

(2015) 08 DEL CK 0163
In the Delhi High Court
Case No : Writ Petition (C) 3778 of 2014

Rakesh Sethi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 6
Constitution of India, 1950 — Article 14

Citation : (2015) 9 AD 524 : (2015) 152 DRJ 332

Hon'ble Judges : S. Ravindra Bhat, J;Deepa Sharma, J

Bench : Division Bench

Advocate : Jyoti Singh, Senior Advocate, Tinu Bajwa, Amardeep Joshi and Sameer Sharma, for the Appellant; Kirtiman Singh, CGSC and S.S. Sejwal, Law Officer, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J—This is a writ petition filed by the petitioner who is aggrieved by the actions of the respondents in refusing him promotion to the rank of Deputy Inspector General (DIG) and consequent emoluments and benefits by letters dated 13.12.2013 and 10.02.2014. The Central Reserve Police Force ("CRPF"), which is the Petitioner's parent organization, was of the view that he did not fulfill the criteria for Mandatory Field Service (hereafter "MFS"), as required by the CRPF Group "A" General Duty Officers Recruitment Rules, 2001 and as interpreted by a letter issued by the Ministry of Home Affairs, MHA UO No. I.45024/10/2003.Pers.II dated 17.06.2003 and subsequently communicated by DG, CRPF on 24.06.2003 read with letter dated 04.07.2012 and letter dated 19.09.2012.

2. The Petitioner is a Commandant in the CRPF, which he joined in 26.09.1992 as an Asst. Commandant. He was later promoted to the rank of Commandant on 29.09.07. The Petitioner applied and was successful in clearing the interview for the position of Joint Director (Technical), Lok Sabha. After 3 months of Field

Service he was posted on deputation as Joint Director (Technical), Lok Sabha (subsequently the post was changed to Additional Director) under same pay scale and grade Rs. 14,300-18,300- for a period of 3 years i.e. from 31.01.2008 to 21.01.2011. Subsequently, the tenure of deputation was extended for a period of 12 months at the behest of Additional Secretary (Security), Lok Sabha from 31.01.2011 to 23.12.2011. It was again, further extended to 23.12.2012. In this manner, 3 more extensions (of 2 months, 6 months, and 4 months respectively) were sought to extend his deputation till 23.12.2013 on account of a lack of substitutes available to fill his vacancy.

3. During the pendency of his deputation the petitioner sent a letter dated 20.10.2011 requesting consideration of his deputation posting, as an "operational post" on account of the job profile including security and collaboration with the CRPF's battalions. The Additional Secretary (Security), Lok Sabha forwarded the said letter to DG, CRPF, with a comment stating that the "request of the officer seemed genuine" and the same job profile was viewed as an operational post in other branches of Government Service as well. The CRPF, in this regard stated in its letter dated 24.01.2012 that "Further, with regard to notify the post being held by the above officer at present in LS (Sectt) as operational post in view of the duties being performed by him, we have no objection." to the same and communicated this to the Central Government (first respondent herein). Later on 26.12.2012 a request was made by the Lok Sabha Secretariat to the CRPF to again extend the petitioner's period of deputation, since no nomination for his substitute had been received. This was approved by the CRPF on 7.01.2013, by a letter. A consequential order was issued on 05.04.2013 extending the petitioner's deputation tenure till 23rd June, 2013.

4. Subsequently, the petitioner was considered for promotion and promoted by Presidential Order dated 16.06.2013 and Signal dated 18.5.2013. A letter requesting intimation of such promotion to the Petitioner and subsequent release from deputation to enable him to receive his rank and consequential posting, unless "deemed necessary to extend", was sent to the Lok Sabha by letter, dated 22.05.2013. In the interregnum, the petitioner's period of deputation was extended till it ultimately ended in December, 2013. By letter dated 23.12.2013, CRPF clarified to the first respondent with respect to the petitioner's promotion:

"Certain clarifications have been sought by MHA with reference to the promotion of Shri Rakesh Sethi, Commandant (IRLA:3382) of CRPF to the rank of DIG. In this regard, it is intimated that promotion of the said officer is kept in abeyance till the issue is resolved."

