
(2004) 07 MAD CK 0089
In the Madras High Court
Case No : Writ Petition No. 20038 of 1998

P.C. Abraham

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-07-2004

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11
Central Industrial Security Force Rules, 1969 — Rule 18, 31, 34, 70

Citation : (2004) 07 MAD CK 0089

Hon'ble Judges : P.K. Misra, J; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : T.N. Sugesh, for the Appellant; G. Jayachandran, ACGSC, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—The petitioner is aggrieved against the rejection order of the fourth respondent dated 28.5.1998, in and by which

his representation as regards non-consideration of his promotion earlier to the year 1998, was sought to be remedied.

2. Brief facts which are required to be stated are:

The petitioner joined as a Constable in the Central Industrial Security Force (C.I.S.F.) on and from 12.3.1982. In the year 1995, he was imposed

with the punishment of reduction of pay by two stages, i.e. from Rs.900/- to Rs.870/- which was to operate for a period of one year with effect

from 1.2.1995. By virtue of the said punishment imposed, he was not considered for promotion in the review Departmental Promotion Committee

(D.P.C) held for the year 1994 for being promoted from the post of Constable to the post of Lance Naik. Subsequently, he was promoted to the

post of Lance Naik notionally with effect from 1.2.1996, i.e. after completion of the punishment period. Thereafter, his case fell for consideration

for promotion to the post of Head Constable. By applying the Circular Instructions 5/91, the petitioner was found ""BELOW AVERAGE / NOT

FIT"". Thereafter, the turn for being promoted to the post of Head Constable occurred only in February 1998 and accordingly, he was promoted

notionally with effect from 26.12.1998 and he physically assumed charge as Head Constable (G.D) on and from 25.9.1999. Aggrieved against

such belated promotion, and also expressing the grievance that his juniors got promoted earlier in point of time, the petitioner appeared to have

made a representation, which came to be rejected by the order impugned in the writ petition.

3. Assailing the said order, Mr. T.N. Sugesh, learned counsel appearing for the petitioner would contend in the first place that the punishment of

reduction in the lower post by two stages for a period of one year, was not a major punishment and therefore, reduction of more than two marks

for the suffering of the said punishment, because of which he was denied the promotion prior to 1998, was not justified, and that the same was

contrary to Central Civil Services (C.C.S) - Classification Control and Appeal Rules (C.C.A) Rules, which would be applicable to the case of the

petitioner. The petitioner relied upon Rule 11(iii)(a) of the C.C.S. (C.C.A) Rules, where the reduction to a lower stage in the time-scale of pay for

a period not exceeding three years, without cumulative effect and not adversely affecting his pension, has been prescribed as one of the minor

penalties which could be inflicted upon a Government servant.

4. As against the above submission, Mr. G. Jayachandran, learned Additional Central Government Standing Counsel (ACGSC) would contend

that Rule 11 of C.C.S. (C.C.A) Rules will have no application to the case on hand. Learned ACGSC drew our attention to Rules 18, 31, 34 and

70 of the C.I.S.F. Rules, 1969 and contended that when specific rules relating to the manner in which the promotion is to be made, and

consideration of major and minor punishments, as also specifying which are the major and minor punishments, application of C.C.S. (C.C.A)

Rules, stood automatically excluded. Learned ACGSC therefore contended that going by the relevant rules under the C.I.S.F. Rules, the petitioner

was not eligible to be considered for promotion from the post of Lance Naik to the post of Head Constable in any year other than the year 1998.

In this context, learned ACGSC would submit that the application of Circular Instructions contained in Force Headquarters Circular No. 5/91,

was correctly applied to the case of the petitioner.

5. After hearing learned counsel for either parties, we are convinced that the order impugned in the writ petition was well justified and the same does not call for interference.

6. We feel it appropriate to refer to Rule 70 of the C.I.S.F. Rules, in the first instance, which is to the following effect:

70. Other conditions of service: The supervisory officers and members of the Force shall, in respect of all other matters regarding conditions of

service for which no provision or insufficient provision has been made in these rules, be governed by the rules and order for the time being

applicable to officers holding corresponding posts in the Central Government in respect of such matters.

7. A reading of Rule 70 of the C.I.S.F. Rules, makes it clear that in respect of the members of the C.I.S.F. and as regards the conditions of service

for which if no provision is made or the provisions contained in the Rules are insufficient, then and then only the members would be governed by

the other Rules applicable to the corresponding post in the Central Government, namely C.C.S. (C.C.A) Rules.

