
(2007) 03 DEL CK 0176
In the Delhi High Court
Case No : WP (C) No. 18544 of 2004

Shri R.K. Gupta

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 15-03-2007

Acts Referred:

Citation : (2008) 2 SLJ 258

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : R.V. Sinha, for the Appellant; Madhu Tewatia and Sidhi Arora, for the Respondent

Final Decision : Allowed

Judgement

T.S. Thakur, J.—In this petition for a writ of certiorari the petitioner calls in question the validity of orders rejecting his representations for protection of his seniority in the cadre of Assistant Commandants in Central Reserve Police Force. A mandamus directing the respondents to grant to the petitioner an appropriate place in the seniority list of Assistant Commandants of the Force in accordance with the rules has also been prayed for. The facts giving rise to the filing of the present writ petition may be summarized as under.

2. The petitioner is an Assistant Commandant in the Central Reserve Police Force. In the year 1997 while he was serving as an Inspector in the Force, he appears to have been selected as a member of the Indian contingent deployed for peace keeping operations in Bosnia and Herzegovina for a period of one year. The petitioner was, it appears, around the same time also due for promotion and for being deputed to what is described as "Senior Inspector Cadre Course" along with his other batchmates. On account of his selection and proposed deputation to Bosnia, the petitioner could not be detailed for undergoing the said course. Consequently, an order dated 24.6.1997 issued by the Directorate General of the Central Reserve Police Force Headquarters, Delhi protected the petitioner's seniority subject to the condition that the petitioner qualified the SICC mentioned

above 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:

Since his detainment to attend SICC Sl. No. 48 has been cancelled due to administrative reasons his seniority will be protected and he will have to qualify SICC at the first available opportunity on his return from UN Mission.

3. The above order was followed by another order dated 3.3.1999 which too made a similar provision and protected in unequivocal terms the seniority of the petitioner if he qualified in the SICC after his return from the U.N Mission in Bosnia and Herzegovina. The relevant portion of the said order is in the following words:

2. The case regarding protection of seniority as per with the Sms/Insps. Who qualify SICC-48 has been examined SM R.K. Gupta was eligible to undergo SICC Sl. No. 48, But he could not be detailed to undergo the said course as he was away on U.N. Mission in Bosnia and Herzegovina. On returning from U.N. Mission he has successfully completed SICC Sl. No. 52 conducted at CTC-2 CRPF from 5.10.98 to 19.12.98.

3. Since Insp. (Now SM) R.K. Gupta of 38 Bn. Could not be detailed in SICC Sl. No. 48 due to administrative reasons, his seniority is protected at par with the SM/Isps. Passed in SICC Sl. No. 48 under the provision contained in Para-11-2.7 of chapter - IX of Esstt. Manual.

4. The petitioner appears to have returned from the Bosnia's Mission in the year 1998. Shortly thereafter he qualified the SICC along with other officers of batch No. 52. A long run struggle thereafter started for the petitioner in which he made representations to the authorities for the protection of his seniority in keeping with the orders that had been made by the authorities from time to time. These representations were examined and eventually rejected by the Force Headquarter in terms of a speaking order dated 12.5.1999. A reading of the said order shows that the Force Headquarter did not find the petitioner entitled to the protection of his seniority as according to it, the petitioner had by submitting an application on 28.5.1997 i.e shortly before his departure f or Bosnia, expressed his unwillingness to undergo the course. The Force Headquarter was of the view that the said application tantamounted to a deliberate avoidance on the part of the petitioner to attend the course thereby disqualifying him for the grant of any protection in terms of batch seniority. The petitioner has assailed the said view and sought a mandamus directing the respondents to allot him a proper place in the seniority with his batch mates in terms of Establishment Manual of Central Reserve Police Force which recognizes the application of "Next below Rule" as laid down in Paragraph 9 of Government of India decision below fundamental Rules 30 in cases where promotion of personnel sent away on deputation or foreign service is protected on account of their being on such deputation or foreign service.

5. The respondents have filed a counter affidavit in which they have tried to

justify the decision taken by the Force Headquarter. According to the respondents, the petitioner had made a choice and declined to go for the course much before he was sent for the U.N. Mission in Bosnia. The respondents are of the view that the orders issued by the Force Headquarter protecting the petitioner's seniority were not justified and that the petitioner's claim for any such protection was rightly rejected.

6. Mr. Sinha counsel for the petitioner, made a solitary submission before us in support of the petition. He argued that the respondents were legally estopped from withdrawing the protection of his seniority after the respondent had acted upon the representation made by them and changed his position to his detriment. He contended that the petitioner had, at no stage, declined to undergo the course as was sought to be projected by the respondents in their counter affidavit. He drew our attention to an application dated 28.5.1997 the contents whereof were being interpreted by the respondents as a refusal on his part to undergo the course. He argued that the application did not signify any such refusal and that the contents of the same were being read by the respondents out of context.