5. The Petitioner represented against this on three occasions, i.e. by letters dated 23.12.2013, 06.01.2014, and 23.01.2014. In reply to these representations, the CRPF by its letter, dated 23.01.2014 informed the Petitioner that his representations were rejected and that the Central Government, Ministry of Home Affairs had referred the question of his promotion to a DPC. The petitioner is aggrieved by this and terms the impugned action of the respondents

as unjustified withdrawal of promotion.

6. Ms. Jyoti Singh, learned senior counsel for the Petitioner argues that the Respondents have acted in an arbitrary and fanciful manner by revoking his promotion subsequently given that his deputation was sanctioned by CRPF itself. She states that considering the deputation was extended with the Respondents' permission, the petitioner cannot be denied the benefit of relaxation of the MFS criterion to his detriment. She also contended that the deputation entailed an operational character akin to Field Service and that the CRPF issued a "no objection" with respect to his request dated 20.10.2011. She argues that in summarily dismissing his representations without affording him an opportunity to be heard is a violation of natural justice and such administrative action revoking his promotion must be set aside.

7. Learned senior counsel also argued that the petitioner's period of deputation was extended due to exigencies of service and with the concurrence of both the Lok Sabha Secretariat and CRPF. Such being the case, the CRPF should not have resiled on its earlier commitment or no objection to treat the period of deputation as having been spent on operational duties. She underscored the fact further by stating that being involved with the overall security detail for the whole Lok Sabha establishment was no less onerous than being detailed on field or operational duty. Keeping in mind these factors, she argued that the CRPF had conveyed no objection to the Lok Sabha's request to treat the duties in its establishment as having spent on field duties. It was argued that besides, the DPC which considered the petitioner's claim did so after taking into consideration that he was on deputation in the Lok Sabha. He was declared fit and selected for promotion. In the conspectus of these circumstances, the letter of 23.12.2013 was wholly untenable; the determination by the DPC as to the petitioner's suitability and merit to hold the post of DIG was conclusive. It was also argued that the requirement of having to undergo MFS cannot be insisted upon as a precondition for granting promotion. The Petitioner relied on the decisions in *Ashok Kumar v. UOI & Ors.* W.P. (C) No. 21900/2005, decided on 27.10.09 and *Devender Singh Sandhu v. Union of India* W.P.(C) No. 2405/2013, decided on 29.05.13.

8. The CRPF contends that the Petitioner showed unwillingness to undergo MFS; rather, he willingly sought extensions to his deputation knowing fully well that service conditions required him to complete two years of MFS and he had only completed 3 months. It relies on letters written by the Petitioner to his superior officials in the Lok Sabha requesting extensions on account of his daughter's exams and aged parents till December 2012. For subsequent dates we have no evidence of any requests. It is submitted that the Petitioner could not have assumed that the post he was holding was declared to be an operational one. The Ministry's rejection letter, refusing finally, the proposal to declare certain posts (i.e. the Director (Security) and Jt. Director (Security)) in the Rajya Sabha Secretariat as operational, was dated 13.05.2013. In these circumstances, the

Petitioner's promotion, made later, was in ignorance of the Central Government's order, disapproving the proposal for declaring the post held by him to be an operational one. It was argued that in the facts of this case, in the absence of MFS, the Petitioner could not claim entitlement to promotion as DIG on the basis of the June, 2013 order.

9. The Central Government's stated position is that promotion was granted on the information that the Petitioner had completed MFS requirements for promotion and subsequent clarification from the CRPF resulted in reconsideration of promotion subject to DPC. It was stressed by Mr. Kirtiman Singh, learned counsel, that the requirement to possess MFS has never been relaxed or set aside. Consequently, in the absence of a declaration that the post held by the petitioner was equivalent to a field or operationally functioning post, he was ineligible for promotion as he lacked an essential condition to hold the post of DIG. It was argued by counsel that the CRPF's "no objection" to treat the deputation posting of the Petitioner as equivalent to "operational duty" was not absolute and conditional upon the Central Government's approval. The counsel relied on the Central Government's decision conveyed in this regard on 13.05.2013 and submitted that consequently, the Petitioner's selection through the DPC, held on 18.05.2013 was a mistake because this development had not been noticed by it.

