

(2011) 09 DEL CK 0570
In the Delhi High Court
Case No : Writ Petition (C) 799 of 2008

Dr. H.L. Raskaran

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 9

Citation : (2011) 09 DEL CK 0570

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Raman Kapur, Jyoti Singh, Puneet Bajaj and Amandeep Joshi, for the Appellant; A.S. Chandhiok, A.S.G., Anjana Gosain, Ruchir Mishra, Sandeep Bajaj, Gurpreet S. Parwarda for UOI, Rekha Palli, Punam Singh, Amrita Prakash for R 5, 10, 12, 15, 16, 18, 20, 22 and 24 and D.K. Rustagi, for R 26 in W.P. (C) 800/2008, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.

R.P. No. 385/2011 and R.P. No. 341/2011

1. R.P. No. 341/2011 has been filed in W.P.(C) No. 800/2008. R.P. No. 385/2011 has been placed in the file of W.P.(C) No. 7136/2008. However, we find that in the said review petition it is stated that it be treated seeking review of the judgment and order dated 2.5.2011 which is common to 4 writ petitions i.e. the above captioned writ petitions.

2. 4 writ petitions No. 799/2008, 800/2008, 803/2008 and 7136/2008 were disposed of by a common judgment and order dated 2.5.2011, in which directions issued were in para 19 which reads as under:

"It is apparent that there is a complete arbitrariness in the action of the official Respondents and thus we dispose of the writ petitions quashing the impugned combined seniority list of CMO (SG) and issue a direction that the list would be

re-drawn with reference to the date the incumbent joined as a Medical Officer i.e. the lowest post in the cadre, subject to the condition that the person concerned would lose said benefit if at any stage while being promoted he was declared unfit in a particular year and gained fitness in a subsequent year and hence thereby earned a promotion."

3. From the facts which we would be noting hereinunder, it would be apparent that a most ill-drafted writ petition and equally confusing responses, have necessitated a virtual re-hearing of the 4 writ petitions and we must express our displeasure at the callous manner in which the writ petitions were drafted and the response filed.

4. When the writ petitions were heard on 2.5.2011 and disposed of by an oral judgment, in para 2 of our order under review, we had observed:

From the inchoate pleadings in the writ petition as also the counter affidavit filed on behalf of the official Respondents, nothing of substance can be gathered. But with reference to the counter affidavit filed on behalf of the Respondents 5 to 10, 12, 15, 16, 18, 20, 22, 23 and 24 in W.P.(C) No. 800/2008, we have been able to see the distinction between the head from the tail and thus identify the issue which arises for consideration in the above captioned writ petitions.

5. But today, looking at the matter from hindsight and benefited with the pleadings in the review petition, we have No. hesitation in acknowledging that our boast in paragraph 2 of our decision which we have been called upon to review, of having been able to see the distinction between the head from the tail was not a correct vision. The desert of the ignorant pleadings led us into a folly to commit an error of seeing a mirage and thinking that we have reached the oasis.

6. Of lately, we have been lamenting time and again, that standards of pleadings are falling abysmally low, resulting in judicial time being wasted; contributing as one of the many reasons, amongst others, for judicial delays. Hours are spent to grapple with the pleadings to understand what the controversy is. We wish to highlight that writ pleadings are pleadings of fact, evidence and law. The annexures make good the pleadings in the writ petition and the narratives in the various paragraphs of a writ petition have to relate to the annexures and suffice would it be to state that the requirement of Order 6 Rule 9 of the CPC is to briefly state in the pleadings the effect of a document upon which a party relies. The grounds in a writ petition are intended to highlight the legal issues which arise for consideration with respect to the pleadings and the annexures i.e. the documents on which the pleadings rest. We are repeatedly noting that No. pleadings are being made with respect to the effect of the annexures annexed to the writ pleadings and in most of the cases only by way of statement of fact it is pleaded that a document exists. Indeed, as we would be highlighting this has happened in the instant case and the result is that we wasted nearly 2 hours on 2nd May, 2011 when the writ petitions were disposed of. We had to spend

another 2 hours on the last date of hearing i.e. 21st July, 2011 when issues (in review) got sorted out, which had to be reflected upon and on 1st September 2011, i.e. the date on which we reserved the matters for judgment, we had to spend another 1 hour and 30 minutes. The court sitting time is from 10:30 AM to 4:30 PM with a lunch break from 1:15 PM to 2:15 PM. The court sits for 5 hours each day for 5 days a week and 210 day in an year, and it is most unfortunate that on a short little issue the Division Bench had to spend 30 minutes + 1 day.

