
(2019) 03 DEL CK 0036

In the Delhi High Court

Case No : Civil Writ Petition No. 1633, 1639, 1649, 1652, 1653, 2356 Of 2017

Manoj Kumar Gupta & Anr

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 13-03-2019

Acts Referred:

Citation : (2019) 174 DRJ 377 : (2019) 4 SLR 137

Hon'ble Judges : S.Muralidhar, J;I.S.Mehta, J

Bench : Division Bench

Advocate : Ankur Chhiber, Bhanu Gupta, Anshuman Mehrotra, Anurag Ahluwalia, Vivek Kumar Singh

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, J

1. A common question of law arises in these five petitions where the facts are more or less similar. Accordingly, the petitions are disposed of by this common judgment. For the sake of convenience, the Court refers to the facts in W.P. (C) 1633/2017 filed by Mr. Manoj Kumar Gupta.

2. Mr. Gupta joined the Central Reserve Police Force (CRPF) in the rank of Constable on 9th September 1992 and was promoted as Head Constable (Radio Operator) [HC (RO)] on 13th November 1997. He was further promoted as Assistant Sub Inspector Ministerial (ASI/M) on 22nd February 2001. Thereafter, the Petitioner was promoted to the rank of Sub Inspector Ministerial (SI/M) in the pay scale of Rs.9300-34800 + Grade pay Rs. 4200/- (pre-revised).

3. On 8th August 2013 a circular was issued by the Respondents inviting applications from amongst "combatised ministerial employees of CRPF/Central/ State Police organization" for the post of Inspector (Hindi Translator) [Inspector/ HT] in the CRPF. It was indicated in the said Circular that the post of Inspector/ HT was to be filled up "by deputation/absorption failing which by direct recruitment from amongst combatised ministerial employees of CRPF/Central/

State Police organization".

4. In other words, there were only two modes of appointment envisaged, one being deputation/absorption and the other being direct recruitment from amongst the existing ministerial employees of the CRPF/Central/State Police organization. Although the expression used is "direct recruitment", it was in fact conducted through a limited departmental competitive exam (LDCE).

5. Mr. Gupta, and each of the other Petitioners in this batch of petitions, applied pursuant to the above Circular and was successful in the exam. The facts in the remaining petitions are more or less similar. One common feature is that each of the other Petitioners at the time of applying for the post of Inspector/HT pursuant to the above circular was already serving as SI/M in the CRPF. Each of the Petitioners was selected for the said post.

6. At the time of being appointed as Inspector/HT, each of the Petitioners furnished an undertaking that they will claim their seniority in the order of merit in the test and the grade of Inspector/HT and that "they will not have any claim of seniority, promotion, etc. in their respective rank of SI (M)/previous rank."

7. Each of the Petitioners tendered a technical resignation as SI/M pursuant to the above Circular and their names were struck off from the strength of the respective cadres where they were serving. On reporting to the Group Centre, each of them was appointed as Inspector/HT in the pay band of Rs.9300-Rs.34800 with Grade pay of Rs.4600/-. By inter office order dated 8th April 2014, the pay of the Petitioners was fixed at Rs.12,540 with Grade Pay of Rs.4600/- with effect from 28th February 2014.

8. Each of the Petitioners submitted their "option certificate" for fixation of pay "initially in the manner as under Fundamental Rule (FR) 22 (I) (a) (1) and which could be re-fixed on the basis of FR-22(C) "on the date of accrual of his accrual of next increment in the scale of pay of the lower post." According to the Petitioners it was more beneficial for each of them to draw pay in the lower post till the next increment.

9. The Petitioners in W.P.(C) 1633/2017, W.P.(C) 1652/2017 and W.P.(C) 2356/2017 were given the benefit of FR 22. However, subsequently by the Directorate's Signal dated 11th August 2015, their cases were directed to be reviewed. Subsequently by an order dated 16th April 2015, the benefit of the FR 22 given to these Petitioners was withdrawn. The present petitions have been filed challenging the orders withdrawing the benefit of the FR-22 to these Petitioners and the non-grant of the benefit to the others.

