

(2013) 02 DEL CK 0355

In the Delhi High Court

Case No : Writ Petition (C) 3893 of 1997 and CM Application 7468 of 1997

Jagbir Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 309

Citation : (2013) 3 AD 364

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

Bench : Division Bench

Advocate : H.S. Dahiya and Ms. Anita Sharma, for the Appellant; Ruchir Mishra, Sh. M.P. Singh, Advocates with Sh. S.K. Jha, Assistant Commandant, for the Respondent

Judgement

S. Ravindra Bhat, J.—The petitioner claims various directions, essentially in the nature of policy realm, in respect of the service in the Central Industrial Security Force (CISF). The brief facts are that the petitioner was appointed as Assistant Commandant (AC) on 13.07.1989, a Junior Time Scale post in the CISF. In accordance with the recruitment rules, he became eligible for the post of Commandant after 6 years and was, in fact, promoted with effect from 20.07.1995. He approached this Court in 1997. At that stage, the complaint was that the post of AC, though a Group-A service, for which a common entrance examination is held by the Central Government and the Union Public Service Commission (UPSC); in certain important employment and service related aspects, the conditions differed and the employees of CISF are discriminated. At the outset learned counsel for the petitioner submitted that with the passage of time, some of the reliefs claimed have become academic and that he would focus on the following subsisting grievances:

(a) A direction to the respondents to assign Senior Time Scale to the petitioner on completion of four years" service, i.e. sometime in 1993, in tune with the then existing policies in relation to Group-A services, according to the existing

Central Government Circulars in that regard. It was argued that this benefit accrues in some of the other Group-A services upon the incumbent completing four years' regular service. In the CISF, this benefit was extended with effect from 04.04.2001. It was argued by the learned counsel for the petitioner that the petitioner was automatically entitled to the benefit immediately upon expiry of four years' service, sometime in 1993;

(b) grant of Junior Administrative Scale to the petitioner after nine years service, like in the case of other Group-A services and posts. It was argued that in the CISF, this benefit was and continues to be granted after 14 years;

(c) Learned counsel contends that the petitioner is entitled to Selection Scale (Non-Functional) after 14 years of service; in his case, with effect from 2003, like in the other Group-A services. However, in the CISF this arrangement did not exist. Likewise learned counsel for the petitioner argues that the benefit of Senior Administrative Grade, given to officials in the other Group-A services after their completion of 18 years' service too should be granted to the petitioner.

2. Learned counsel for the petitioner relied upon various Circulars of the Central Government as well as the Cadre Management of Group-A Central Services Monograph of 1993. It was submitted that once the Central Government had grouped the CISF personnel from Assistant Commandant rank upwards as belonging to the "Group-A" service, all benefits of employment akin to other Group-A services automatically had to be extended to him. Therefore, it was argued that the time-bound manner in which various pay scales and pay bands are extended to members of other Group-A services, such as Senior Time Scale, Junior Administrative Grade, Selection Grade and Senior Administrative Grade have to be necessarily extended to the personnel of equivalent rank in the CISF. Learned counsel stressed on the process of recruitment whereby the post of AC in the CISF is classified with other services, including the AH India Services (AIS). He also relied upon the decision of the Supreme Court in *State of Mizoram and Another Vs. Mizoram Engineering Service Association and Another*, and the ruling of the Division Bench of the Calcutta High Court in *The Secretary, Department of Finance, Government of West Bengal Vs. West Bengal Judicial Service Association and Others*, and the judgment of the Lucknow Bench of the Allahabad High Court in *Sharad Choudhry Vs. Union of India and Others* (W.P. 701(S/B)/2004, decided on 16.05.2007). Learned counsel for the respondents argued that the present proceedings are not maintainable. It was submitted by the learned counsel that the classification of the posts within the CISF and the terms and conditions governing the employment in the cadres of posts as well as their promotional posts, pay scales etc. are entirely governed by the recruitment rules. In this regard, it is pointed-out that these rules were amended pursuant to recommendations of the Fourth Central Pay Commission, and notified with effect from 16.02.1989. In terms of these rules, at the relevant time, when the petitioner was recruited, there was no concept of Senior Time Scale and that the career progression for Assistant Commandant was "promotion after completion of