7. With the expression of woe as above, and having regained our composure, we proceed to note the facts.

8. There are 6 Central Para Military Forces in India i.e. (i) Border Security Force, (ii) Central Reserve Police Force, (iii) Indo-Tibetan Border Police, (iv) Shashtra Seema Bal, (v) Central Industrial Security Force, and (vi) Assam Rifles.

9. Each Force has a medical cadre and for which recruitment and promotion rules were enacted separately, but admittedly are pari-materia with each other.

10. At the constitution of the cadre in each force, the lowest post was that of a Medical Officer Grade-II and the next above post was of Medical Officer Grade-I. The next above post was that of a Chief Medical Officer.

11. Since promotions were vacancy based and there was stagnation in the medical cadre in each force and similar being the position of doctors working in civil hospitals under the Ministry of Health, the Government actively considered a cadre review and on 13.3.1987 constituted an Inter Departmental Committee to consider career progression in the medical cadre.

12. The recommendations of the Committee resulted in the Government of India issuing an office memorandum on 6th July 1994, reconstituting the medical cadre in all Central Police Organization, which included the Central Para Military Forces. Vacancy based promotions were done away with up to the level of a Chief Medical Officer (Ordinary Grade). The Cadre restructuring was as under:

A. MO (Grade-II): Reclassified as Medical Officer (MO)

B. MO (Grade-I): Reclassified as Senior Medical Officer (SMO)

C. Chief Medical Officer (CMO): CMO (Ordinary Grade)

13. A promotional post i.e. CMO (Selection Grade) was created by placing 15% of the posts of CMO (Ordinary Grade) in the selection grade when reconstitution initially took place, which was enhanced to 30% in the year 2000 and in the year 2002 the post of CMO (Selection Grade) was put in the time scale.

14. At the reconstitution of the cadre all Medical Officers either Grade-II having 5 years" experience became eligible to be promoted as Senior Medical Officer and it was only fitness which had to be considered. Those who had rendered 10 years" service as Medical Officers with 2 years" as Senior Medical Officer became entitled to be promoted as CMO (Ordinary Grade). In other words promotions

ceased to be vacancy based. They came on a time scale.

15. It may be highlighted that the decision taken in the year 1994 was to be given retrospective effect with effect from 1.4.1988.

16. Nobody had a problem as everybody moved up the cadre in the respective force till the year 2005, when above the post of CMO (Selection Grade) posts of DIG (Medical) were created with integration at said level of all Central Para Military Forces. In other words all persons holding the post of CMO (Selection Grade) in the 6 Para Military Forces had to be placed in an integrated seniority list for purposes of consideration of the eligible candidates for promotion to the integrated posts of DIG (Medical).

17. Making a cursory mention in the writ petitions that on 18th February 2005 the Ministry of Home Affairs issued a circular listing principles for finalization of common eligibility list for promotion to the rank of DIG (Medical) and that pursuant thereto a seniority list was formulated, above captioned writ petitions were filed making different prayers. Let us note the prayers made in the 4 writ petitions.

18. In W.P.(C) No. 799/2008 it is prayed:

(a). Issue a writ of or in the nature of certiorari and mandamus or any other appropriate writ, order of direction to either quash the Common Eligibility list of Chief Medical Officers (SG) of Combined Medical Cadres of Central Police Organizations as on 01-07-2005 and direct the Respondent No. 1 to recast a new one as per circular dated 06-07-1994 by placing the Petitioner at serial No. 106 instead of present serial No. 118 in above mentioned common eligibility list.

(b) Issue a writ of mandamus or any other appropriate writ, order or direction directing the Respondents to promote the Petitioner with effect from 06-11-1992 and pay him the salary and allowances from that date.

(c) Issue an appropriate writ, order or direction directing the Respondents to compensate the Petitioner by giving interest on the differences in the salary and allowances pursuant to the promotion from 06-11-1992.

19. In W.P.(C) No. 800/2008 it is prayed:

(a). Issue a writ of or in the nature of certiorari and mandamus or any other appropriate writ, order of direction to either quash the Common Eligibility list of Chief Medical Officers (SG) of Combined Medical Cadres of Central Police Organizations as on 01-07-2005 and direct the Respondent No. 1 to recast a new one as per circular dated 06-07-1994.

(b) Issue a writ of mandamus or any other appropriate writ, order or direction directing the Respondents to promote the Petitioner No. 1, 2 and 3 as Chief Medical Officer from 15-2-1994, 19-9-1995 and 23-9-1995 respectively and pay them the salary and allowances from that date.

(c) Issue an appropriate writ, order or direction directing the Respondents to compensate the Petitioner by giving interest on the differences in the salary and allowances pursuant to the promotion from 15-2-1994, 19-9-1995 and 23-9-1995 respectively.

