
(2011) 02 DEL CK 0035

In the Delhi High Court

Case No : Writ Petition (C) No. 7035 of 2010

Neeraj Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Citation : (2011) 02 DEL CK 0035

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

Bench : Division Bench

Advocate : Rekha Palli and Shailendra Kumar, for the Appellant; Barkha Babbar and Asif Tiwari, for the Respondent

Judgement

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

2. Petitioner prays that communication dated 31.05.2010, by which his request for promotion with effect from the date persons junior to him were promoted stand rejected, be quashed and a mandamus be issued to the Respondents to promote the Petitioner as an Inspector with effect from the date persons junior to him were promoted with all consequential benefits.

3. It be noted that Petitioner stands promoted as an Inspector and hence the limited claim is for seniority to be reckoned with effect from a retrospective date plus consequential benefits.

4. Relevant facts are that on completing the probation of 2 years and held entitled to be confirmed as a Sub-Inspector, on 14.11.2004 the Petitioner was confirmed as a Sub-Inspector under Boarder Security Force. On the next day i.e. 15.11.2004 he was attached to the 106th Bn., where Petitioner remained posted till 15.12.2004. This battalion was treated as a duty battalion. It is apparent that the Petitioner served in a duty battalion only for 1 month.

5. On 15.12.2004, Petitioner was deputed to serve at the "G. Unit" where he served till 25.01.2006 i.e. for a period of 1 year, 1 month and 9 days.

6. As would be hereinafter noted that the issue between the parties is: Whether service under "G. Unit" is to be treated as duty in a duty battalion or a duty in a non-duty battalion?

7. On 25.01.2006, Petitioner was attached to a battalion, number whereof has not been disclosed by the parties in their pleadings, but there is no dispute that the said battalion was treated by the Respondents as a duty battalion. Petitioner worked there for 1 month i.e. till 26.02.2006.

8. As per applicable recruitment rules, for being entitled to be promoted as an Inspector, every Sub-Inspector had to undergo a promotion course. From 27.02.2006 till 07.04.2006, Petitioner underwent said course and it is an admitted case of the parties that said period cannot be treated as serving in a duty battalion.

9. Thereafter, with effect from 08.04.2006 till 30.06.2007 i.e. for a period of little less than 1 year and 2 months the Petitioner served in a duty battalion. This is the common case of the parties.

10. It would be apparent that if service in the "G. Unit" is not to be treated as service in a duty battalion, during his entire service as a Sub-Inspector, Petitioner would have served in a duty battalion for a period of 1 year and 4 months. However, if service under "G. Unit" is to be treated as service in a duty battalion, Petitioner would have served in a duty battalion for about 2 years and 6 months.

11. What turns on this dispute, is the requirement of the service rules that for being eligible to be promoted as an Inspector, a Sub-Inspector must have served in a duty battalion for a period of at least 2 years.

12. On 04.06.2007, Petitioner was sent on deputation to SPG. Obviously, this service cannot be counted as service in a duty battalion.

13. In the year 2007, persons junior to the Petitioner were promoted as Inspectors. Petitioner was not even considered by the DPC for the reason the department held that service rendered in a "G. Unit" cannot be treated as service in a duty battalion and thus, excluding 1 year, 1 month and 9 days service rendered by the Petitioner in "G. Unit", Respondents took the view that the Petitioner had not rendered 2 years service in a duty battalion.

14. Petitioner questioned the same. He made a representation. The representation stands rejected by the order dated 31.05.2010; by which time the Petitioner was promoted as an Inspector after he returned from deputation and was made to work in a duty battalion. Hence claim for anti dating the promotion.

15. The issue has to be resolved on a simple area of dispute. Whether, service in the "G. Unit" has to be treated as a service in a duty battalion and if not, what is the affect of the decision taken by the Respondents to depute the Petitioner on deputation to SPG, in the teeth of a policy taken by the Respondents that only those Sub-Inspectors would be sent on deputation to SPG who have served for at

least 3 years in a duty battalion.

16. There is no material on basis whereof it can be objectively determined which duty would be treated as in or under a duty battalion. If this be so, the question which arises would be; Why did the Respondents send Petitioner on deputation to SPG on 04.06.2007, if it was the case of the Respondents that service rendered by the Petitioner in the "G. Unit" had not be treated as duty in a duty battalion? As per the Petitioner if service rendered in the "G. Unit" was not reckoned as service in a duty battalion, the Respondents had no business to send him on deputation. The reason is obvious. He was denied the right to serve in a duty battalion. By doing reverse engineering on the aforesaid arguments, Petitioner would contend that it is obvious that the Respondents treated duty in "G. Unit" as duty in a duty battalion, for the reason, it was a condition for being sent on deputation that a Sub-Inspector had worked in a duty battalion for a minimum of 3 years.

17. Learned Counsel for the Respondents stated that it is obviously a case of an error committed by the department to send the Petitioner on deputation to SPG, but conceded that the effect of the mistake of the Respondents has resulted in a valuable right of the Petitioner being infringed.

18. If this be so, the answer to the question posed in simple.

19. For the reason, the criteria for deputing persons on deputation to SPG required the Respondents to ensure that only those persons were sent on deputation who had rendered 3 years service in a duty battalion casts an obligation on the Respondents not to send anybody who has not rendered 3 years service in a duty battalion to the SPG. If the Respondents were to act in contravention of the policy it adversely effected the entitlement of the person concerned to be promoted, in that, a BSF Jawan has no option but to serve wherever he is sent. The Department cannot send him to a place where his right to be promoted would be obviously effected, in the form of the person not being able to serve in a duty battalion. It would be the obligation of the Respondents to ensure the jawans serve in duty battalion for at least 2 years before sending them on deputation.

20. Thus, we hold that conduct of the Respondents entitles the Petitioner to a declaration that the Respondents must treat service rendered by the Petitioner in "G. Unit" as service in a duty battalion.

21. If this be so, the inevitable conclusion would be that the Petitioner would be entitled to be considered eligible for promotion in the year 2007, when persons junior to him were promoted.

22. Noting that these promotions took place in April, 2007; noting that the Petitioner has been found fit to be promoted at a subsequent DPC; we dispose of the petition quashing the order dated 31.05.2010 and issue a direction that Petitioner be notionally promoted and seniority of the Petitioner be reckoned with

effect from the date persons junior to him were promoted. Petitioner would be entitled to all consequential benefits except back wages.

23. No costs.