

(2011) 03 DEL CK 0272
In the Delhi High Court
Case No : Writ Petition (C) 11896 of 2009

Rajender Pal Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Citation : (2011) 03 DEL CK 0272

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

Bench : Division Bench

Advocate : Jyoti Singh, Aradhna Mittal and Satya Sahrawat, for the Appellant;
R.V. Sinha and R.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The Petitioner joined the Indo-Tibet Border Police as a Sub-Inspector on 14.2.1995. The next promotional post available is that of an Inspector and to earn a promotion to which, as per service rules, it is mandatory for a Sub-Inspector to successfully undergo a promotion course called SO Tactic Course-cum-Departmental Promotion (E-List) Test. The entitlement of the Petitioner endured in the year 2007 to be promoted and thus he was permitted to undergo the promotion course. He underwent the course but failed in the test held with effect from 24.9.2007 till 30.9.2007. He failed in DPET.

2. The Petitioner successfully cleared the course and the examination in the year 2008 and thus was placed in the approved E-List of Inspectors.

3. The grievance raised in the writ petition is to the circular dated 15.11.2007 which reads as under:

According to para 7 (7) of the Standing Order No. 2/2004, Tests of approved List C, D & E of CD Cadre, keeping in view the vacancies of the Force, generally should be held between January to March every year. For the administrative reasons, if the approved list test is held twice or more in a year, then the candidate once failed in the approval list examination in same year, should be

given permission to join the tests held second time, or not, in this regard correspondence is being received from all the Battalions of the force.

2. Like the above, one case has come in the notice of the Directorate General. No. 887041963/Sep/GD C Regional headquarter (NE-2) after once failed in the approved List C Examination of the year 2005 has been included in the approved list C Examination by the Regional Headquarter (NE-2) held again, in which the candidates has passed. Thereafter after thorough consideration in the matter, the competent authority has taken the following decision:

Personnel failing to qualify the approved List Test in a particular year will be unless otherwise specified be debarred from re-appearing in the promotion test in the same year, which means that unless otherwise specified such unsuccessful candidates will be allowed to appear in the promotion test in the next year only subject to fulfilling other eligibility conditions.

3. The above said directive will be applicable generally on all the approved list Tests of Cadres.

4. This is being issued with the permission of the Competent Authority.

4. As per the Petitioner the result of the circular was he not being informed of the dates of the subsequent exams and hence a denial of opportunity to clear the exams held from 4.10.2007 to 10.10.2007 and 13.12.2007 to 21.12.2007, in which persons junior to the Petitioner cleared and hence were placed in the approved E-List of Inspectors and thus earned seniority above the Petitioner.

5. A perusal of the circular dated 15.11.2007 shows that it intends to grant only one opportunity to the force personnel to take an approved List Test in a particular year.

6. But, what has actually happened is explained in the counter affidavit.

7. We must highlight that the pleadings in the counter affidavit, as indeed we find in virtually 9 out of 10 counter affidavits filed on behalf of the Government, are inadequate and do not justify the standard of pleadings expected in a premier High Court. We do not expect muffasil level pleading standards in the urbanized city of Delhi. Be that as it may, in para 5 of the counter affidavit it is stated that "keeping in view the exigencies of the services the test can be conducted more than one time on administrative grounds".. "as per convention, the candidates who failed in E-List Test held during the year are not eligible to appear in the E-List Test held subsequently in the same year." As regards the circular dated 15.11.2007, it is stated that the same was necessitated when it was noted that due to administrative lapses, in the past, candidates who were permitted to take the E-List Test, upon failure, were permitted to re-take the test in the same year.

8. To give meaning to the inchoate pleadings in para 5 of the counter affidavit, it was explained at the hearing of the writ petition that the exigencies of the

service and conducting a test more than once on administrative grounds was that ITBP personnel are posted at various places in India and some of them are on such emergency duty that they cannot be relieved to undergo the course and take the test as scheduled. For these force personnel, lest they be deprived a chance to sit at the examination, clearance whereof is the prerequisite for promotion, exams are held later on. The purpose of these examinations is to give one opportunity to those Force Personnel, who, on account of exigencies of service could not take the examination conducted at the first instance.

