

(2011) 05 DEL CK 0107
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 : 02-05-2011

Acts Referred:

Citation : (2011) 180 DLT 89

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

Bench : Division Bench

Advocate : Puneet Bajaj and Amit Bajaj, for the Appellant; A.S. Singh, for R-1 to R-4, Ritu Rastogi, for R-8 in W.P.(C) 799/2008, A.S. Singh, for R-1 to R-4, Rekha Palli, Punam Singh and Amrita Prakash for R-5, 6, 7, 8, 9, 10, 12, 15, 16, 18, 20, 22, 23 and 24 in W.P.(C) 800/2008, A.S. Singh, for R-1 to R-4, Ritu Rastogi, for R-6 to R-10 in W.P. (C) 803/2008, Ruchir Mishra and Mukesh Kumar for R-1 to R-4, Rekha Palli, Punam Singh and Amrita Prakash for R-6 and Ritu Rastogi, for R-8 in W.P.(C) 7136/2008, for the Respondent

Judgement

Pradeep Nandrajog, J.—Heard learned Counsel for the parties.

2. From the inchoate pleadings in the writ petitions 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 Respondent Nos. 5 to 10, 12, 15, 16, 18, 20, 22, 23 & 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.

3. Facts are not in dispute.

4. There are 6 Central Para-military Forces in India, being: (i) Border Security Force (BSF), (ii) Central Reserved Police Force (CRPF), (iii) Indo-Tibetan Border Police (ITBP), (iv) Shashtra Seema Bal (SSB), (v) Central Industrial Security Force (CISF), and (vi) Assam Rifles (AR).

5. Medical cadre in all 6 Central Para-military Forces was identical,

notwithstanding separate Recruitment Rules being notified by each Central Para-military Force; all of which are admittedly pari-materia with each other.

6. At the lowest level is the post of Medical Officer (MO). The next above post is that of Medical Officer Grade-I re-designated as Senior Medical Officer (SMO). Promotion from the post of Medical Officer to that of Senior Medical Officer is not dependent upon the vacancy position. All those who had rendered 4 years qualifying medical service as Medical Officer were eligible to be promoted as Senior Medical Officer and the only barrier to be crossed was to be declared fit for promotion. Thus, it can safely be said that all Medical Officer became eligible for promotion as Senior Medical Officer on rendering 4 years service as Medical Officer and subject to fitness are entitled to be so promoted the moment they completed 4 years service.

7. The next above post i.e. the post above that of Senior Medical Officer is that of the Chief Medical Officer (Ordinary Grade) i.e. CMO (OG). Promotion to this post is also not vacancy based. All those who had rendered 10 years service in the medical cadre with 2 years out of 10 years in the grade of SMO or those who had rendered service for 6 years as Senior Medical Officer are entitled to be promoted as CMO(OG) and since promotion was not contingent upon the vacancies, the fitness had to be earned. In other words those who had joined as Medical Officers, upon being certified fit for promotion, became entitled as a matter of right to be promoted as CMO (OG) upon having rendered 10 years service, 2 of which years had to be as Senior Medical Officer.

8. Those who rendered service for 3 years as CMO (OG) become eligible to be placed in the next higher post, being that of CMO (SG) and for which, criteria was 3 years service rendered as CMO(OG); fitness had to be obtained.

9. Further promotion was earned thereafter to the post of DIG (Medical) and till the year 2005 there was no problem, for the reason in each Central Para-military Force, persons used to be placed in the next above post upon being declared fit and whenever there was a delay in constituting the screening boards to consider service record and certify fitness of the candidate concerned, it hardly matter inasmuch as seniority was protected.

10. What happened in the year 2005 was that a decision was taken by the Cadre Controlling Ministry i.e. Ministry of Home Affairs unifying the post of Medical Officers at the level of DIG (Medical) that henceforth promotion to the post of DIG (Medical) came to be effected on the basis of an integrated seniority list of all CMO (SG) in the different Central Para Military Forces. Obviously, an integrated seniority list of CMO (SG) had to be prepared. The Respondents did so.

