

(2011) 08 DEL CK 0355

In the Delhi High Court

Case No : Writ Petition (C) No. 1534 of 1997

Hari Prasad Raturi and Another

APPELLANT

Vs

The Director General, ITBP

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Citation : (2011) 08 DEL CK 0355

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

Bench : Division Bench

Advocate : Amrita Sharma and Darshan K.M, for the Appellant; Sachin Dutta and Abhimanyu Kumar, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—At the time when the writ petition was filed the Petitioners were working as Sub-Inspector (Education) and raised a grievance of not being promoted as Subedar (Education) in spite of having qualified at the departmental examination conducted in the year 1993 at which 13 Sub-Inspectors qualified, but only 6 were promoted. It is the further grievance of Petitioner No. 2 that he having qualified at the examination conducted in the year 1995 was wrongly denied a promotion on account of the select panel being drawn up with reference to the seniority as Sub Inspector and not on the basis of merit.

2. No examination being conducted in the year 1994, at the examination conducted in the year 1995, 9 candidates were declared qualified. 4 out of the said 9, being Respondents No. 3 to 6 had failed at the examination conducted in the year 1993 but they cleared the examination conducted in the year 1995 and being senior to Petitioner No. 2 were promoted.

3. Said Respondents i.e. Respondent No. 3 to Respondent No. 6 being promoted, Petitioners raised an issue. They stated that having cleared the examination in the year 1993 at which Respondent No. 3 to Respondent No. 6 had failed to

qualify, said Respondents having cleared the examination in the year 1995, they could not be promoted ahead of the Petitioners.

4. The Petitioners were informed that candidates had to clear the examination each year and if a candidate had cleared the examination at a particular year, his promotion was subject to the vacancy available and once the vacancies were filled up, the panel lapsed.

5. Instant writ petition was filed alleging that the mandate of Rule 61 and Rule 62 of the CRPF Rules was breached. It was alleged that the mandate of the Rules require a select panel to be prepared and names entered in the approved list based on merit and not as per the seniority of the candidates who clear the exam. It is further alleged that those whose names are entered in the E-list first would rank higher above those who clear the exam later and thus irrespective of seniority, promotions have to be effected accordingly.

6. As per the counter affidavit filed, the examination is conducted depending upon the vacancies likely to accrue and that those who clear the exam would be promoted as per seniority and not on merit. If in the year a candidate clears the exam but is not senior enough to be promoted and all vacancies get filled up, pertaining to the vacancies which arise subsequently, the person concerned must re-appear at the examination i.e. the panel lapses.

7. With respect to Rule 61 and Rule 62 of the CRPF Rules, it is alleged that the Rule deals with General Duty personnel and not the Education Cadre in respect whereof it is stated that separate rules were notified on 12th March 1985.

8. Rule 61 and Rule 62 of the CRPF Rules read as under:

61. Maintenance of lists of approved candidates.- Lists of approved candidates for promotion to various ranks, required to be maintained under Sub-rule (b) of Rule 62, shall be kept in the office of the Commandant, and promotions shall ordinarily be made from these lists according to the provisions of Rule 55.

62. Preparation of lists of approved candidates.-

(a) The Commandant may, for special reasons, promote to the next higher rank any qualified candidate whose name is not on the appropriate approved list. In the case of Subedar (Inspectors) and sub-Inspectors prior approval of the Inspector General and the Deputy Inspector General respectively shall be obtained.

(b) Promotions shall be made from among the best men in the Force as a whole and for this purpose the Commandant shall maintain separate lists for promotion to different ranks, as shown below:

(1) List "A" containing names of Constables fit for promotion to the rank of Lance Naik.

(2) List "B" containing names of Lance Naiks suitable for promotion to the rank of

Naik.

(3) List "C" containing names of Naiks suitable for promotion to the rank of Head Constables.

(4) List "D" containing names of suitable Head Constables for promotion to the rank of Sub-Inspectors.

(5) List "E" containing names of suitable Sub-Inspectors for promotion to the rank of Subedars (Inspectors).

(c) Ordinarily, only those men shall be considered for inclusion in List "A" who have passed the prescribed course for Drill Instructors and are sufficiently educated to be able to read and write Hindi, Roman and Hindi numerals. Higher educational qualification is necessary for promotion above the rank of Head Constable, but the normal standard shall be Third Class for promotion from Constable to Lance Naik and second class from Naik to Head Constable. A man selected for promotion should have initiative, power and leadership the makings of an officer. Men on promotion list for Naiks and above shall be on probation for at least one year and names of those on the list who do not come up to the required standard shall be removed thereof from time to time. Entry of names in lists A, B and C shall be made by the Commandant and in Lists D and E by the Commandant with the approval of the Deputy Inspector General of Police and Inspector-General of Police respectively.

