
(2017) 08 DEL CK 0054

In the Delhi High Court

Case No : 2246 of 2017

PANKAJ KUMAR GUPTA & ORS

APPELLANT

Vs

UNION OF INDIA & ORS

RESPONDENT

Date of Decision : 21-08-2017

Acts Referred:

Constitution of India, Article 14, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Dissolution of a Distr

Citation : (2017) 08 DEL CK 0054

Hon'ble Judges : Sanjiv Khanna, Navin Chawla

Bench : DIVISION BENCH

Advocate : Anuj Aggarwal, Deboshree Mukherjee, Anil Soni, Naginder Benipala

Judgement

1. The above petitions arise out of almost identical facts and situations, except a few minor variances which have no effect on the judgment and, therefore, we propose to dispose of the same recording the facts of petition filed by Pankaj Kumar Gupta in WP(C) No.2246/2017.

2. As stated above, the common question that arises in the present batch of petitions is as to whether the petitioners are eligible for appearing in Limited Departmental Competitive Examination, 2015 (LDCE-2015) for the post of Head Constable. The respondents have declared them ineligible on the ground that they have not completed 44 weeks of basic training.

3. At the outset, we may note that the respondents have filed their counter affidavits only in Writ Petition (C) Nos. 2246/2017 titled Pankaj Kumar Gupta vs. Union of India & Ors. and 2325/2017 titled Shriniwash Oraon vs. Union of India & Ors.; and have not filed their counter affidavits, in spite of opportunities granted, in Writ Petition (C) Nos. 2265/2017 titled Pintu Bhattacharya vs. Union of India & Ors. and 2294/2017 titled Shambhu Kumar vs. Union of India & Ors. However, as all the four petitions raise the common question as noted above and there is no

controversy with respect to the facts involved, we propose to dispose of all the four petitions by this common judgment without awaiting any further for the counter affidavits in Writ Petition (C) Nos. 2265/2017 and 2294/2017.

4. The petitioner (Pankaj Kumar Gupta) joined the respondent, Central Reserved Police Force (CRPF) as Constable (GD) at Group Centre, Sindhri, Jharkhand on 21.06.2011. After completing 24 weeks of basic training out of 44 weeks of basic training, he was posted in 203 Bn, Hazaribagh, Jharkhand, which we are informed is a Counter-Guerrilla Team.

5. The respondents called for the applications under LDCE-2015 for selection to the post of Head Constable (GD). One of the eligibility condition was that the candidate should have minimum good ACRs in the last 4 years and should have unblemished service record till the issue of offer of appointment.

6. Condition-1 under the heading "In addition to above, following guidelines are also issued", reads as under: "[1] ACR grading in respect of recruits who have passed 44 weeks of basic training be treated as Good."

7. The petitioner was granted no objection certificate by the Commandant, 203 Cobra Bn to appear in the LDCE-2015. The petitioner appeared in written examination on 14.02.2016 and after successfully clearing the same, was called for PST/PET/Screening of Testimonial/Service Book on 03.03.2016. The petitioner was declared successful and his selection was approved for the post of Head Constable (GD) vide Signal dated 21.09.2016. He was, thereafter, asked to submit technical resignation vide Signal dated 08.10.2016, which he claims to have duly submitted.

8. It is only at that stage, the impugned Signal dated 28.10.2016 was issued by the respondents holding the petitioner ineligible for the post of Head Constable (GD) under LDCE-2015 on the ground that he had not undergone 44 weeks of basic training. The petitioner represented against the above. However, his representation was rejected by the Deputy Inspector General (Recruitment) vide impugned communication dated 04.01.2017 with the remarks "Individual found place in HC/GD (LDCE)-2015 but his selection cancelled due to non-completion of 44 weeks basic training" and by the Inspector General of Signal dated 18.01.2017 with the remarks "Accordingly CTs/GD who have completed 44 weeks of basic training are only eligible to apply for the post of HC/GD through LDCE including other eligibility conditions. CTs/GD who have not completed their basic training as on last date of submission of application, they could not be considered eligible for the post of HC/GD through LDCE".

9. The petitioner has filed the present petition challenging the above communications holding him ineligible for applying for the post of Head Constable (GD) in the LDCE-2015. The petitioner has urged that he was selected for Counter-Guerrilla Operation owing to his fitness and higher capability than others and therefore, no fault can be attributed to the petitioner for not completing 44 weeks basic training and he cannot be penalised for the same,

especially when he was earlier certified to be eligible to appear in the LDCE.

10. Upon issuance of notice, the respondents have filed their counter affidavit in the case of Pankaj Kumar Gupta, wherein it is reiterated that the petitioner was found ineligible to appear in the LDCE as he had undergone only 24 weeks of basic training instead of 44 weeks and because one of the eligibility criteria for selection was four years service including 44 weeks of basic training being a mandatory requirement, was not fulfilled by him.

11. We have gone through the rival contentions and find that the stand of the respondents cannot be sustained. The notice inviting application for LDCE-2015 in condition "1" merely states that ACR grading in respect of recruits who have passed 44 weeks of basic training be treated as Good. It nowhere states that a candidate who did not undergo 44 weeks of basic training shall be ineligible for applying for selection. In any case, it is not the case of the respondents that petitioners have not undergone 44 weeks of basic training on their own violation. The undisputed position is that the petitioners were selected by the respondents for Counter Guerrilla Operation owing to their fitness and higher capability than others. This assertion has not been specifically denied in the counter affidavit. Further, posting and selection of an officer is not at the whims and fancies of the said officer but upon directions of the respondents themselves. It is therefore, not for reasons attributable to the petitioners, that they were unable to complete 44 weeks of basic training. It would be grossly unfair and unjust to deny them appointment to the post of Head Constable (GD) having cleared the examination, after having passed different stages of qualifications. If the contention of the respondent is to be accepted, the petitioners would well become junior to those who have cleared the LDCE-2015 Examination and would not be promoted as Head Constable (GD). The said position is unacceptable, arbitrary and unreasonable. The petitioner cannot suffer and denied promotion due to them, for the reason they were selected and performed the duty assigned to them. Duteousness and obedience cannot be a disqualification. To hold so, it would undermine the very object of selecting the petitioners for the Counter-Guerrilla operations, and would put them at an unintended disadvantage throughout their service. The merit selection to participate in the Counter Guerrilla operations cannot work to the detriment of the petitioners. Perhaps the respondents had never realised and understood the consequences of condition-1 in guideline and the effect thereof in case of the petitioners who were selected, while undergoing the 44 weeks basic training course, for Counter-Guerrilla operation. A pedantic approach is unwarranted as it would result in the discrimination and violation of Article 14 and 16 of the Constitution.

12. In view of above, we hold that the petitioners were eligible for applying to the post of Head Constable (GD) under LDCE-2015 and if found otherwise eligible, are entitled to be appointed to the said post from the date their immediate junior(s) were appointed.

13. The petitions are allowed in the above terms with no order as to costs.