7. On behalf of the respondents it was, on the other hand, argued by Ms. Tewatia that the respondents were justified in taking the view that the failure on the part of the petitioner to go for SICC course was deliberate and that having opted out of the course the petitioner could neither demand any protection of his batch seniority nor was any such protection otherwise justified.

8. We have given our anxious consideration to the submissions made at the Bar. The material facts are not in dispute. It is not in dispute that the petitioner was asked to give his willingness for being a part of the U.N. Peace Keeping Mission in Bosnia. It is also not in dispute that the petitioner had expressed his willingness to be a part of the peace keeping force being deputed to Bosnia from out of the Central Reserve Police Force personnels. The fact that the petitioner had a chance to appear in the SICC course around the time he was sent to Bosnia is also not in dispute before us. The petitioner's application dated 28.5.97 made to the respondents simply pointed out to the Assistant Director, Administration that the petitioner would not be able to attend the SICC No. 48 course on account of his selection for the U.N. Mission in Bosnia & Herzegovina and that he was on account of the said selection required to report in the Ministry of Home Affairs on 2.6.1997 for briefing etc. The relevant portion of the application filed by the petitioner in this regard is as under:

3. Now due to unavoidable circumstances developed suddenly, I am unable to attend the SICC Sl. No. 48. The reason being that I have been selected for U.N. Mission in Bosnia and Herzegovina and required to report in MHA on 2/6/97 for briefing etc. as informed by your office. In addition to this I am also required to be ready to move to U.N. Mission in Bosnia & Herzegovina at short notice (Departure date likely to be 26/6/97).

4. In view of the circumstances mentioned above it is not possible for me to attend/appear in the Special SICC Sl. No. 48 which is being started w.e.f 2/6/97. Therefore, it is requested that I may be exempted from attending/appearing in the Special SICC Sl. No. 48 and my seniority may also be protected. I will do the SICC at the first available opportunity on my return from UN Mission in Bosnia and Herzegovina.

9. A careful reading of the above shows that the petitioner had not expressed his unwillingness or reluctance to attend the SICC on account of any reason personal to him. The only reason why he could not immediately attend to the said course was his selection for the U.N. Mission in Bosnia. That apart, the petitioner was very specific in seeking protection of his seniority on account of his being a part of the peace keeping force. Far from informing the petitioner that he would lose his seniority if he chose to give up the course in preference to the foreign assignment, the respondents passed two orders one dated 24.6.1997 and the other dated 3.3.1999, extracted earlier by which the respondents in specific terms granted the protection of seniority to the petitioner. By order dated 24.6.1997, which the respondents had passed, the respondents acknowledged the fact that the petitioner's deputation to undergo SICC 48 had been cancelled due to administrative reasons and not because of his unwillingness to go for the said course. It was specifically directed that the protection of the petitioner's seniority shall be subject to the condition that he would qualify the SICC at the first available opportunity after returning from the U.N. Mission. It is in the light of the said order difficult to appreciate how the respondents can at this belated stage shift the burden of the loss of seniority on to the petitioner or allege that the petitioner could not attend the course on account of his unwillingness and not because of any administrative reason as mentioned in order dated 24.6.1997. The respondents having made a clear representation and promise to the petitioner that his seniority shall stand protected while he was serving on a foreign assignment the later was entitled to remain supremely confident that his assignment in Bosnia would not affect his seniority in service back home. That is because on the date the petitioner left for Bosnia as a part of the Indian contingent, he had with him a clear promise regarding protection of his seniority upon which he had acted and continued being a part of the peace keeping force. This the petitioner may not have done if he had been told that the foreign assignment would not carry with it the protection of his seniority. The argument of Mr. Sinha that the respondents are estopped by conduct and representation from resiling from the promise made to the petitioner or denying to the petitioner the benefit of the protection which was assured to him appears to us to be legally unexceptionable.

10. The next question is as to where would the petitioner find his place among the officers who attended the SICC 48. The answer to that is provided by provisions of the Establishment Manual of the Central Reserve Police Force. Para 7 of the said Manual reads as under:

7. Promotion of personnel away on Deputation

The claim of officers and men who are away on deputation, foreign service etc. should be safe-guarded 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.

11. Mr. Sinha submitted, and in our opinion rightly so, 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 48.

12. In the result, this writ petition succeeds and is hereby allowed. The impugned orders/communications 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 in the Cadre of Senior Inspector Cadre Course. The petitioner shall on that basis be entitled for with all consequential benefits. The parties are left to bear their own costs.