

(2007) 12 DEL CK 0001

In the Delhi High Court

Case No : Writ Petition (C) No. 13088 of 2005

Roshan Singh Rawat

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-12-2007

Acts Referred:

Citation : (2007) 12 DEL CK 0001

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

Bench : Division Bench

Advocate : S.K. Gupta, for the Appellant; Anjana Gosain and Pushpa P. Jhuraney, for the Respondent

Judgement

S.L. Bhayana, J.—In this petition, for a Writ of Certiorari, the Petitioner questions the validity of the Orders dated 21.06.2005 and 01.04.2005, rejecting his representations for the protection of his seniority in the cadre of Assistant Sub-Inspector (RO) in Central Reserve Police Force (for short "CRPF"). A Mandamus, directing the Respondents to protect the seniority of the Petitioner in the cadre of A.S.I. (RO) in accordance with the Rules, has also been prayed for.

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

3. The Petitioner is an Assistant Sub Inspector (RO) in the CRPF. In the year 2002, while serving as a Head Constable (RO) in the CRPF, he was selected to be a member of the Indian contingent deployed for an U.N. Mission at Kosovo for a period of one year. The Petitioner was at the same time also due for promotion to the post of ASI (RO) once he qualified the "Senior Under Officer Cadre Course" (SUOCC) along with his other batch mates. On account of his selection and deputation to Kosovo, the Petitioner could not be detailed for undergoing the said course. Consequently, the CRPF Headquarters, Delhi issued an order dated 30.04.2002, which protected the Petitioner's seniority subject to the condition that the Petitioner qualified the SUOCC Course at the first available opportunity

on his return from the U.N. Mission. The relevant portion of the order protecting his seniority was in the following words:

2. No. 850795059 HC/Ro Roshan Singh of this Unit who was detailed for SUOCC(RO/CRY) SL. No. 10 could not proceed to attend the course as he was detailed for UN Mission to Kosovo. Hence he may not lose his chance as well as seniority as he cannot attend the course on adm. Grounds.

3. The Petitioner appears to have remained on deputation to Kosovo with effect from 15.03.2002 to 15.03.2003 and returned from Kosovo in March, 2003. During this period, the Courses at Srl. No. 11, 12 and 13 of the aforesaid SUOCC (RO) were held but the Petitioner could not attend these courses. The Petitioner was debarred from promotion and thus, was not allowed to join the courses subsequently held at Srl. Nos. 14 and 15. He was subsequently allowed to participate in the course which was held at Sr. No. 16 in the month of November and December 2004 in which he qualified the said SUOCC (RO) Course and was promoted as Assistant Sub-Inspector (RO) with effect from June 2005 but his seniority was fixed along with the officers, who appeared in the Course at Srl. No. 16.

4. The Petitioner made a number of representations to the authorities for the protection of his seniority. The representations were examined, and eventually rejected by the Force Headquarters in terms of an order dated 01.04.2005. A reading of the said order shows that the Force Headquarters did not find the Petitioner entitled to the protection of his seniority retrospectively, as he had already exhausted his admissible chances and that his seniority would be assigned along with personnel appearing in that particular course. Thereafter, another order dated 21.04.2005 was passed, which contained the same reasons.

5. 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 had lost all three admissible chances. Learned Counsel for the Respondent has submitted that the seniority of the Petitioner is not protected, as his willingness/unwillingness could not be obtained as he was on deputation with the U.N. Mission to Kosovo during that period. It is further submitted that the failure on the part of the Petitioner to attend the Course was deliberate and he cannot demand any protection of his seniority nor is any such protection otherwise justified.

6. Learned Counsel for the Petitioner has submitted that the Petitioner was detailed to UN Mission to Kosovo and remained there from 15.3.2002 to 15.3.2003. The Petitioner's seniority was protected vide Order dated 30.04.02 with respect to SUOCC (RO) Course at Sr. No. 10, which was scheduled to be held from 25.02.2002 to 20.04.2002. Learned Counsel argued that during this period from 15.3.2002 to 15.3.2003, SUOCC (RO) courses at Sr. No. 11, 12 and 13 were also held, however, no information was received by him in this regard from the Department. Learned Counsel further submitted that it is not the case

that the Petitioner had willingly not participated in the Courses or refused to participate in the course but was unable to attend the course on account of his deputation in Kosovo. Hence, the Petitioner is entitled to the protection of his seniority.

7. Learned Counsel for the Petitioner further contended that the Petitioner was sent to Kosovo in public interest. During this period the Petitioner's juniors were allowed to undergo the said Course and were promoted as ASI (RO). The Petitioner on returning from Kosovo qualified the Course, in the first instance, as has been directed by the Respondents, vide order dated 30.04.2002. The petitioner has sought a mandamus, directing the Respondents to allot him a proper place in the seniority with his batch mates on the basis of "Next Below Rule" as laid down in Para 7 of the Establishment Manual of the Central Reserve Police Force, where promotion of personnel sent away on deputation or foreign service is protected on account of their being on such deputation or foreign service.

8. We have given anxious consideration to the submissions made at the Bar. It is not in dispute that the Petitioner was asked to give his willingness for being a part of the U.N. Mission in Kosovo. The fact that the Petitioner had a chance to appear in the SUOCC Course at the time when he was sent to Kosovo and his promotion qua SUOCC Course held at Sr. No. 10 was also protected vide Order dated 30.04.2002 is not in dispute. During the deployment of the Petitioner in Kosovo, SUOCC (RO), Sr. Nos. 11, 12 and 13 were held at Ranchi from September, 2002 to January, 2003. The relevant portion of the application dated 06.11.2003 filed by the Petitioner for the protection of his seniority is as under:

That Sir, I came to know from Dealing Assistant Communication Branch Directorate, CRPF that a letter No. P.7/I-PERS-II dated 24.04.02 was issued by personnels Branch Dte. Genl., CRPF that a personnels on who will go on deputation to foreign mission shall not be entitled to claim the seniority if his promotion comes in between that duration. But Sir this letter was issued after my departure of Kosovo, and I was never informed of any letter pertaining to this matter.

