

(2013) 03 DEL CK 0147

In the Delhi High Court

Case No : Writ Petition (C) 6583 of 2000

SI (CM) D.C. Tiwari and Others

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 14-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 03 DEL CK 0147

Hon'ble Judges : Sudershan Kumar Misra, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : N.L. Bareja, for the Appellant; Mansi Gupta, Advocate for Ms. Archana Gaur, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioners, who were recruited and were serving with Indian Tibetan Border Police Force (hereinafter referred to as ITBPF) at the relevant time, are challenging the Recruitment Rules of 1999 and Standing Order No. 10/2000 dated 27th July, 2000 issued by the respondents on the ground that it has adversely affected the service conditions, especially chances of promotion. Relevant facts for the purpose of this judgment are that the petitioners joined the ITBPF sometimes in 1970s. ITBPF was earlier a unit of Central Reserve Police Force (CRPF) and governed by the terms of its enactment. The separate enactment, the Indo Tibetan Police Force Act was brought into force in 1992 and the Rules including Rules of Recruitment were framed in 1994. The petitioners, as mentioned earlier, have been recruited to the ITBPF prior to coming into force of that enactment. In terms of the enactment and the Rules they were considered existing employees and assimilated in terms of the Rules as a part of the Force. The petitioners mentioned that certain service conditions had been formulated in 1984 and 1987 which had modified the existing system of promotion to higher ranks such as Head Constable and Sub-Inspector (CM). In terms of these Rules, to qualify for promotion to the post of Head Constable,

Departmental Test "C" should have been successfully cleared. Likewise for the post of Sub-Inspector (CM), the incumbent in the feeder cadre had to clear Departmental test "D". It is stated that in terms of the pre existing Rules, promotion to the post of SI (CM) was on the basis of seniority-cum-fitness. The petitioners mentioned about the fact that being unreserved category employees, they had to serve longer spells of service in the feeder cadre as compared with the reserved category candidates who used to normally secure accelerated promotion on account of abundance of vacancies in the higher cadre. Nevertheless, the criteria of seniority-cum-fitness was perceived as operating to the best satisfaction of the concerned employees in the SI (CM) cadre.

2. The petitioners argue that pursuant to the recommendations of the 5th Pay Commission made effective sometime in 1997, the order dated 10.10.1997 the pay scale of various cadres in the Central Police Organisations under the command and control of Ministry of Home Affairs were streamlined. By virtue of this order, the rank of L/Nk and Naiks were removed w.e.f. 10.10.1997. Consequent rationalization in the pay scale and rank structure, was undertaken aligning certain conditions within other police organizations which were declared as armed forces of the union i.e., BSF, CRPF and CISF.

3. In this background, the petitioners submit that on 31st July, 1999, the ITBPF revised the Recruitment Rules, and subsequently issued the impugned Standing Order No. 10/2000. In short, the petitioners' grievance with this subsequent development is that it altered their promotional chances. The existing criteria of seniority-cum-fitness for governing promotion to the post of Sub-Inspector (CM) was substituted with the requirement of incumbents in the feeder cadre having to qualify in a departmental test, titled as Departmental Test-"E".

4. Mr. Bareja argues that the imposition of new rules and applicability of standing order 10/2000 has adversely affected chances of promotion of the petitioners. He submits that they had a legitimate right to expect to be governed by the rules and service conditions which were in existence at the time when they joined the Force. If that had been operated and their career progression were continued in accordance with such existing rules, there would have been no complaint and grievance. Instead, by directing the petitioners and others desirous of promotion to the rank of Inspector (CM) to qualify in a departmental test, the respondent injected uncertainty. Learned counsel highlighted the fact that the petitioners at the time of the introduction of the new regime, had spent considerable period in the force-15-20 years, and could not obviously be expected to compete with the new entrants whose academic skills were sharper. It was submitted that, therefore, the Recruitment Rules to the extent they substituted the pre existing criteria of seniority cum fitness, are arbitrary and unreasonable and are liable to be quashed.

5. This court has considered the submissions of the petitioners. At the outset, there is no dispute about the fact that the petitioners are members of the Force and are therefore governed by the terms of employment which are now

embodied in Rules. Even otherwise, as public servants the terms of engagement or employment are not mere matters of contract. As held by the Supreme Court in its judgment reported as *Roshan Lal Tandon Vs. Union of India (UOI)*, a public servant has no vested or contractual right in regard to the terms of his service; the legal position of a Government servant is more of status than contract, and once appointed to the post or office, a Government servant acquires a status. His rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government.

6. The judgment *B.S. Vadera Vs. Union of India (UOI) and Others*, is also to the same effect. Later judgments too have consistently held that Rules can even be made retrospectively provided they do not take away or impair vested rights of the employee or public servant.

7. All these aspects were considered by yet another Constitution Bench in *Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others*, . The Court has reiterated the position and applied the Rule in *Roshan Lal Tandon* holding that "the relationship between the Government and its servants is not like an ordinary contract of service between a master and servant, but is something in the nature of status. It is urged that once appointed to a post or office, the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by Government and the Government servant has no vested right in regard to the terms of his service."

8. From the above, it follows therefore, that the introduction of a different standard to govern promotions; or the unilateral expression of the Government desiring to change the conditions of service, of the members of the Force, (governed by the terms of 1992 Act and the Rules framed there under) cannot be ipso facto, impeached.

9. From another perspective unless such a statutory policy is shown manifestly arbitrary or unreasonable, the Court would be circumspect in exercising its discretion and substituting its opinion. The petitioners have not shown how continued existence of their service conditions was in the nature of a vested right that could not have been altered to their disadvantage. Several authorities in the form of judgments of the Supreme court have upheld Rules that have changed condition of service including promotion rules. Having regard to these, the court is of the opinion that the challenge made out by the petitioners does not merit consideration. In any event, the nature of the changes brought about by the impugned rules are not fundamentally unfair or so manifestly arbitrary as to warrant interference under Article 226 of the Constitution of India.

10. In the light of the above discussion, this court is of the opinion that no relief can be granted in these proceedings.

11. Rule discharged. Petition is dismissed.