

(2008) 01 DEL CK 0158

In the Delhi High Court

Case No : Writ Petition (C) No. 4925 of 2001

Rajinder Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-01-2008

Acts Referred:

Citation : (2008) 148 DLT 267 : (2008) 101 DRJ 207 : (2008) 3 SLJ 388

Hon'ble Judges : Vikramajit Sen, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : Anil Panwar and Sripal Singh, for the Appellant; Dalip Mehra and Siddhartha Singh, for the Respondent

Final Decision : Allowed

Judgement

S.L. Bhayana, J.—The Petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India praying for issuance of an appropriate writ or order directing the Respondents to promote the Petitioner to the post of Inspector with effect from 24.08.1998 with all consequential benefits.

2. The facts giving rise to the filing of the present writ petition may be summarized as under:

3. The Petitioner was a Sub-Inspector in the Border Security Force (for short "the BSF"). At the time of undergoing Platoon Commander (Tactics) Course (hereinafter referred to as "PC(TAC)") held between 13.01.1997 to 22.03.1997, the petitioner was informed by the Directorate of Training that the Junior Leader Course (for short "JLC"), a pre-promotion course, was scheduled to be held from 17.02.1997, on the completion of which the Departmental Promotion Committee meeting was to be held. The eligible Sub-Inspectors, who were detailed to undergo PC(TAC) course were allowed to appear directly before the Departmental Promotion Committee meeting provided they qualified JLC within one year of the DPC. This concession was in view of Rule 5 of the BSF (SOs & UOs) Promotion and Seniority Rules, 1975, which reads as under:

Subject to the provisions of Rule 21, every such member of the Force, shall before any promotion, be required to pass a pre-promotion course referred to in Sub-rule (3) or such other examinations as may be specified by the Director General, from time to time.

Provided that if the competent authority is satisfied that due to exigencies of services or other reasons, any such member is not able to pass the pre-promotion course, he may, with the prior approval of the next superior authority, be promoted but he shall be required to pass the next available pre-promotion course failing which he may be reverted.

4. The Petitioner appeared before the DPC and qualified the same. In December 1997, the BSF commenced the selection of candidates for deputation to United Nation's Mission in Bosnia & Herzegovina. The Petitioner was selected for the U.N. Mission on 1st May 1998 and was ordered to leave for Bosnia in the month of July, 1998.

5. On receiving the information about his selection, the Petitioner joined the JLC on 6th May 1998, as he was required to clear JLC within a period of one year from the date of the DPC. On joining the JLC at Tekanpur on 06.05.1998, the Petitioner on 09.05.1998 received information that he would be required to join the U.N. Mission immediately. On 11.05.1998 the Petitioner wrote to the respondent that as he was deputed for U.N. Mission, he is unable to complete the JLC. The relevant portion of the application filed by the Petitioner in this regard is as under:

I received a message copy from FHQ, My name has been nominated in UN Mission vide FHQ sig No. R 3281 DTD 08.05.1996. According to the msg. All off/ JO's are directed to report STS II T/ camp forthwith. I am unwilling to do JLC.

In view of above please I may please be RT W so that I join the Indian Contingent for UN peace keeping Force in due time.

6. The Petitioner was given a movement order dated 11.05.1998 and on receiving the same, he left the Tekanpur station.

7. It appears that while the Petitioner was on deputation to Bosnia, Respondent No. 3 issued a promotion order wherein the Petitioner's name was mentioned but the same was not communicated to the Petitioner. The Petitioner, however, received this information, through his friend vide letter dated 27.08.1998. The Petitioner vide letter dated 15.02.1999 requested the Respondents to supply him a copy of the promotion letter. However, a letter disclosing the reasons for the non-promotion of the Petitioner was received. The relevant portion of the said letter is reproduced below:

a) It is correct that your promotion order to the rank of Subedar was issued vide Pers Dte Sig No. R-3264 of 24 Aug'98 subject to the condition of having qualified JLC.

XXX XXX XXX d) While undergoing JLC at BSF, STC, Tekanpur you, on your own, after having submitted your unwillingness to continue on the JLC returned to this Institution on 12.05.1999, even without a movement order, which was against the normal procedure and discipline.

e) It is correct that a message was sent to BSF STC, Tekanpur, vide No. A-6001 of 10.05.1998 informing them about your selection and the date of reporting at Delhi for onward move. However, before any action could be taken by STC in this regard you had already left voluntarily after furnishing the said unwillingness certificate on your own; knowing fully well the consequences thereof and even without obtaining a movement order. Adjutant BSF CSWT did contact Adjutant BSF Academy to request him to forward your movement order so as to regularize the move and not for effecting and for making changes in your movement order, as alleged by you. As you had moved back without one.

f) This Institution had not given you any direction to opt out from the JLC by tendering your unwillingness to complete the same and proceed for the said UN deputation as part of the Indian contingent.

8. On his return from Bosnia on 04.06.1999, the Petitioner made a number of representations to the authorities for the issuance of a formal promotion order. Thereafter, the Petitioner cleared the JLC course on 22.08.1999 and though the Petitioner had previously qualified the DPC, he was directed to attend the DPC on 15.11.1999. On qualifying the DPC, the Petitioner was promoted to the rank of Inspector on 06.06.2000 on the basis of the DPC held on 15.12.1999.

