

(2018) 04 JH CK 0084
In the Jharkhand High Court
Case No : W.P. (S) No. 4196 of 2011

SANTOSH KUMAR, S/O SRI KHUDI SAHU	APPELLANT
Vs	
UNION OF INDIA AND OTHER	RESPONDENT

Date of Decision : 11-04-2018

Acts Referred:

Constitution of India, — Article 14, 16

Citation : (2018) 04 JH CK 0084

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Pradeep Kumar, Laxman Kumar

Final Decision : Dismissed

Judgement

1. In the accompanied writ application, the petitioner has, inter alia, prayed for issuance of a writ commanding upon the respondents to give him due seniority in the rank of Inspector, CRPF, from October, 2008 by quashing the order of the DIG (Adm), Special Sector, CRPF, dated 17.03.2011.Â

2. The brief facts, as has been delineated in the writ application, are that the petitioner was initially appointed directly as Special Inspector, (GD) in the Central Reserve Police force in the year 2004. Thereafter, the petitioner was sent for Basic Training and after successful training, he was given B Grade. In the year 2008, a Promotion Board was constituted for promotion in the rank of Inspector on the basis of good service records but the case of the petitioner for promotion was not considered by the Board in the year 2008 and 2009 inspite of the fact that the petitioner had a good service record. However, the petitioner was promoted in the year 2010 in the rank of Inspector, since the junior to the petitioner were promoted earlier to him, the petitioner being aggrieved by his supersession, submitted representation

before the respondent No. 2 vide Annexure-1 to the writ application and the said representation was not considered on the ground that the petitioner failed to secure required marks, because of his performance, therefore, his case was turned down by the D.I.G. (Adm) Special Sector, CRPF for promotion in the rank of Inspector, CRPF, as per the order vide Annexure-2 to the writ application. Being aggrieved by the order dated 17.03.2011 vide Annexure-2 to the writ application, the petitioner has been constrained to knock the door of this Court for redressal of his grievances.Â

3. Learned counsel for the petitioner has strenuously urged that the respondents are not justified in not giving remarks like â??Very Goodâ?? when the performance of the petitioner was found to be up to the mark and without any complaint. Learned counsel further submits that the entry in his service records should have been communicated to the petitioner, so that he would have known about the assessment of his work and conduct by his superiors, which would have enabled him to improve his work in future and he would have an opportunity of making a representation against the entry, if he felt, it was unjustified, therefore, non-communication of the entry amounts to arbitrary exercise of power, therefore, the action of the respondents being arbitrary, are violative of Articles 14 and 16 of the Constitution of India. In order to buttress his submissions, learned counsel for the petitioner has referred to the decisions reported in AIR 2008 SC 2513, Dev Dutt-versus-Union of India & Ors.Â Â

4. Controverting the averments made in the writ application, a counter affidavit has been filed by the respondents, wherein, it has been submitted that since the petitioner has not cleared the prescribed bench marks (i.e. one very Good and Two Good A.C.Rs. for 21 Marks during the year 2005-06 to 2007-2008, therefore, his case for promotion was not considered in 2008 and 2009, but, he has been brought on Approved List C (GD)-6/2010, after he scored prescribed 21 marks during screening of records and then released for promotion as Inspector (GD) vide DIG (Estt) Dte letter dated 25.06.2010. It has further been submitted that since the Good is not an adverse remark, therefore, the petitioner has not been informed or communicated with the marks in his CCRs.

5. A supplementary counter affidavit has been filed on behalf of the respondents-Union of India. In the said affidavit, it has been submitted that as per

standing order 6/1999, dated 23rd April, 1999 procedure for promotion of NGO (GD), Executive Personnel, (male and female) to various ranks from

Constable to Inspector has been laid down as per A (III) of the said Standing Order, the eligibility conditions for promotion from Sub Inspector to

Inspector is given and as per III (c) of the said Standing Order, it is mentioned that "must not have adverse report in the

ACR in preceding 5 years". Further the marks for ACRs are mentioned as follows:-

(i) Outstanding - 12 marks

(ii) Very Good - 09 marks

(iii) Good/Satisfactory - 06 marks

(iv) Above average/average/barely - 3 marks

(v) Poor/Unsatisfactory/below average - 0 marks

As per above Standing Order, it is also mentioned that to become an Inspector from Sub Inspector, one must score 33 out of 80 marks and must

have 1 Very Good and 4 Good ACRs to become an Inspector. For better appreciation of the above facts, the Standing Order No.6/1999 has

been annexed as Annexure-R/1.

It has further been submitted that the petitioner joined as SI (GD) in CRPF on 26.09.2004 and was sent for Basic Training with effect from

27.06.2005 to 20.08.2006 and thereafter the ACR of the petitioner for the period from 06.09.2006 to 31.03.2007 was recorded as good, for the period

from 01.04.2007 to 31.03.2008 was recorded as good and further for the period from 01.04.2008 to 31.08.2008, Non Initiation Certificate in lieu of

ACR was given by the Commandant 75 Bn. CRPF as the period is less than 90 days because the petitioner was on 80 days EL w.e.f. 02.06.2008 to

20.08.2008 and further for the period 01.09.2008 to

31.03.2009, the ACR was recorded as Good and for the period 01.04.2009 to 31.03.2010, the ACR was recorded as Very Good. In other orders, the

petitioner met the prescribed Bench Marks of 21 in 2010, whereafter, he was considered for promotion as Inspector and was accordingly granted as

evident from Annexure-R/2 and R/3 series. The petitioner secured this Bench Marks through the ACRs as per the revised criteria vide Signal

No.PVII-11/2003-Pers-II, dated 12.12.2003, vide Annexure-R/4 to the counter

affidavit.

6. Learned counsel for the respondents apart from reiterating the submissions made in the counter affidavit, has submitted that the claim of the

petitioner for ante-dating his promotion with effect from 2008 is neither justified nor sustainable in the eyes of law.Â

7. After hearing the learned counsel for the respective parties and on perusal of the records, the petitioner has not been able to make out a case for

interference, in view of the following facts and reasons : -

(i) Admittedly, the case of the petitioner was considered for promotion as per the criteria/Bench Marks prescribed for giving promotion in the rank of

Inspector as per the Standing Order No.6/1999, dated 23rd April, 1999, whereby the procedure for promotion has been laid down and as per the said

instructions, the eligibility condition for promotion from Sub-Inspector to Inspector has been given. Since the petitioner has failed to secure the required

marks in 2008 and 2009, considering his ACR(s) in the year 2010, because of securing the required Bench Marks through the ACR(s), the petitioner

has been promoted to the rank of Inspector. Therefore, the petitioner was duly considered in 2008 and 2009 and promotion is never a matter of right,

the petitioner had a right to be considered for promotion and hence, the action of the respondents cannot be construed to be an act of arbitrariness,

therefore, the claim of the petitioner for promotion as Inspector with effect from 2008 is neither legally justified nor sustainable in the eyes of law.

Therefore, this Court is not inclined to accede to the prayer of the petitioner.

(ii) The decision cited by the learned counsel for the petitioner is of no help to the petitioner in view of the clear-cut Standing order and instructions

governing the field for promotion to the rank of Inspector.Â Â

8. Resultantly, the writ petition stands dismissed, being devoid of any merit.