9. Clause (b) of Rule 62 requires promotions to be made from among the best men in the Force. This is the basis for the Petitioners to allege that whenever departmental exams are conducted, select panel has to be with reference to the merit position obtained.

10. As noted herein above, the defence of the Respondents is that the CRPF Rules are general rules and since pertaining to the Education Department, separate rules called "ITBP (Education, Development and Rehabilitation Cadre) Recruitment Rules 1985" (hereinafter referred to as the "Education Rules") have been notified and it is said rules which would govern the field.

11. The promotional post for a Sub-Inspector, whether in the General Cadre or the Education Cadre is that of a Subedar (Inspector).

12. The CRPF Rules 1955 require appointment to the post of Subedar (Inspector) to be by way of promotion from Sub-Inspectors. So is the mandate of the separately notified Recruitment Rules for the Education Department.

13. Rules governing the Education Department which were notified on 12.3.1985 and have been annexed as Annexure R-1 to the counter affidavit simply state that the post of Subedar (Education) is a selection post requiring to be filled up by promotion and the eligibility is having rendered 4 years' service as a Sub-Inspector.

14. The Rule also requires the candidate to clear the E-list test.

15. The Rule applicable to the Education Department does not indicate whether the E-list test is a qualifying test or a competitive examination.

16. But since the post is a selection post, it is apparent that some criteria relatable to a post which is treated as a selection post has to be followed.

17. Guided by civil service, it would be highlighted by us that it is the benchmark which determine the selection and all those who qualify on the benchmark would have inter-se merit drawn up with reference to the seniority. The distinction between a post being a "selection" and "non-selection" has been well explained in the decision reported as 1993 (2) Suppl SCC 362 UOI v. Dr. V.Raja Ram and Ors. and we would highlight that as per the decision (vide para 28) the basic distinction between "selection post" and "non selection post" is, the former has to be filled up pursuant to a comparative assessment on merit and the latter on the basis of seniority subject to fitness.

18. Since the post has been described as a selection post, the stand of the department that those who cleared the exam would be promoted on the basis of seniority is an incorrect stand and cannot stand the scrutiny of law.

19. Thus, whether the selection for purposes of promotion has to be as per Rule 61 and Rule 62 of the CRPF Rules or the promotion has to be as per the rule applicable to education cadre, would make No. difference inasmuch as the requirement of Rule 62-B being to promote from amongst the best in the Force and as per the rules governing the Education Department (Annexure R-1) the post is a selection post and thus merit has to prevail over seniority.

20. Looked at from any angle, the stand of the Petitioners that promotion had to be effected based on merit is correct and the stand of the Department that the E-list examination was merely a qualifying examination and all those who qualified were to be promoted based on seniority is incorrect.

21. But, the stand of the Petitioners that those who cleared the examination in a particular year would rank above those who cleared the examination in a subsequent year is incorrect for the reason the merit list exhausts itself when the vacancies in the year are filled up and for the next year, one must compete again.

22. We note that Petitioner No. 1 has died and his legal heirs have not been brought on record as they have not sought impleadment and thus qua Petitioner No. 1 we hold that the petition has abated.

23. Considering the claim of Petitioner No. 2, in view of our reasoning above, it has to be held that pertaining to the examination conducted in the year 1993, the merit list had to be drawn up not on the basis of seniority but by treating the post in question as a selection post and for which a benchmark had to be prescribed. But, the wrong pertaining to the said year cannot be undone for the reason those who were promoted in the year 1993 have not been impleaded as a Respondent and in their absence we cannot direct the department to redraw the merit list.

24. However, those who cleared the E-list test in the year 1995 and were promoted based on seniority have been impleaded as Respondents No. 3 to 6 in the instant writ petition and thus corrective action can be directed for the year 1995.

25. The corrective action has to be a direction to the Respondents to keep in mind that the Education Rules clearly state that the post of Subedar (Education) is a selection post and thus the select panel for the year 1995 has to be redrawn as a merit based panel and not a panel based on seniority. But since Respondents No. 3 to 6 have worked for over 16 years, suitable directions need to be issued to protect them, should they be ousted when the select panel is redrawn.

26. We dispose of the writ petition directing the Respondents to redraw the select panel keeping in view that the post in question is a selection post and with reference to the benchmark to be prescribed would place the candidates in order of merit. If Petitioner No. 2 finds a rank in the merit panel drawn up which would entitle him to a promotion, same be granted to him with effect from the year 1995 and if this would require any of the Respondents to be reverted, we direct that none would be reverted and a supernumerary post be created to accommodate him. In said eventuality, Petitioner No. 2 would be entitled to all consequential benefits save and except actual wages.

27. Needful would be done within a period of 8 weeks from today.

28. No. costs.