10. The first question which has to be decided in this case is if the willingness showed by the petitioner to continue on deputation in any manner disentitled him to promotion on the ground that he had to undergo the MFS. The second is whether the decision of the Central Government to not treat the deputation posting as "operational duty" justified the CRPF's action to revoke the promotion given to the Petitioner.

11. The Central Government's policy that an officer should undergo an MFS is embodied in its letter dated 03.02.2003. The policy of not promoting an officer unless he had undergone the field posting was questioned and in several decisions of this court, it was held that the CRPF could not deny promotion for something which was not within his control, i.e. posting. These decisions also directed that the CRPF should exercise its discretion and relax the condition requiring mandatory posting in such cases where the officer did not have any MFS. The judgments in turn led to a clarification, dated 04.07.2012 by the Central Government. Relying upon the CRPF Group "A" (General Duty) Officers Recruitment Rules, 2001, the Central Government's letter dated 03.02.2003 recites minimum two years' MFS to become eligible for the post of DIG. Relevant portions of the letter are reproduced below:

"..under mentioned eligibility criteria to be met for consideration for next rank promotion in various ranks of Group "A" officers:

Commandant to Addl. DIG

(i)..

(ii) Two years Command as Commandant in Duty Bn.

(iii)..

(iv).."

(v)

The rank of Additional DIG was done away with subsequently and promotion directly occurs to rank of DIG. The policy of the Union Ministry of Home Affairs, contained in its U.O. No. P-VII-10/2012 dated 04.07.2012 - to the extent it is relevant is extracted below:

"Therefore, based on guidelines received from MHA, the following instructions are hereby issued for compliance/ implementation:

a)..

b) In ordinary course, no person should be posted to an establishment where duty is not counted as a service in a field Unit till he completes required service in a field unit. However in exceptional circumstances where services of a person are essentially required in the interest of work for the force or due to other technical reasons / grounds in an establishment where duty is not counted towards service in a field unit, approval of IG (Pers) DTE or Sector IsGP may be obtained....

c) In case such a person becomes due for his next promotion before completion of required field service, his case may be submitted to this DTE with full justification under circumstances he was allowed to continue in such static establishment duly supported by copy of approval accorded by IG (Pers) DTE or Sector IsGP. The promotion of such person will be released after obtaining such relaxation or waiver....

d) The personnel who do not complete required MFS owing to their own request for posting in static establishment where duty is not counted towards MFS or wherever such personnel have expressed their unwillingness for posting to a field unit and get posting/ attachment on their own request to static establishment, their cases will not be considered for granting relaxation in MFS."

12. A subsequent letter dated 19.09.2012 amended the list of deputation terms to be counted towards MFS. The relevant portion is quoted:

"(i) In existing paragraph 2f (vi) Parliament Duty Group (PDG) may also be inserted besides SDG."

13. Whilst there is an eligibility criterion of 2 years MFS in order to be promoted to the rank of DIG, the power to relax the same has been granted to the CRPF under Section 6 of the Central Reserve Police Force Act, and this is to be exercised according to the above policy especially in light of exigent circumstances resulting in postings to "static" posts. Besides, in the present circumstances, given that there was a lack of clarity on behalf of the CRPF itself

as to whether the concerned deputation is a "static" post or a field posting, the CRPF should have first ensured that a non-static posting was offered to an officer on the threshold of promotion, or at least warned him before that if he accepted the deputation he would lose his chance of promotion. The request for treating his posting in the Lok Sabha as one on "operational duty", was accepted by way of a "no-objection" on 24-01-2012.