20. In W.P.(C) No. 803/2008 it is prayed:

"(a). Issue a writ of or in the nature of certiorari and mandamus or any other appropriate writ, order of direction to either quash the Common Eligibility list of Chief Medical Officers (SG) of Combined Medical Cadres of Central Police Organizations as on 01-07-2005 and direct the Respondent No. 1 to recast a new one as per circular dated 06-07-1994 and circular dated 18-2-2005 by placing the Petitioner above Respondents No. 5-11 in above mentioned common eligibility list."

21. In W.P.(C) No. 7136/2008 it is prayed:.

"(a). Issue a writ of or in the nature of certiorari and mandamus or any other appropriate writ, order of direction to either quash the Common Eligibility list of Chief Medical Officers (SG) of Combined Medical Cadres of Central Police Organizations as on 01-07-2005 and direct the Respondent No. 1 to recast a new one as per circular dated 06-07-1994 by placing the Petitioner at serial No. 106 instead of present serial No. 119 in above mentioned common eligibility list.

(b) Issue a writ of mandamus or any other appropriate writ, order or direction directing the Respondents to promote the Petitioner with effect from 01-01-1993 and pay him the salary and allowances from that date.

(c) Issue an appropriate writ, order or direction directing the Respondents to compensate the Petitioner by giving interest on the differences in the salary and allowances pursuant to the promotion from 01-01-1993."

22. It is apparent that in the writ petitions filed in the year 2008 the Petitioners were claiming a right to be promoted as Chief Medical Officers from dates as interior as the year 1992 and one could simply have dismissed the writ petitions as barred by delay and laches.

23. But noting the fact that the fortuitous circumstance when Screening Boards met to determine fitness in various Central Para Military Forces and made recommendations, had resulted in persons being promoted on the time scale, in Central Para Military Forces, on different dates and being made to understand that the result thereof was that persons who joined at the lowest in the cadre on a date earlier than their counterparts in some Central Police Organizations becoming junior, prima facie finding the same to be unjust and noting, in para 17 of our decision dated 2nd May 2011 that the stand projected by the Government was that it was the length of service rendered as CMO (SG) and if this was the same, the date of promotion in the immediately lower grade would be the deciding factor, observing that the fortuitous circumstance of the date on which Screening Committee is met cannot result in seniority being effected, had issued

the direction in para 19 of our decision dated 2nd May 2011, which direction has been reproduced by us in para 2 above.

24. Regretfully we must say that neither counsel drew our attention, though we must confess that in all the writ petitions there is a reference to the office order dated 18th February 2005, that the principles of integration of the cadre at the level of CMO (SG) had been enlisted therein and we must highlight that it was only during arguments in the review application that it was highlighted through the medium of the review applications that the Government had finalized the common eligibility list with reference to the 4 principles enunciated in the said office order, which reads as under:

MINISTRY of HOME AFFAIRS

Pers-II

Sub:Finalization of Common Eligibility Lists of promotion to the ranks of DIG (Med) and above in the Combined Medical set-up of Central Police Forces

1. Reference is invited to this Ministry's letter No. II.27012/93/2003-PF-III dated 02.09.2004 regarding restructuring of Medical set-up of CPFs which inter alia envisages that at the level of DIG and above the promotions will be common to all Forces based on combined gradation of Medical Officers.

2. Therefore in order to prepare Common Eligibility lists of the ranks of CMO (SG) (which is the feeder cadre to the rank of DIG (Med) and above a Committee was constituted in MHA. The Committee has prepared draft common Eligibility lists based on the following principles.

(i) To prepare the eligibility list for promotion the duration of regular service in the present grade i.e. the date of promotion to this grade has been taken into account as provided in para 3(8)(ii)(a) to (d) & 9 of Gazette No. -A/12019/1790-CHS-V vol-II GOI, dated 08 Oct.1996 for promotions to higher floating posts of CHS from various specialist/non specialist sub cadres.

(ii) If the length of service in the present grade is same the date of promotion to the immediate lower grade was the deciding factor and soon.

(iii) If all the duration of service in all higher grades are same the date of joining was taken into account and if that also happened to be same the date of birth

(iv) The inclusion of the civilian component of SSB Medical Officers in the combined combatized CPF Medical cadre is subject to exercising their option for combat zing as one time measure in the event of any Medical Officer remaining unwilling for the same such name(s) shall deleted from the list.

3. CPFs are requested to circulate the draft eligibility lists among all concerned for information and inviting objections if any within a period of 30 days so that the lists could be finalized Objections received within the specific period may kindly be examined and forwarded to this Ministry along with your comments.