9. We note that under para 218 of the General Instructions of the ITBP Manual, it has been provided as under:

218. General Instructions:

(a) The Head Constable and S Is appearing for "D" and "E" list tests respectively should obtain at least 50% marks in the evaluation of service records to qualify for appearing in the BPET and other tests. But the SC and ST candidates will be allowed a concession of 5% marks in terms of GOI, DP&T OM No. 36012/223/96-Estt(Res) Vol-II dated 03.10.2000.

(b) Those who fail to qualify in the BPET will not be allowed to appear in the written, practical tests and interview.

(c) The candidates who appear in all the "C", "D" and "E" list test must obtain at least 50% marks in each individual subject to qualify the tests. But the SC and ST candidates will be given a concession up to 5% marks.

(d) An Officer belonging to the SC/ST community may be co-opted as a member of the DP Cs.

(e) Not more than 3 chances will be given to a candidate to appear in the "E" list test.

(f) "The application of unwilling candidates, to appear in the "E" List tests, may be accepted once during the eligibility period by the IG (HQ) on merit of the request. But the individual will not be entitled to seniority except that he may be given another chance to appear in the test. In case the request is rejected, the applicant will lose a chance to appear in the test".

Those who could not sit for the promotional tests due to administrative reasons, deployment on far-flung areas and due to reasons beyond their control, if certified by the Commandant and the DIG, may be allowed to appear in the test subsequently (in the next test) by the IG (H Qrs) with protection of seniority.

(g) Ex-servicemen re-employment in ITBPF are exempted from undergoing Basic Training. They will, however, be required to undergo the re-orientation course for confirmation. For further promotion such personnel will also be required to achieve requisite qualifications required under the Recruitment Rules and in this chapter of the Manual.

(h) All Approved Lists "C", "D" & "E" will be drawn once in a year in the month of February. The crucial date for determining the eligibility conditions will be 1st January of the year in which the test is held. The result of all the tests should be communicated to the Directorate General latest by 31st March positively.

(i) A person who has been awarded a major punishment shall not be permitted to appear in the promotion test for a period of 5 (five) years from the date of such punishment.

(j) A person who has been awarded a minor punishment shall not be permitted to appear in the promotion test for a period of 1 (One) year from the date of such punishment.

(k) A person who has been brought on approved list is awarded major punishment, his name will be removed from the approved list and has to re-appear after 5 years as per the eligibility conditions at that time and in case of award of minor punishment, he will be considered for promotion only after one year from the date of such punishment.

(l) For the above purpose punishments enumerated in Section 56 and 58 of the ITBPF Act 1994 should be treated as Minor Punishment and those u/s 51 (excluding those, which have been enumerated in Sections 56 and 58 of the Act) as Major Punishment.

(m) The personnel placed on Temporary Medical Category may be allowed to appear in the promotion tests. But, they will be considered for promotion only after they are upgraded to medical category SHAPE-I. There is no time limit for keeping them in the respective approved lists except removed on other grounds/conditions. However, those who are declared/brought on permanent Medical Category subsequently will be removed from the Approved List.

(n) The Temporary Medical Category person on his up-gradation to SHAPE-I within a year of his qualifying the approved list test will maintain his original seniority. If not upgraded to medical category SHAPE-I within a year of his qualifying the approved list test, his seniority will be determined from the actual date of his medical upgrading SHAPE-I. In other words, he will be senior to all those who qualify the approved list test after the date of his medical category up-gradation.

(o) The Director General in deserving cases may relax any of the above conditions.

(p) The approved lists shall be subject to review and names of the persons who fail to keep up the required standard of efficiency will be removed by the authorities who maintain the lists.

10. We highlight para (f) thereof. The second para of para (f) makes it clear that only those who could not sit for the promotional test due to administrative reasons i.e. being deployed on far flung areas and due to reasons beyond their

control are the only ones allowed to sit at a subsequent test.

11. It is apparent that any past practice which violates the administrative instructions in the ITBP Manual cannot be source of foundation of a right. There cannot be any equality in the negative. A right to equality cannot be based on a past wrong committed by the Department.

12. We find no infirmity in the action taken by the Respondents and hence dismiss the writ petition.

13. No costs.