14. The second point which has to be highlighted is that the CRPF declared this policy (rather, an exception by way of additional disqualification for eligible officers) after the Petitioner's deputation tenure had been approved. The declaration of the policy later, on 04.07.2012, was well after this particular extension of his tenure. By then the Petitioner was sanguine in his belief that the deputation posting tenure given him was an operational duty post. It is accepted that the CRPF owes no duty of relaxation to officers who show an unwillingness to perform field duties; since the Petitioner had been told categorically that his deputation posting itself was being treated as operational (hence, counting towards MFS) the question of his seeking a separate MFS did not then arise. It is only by letter dated 13.05.2013 that the Central Government seems to have indicated that posting to the Rajya Sabha secretariat could not be considered as a field or operational posting. In this Court's opinion, that letter would make no difference to the Petitioner's entitlement for consideration- which took place shortly afterwards, on 18th May, 2013. The letter of 13.05.2013 pertained to treatment to deputation posting in Rajya Sabha, not Lok Sabha. The Petitioner was deputed to Lok Sabha security detail. More importantly, the Petitioner's deputation tenure had been extended and approval communicated over a year earlier- on 24.01.2012, stating that experience/posting in Lok Sabha in the post held by him was operational/field posting. Therefore, the Central Government's view - expressed later, could not have impacted his case. The most salient aspect of this case, in the Court's opinion is the complete opacity of the CRPF and its silence in not alerting the Petitioner at any time, whenever his deputation tenure had to be extended (for which he had sought and was granted after due consideration by CRPF- in some instances, only because there was no replacement in sight) that if he were not to return, his case for promotion to DIG would not be considered.

15. The CRPF's subsequent letter dated 23.08.2013 revoked the relaxation of MFS criteria for promotions of candidates on deputations to various organisations considered in clause (f) i.e. (of the O.M. of 04.07.2012 read with amendment vide letter dated 19.09.2012), the result being that deputations to RAW, CBI, IB, NIA etc. were no longer considered as valid periods of service counting as MFS on grounds that deputationists are "having an easy time". The CRPF's plea that the Petitioner showed willingness to extend static deputation, for which MFS relaxation is not accorded, is untenable as there would no longer exist any accepted deputations where service would count towards MFS. The removal of the substance of OM dated 04.07.2012, has resulted in a return to the earlier legal position in *Ashok Kumar and Ors. v. Union of India and Anr* [supra] and

allied judgments. So, requests made for extension of deputation by the Petitioner could not have been considered to his detriment. Thus, the first question is decided in favour of the Petitioner.

16. Now, to consider the second question. The Respondents had urged that the Petitioner's promotion was granted on a mistaken belief that the deputation had been considered as an operational post. It cannot be said that such promotion was given in absence of material facts as both the deputation and the request by the Petitioner for consideration of his deputation as operational were a matter of record. In addition the Additional Secretary for Security, Lok Sabha has given a comment stating that other organisations view such deputations as operational posts. The delay in intimating rejection of his request was clearly detrimental to the Petitioner as he had laboured under the assumption that CRPF had no objections. Hence, even if being aware of his apparent lack of field service was the Petitioner's liability, he was not given adequate time to act upon it considering he was first informed of such infirmity on 23.12.2013.

17. This Court's judgment in *Ashok Kumar and Ors. v. Union of India and Anr* [W.P. (C) No. 21900 of 2005] and subsequent judgments (i.e. *Shri Virendra Singh Rajput v. Union of India and Ors.* [W.P. (C) No. 2427/2010], *S. Arul Raj v. Union of India and Ors.* [W.P. (C) No. 2266/2011], *Ram Naresh Pratap Singh v. Union of India & Ors.* [W.P. (C) No. 82/2012], *Ghamman Singh v. Union of India* [W.P. (C) No. 8046/2011] and *Devender Singh Sandhu v. Union of India* [W.P. (C) No. 2405/2013]) which have followed it, is an authority for the proposition that MFS conditions cannot be invoked to deny promotion if the officer never was posted to any of those field battalions, or given field postings and that the Force should invoke the power of exempting its personnel in such eventualities. Those judgments hold the field even today.

