
(2011) 08 DEL CK 0411
In the Delhi High Court
Case No : Writ Petition (C) 2266 of 2011

S. Arul Raj

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Citation : (2011) 08 DEL CK 0411

Hon'ble Judges : Sunil Gaur, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Ankur Chhibber, for the Appellant; Himanshu Bajaj, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.

1 Enrolled as a Constable (GD) in CRPF on 15.5.1976, after completing basic training at RTC-I, Petitioner was posted to the 21st Bn. CRPF in July 1977 and remained attached with the battalion till March 1985. He was then attached to the 77th Bn.

2 In 1989, the Petitioner successfully completed the JCC course, a pre-requisite for promotion, and was promoted as a L/Nk. He continued to be attached with the 77th Bn. till March 1991.

3. Attached to the 99th Bn. RAF in April 1991, Petitioner earned promotion as a Naik and after successfully clearing the SCC course earned a promotion as a Head Constable and continued to be attached to the 99th Bn. RAF.

4. In March 1997, the Petitioner was attached to CTC Mudkhed, a non-field posting, where he remained till September 1997. In October 1997 he was sent on deputation to Tamil Nadu police to serve as an instructor in the Police Training College, Chennai where he remained till November 2002 when on repatriation he was posted at RTC-II CRPF stationed at Avadi.

5. Successfully clearing the promotional course in 2006, the Petitioner was promoted as a Sub-Inspector but was retained in RTC-II because of his being found to be a very good instructor. In December 2007, he was posted as the instructor in National Police Academy, where he was on deputation.

6. Being eligible for being promoted as Inspector, the Petitioner completed the pre-promotional course but could not find promotion inasmuch as it was held against him that he had not served as Sub-Inspector for 2 years in a duty battalion. Persons junior to the Petitioner were promoted. Petitioner's representations to the department have not been responded to.

7. The Petitioner has a very simple argument. On the issue of eligibility condition for promotion of personnel in Central Para-Military Forces, vide order dated 17.6.2003, Ministry of Home Affairs has instructed as under:

3. Service in Training Institutions will be considered as "Duty Battalion" only for the purpose of promotion up to the ranks of 2IC and below only for this year. This is being allowed as a one-time exemption. The Force will ensure that in future only such officers are posted in Training Institutions who have had mandatory two years service in "Duty Battalions" for the purposes of consideration of promotion to the next higher grade.

8. The Petitioner states that while granting one-time exemption to serve in a duty battalion for promotions up to the rank of 2IC, in the year 2003, the Ministry of Home Affairs specifically directed that in future, no officer should be posted in a training institute unless the officer has mandatorily served for 2 years in a duty battalion.

9. The reason was obvious. No employee can have a say in his transfer/posting. Wherever the department wants an employee to serve, he must serve. The Ministry of Home Affairs was noticing that it was repeatedly being called upon to exercise its discretionary power to grant relaxation from the condition requiring officers and jawans to serve for at-least 2 years in a duty battalion because the department was not ensuring their posting in a duty battalion for 2 years. Granting one-time relaxation, for the future, it was directed that it would be the obligation of the department to ensure that all force personnel are made to work in a duty battalion for at least 2 years before being sent to a training institute.

10. The office memorandum incorporates a good policy of the law. The policy of law would be that where the employer mandates a particular kind of duty to be rendered by the employee before the employee can earn promotion, the WP(C) 2266/2011 Page 3 of 4 employer would be under a legal obligation to ensure that the employee concerned gets a right to serve and perform the duties required to be performed as a condition for promotion.

11. Noting that the Respondents are in breach of the office memorandum dated 17.6.2003 and noting the law that he who is in the wrong must recompense the person wronged, we dispose of the writ petition issuing a mandamus that the

Petitioner would be considered for promotion as of the date the persons junior to him were promoted. DPC be held in which ACRs of the Petitioner would be considered. If the Petitioner achieves the benchmark for promotion he would be promoted with effect from the date persons junior to him were promoted save and except he would not be paid back-wages. He would be entitled to all other benefits.

12. Needful would be done within a period of 12 weeks from today.

13. No costs.