
(2012) 02 OHC CK 0017

In the Orissa High Court

Case No : Writ Petition (C) No. 19848 of 2009

Shri Pradeep Mohapatra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Citation : (2012) 114 CLT 258

Hon'ble Judges : B.P. Das, J;B.K. Nayak, J

Bench : Division Bench

Advocate : C.R. Pattnaik, for the Appellant; S.K. Patra, Learned Central Government Counsel, for the Respondent

Judgement

1. The Petitioner in this writ application challenge the Order Dated 25.9.2010 & 14.10.2010 passed by Opp. Party No. 6, Commandant, 60th

Bn., CRPF vide Annexures-5 & 6 & prays for a direction to the Opp. Parties to allow him to undergo Senior Under Officer Cadre Course for

being eligible for promotion to the rank of Sub-Inspector in the CRPF. The brief facts leading to the writ application tend to reveal that on

19.6.1985 the Petitioner was appointed as a Constable/ GD in the Group Centre of the CRPF at Bhubaneswar & on being promoted to the post

of L/NK was posted at 60 Bn CRPF at Nawgaon (Assam). While he was engaged as Mess Officer in CRPF, Ors mess for the period from

26.10.1995 to 25.11.1995 & on the allegation of raising two false bills, a Disciplinary Proceedings was initiated against him, which ended against

him in dismissal from service vide Order Dated 11.7.2007. The Petitioner being aggrieved by the said order preferred an appeal before the

Appellate authority but the same was also rejected. Thereafter the Petitioner filed a writ application before this Court being OJC No. 4288 of

2000 challenging the order of his dismissal from service. The said writ application was allowed by this Court by setting aside the order of dismissal

dated 11.7.2007 as well, as the order of the Appellate authority, but it was left open to the authorities to inflict a lesser punishment as provided in

the CRPF Rules, 1955. The Petitioner was reinstated in service & ultimately the order of punishment was passed in the stoppage of increment for

one year with cumulative effect.

2. According to the Petitioner, when his counter parts were promoted to the post of Head Constable/GD & the case of the Petitioner was not

considered, he approached this Court in W.P.(C) No. 916 of 2009 which was disposed of on 10.4.2009 with a direction to the Commandant 60.

Bn CRPF to take a decision on the Petitioner's representation dated 23.5.2008 within 3 months. When the aforesaid order was not complied

with, the Petitioner filed CONTC No. 2118 of 2009 & during pendency of such contempt petition, the DIG (Estt.) DTE of the Directorate

General, CRPF vide Order Dated 20.1.2010 in Annexure-2 assigned the seniority of the Petitioner as Head Constable & indicated that he would

claim seniority for next rank promotion with effect from 20.7.2001.

3. According to the Petitioner, the next promotional post of the Head Constable being Sub Inspector & an incumbent to be eligible for promotion

to the said post have to qualify in the W&T Course & the Senior Under Officers Cadre Course (SUOCC). But according to the Petitioner though

initially he was not allowed to undergo the W& T course along with his counter parts to avail the further promotion to the rank of Sub-Inspector,

ultimately on a representation tiled, he was allowed to undergo the W&T Course along with his counter parts & he had also completed the same.

4. Thereafter the 2nd Course Was the Senior Under Officers Cadre Course, which was scheduled to be held on 18.10.2010. According to him,

though he had already completed the W&T Course, he was not selected on the ground that he had not achieved the minimum requirement of 30

marks in the Annual Confidential Report (ARC) due to the deduction of 10 marks for the punishment imposed on him in the disciplinary

proceeding. This fact had been communicated to the Petitioner by signal messages under Annexure-5 & 6, which have been impugned in this writ

application.

5. Learned Central Government Counsel produced Standing Order No. 6 of 1999 issued by the Directorate General of CRPF- regarding the

procedure for promotion to various ranks from constable to Inspector, which prescribes that 10 marks is to be deducted for major punishment &

4 marks is to be deducted for minor punishments.

6. Perusal of the impugned order under Annexure-5 shows that 10 marks have been deducted from the total marks obtained by the Petitioner for

the punishment imposed on him by treating the same as a major punishment & after such deduction, the marks obtained by the Petitioner came to

26 marks.

7. Annexure-5 also reveals that the Petitioner has not completed the mandatory 2 years field service in the rank of Head Constable GD.

8. In this regard, Learned Counsel for the Petitioner draws our attention the Order Dated 20.1.2010 passed by the DIG (Estt) DTE, in Annexure-

2, wherein it is indicated that, the Petitioner would claim seniority for next rank promotion with effect from 20.7.2001.

9. Be that as it may, we do not find anything either from the Standing Order produced by Learned Central Government Counsel, nor from the

counter affidavit filed by the Opp. Parties that the mandatory 2 years field service was required to undergo the Senior Under Officers Cadre

Course, but on the other hand, Annexure-2 issued by the DIG (Estt) reveals that the Petitioner has been allowed to claim seniority for next rank

promotion with effect from 20.7.2001. So this is a clear case where the Petitioner was promoted to the post of HC/GD with effect from

20.7.2001.

10. As it is evident from Annexure-5, the minimum mark required to undergo the Senior Under Officers Cadre Course is 30 marks & after

deduction of 10 marks, he has secured 26 marks, for which he was declared ineligible for the aforesaid course.

11. From the above, it reveals that the Petitioner had secured 36 marks. But the Standing Order reveals that 10 marks are to be deducted for

major punishment & 4 marks for minor punishment.

12. According to Learned Counsel for the Petitioner, the punishment imposed on the Petitioner being a minor punishment, instead of 10 marks if 4

marks would have been deducted from his total marks, his mark would have

come to 32, which is more-than the qualifying mark to undergo the course.

13. Now the question arises, whether the punishment imposed on the Petitioner, i.e., stoppage of increment for one year with cumulative effect, is a major punishment or minor punishment.

14. In this regard, the rules governing the field was produced before us wherefrom we find that the punishment imposed on the Petitioner is a minor punishment.

15. In view of such, the deduction of 10 marks from the marks awarded to the Petitioner, treating the punishment as a major punishment, is illegal

& the authorities should have deducted 4 marks treating the same as a minor punishment.

16. Accordingly, we quash the orders under Annexures-5 & 6 & direct the Opp. Parties to consider the case of the Petitioner to undergo the

Senior Under Officers Cadre Course. As it is submitted that the Petitioner has been illegally debarred from undergoing the course & as the

Petitioner has already attained the age of 48 years, he will not be eligible for the course, for which we direct the authorities to consider the case of

the Petitioner for promotion to the next higher post, without the qualification of the Senior Under Officers Cadre Course by the Petitioner. The

entire exercise shall be completed within a period of two months hence. This Writ Petition is accordingly disposed of.