8. With that background, when Rule 18(1) of the C.I.S.F. Rules are perused, the same would prescribe the procedure to be followed in the matter

of promotion. For the sake of clarity, Rule 18(1) of the C.I.S.F. Rules is also extracted, which is to the following effect:

18. Promotion -- (1) Promotion from one rank to another or from one grade to another in the Force shall be made on the basis of selection made

in accordance with the procedure laid down by the Inspector-General in this behalf.

A reading of Rule 18(1) of the C.I.S.F. Rules makes it clear that promotion from one rank to another could be made on the basis of the selection

made in accordance with the procedure laid down by the Inspector General in that behalf.

9. Therefore, a reading of Rule 70 along with Rule 18(1) of the C.I.S.F. Rules,

makes it clear that there is not only a specific provision relating to promotion, that provision is also sufficient enough to govern all cases wherever the promotions are to be made including the cases where the persons suffer from any punishment.

10. Inasmuch as under Rule 18(1) of the C.I.S.F. Rules, the Inspector General has been empowered to lay down the procedure, the Circular

Instructions contained in Force Headquarters Circular No.5/91 which specifically provides the manner in which the punishments suffered by a

member of the Force is to be considered in the matter of promotion, it will have to be held that there was sufficient provisions contained in the

Rules themselves to regulate the promotions to be made in respect of the members of the Force.

11. Again, when we refer to Circular Instructions No.5/91, the provision is to the following effect:

Punishments:- During the past five years period which the DPC will consider, 2 marks will be deducted for each "Minor punishment". He will be

declared "BELOW AVERAGE / NOT YET FIT" in case of Major punishment in the preceding year of holding DPC, otherwise 5 marks will be

deducted for each "Major punishment".

12. When we come to the question as to whether the punishments suffered by the petitioner in the year 1995 was a major punishment or a minor

punishment, here-again, we had to refer to Rules 31 and 34 of the C.I.S.F. Rules, with particular reference to Rule 70 thereunder. Rule 31

prescribes the nature of penalties which can be imposed on a member of the Force. Clause (d) to Rule 31 prescribes the punishment, namely

reduction to a lower stage in the time-scale of pay. Though under Rule 31, no distinction has been shown as to which would be the major

punishment and which would be the minor punishment, when we read Rule 31 along with Rule 34 of the C.I.S.F. Rules, which is the procedure

prescribed for imposing major penalties, we find under Rule 34 it is specifically provided that no order imposing on a member of the Force any of

the penalties specified in Clauses (a) to (d) of Rule 31 should be passed, except after an enquiry held as far as may be in the manner provided

therein. The caption of Rule 34 is that "Procedure for imposing major penalties". Rule 35 of the C.I.S.F. Rules has been captioned "Procedure for

imposing minor penalties"".

13. Therefore, a conjoint reading of Rules 31, 34 and 35 of the C.I.S.F. Rules makes it clear that while Clauses (a) to (d) of Rule 31 would be

governed by Rule 34, meaning thereby that those punishments are major penalties, the punishments falling under Clauses (e) to (h) of Rule 31 by

virtue of the procedure prescribed under Rule 35, are minor penalties. Therefore, to that extent, the Rules are specific and makes a clear cut

distinction as between major penalties and minor penalties and therefore we do not find any compelling necessity to invoke Rule 11 of the C.C.S.

(C.C.A) Rules. In other words, by virtue of Rules 18, 31, 34 and 70 of the C.I.S.F. Rules, we are inclined to hold that there is an implied non-

application of any Rule concerning the treatment of any punishment imposed on the petitioner in the manner done by the respondents herein, and

the same did not call for invocation of Rule 11 of C.C.S. (C.C.A) Rules.

14. Having regard to the said legal position, the impugned order dated 28.5.1998, in and by which it was held that by virtue of Circular

Instructions No.5/91, since the petitioner had suffered a major punishment in the year 1995, which was within the five year period prescribed

under the said Circular, the fourth respondent (The Group Commandant, C.I.S.F. Group Headquarters, Vennela Post, Cochin-28, Kerala) was

fully justified in rejecting the petitioner's representation on the ground that the petitioner dis-entitled himself to be considered for promotion in any

year prior to 1998.

15. We therefore do not find any flaw in the order impugned in this writ petition. The writ petition therefore fails and the same is dismissed. No

costs.