18. *Ashok Kumar* (supra) observed inter alia, that:

"36. We may note that with the increase in posts in the year 2004 and knowing fully well that the continued requirement of two years" service in a duty battalion would hamper the promotional career of the officers, the respondents have themselves, put on track mode, the identification of its officers in various non-duty posts because the respondents know and recognize that transfer/posting is not in the hands of the officers but is a prerogative of the department and the department has to ensure that it affords an opportunity to all its officers to become qualified by serving in duty battalions. This also highlights the fact that the sudden change in situation in the year 2004, being unexpected, required a proper administrative redressal.

37. We accordingly quash the decision of the Central Government declining to relax the eligibility condition of two years" service in a duty battalion for promotion to the post of Inspector and 2 IC under BSF as also the post of Inspector under CRPF.

38. A mandamus is issued to the Central Government to re- consider the issue

pertaining to the promotions to the posts of 2 IC and Inspector under BSF and the post of Inspector under CRPF; the issue being exercising the power of relaxation vested under the Rules, to be exercised by the Central Government. While reconsidering the matter, the questions framed by us would be kept in mind while deciding the issue and the backdrop circumstances would be kept in mind while deciding the issue. Needless to state the decision of the Central Government would be a reasoned decision evidencing the application of mind with reference to the questions and the backdrop circumstances. The decision would be taken within a period of 8 weeks from date of receipt of this decision in the Ministry of Home Affairs i.e. the Nodal Ministry of the Central Government. We further mandate that if the decision taken is in favour of the petitioners, they would be promoted with effect from the date, persons junior to the petitioners were promoted and in said eventuality, the petitioners would be entitled to all consequential benefits such as seniority, pay fixation and arrears of pay."

19. This Court's reasoning in Ashok Kumar (supra) is supported by authority- i.e. the judgment of the Supreme Court in State Bank of India etc., Vs. Kashinath Kher and others, etc.,, (1996) 2 AD 270 : AIR 1996 SC 1328 : (1996) 2 JT 569 : (1996) 2 LLJ 654 : (1996) 2 SCALE 423 : (1996) 8 SCC 762 : (1996) 2 SCR 324 : (1996) 1 UJ 691 . Discussing the efficacy of one such mandatory requirement of a Bank employee previously having to function in rural areas, it was observed that:

"It would thus be seen that it is not a case of ineligible persons made eligible, but a case of giving opportunities to those officers, who for no fault of theirs, were not made eligible to be considered and given opportunity to be considered for promotion and after consideration, on fulfillment of the service of line assignment and rural/semi-urban service for a minimum of two years were promoted to the MMGS-III. Thus, we hold that the policy adopted by the Board is not violative of Article 14 of the Constitution. But it must be remembered that in considering whether the candidate has completed the line of assignment or rural/semi-urban service for the required period, a clear demarcation be drawn between the officers who either due to volitions refusal to serve and those on account of inaction or deliberate omission on the part of the controlling authority did not have an opportunity as the case may be, to get the required service qualifications. Therefore, an exercise requires to be done by the appellant to identify this grouping and consider all those candidates who have otherwise become eligible but did not get opportunity, for no fault of theirs", to secure the service qualification but should be denied to those who volunteered not to go for line assignment or rural or semi-urban service as the case may be, and then to consider according to the criteria prescribed under the rules or the circulates issued from time to time."

20. In the present case, the facts do not anywhere indicate the Petitioner's unwillingness to shoulder responsibilities in a field posting; the CRPF never told him that the period of deputation spent by him would be treated as his

unwillingness for being given field posting; it is not on record stating that any such field posting had been offered. In these circumstances, the respondents are hereby directed to exercise the power of exemption, and ensure that he is fixed in the rank and pay of DIG from the date he became entitled to it, after his name was cleared by the DPC and in terms of the Presidential order dated 16.06.2013. Notional pay fixation in the said grade shall be granted from that date, and his increments worked out on that basis; actual pay and arrears shall be calculated and disbursed to him, from the day he rejoined the CRPF after completion of his deputation tenure with the Lok Sabha. It is also declared that he is entitled to all consequential benefits such as seniority, etc. The relevant orders shall be issued and consequent disbursements made, within eight weeks from today.

21. The writ petition is allowed in the above terms without any order as to costs.