

(2007) 03 DEL CK 0013
In the Delhi High Court
Case No : Writ Petition (C) 2851 of 1999

P. Nageswara Rao

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 14-03-2007

Acts Referred:

Citation : (2007) 142 DLT 763

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : S.S. Ray and Rakhi Ray, for the Appellant; Manisha Dhira and Preeti Dalal, for the Respondent

Final Decision : Allowed

Judgement

T.S. Thakur, J.—In this petition for a writ of certiorari, the petitioner calls in question the validity of an order dated 16th August, 1991 issued by Respondent No. 4 cancelling the earlier order issued by the DIG(P), CRPF, Chandigarh offering to the petitioner an appointment against the post of Assistant Sub-Inspector/Clerk in the Central Reserve Police Force. The facts giving rise to the filing of the petition may be summarised as under:

2. The petitioner joined as a water carrier in the CRPF as early as in the year 1981. Between June 19, 1982 to 1st May, 1991, the petitioner appeared 9 times in a competitive examination held for eligible candidates for appointment against the available post of Assistant Sub-Inspector (Ministerial) in the Force. The petitioner appears to have failed in all these attempts except the one made in the year 1991 when he was declared successful and was offered an appointment in terms of an order issued by the Deputy Inspector General of Police, CRPF, Chandigarh dated 11th July, 1991, the relevant portion whereof reads thus:

To Shri Nageshwar Rao S/o Late Sh. Tarini Rao Qr. No. 5-B, Sector-39, Police Station, Chandigarh (UT)

Sub :- APPOINTMENT TO THE POST OF ASI/CLK IN THE CRPF OFFICER OF

APPOINTMENT

On selection as a result of a competitive examination had from 3.5.91 to 4.5.91 at Chandigarh, you are hereby offered to the post of ASI/Clk in CRPF in a purely temporary capacity on the following terms and conditions:

XXXXXX

XXXXXX

3. Shortly after the issue of the above order, the office of the Commandant 96 BN, CRPF, Ajmer issued an order dated 16th August, 1991 cancelling the offer of appointment made to the petitioner in terms of the letter extracted above. The only reason for cancellation of the said offer was that the petitioner was ineligible for appointment against the post of ASI (Ministerial) under the recruitment rules regulating such appointment. The petitioner had, in the meantime, joined against the post of ASI (Ministerial) and worked between 24th July, 1991 to 16th August, 1991 when he was reverted back to his substantive post of water carrier. Aggrieved, the petitioner made representations to the higher authorities, copies whereof have been produced collectively as Annexure "H" to the petition. These representations evoked no response from the respondents whereupon the petitioner filed the present writ petition for a writ of certiorari quashing the cancellation order as already noticed earlier.

4. Appearing for the petitioner, Mr. Ray strenuously argued that the view taken by the respondents that the petitioner was not eligible for appointment as an ASI (Ministerial) was, on a plain reading of the Recruitment Rules, perverse. That was according to him so not only because the petitioner had been given promotion by the Department to appear in the competitive examinations as many as nine different times but also because the rules did not admit of any interpretation other than the one that would support the petitioner's eligibility for appointment. He submitted that the petitioner was admittedly a Group "D" employee and was serving in a grade admissible to Peons, Daftaries, Farash and Safai Karmcharis. The only other requirement for his eligibility, namely, five years regular service against a Group D post was also satisfied by him as the petitioner was, as on the date of his ninth attempt in the examination, already in service for nearly ten years or so.

5. On behalf of the respondents, it was on the other hand submitted by Ms. Dhir that the petitioner was not eligible for appointment as the rules permitted only Peons, Daftaries, Farash and Safai Karmcharis to take the said examination. She submitted that even when the petitioner was a Group "D" employee as a water carrier and was in the same pay scale as was admissible to Peons, Daftaries, Farash and Safai Karmcharis, since the rules did not include a water carrier as one of those eligible for appearing in the examination, there was no question of declaring the petitioner eligible by re-writing the rules. She further argued that since the appointment offered to the petitioner in terms of order dated 11th July, 1991 was a temporary appointment the same did not create any right in the

petitioner nor did the cancellation of the said order give to the petitioner any cause of action to file the present writ petition.

6. We have given our anxious consideration to the submissions made at the bar and perused the record. Appointments against the post of ASI (Ministerial) are regulated by what are known as CRPF (Combatised Ministerial Cadre) Recruitment Rules, 1989. The method of recruitment to the said cadre is set out in schedule 7 to the Rules which is to the following effect:

Method of Recruitment whether by direct recruitment or by deputation or transfer and percentage of vacancies to be filled by various methods.

In case of recruitment by promotion or deputation or transfer, grades from which promotion or deputation or transfer is to be made

If the DPC exists, what is its composition?

Circumstances in which UPSC is to be consulted in making recruitment.

10 11 12 13 (i) By direct recruitment - 70%

(ii) By selection through a departmental examination failing which by direct recruitment - 30%

Selection through departmental examination from amongst -

1. Group "D" employees of Central Reserve Police Force with five years regular service in the grades of Peon, Daftry, Farash and Safai Karamchari, and

2. Constables and Under Officers of Central Reserve Police Force with three years regular service and possessing the following eligibility conditions:

(a) Education and other qualifications. As prescribed for direct recruits.