11. This combined seniority list created a hurdle for the reason, in the different Central Para-military Forces the screening boards used to meet from time to time as per convenience to determine the fitness of the eligible candidates and the result was that in some Central Para-military Forces, in particular years, persons were placed in the next above higher grade whereas their brethren in other

Central Para-military Forces earned the same benefit on a subsequent date.

12. To illustrate what happened, we may note 10 instances from the counter affidavit filed in W.P. (C) 800/2008 by Respondent Nos. 5 to 10, 12, 15, 16, 18, 20, 22, 23 & 24 of said writ petitions.

13. This highlights the issue.

14. We note in column 2 the seniority position assigned and in column 3 the name. In column 4 we note the name of the Central Para-military Force and in column 5 we note the date of appointment of the respective person as a Medical Officer and in the last column we note the date when the person concerned was appointed as a CMO (SG). The chart reads as under:

Col. 1

Col. 2

Col.3

Col.4

Col.5

Col.6

Sl. No.

Senioriy Position

Name

Organization

Date of appointment as M.O.

Date of appointment

1.

82

Dr. S.D. Kiniker

CRPF

05.05.1975

05.02.2002

2.

86

Dr. S.L. Nimesh

CRPF

22.09.1978

05.04.2002

3.

92

Dr. Chandra Bhal

CRPF

19.06.1980

05.04.2002

4.

91

Dr. Surendra Pal

CRPF

04.07.1980

05.04.2002

5.

90

Dr. K.N. Rao

CRPF

17.07.1980

05.04.2002

6.

93

Dr. K.K. Dhimre

CRPF

28.02.1981

05.04.2002

7.

72

Dr. K.D. Sharma

BSF

25.06.1981

06.06.2000

8.

73

Dr. N.K. Yadhuvanshi

ITBP

25.06.1981

06.06.2000

9.

76

Dr. M.P. Naharia

ITBP

25.07.1981

06.06.2000

10.

74

Dr. A.K. Singh

ITBP

15.05.1982

06.06.2000

11.

75

Dr. A.N. Jha

ITBP

03.03.1983

06.06.2000

15. Suffice would it be to state that to the reader it becomes apparent that the fortuitous circumstance of the day when the screening boards met, to determine fitness, have resulted in personnel in different Central Para-military Force earning a promotion ahead of their brethren and thus reaching the higher post a little early resulting in those who were appointed earlier being rendered junior in the

seniority list thereby adversely affecting the chance of promotion to the post of DIG (Medical); when the cadre gets integrated. To illustrate, Dr. S.D. Kinker who joined CRPF as a Medical Officer on 05.05.1975 finds himself at Sl. No. 82 and Dr. K.D. Sharma who joined BSF on 25.06.1981 finds himself 10 notches above i.e. Sl. No. 72.

16. Learned Counsel for the parties jointly state that whereas under BSF and ITBP, by and large the screening boards used to meet regularly, with the results the medical personnel in said two Central Para-military Forces earned promotions on the right date, in CRPF this did not happen resulting in CRPF personnel reaching the post of either Senior Medical Officer or Chief Medical Officer a year or two after they became eligible. Nobody raised an issue as this delay caused no prejudiced since in each Central Para-military Force promotions were effected force wise and it was only in the year 2005 when integration took place at the level of DIG(Medical) that the problem started pinching.

17. The rationale adopted by the official Respondents is as pleaded in paragraph 4 of the preliminary submissions in the following words: "That it is submitted that in order to prepare the eligibility list for promotion as per the guidelines issued by the Ministry, it was also mentioned that if the length of service in the present grade is same, the date of promotion to the immediate lower grade would be the deciding factor and so on."

18. It is apparent that those who fortuitously to became CMO (SG) earlier have stolen a march notwithstanding they having joined the cadre much later.

19. It is apparent that there is 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.

20. Needful would be done within a period of 16 weeks from today by drawing up a tentative seniority list within said period and notifying all thereby inviting objections and after hearing those who have filed objections, the final list would be finalized within further period of 16 weeks.

21. No costs.