9. The Respondents have filed a counter affidavit in which they have tried to justify the decision taken by the Force Headquarters. According to the Respondents, the Petitioner failed to fulfill the requirement of qualifying the pre-promotion course under the Rules. Learned Counsel for the Respondent has submitted that the Petitioner was detailed to undergo the JLC, which commenced on 4th May 98 at STC BSF Tekanpur and, the Petitioner was given sufficient opportunity to qualify the JLC within one year of qualifying the DPC. The Petitioner had at his own behest not availed the opportunity to complete the JLC within the period of one year from the DPC and had also tendered his unwillingness to undergo the said course. The Respondents are of the view that the Petitioner's claim for protection of seniority is rightly rejected, as the Petitioner had made a choice and declined to undergo the course much before he was sent for the U.N. Mission in Bosnia.

10. Learned Counsel for the Petitioner has argued that in the unwillingness letter submitted by the Petitioner, the Petitioner's inability to continue with the JLC was not due to personal reasons but due to the administrative reason of the Petitioner joining the U.N. contingent to Bosnia. The Petitioner has further argued that he wrote the unwillingness letter forcibly on dictated terms. Learned Counsel for the Petitioner has contended that the Petitioner's refusal to join the U.N. Mission on the ground that he is undergoing training at the JLC, would have lead

to his punishment for disobedience of orders and hence, the Petitioner had no choice but to leave the JLC and report for the U.N. Mission. Thus, the Petitioner is entitled to the protection of his seniority.

11. Learned Counsel for the Petitioner has further contended that the concerned authorities have misrepresented the fact that the Petitioner left the institution without a movement order. The movement order in respect of the Petitioner was issued on 11.05.1998. It is further submitted that the Petitioner's name was shown in the combined seniority list maintained by the Directorate General Border Security Force (Personal), where he was shown as promoted on 24.08.1998.

12. We have given our anxious consideration to the submissions made at the Bar. It is not in dispute that the Petitioner had submitted his unwillingness to attend the JLC conducted in May 1998 in order to be part of the U.N. Mission to Bosnia. The fact that the Petitioner was attending the JLC at the time when he received an intimation to join the U.N. contingent in Delhi is also not in dispute before us.

13. A careful reading of the above shows that the Petitioner had not expressed his unwillingness or reluctance to attend the JLC held on 04.05.1998 on account of any reason personal to him. The Respondent's contention that the Petitioner was personally not willing and opted out of his conditional promotion by tendering a written consent in the form of unwillingness letter is also without any substance. The only reason the Petitioner was unable to continue with the JLC was his selection and the immediate requirement to join the U.N. contingent to Bosnia. The unwillingness letter as submitted by the Petitioner specifically states that the Petitioner would be unable to continue the JLC course as he was required to report for the U.N. Mission, and as such he was unable to complete the JLC.

14. A similar issue came up for consideration before this Court in *R.K. Gupta v. Union of India* 143 (2007) DLT 795, wherein it was held as under:

The only reason why he could not immediately attend to the said course was his selection for the U.N. Mission in Bosnia. That apart, the Petitioner was very specific in seeking protection of his seniority on account of his being a part of the peacekeeping force. Far from informing the Petitioner that he would lose his seniority if he chose to give up the course in preference of the foreign assignment, the Respondent passed two orders one dated 24.06.1997 and the other dated 03.03.1999, extracted earlier by which the Respondents in specific terms granted protection to the seniority of the Petitioner.

XXX XXX XXX It is in this light of the said Order difficult to appreciate how the Respondents can at this belated stage shift the burden of loss of seniority on the Petitioner or allege that the Petitioner could not attend the course on account of his unwillingness and not because of any administrative reasons as mentioned in Order dated 24.06.1997.

15. It can be seen from Annexure P-4 that authorities concerned directed the Petitioner to join the U.N. Mission. Further it was due to the lack of option given to the Petitioner to choose between the continuation of the JLC and the U.N. Mission, the Petitioner choose to join the U.N. Mission. Disobedience of orders of the Force Headquarter, would have lead the Respondent"s to issue disciplinary proceedings against the Petitioner u/s 21 Border Security Act, 1968, which reads as under:

21. Disobedience to superior officer. - (1) Any person subject to this ACT who disobeys in such manner as to show a willful defiance of authority of any lawful command given personally by his superior officer in the execution of his officer whether the same is given orally, or in writing or by signal or otherwise, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who disobey any lawful command given by his superior officer shall, on conviction by a Security Force Court,-

(a) if he commits such offence when on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less imprisonment as is in this Act mentioned; and

(b) if he committed such offence when not on active duty, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in the Act mentioned.

16. The Petitioner choose to join the U.N. Mission as he had been left with no option and the disobedience of this order would have attracted disciplinary action against the Petitioner.

17. The Respondent"s contention that the Petitioner because of his personal interest in order to reap the benefits of the deputation willingly did not complete the JLC is also without any force. It is clear that the actions of the Petitioner were justified that the non-compliance of the order to join the U.N. contingent would have lead to disciplinary action against him and if given the option the Petitioner may not have proceeded on the foreign assignment if he was aware that his promotion and seniority were at stake.

18. In view of the above and taking into consideration the ratio laid down in R.K. Gupta"s case (supra), the writ petition is allowed. The impugned order dated 27.03.1998 is quashed and by a writ of mandamus the Respondents are directed to give to the Petitioner the benefit of seniority by placing him at the bottom of the seniority list. The Petitioner shall on that basis be entitled to all consequential benefits. The parties are left to bear their own costs.