
(2007) 09 GAU CK 0019
In the Gauhati High Court

S.S. Khanna

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-09-2007

Acts Referred:

Border Security Force Act, 1968 — Section 141

Citation : (2009) 3 GLR 915 : (2008) 4 GLT 363

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.N. Sarma, J.—Alleging supersession in the matter of promotion to the rank of Assistant Commandant by the private respondents and in action on the part of the respondent authorities to consider the case of the petitioner for promotion in the light of the relevant promotion rules and alleging illegal deprivation of his promotion, the present writ petition has been filed by the petitioner on 26.2.1999.

2. I have heard Dr. H.K. Bhattacharjee, learned Counsel for the petitioner and Mr. P.K. Biswas, learned Assistant Solicitor General of India.

3. In nut shell, the case of the petitioner as projected in this writ petition is that he was appointed as Constable under Border Security Force (for short "BSF") in the year, 1968 and during the course of his service period in consideration of satisfactory service, he was promoted upto the rank of Subedar Clerk on 21.10.1991 the said post of Subedar Clerk is the feeder post for promotion to the rank of Assistant Commandant in BSF. While the petitioner became entitled for promotion to the rank of Assistant Commandant, the competent authority on the basis of the decision of the Departmental Promotion Committee (for short "DPC") held for the purpose did not promote the petitioner as he did not come up to the mark for such promotion in terms of bench mark provided under the relevant promotion rules. It is further alleged that the private respondent Nos. 6 to 10

though were junior to him in service promoted to the rank of Assistant Commandant excluding the petitioner. Failing to redress his grievance at the hands of the respondent authorities, the petitioner has filed this writ petition.

4. A counter affidavit has been filed on behalf of the respondent Nos. 1 to 5 justifying denial promotion of the petitioner to the rank Assistant Commandant. The petitioner has also filed an additional affidavit wherein he alleged that at the time of recording his ACR, two of the officers who were not the controlling officers of the petitioner for the required period had written his ACR, which they ought not to have wrote and instead they would have written his PCR, in that event he would have come within the zone of consideration. The specific contention of the petitioner is that his controlling officer Shri S.N. Sarma, Deputy Commandant, was transferred from the unit of the petitioner on 18.11.1995. Similarly, Shri S.K. Chakraborty, 2nd-in-Command, who was his controlling officer released from the unit on 24.10.1995. The petitioner not having been under the control of these two officers they would not have written his ACR, which stood in the way of his getting promotion although he was senior to the private respondents.

5. A reply has also been filed by the respondent authorities on the aforesaid additional affidavit and the stand of the respondent authorities is that even if the said two officers instead of writing ACR they had written PCR of the petitioner in that event also the petitioner would not have been promoted.

6. Promotion to the rank of Assistant Commandant is regulated and guided by a set of statutory rules, namely BSF (Assistant Commandants) Recruitment Rules, 1985, issued in exercise of powers conferred by Clause (b) of Sub-section (2) of Section 141 of the Border Security Force Act, 1968. The method of recruitment to the post Assistant Commandant is provided under Rules 3 and 4 and the details thereof have been described in the schedule appended thereto. As per these rules 50% of the post of Assistant Commandants are to be filled up by way of promotion and 50% are to be filled up by way of direct recruitment. In case the post earmarked for filling up by way of promotion no specific qualification has been provided. But the candidate must pass Matriculation or Higher Secondary Examination passed or an equivalent of a recognized Board of Education/ University or Border Security Force Certificate of Education Class-I. To be qualified for promotion, it is also one of the conditions that a candidate should have five years experience in the Substantive Subedar including combatised ministerial Subedars and such promotion is to be effected on the recommendation of the DPC. The procedure to be adopted by the DPC is prescribed in the Office Memorandum No F. 22011/5/86-Esstt-(D), dated 27.3.1997. As per the aforesaid Office Memorandum, the bench mark for promotion is "Good".

7. In the instant case, what is to be found out from the response of the respondent authorities is that the case of the petitioner for promotion to the post of Assistant Commandant was considered by the DPC held on 12.12.1997 and

DPC found that the petitioner was graded as "Good" on the basis of confidential report whereas the private respondents were graded as "Very Good". Since the private respondents were provided with higher grade than the petitioner, the DPC recommended the private respondents who were graded as "Very Good".

8. Admittedly, the bench mark for promotion to the rank of Assistant Commandants is "Good" and in terms of the office memorandum dated 27.3.1997, the promotion to the rank of Group-C, Group-B and Group-A posts upto and excluding the level of Rs. 3,700- Rs. 5,000/-, the bench mark would be "Good" and will be filled up by the method of selection-cum-seniority. In terms of para 2.1.1., Clause (iii), the suitability of the officers for promotion to the post for which the bench mark has been determined as "Good" would grade the officers as "Good" "Average and "Unfit" only and only those officers obtaining the grading of "Good" will be included in the panel in the order of their seniority in the lower grade subject to availability of vacancies.

9. As contended in the counter filed by the respondent authorities, the private respondent Nos. 6 to 10 were promoted as they were graded as "Very Good" although they were junior to the petitioner. In fact, the office memorandum dated 27.3.1997 prescribed the procedure to be adopted by the DPC for promotion. There is no provision for grading officers as "Very Good". Accordingly, in terms of the relevant procedure and the relevant promotion rules prescribed by the authorities, the petitioner comes within the zone of consideration having graded him as "Good". After having so graded, the petitioner being the senior most, he could not have been superseded by those private respondents.

At this stage, Dr. Bhattacharjee submits that few months back the petitioner has been promoted to the rank of Assistant Commandant. Accordingly, the grievance of the petitioner has been partially fulfilled. But the private respondents having been promoted prior to the aforesaid promotion of the petitioner, they would naturally be treated as senior to the petitioner for the purpose of further promotion and other service benefits.

10. As indicated above, the petitioner was not promoted and allowed to be superseded by the private respondents in derogation of the relevant promotion rules. The petitioner, on own showing of the respondents was entitled to be promoted as Assistant Commandant in terms of the relevant rules and guidelines holding the field. Accordingly, the promotion of the petitioner is required to be treated from the date when his juniors were promoted. The respondent authorities shall treat the petitioner as promoted from the date on which his juniors, i.e., private respondent Nos. 6 to 10, were promoted, and shall issue necessary order in this regard and his seniority above the respondents would be considered for providing necessary further promotion and other service benefits as may be available under the rules.

However, the petitioner will not be entitled to any arrear back wages but his pay and allowances shall be fixed notionally from the date on which his juniors were

promoted.

12. Subject to the aforesaid observations and direction, this writ petition stands allowed to the extent indicated above.