I left for Kosovo on 15th March, 2002 whereas the letter quoted above from DIG (personnels) was issued on 24th April, 2002. It is not understood as to how a letter/ instruction issued after my departure to Kosovo implemented in my case. I came to know from Dealing Assistant that this letter/order was only implemented in my case. It may please be clarified to me.

9. Vide Order dated 01.04.2005, the respondents summarily rejected the request of the Petitioner. The relevant portion of the Order dated 01.04.2005 is reproduced as under:

3. DIG(Pers) has clarified that orders of competent authority conveyed vide Para-v and vi of Pers Dte. Signal No. P. VII/I-20040Pers-II dated 17.09.2004 are applicable in the case of said HC(RO) also. As per Para v and vi of DIG Pers ibid

signal, those personnel who have already exhausted admissible chances will not be given seniority from retrospective effect on qualifying the course and their seniority will be assigned along with the personnel appearing in that particular course. Hence, the request of No. 850795059 HC(RO) Roshan Singh Rawat of your unit for protection of this seniority with candidates who have qualified SUOCC (RO/CRY) Sl. No. 11 was not acceded to.

4. Moreover, as per DIG personnels Sig. No. P. VII/I-2004-Pers.II dated 21.09.2004, the relaxation of availing mercy chance is for the first available prepromotional/promotional courses to be conducted during the year, 2005 and not 2004 Accordingly, No. 850795059 HC(RO) Roshan Singh Rawat was to be detailed on the first SUOCC(RO/CRY) conducting 2005 and not in SUOCC (RO) Sl. No. 16 held from 6.9.04 to 9.10.04. However, based on the directions issued vide DIG Pers. Sign. H No. P. VII/I-2004-Pers.II dated 17.9.04 he was detailed to join SUOCC (RO) Sl. No. 16 at 1 Sig. Bn vide this office Sig of even number dated 20.9.04.

10. Having heard learned Counsel for the parties and after going through the records, we have come to the conclusion that the Petitioner was assured by the Respondents vide order dated 30.04.2002 that his seniority would be protected, when he was on foreign mission. We are unable to understand that while rejecting the representations of the Petitioner for protection of his seniority, the order dated 30.04.2007 cannot be taken into consideration, where it was specifically stated that the Petitioner, who was detailed for SUOCC (RO/CRY) SL. No. 10 could not proceed to attend the course as he was detailed for UN Mission to Kosovo. Hence, he would not lose his chance as well as seniority as he could not attend the course on administrative grounds.

11. The inability of the Petitioner to undergo the SUOCC (RO) Course at Srl. Nos. 11, 12, and 13 was on administrative grounds as the Petitioner was deputed in Kosovo. The Respondents neither informed the Petitioner regarding SUOCC (RO) Course at Srl. Nos. 11, 12, and 13 nor his seniority was protected in respect of these Courses. If the Petitioner had known that the foreign assignment would not carry with it the protection of his seniority, he may not have acted and continued to be a part of the foreign assignment. The Petitioner has also not expressed his unwillingness at any stage to attend the SUOCC (RO) Course for any reason personal to him. We cannot also lose sight of the fact that the Petitioner had qualified the said SUOCC (RO) Course in his first attempt.

12. As regards the question of seniority of the Petitioner among the officers, who attended the SUOCC (RO) course at Srl. No. 10 reference may be made to the decision of this Court in R.K. Gupta v. Union of India 143 (2007) DLT 795, where a similar issue came up for consideration. In the said case, the Court has placed reliance on Para 7 of the Establishment Manual of the Central Reserve Police Force, which reads as under:

7. Promotion of personnel away on deputation

The claim of officers and men who are away on deputation, foreign services, etc. should be safeguarded while drawing up the approved lists.

8. Such officers and men may be given the benefit of "Next below Rule" as laid down in paragraph 9 of the Government of India decision below Fundamental Rule 30.

13. The Court, after placing reliance on the above-said Para 7, held that since the "Next Below Rule" envisages placement of the officers sent on foreign assignment at the bottom of the batch to which he otherwise belongs, the Petitioner would be satisfied in case he is placed at the bottom of the seniority list of his batch mates, who qualified in the SICC.

14. From the records, it is amply clear that the Petitioner was on a Foreign Mission from 15.3.2002 to 15.3.2003 at Kosovo and this was the only reason he was unable to attend the courses held at Sr. No. 11, 12 and 13. As the Petitioner was unable to attend the courses at Sr. No. 11, 12 and 13, the authorities debarred him from appearing in course at Srl. No. 14 and 15. Thereafter, when the Petitioner was given a chance to appear for the Course at Srl. No. 16, he qualified the same in the first attempt and subsequently he was promoted as ASI (RO). Further, by applying the "Next Below Rule" as envisaged under Para 7 Establishment Manual of the CRPF, the Petitioner should be placed at the bottom of the list of officers, who have qualified the SUOCC at Sr. No. 10.

15. In view of the above and taking into consideration the ratio of this Court's decision in the case of R.K. Gupta v. Union of India (supra), the writ petition is allowed. The impugned orders dated 01.04.2005 and 21.4.2005 are 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 of the officers, who qualified SUOCC Course at Srl. No. 10. The Petitioner shall, on that basis, be entitled to all consequential benefits.

16. The parties are left to bear their own costs.

17. Writ petition stands disposed of.