him from the Academy.

3. The basic training for 63 RR batch of Indian Penal Code (OTs) is in the midterm and relieving an Assistant Drill Instructor from the Academy at this juncture will definitely impact the training of Indian Penal Code OTs.

4. In the above circumstances, the Academy is in need of his services at least upto Passing Parade of 63 RR Batch of IPS OTs, which has been tentatively fixed on 04.11.2011.

5. It is, therefore, requested that the concurrence for extension of deputation period from 19.03.2011 to 10.11.2011 in respect of Shri D.J.C. Naidu, Head Constable (ADI). In the public interest, may kindly be conveyed to this Academy at the earliest please.

14. Thus, the Petitioner cannot be faulted. The fault is of CRPF. Noting that the Petitioner has cleared the promotional course and has rendered the qualifying length of service as a Head Constable, relieving the Petitioner of the obligation to serve in a duty battalion for 2 years, we dispose of the writ petition directing that Petitioner would be promoted as a Sub-Inspector with effect from the date his batch mates were promoted. Petitioner would be entitled to all consequential benefits save and except actual pay for the post of Sub-Inspector which we deny on the principle that not having shouldered their responsibility of a higher post, Petitioner would not be entitled to salary thereof.

15. Other benefits would flow to the Petitioner including all consequential benefits.

16. No costs.

17. Dasti.