Encl: As above

-sd-

(Manoj Aggarwal) Director (Pers.)

Ph-23092956

DG, BSF: (Shri R.S.Moosahary)

DG, CRPF: (Shri J.K.Sinha)

DG, ITBP: (Shri K.J.Singh)

DG, CISF: (Shri K.M.Singh)

DG, SSB: (Shri Himanshu Kumar)

DG, AR: Lt.Gen Bhupinder Singh) Through LOAR)

MHA.UO No-I-45024/02/2005/PERs-II dated 18th Feb 2005.

25. Now, the rule of pleading enshrined under Sub-Rule 9 of Rule 6 of the CPC reads as under:

9. Effect of document to be stated. - Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

26. In No. writ petition the effect of office order dated 18.2.2005 containing the principles on which common eligibility list had to be prepared has been pleaded. The only pleading is to the matter of fact of it existing and not its effect. The least what was required was to plead that the effect of the office order is that it is the date of promotion to the grade of CMO (SG) which form the basis to prepare the seniority list with reference to the duration of regular service in the said grade. Further, if length of service in the grade of CMO (SG) was the same, it was the date of promotion in the immediate lower grade which became the deciding factor and if duration of service in the grade was the same it was the date of joining the cadre which became relevant and if even this happened to be the same, it was the date of birth which would have broken the deadlock. It had to be pleaded that when applied, it had an effect which was based on a fortuitous circumstance. The challenge ought to have then been made to the principles laid down i.e. the office order had to be challenged as containing arbitrary principles while dealing with the subject of cadre integration at the rank of DIG (Medical).

27. But the Petitioners have done nothing of the sort. They have prayed that their promotions in the lower posts be ante-dated.

28. Since everything was confusing and lest even our decision looks confusing, we highlight what the problem is.

29. Beginning with noting the facts in the 4 captioned writ petitions, the Petitioners are doctors in BSF and highlighting that BSF had followed the constant practice of convening Screening Committees and completing the screening process by September each year, promotions were effected w.e.f. 1st October.

30. As noted by us hereinabove, cadre restructuring took place in all Central Police Organizations in the year 1994, given retrospective effect w.e.f. 1988, and simply stated the cadre restructuring was that all Medical Officers (Grade-II), re-designated as Medical Officers, having rendered 5 years" regular service till 20.8.1987 became eligible to be promoted as Medical Officer (Grade-I) re-designated as Senior Medical Officer and those joined after 1.10.1987 became eligible for promotion upon rendering 4 years" service. Senior Medical Officers i.e. erstwhile Medical Officers (Grade-I) became eligible for promotion as Chief Medical Officer with 6 years" of regular service as Senior Medical Officer or 10 years" service in the medical cadre out of which 2 years" service had to be as Senior Medical Officer. In other words, upon completing 10 years" service in the medical cadre and found fit for promotion at the first instance when they became eligible for promotion, these doctors would become Chief Medical Officers on completing 10 years" service. Aforesaid is the position which stands culled out from the office memorandum dated 6th July 1994, and we immediately highlight that now the prayers made by the writ Petitioners get enlightened, inasmuch as we find that one prayer in each writ petition is that Petitioners" promotion as Chief Medical Officer be ante-dated in light of the Office Memorandum dated 6.7.1994.

31. Whereas most of the Central Para Military Forces completed the screening process before doctors completed 10 years" service and those found suitable were promoted as Chief Medical Officers on completion of 10 years" service or where screening was delayed, these organizations gave retrospective effect to the date from which persons were promoted as Chief Medical Officer, BSF did not do so. Let us highlight with one illustration. In the eligibility list of Chief Medical Officers (Selection Grade) of Combined Medical Cadre of CPS as on 1.7.2005 i.e. the list in dispute, at serial No. 118 is the name of Dr. H.L.Raskakaran, an officer under BSF (Petitioner of WP(C) No. 799/2008), who was born on 9.12.1956 and joined as a Medical Officer (Grade-II) on 6.11.1982. He was promoted as a Medical Officer (Grade-I) on 1.10.1987 and as CMO on 1.10.1993. The next two persons at serial No. 119 and 120 of the same list i.e. Dr. Om Prakash Nimesh and Dr. Ashok Kumar Dass who joined after him on 1.1.1983 and 20.6.1983 were promoted as Medical Officer (Grade-I) on the same date as he i.e. 1.10.1987 and were further promoted as CMO as Dr. H.L.Raskakaran w.e.f. 1.10.1993. In other words all these officers of BSF reach the rank of CMO and were so treated by their organization after they had rendered more than 10 years" service, in fact, Dr. H.L.Raskakaran reached the said post after 11 years" service. Now, the office order dated 6.7.1994 made promotions on a time scale and not vacancy based. To be promoted as a Chief Medical Officer, those who had

rendered 10 years" service as a Medical Officer out of which 2 years had to be a Senior Medical Officer, became entitled to be promoted. Whereas some organizations adhered to the letter and spirit of the office memorandum by promoting their officers on rendering 10 years" service, but BSF followed the conventional path of effecting promotions after Screening Committees met and not ante-dating the same.