10. Mr. Ankur Chhibber, learned counsel for the Petitioners, points out that the process by which the Petitioners were appointed as Inspector/HT could not be characterised as "direct recruitment". It was an LDCE process. Relying on the decision dated 21st December 2012 of the Division Bench of this Court in W.P.(C) 2887/2012 (Man Singh v. Union of India) he submits that the appointment by

way of LDCE should be treated as equivalent to an appointment by way of promotion. In such event, the Petitioners will not gain promotions in their original cadre of SI/M. They have in fact given an undertaking to that effect. As far as their pay is concerned, that was to be governed by FR-22. Mr. Chhibber submitted that there was no justification in the Respondents reversing the orders in case of three of the Petitioners after granting them the benefit of FR 22 and altogether denying that benefit in respect of the remaining Petitioners.

11. Mr. Anurag Ahluwalia, learned Central Government Standing Counsel, referred to the counter affidavit in which the stand of the Respondents is that there is no provision in the recruitment rules for filling up the vacancies to the post of Inspector/HT by promotion or through LDCE, as these vacancies were to be filled up by selection. It is further contended that the Ministerial and Official Language cadres are two different cadres and are not inter- changeable, as the selection procedure, qualification and Recruitment Rules for both cadres are different. It is submitted that once the Petitioner had qualified as Inspector/HT in the Official Language cadre, it was in lieu of him having tendered a technical resignation to his old cadre. Therefore, it was not feasible for him to claim promotion on the basis of the previous cadre. These Petitioners could not claim that their selection as Inspector/HT was by way of promotion. It is contended that the said appointments were by way of "direct recruitment" and therefore, the benefit of FR-22 cannot be extended to the present Petitioners.

12. The above submissions have been considered. The decision dated 21st December 2012 of this Court in W.P. (C) 2887 of 2012 (Man Singh v. Union of India) makes it clear that in the absence of any actual "direct recruitment" for a particular post, the appointment of persons from within the organization by way of LDCE would be treated as a promotion to such post. The advertisement in the present case does not envisage direct recruitment to the post of Inspector/HT by inviting applications from general public but restricts it to persons who are already serving as combatised ministerial employees of the CAPFs. Therefore, the terminology "direct recruitment" used therein is a misnomer as far as the appointment of Petitioners as Inspector/HT is concerned. Admittedly, they sat for the written exam conducted for serving personnel of the CAPFs and subsequently qualified for the said post. Since this examination is not open to the general public, this method of recruitment of those serving in the CAPFs through a written examination had to be necessarily characterized as LDCE.

13. In view of the decision in Man Singh v. Union of India (supra), the only conclusion that is possible is that such appointment was through the process of LDCE which was equivalent to promotion. Mr. Chhiber has also drawn the attention of the Court to a communication dated 2nd August 1984 from the Ministry of Home Affairs clarifying that the benefit under FR-22 C will be available to a person promoted or appointed to a higher post. Therefore the benefit of FR 22 is available to both persons promoted as well as those appointed to a higher post. In that view of the matter, the stand of the Respondents that the

appointment of the Petitioners to the post of Inspector/HT) should be treated as "direct recruitment" is not acceptable.

14. The next question concerns the benefit under FR-22. A perusal of the FR-22 makes it clear that it makes no distinction between appointments from Ministerial post to an Official Language post. In other words, FR 22 does not envisage denying the benefit thereunder only because a person in a Ministerial cadre has shifted on promotion or appointment to an Official Language cadre. With there being no such restriction in FR-22, the Court sees no reason why the Petitioner's requests that they should be granted the benefit of FR-22 should not have been acceded to. In other words there was no justification for the Respondents refusing the request of the Petitioners that their pay should be fixed in terms of FR-22.

15. The Petitioners have depicted the effect of their being extended the benefit of FR 22 (I) (a) (1). It means that their basic pay with effect from 1st July 2014 would be Rs.12880/-, the pay that they were drawing and not Rs.12540/- which is the entry pay for Inspector/HT.

16. Consequently, the Respondents are directed to grant the benefit of the above pay fixation in terms of FR 22 (I) (a) (1) in the post of Inspector (HT) to each of the Petitioners from the date of their initial appointment. The arrears will be paid to each of the Petitioners within 12 weeks failing which the Respondents would be liable to pay simple interest @ 6% per annum on the said sum till the date of release of the amounts. The consequential orders correctly fixing the pay of the Petitioners in terms of this judgment will be issued within eight weeks.

17. The writ petitions are allowed in the above terms.