six years" service". Similarly, learned counsel for the respondents argued that the concept of Selection Grade and further, Senior Administrative Grade, available in the case of certain other Group-A All-India Services (AIS) does not exist in the CISF. Instead, the incumbents are entitled, subject to other conditions - to clear-cut promotional avenues. "Therefore, it is submitted that an Assistant Commandant, on completing six years" service, becomes eligible for promotion as Deputy Commandant (DC); later, after 11 years" services, he is entitled to be promoted as Commandant. This was done in the case of petitioner on 27.07.2001. Subsequently, the incumbent would be entitled to promotion to the post of Senior Commandant after 15 years" service. In the case of petitioner, it was granted on 24.05.2004 and further promotion upon completion of 18 years" service was given to the grade of ADIG, which too was given to the petitioner on 01.09.2008. Subsequently, the post of ADIG was upgraded with effect from 04.09.2008 as Deputy Inspector General (DIG). The petitioner is recipient of that benefit too. Having regard to these lines of benefits and career progression specifically provided for under the recruitment rules framed under the proviso to Article 309 of the Constitution of India, it would be inappropriate for this Court, in the exercise of writ jurisdiction, to direct the respondents to frame new policies that are contrary to law.

3. This Court has considered the submission of the parties. There is no dispute about the fact that the post of Assistant Commandant is part of Group-A service. Further, the promotion and career progression in that regard within the CISF is entirely subject matter of existing rules. These rules have themselves provided specific time lines which entitle or rather spell-out the eligibility for consideration to higher posts and further posts of greater responsibility, such as the Deputy Commandant (DC), Senior Commandant, ADIG and the DIG. The petitioner does not dispute that he was considered at the appropriate time and, in fact, was promoted to these posts. Currently, he is holding the post of Deputy Inspector General (DIG).

4. If this Court considers the challenge sought to be made by the petitioner and the broad nature of declaration that he seeks, it is evident that having received the benefits he is legitimately entitled to, what he wishes is that the Court should enter into the policy arena and make a broad declaration that denial of what are seen as better benefits in other services, to the members of CISF, amounts to discrimination. While the Court is undoubtedly empowered to consider challenges to specific policies and intervene wherever required, and enforce Article 14, surely, it would be inappropriate to give a broad declaration or issue directions of the kind that the petitioner is seeking. The previous narrative would disclose that in the matter of encadrement of posts and pay scales attached to each post and held to be essential for incumbent of each post, the channels of recruitment are entirely subject matter of rules framed under proviso to Article 309, which have the force of law. What the petitioner in the present case seeks is broad directions which would, in fact, amount to giving directions to the respondents to ignore the existing rules even without finding them to be discriminatory or unreasonable.

Furthermore, this Court would be also directing the respondents to legislate policies or frame rules in substitution of existing rules; a course which is clearly impermissible having regard to the judgment of the Supreme Court in *Mallikarjuna Rao and Others Vs. State of Andhra Pradesh and Others*, There, the Court had stated that any exercise of judicial powers cannot amount to directions to the State or executive authorities to frame laws or policies. The reliance placed by the petitioner on the judgment of the Supreme Court in the *Mizoram Engineering Service Association (supra)* is inapt. The Court there was considering the challenge to the denial of benefit of pay scale revision which had otherwise been given to a class of employees. Denial was on the ground that the Engineering Service in the state was not an "organized service". The observations made that officials and employees are not responsible for a particular service being "organized" or otherwise are, therefore, to be seen in the facts of case. Undoubtedly, the question as to whether the services was "organized" or not could not have been the basis for discriminating between class of employees who clearly fell between the prescribed zone that was otherwise entitled for pay revision. The observations in that case are clearly inapplicable and does not apply to this case. So far as the decision in *West Bengal Judicial Service Association (supra)* is concerned, the Court appears to have equated the members of Judicial Services with the members of the All-India Services (AIS), including with regard to their scales of pay, in the facts of this case. With respect, this Court does not see how such broad features can be the basis for issuing directions which can amount to mandating the executive to frame laws in the place of existing rules that have force of law. As far as *Sharad Choudhry (supra)* is concerned, this Court notes that the observations made by the Lucknow Bench of the Allahabad High Court were in the context of benefit of scope of promotion to certain existing members of CISF. As a matter of detail, the Court also notices that the concerned officials likely to be affected by the ruling had been impleaded in the proceeding. Clearly, the observation relied upon cannot be basis for granting the reliefs that are sought in the present case. In view of the above discussion, the Court is satisfied that there is no merit in the petition. It is accordingly dismissed along with the pending application.