32. The principles of integration as per circular dated 18.2.2005 stipulate that length of service as a Chief Medical Officer would be the basis to determine seniority has obviously resulted to the prejudice of those who were working in BSF and the prejudice has been highlighted by us hereinabove. The fortuitous circumstance of BSF completing screening by the September of each year and effecting promotions w.e.f. 1st October of the same year has resulted in doctors who joined BSF as Medical Officers (Grade-II) re-designated as Medical Officers, in spite of having rendered 10 years" service on an earlier date, being promoted as Chief Medical Officer from a later date. These officers never raised a grievance as the delayed promotion by a few months had hardly any effect as regards further promotion; only effect being salary in the higher scale being paid from a date a little later and this was too petty a cause to litigate upon. But when the decision was taken in the year 2005 to integrate the cadres at the level of CMO (SG) and when the principles of determining seniority were specified in the circular dated 18.2.2005, adverse effect becoming apparent vis-?-vis the officers in BSF.

33. Now, unfortunately for them, the Petitioners have not challenged the principles on which seniority has to be integrated as enshrined in the officer order dated 18.2.2005; the claim predicated on the office memorandum dated 6.7.1994 being highly belated; but having understood the problem, and as reflected hereinabove, the question would be what relief needs to be granted while disposing of the review petitions.

34. Law is clear. In the matter of integration of a service, be it in its entirety, or be it at a particular level, all issues which have a bearing have to be properly taken into account and suffice would it be to state that any decision which ignores a relevant matter which should be taken into account is tainted, in that, it suffers from the vice of arbitrariness. We do not fault the Government which otherwise appears to have taken into account the well-recognized factors on which seniority has to be determined when two streams merge at a particular point, but since nobody highlighted before the Government, as above, that whereas some organizations abided by the letter and spirit of the cadre review decision notified on 6.7.1994 and strictly promoted eligible candidates whose suitability was assessed and made them Chief Medical Officers upon rendering 10 years" service, BSF did not do so resulting in doctors in BSF being promoted as Chief Medical Officers on dates ranging between a few month up to 1 year after they had completed 10 years" service. We do not know what decision the Government would have taken if this was made known to the Government, but

surely nobody can argue that the said fact is not relevant. Thus, in the absence of any challenge being made to the office order dated 18.2.2005 which enshrines the principles on which seniority has to be determined and noting that the prayer made of ante-dating seniority of the Petitioners with effect from dates in the year 1992 and 1993 hits the writ petitions by the missile of delay and laches, but unable to close our eyes to the perceived wrong which appears to be resulting, we dispose of the review petitions recalling the mandamus issued vide order dated 2nd May 2011 and in its place directing that the Government of India, Ministry of Home Affairs i.e. the Cadre Controlling Ministry of the Central Police Organization would look into the grievance of the writ Petitioners i.e. BSF granting promotion to them as Chief Medical Officer not upon they completing 10 years" service as Medical Officers, but on dates subsequent thereto, and the consequential effect thereof on their service. If as a result of finding merit in what these Petitioners state, suitable modifications would be effected in the office order dated 18.2.2005 and in said eventuality the seniority list would be re-drawn but after preparing a draft seniority list, inviting objections and then finalizing the same.

35. While reserving the matters for pronouncing our decision as recorded in the order dated 1.9.2011 we had noted that one, Dr. R.S.Rathore has been re-appointed on contractual basis as ADG (Medical) probably for the reason the seniority dispute is hampering the Government to effect promotion to the post of ADG (Medical). It appears to us that Dr. R.S.Rathore has fished in troubled waters and has misled the bureaucrats in the Ministry of Home Affairs for the reason we find that the inter-se seniority dispute is not affecting the persons who are first 10 in the seniority list and on whatever principle the seniority would be determined, these 10 persons would retain their position and noting that as per Rules the zone of consideration is 1:4, we see No. reason why DPC should not meet to empanel a candidate for promotion as ADG (Medical).

36. The review petitions stand disposed of in terms of para 34 hereinabove and a direction is issued that DPC be convened to empanel a candidate for promotion as ADG (Medical) and the process be completed within 12 weeks from today.

37. No. costs.