(b) Age - Not more than 45 years (50 years for scheduled castes/ scheduled tribes)

Group "C" - DPC (for confirmation):

1. Deputy Director/ Deputy Inspector General, Central Reserve Police Force Chairman.

Two Commandant(s) and/or Officer(s) of equivalent status of Central Reserve Police Force - Members 1 & II

Not applicable.

7. A plain reading of the above would show that Group "D" employees of CRPF with five years regular service in the grade of Peons, Daftaries, Farash and Safai Karmcharis are all eligible for recruitment against the post of ASI (Ministerial). What is important is that the candidate must be a Group "D" employee of the CRPF. He must have five years regular service and that service must be in the grade of Peons, Daftaries, Farash and Safai Karmcharis. The words "five years

regular service in the grade of Peons, Daftaries, Farash & Safai Karamcharis" are crucial for a proper interpretation of the rule. The candidate must have served in the grade admissible to any of the above posts. He would be eligible even if he has not held the posts mentioned in the rule, for it is not the post which is made an essential requirement but the grade attached to the same. That being so, the fact that the post of a water carrier is not included in the rule is inconsequential because it is common ground before us that the post of a water man is not only a Group "D" post but also carries the same pay scale and grade as is admissible to the post of Peons, Daftaries, Farash and Safai Karmcharis. On a proper reading of the rule, Therefore, we have no hesitation in holding that all Group "D" employees with five years regular service in the grades admissible to Peons, Daftaries, Farash and Safai Karmcharis would be eligible for appearing in the examination regardless whether the candidate actually holds any such post or is holding an equivalent post in a similar grade.

8. Two circumstances which support that conclusion may be stated straight way. The first is that there is no rational basis for the exclusion of a waterman from the category of those who are eligible for appointment against the post of ASI (Ministerial). If a waterman is a Group "D" employee and enjoys the same grade as is admissible to a Peon, Daftary, Farash and Safai Karmchari, there is no reason why the Rule-making authority would have singled him out for a hostile treatment by making him ineligible for appointment against the higher post while others holding similar Group "D" post and placed in the same grade are eligible for such an appointment.

9. The second circumstance which is equally significant is that the rules were amended in the year 1992. The amended rule position is as under:

Selection through Departmental Examination from amongst:

- (1) Group "D" employees of the CRPF with five years regular service; and
- (2) Constables and Under Officers of CRPF with five years service, and possessing the following eligibility conditions:

XXXXX

XXXXX

10. It is evident from the above that after the amendment in August, 1992, all Group "D" employees of the CRPF with five years regular service are made eligible. Although according to our interpretation of the earlier rule, that was the position even before the amendment yet the confusion if any arising from the inclusion of certain posts in the schedule and exclusion of certain others like that of waterman was removed by the Rule-making authority making it clear that all Group "D" employees of the CRPF with five years regular service were eligible for appointment.

11. In the totality of the above circumstances, Therefore, we have no hesitation

in holding that the view taken by the respondents that the petitioner was not eligible for appointment and that the cancellation of the appointment offered to him pursuant to which he had already joined the higher post of ASI (Ministerial) was legally untenable.

12. Coming then to the alternative submission made by Ms. Dhir that the appointment offered to the petitioner was temporary in character, we need notice the submission only to reject the same. It is true that the initial appointment offered to the petitioner was temporary in nature but that does not in our opinion make any difference. So long as the petitioner had been appointed on the basis of a competitive examination which he had qualified against a vacancy which was in existence, he had a right to hold the said post unless he suffered from any disability that would dis-entitle him from doing so. The only disability which the respondents pointed out was that the petitioner was ineligible for such an appointment. That view as seen above was legally erroneous rendering the removal of the petitioner from the higher post and reversion to the post of waterman totally unjustified.

13. That brings us to the question as to what relief the petitioner is entitled to. In so far as the removal of the petitioner from the post of ASI (Ministerial) is concerned, we have no difficulty in reversing the same and directing the petitioner's reinstatement against the said post. We are not however inclined to direct payment of back wages to the petitioner on that basis. We say so because the petitioner has admittedly not worked on the higher post although for no fault of his. He has worked and has been paid his emoluments against the lower post of waterman. Mr. Ray, learned Counsel appearing for the petitioner also submitted that the petitioner would be satisfied in case his seniority in the cadre of ASI (Ministerial) is protected for purposes of future promotion in which event the petitioner would have no difficulty in giving up his claim for back wages. We are inclined to allow that prayer.

14. We accordingly allow this petition; quash the order dated 16th August, 1992 and direct reinstatement of the petitioner against the post of ASI (Ministerial). We further direct that while the petitioner's seniority in the cadre of ASI (Ministerial) for purposes of promotion and for all other purposes shall be reckoned from the date he had assumed charge of that post pursuant to order dated 11th July, 1991, he shall not be entitled to the payment of any back wages as a consequence of his reinstatement.

15. The petition is disposed of with the above directions leaving the parties to bear their own costs.