
(2013) 08 GAU CK 0082
In the Gauhati High Court
Case No : Writ Petition No. 6421 of 2006

Sujit Bhattacharjee

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : (2013) 4 GLT 713

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : C. Choudhury, Mr. N. Goswami and Mr. A.K. Deka, for the Appellant;
N. Borah, CGC, for the Respondent

Judgement

T. Vaiphei, J.—The sole question, which falls for consideration in this writ petition is whether the petitioner, who is found to be in the medical category of SHAPE-2 can be considered for promotion to the post of Sub-Inspector by virtue of Clause 17(b) of the SO-1/2003, issued by the Director General, CRPF. Both Mr. C. Choudhury, learned counsel for the petitioner and Mr. N. Borah, learned Central Government Counsel have been heard extensively. The controversy arose on the following facts and circumstances. The petitioner is serving as Assistant Sub-Inspector (Ministerial) Group "C" staff in the Central Reserve Police Force (for short CRPF), Guwahati. By the office order dated 31.10.2002 of the DIGP, CRPF, his case was to be considered for financial upgradation by the Departmental Screening Committee under the Assured Career Progression Scheme (for short ACP Scheme). As he was found to be eligible, his upgradation was to take effect w.e.f. 30.03.2003 provided that he was categorized as medical category AYE on the due date. The last categorization of the petitioner was held on 13.11.2002, wherein, he was categorized BEE (temporary for 12 weeks). On 19.06.2003, he was assigned for official duty to liaise with the Senior Auditor in the office of the Auditor General Beltola, Guwahati in connection with settlement of audit paras of the Group Centre, CRPF. Unfortunately, he met with an accident on the way while riding on a scooter and sustained fracture injuries on his person. While he was

being referred from the Base Hospital-III, Group Centre, CRPF, Amerigog to Guwahati Medical College Hospital his signature was obtained on a leave application showing that he was applying for leave for 1 day as on 19.06.2003. He resumed his duty on 23rd October, 2003 after he was certified to be fit. It would appear that during the Annual Medical Examination for the years 2003-2004, he was categorized SHAPE-I (S1 H1 A3 P1 E1) (T-24) and SHAPE-II (S1 H1 A2 P1 E1) respectively. He was, accordingly, not considered for promotion from the post of Assistant Sub-Inspector (Ministerial) to Sub-Inspector (Ministerial) by the DPC for the year 2004 citing "lower medical category". He promptly submitted his representation to the Addl. DIGP, Group Centre, CRPF, Guwahati on the basis of the SO-1/2003, claiming promotion to the rank of Sub-Inspector with consequential benefits or at least financial benefits under the ACP Scheme.

2. It may, at this stage, be noted that the DIGP, CRPF, Guwahati on 14.11.2005, had recommended to the IGP, NE Sector, Shillong that the petitioner was eligible for benefits under paragraph 17(b) of SO 1/03. This prompted the Directorate General of CRPF to raise the query as to how the petitioner was on government duty when he had taken casual leave on 19.6.2003 vide his letter dated 11.3.2006. The clarification to that effect given by the petitioner did not improve his case since the Director General, CRPF took the view that the petitioner was on casual leave on 19.06.2013 and was not, thereafter, on active duty on that day and that the provision of Para-17(b) of SO-1/2003 was admissible only to officer and men injured due to accident while on active government duty. Thereafter, several correspondences were exchanged between the petitioner and the officials, which did not result in redressing his grievance, whereupon this writ petition has been filed.

3. The case of the petitioner is that he had already completed more than the statutory period of 12 years in 2003 itself and, as such, he has been illegally denied of financial upgradation under the Assured Career Progression with effect from 30.3.2003 and to the next higher rank of Sub-Inspector (Ministerial) from the date when his colleagues and juniors were promoted. In this process, his juniors have also stolen a march over him. The writ petition is opposed by the respondent authorities, who have filed their affidavit-in-opposition. The stands taken by the respondents is that the financial benefits of the ACP Scheme, which was due to the petitioner from 30.03.2003, could not be made available to him, inasmuch as he could not make the medical grade of AYE or SHAPE-1. It is also the case of the respondent authorities that on 19.06.2003, the petitioner have taken a casual leave for 1 day due to domestic problem, but was, nevertheless, asked to visit the office of the Accountant General, Assam on his way to home in connection with settlement of pending audit paras of the Group Centre, CRPF, Guwahati since he had a good rapport with the staff of the office of the Accountant General. It was on that day that the accident in question, took place. It is the specific case of the respondent that as a casual leave is not a recognized leave, he could not be treated was on duty on that day. It is also contended by

the respondent that as he was not on duty on that day, the relaxation provision available under Clause 17(b) of the SO-1/2003 cannot be invoked by him and the benefit of ACP Scheme was correctly denied to the petitioner.

4. The contention of the learned counsel for the petitioner is that the vague stance taken by the respondent authorities in their affidavit-in-opposition, particularly, in para 19 will go to show that the petitioner was all along eligible the ACP and for consideration of promotion to the post of Sub-Inspector (Ministerial) by virtue of Clause 17(b) of SO-1/2003 and that these benefits have been denied to him on flimsy grounds, which has absolutely no basis. According to Mr. Choudhury, the respondents have not made any categorical assertion that the petitioner was not on active duty on the date of accident and, as such, the case set up by them that the petitioner was not on active duty on that day is misconceived. The submission of the learned counsel is that once it is held that the stance taken by the respondent authorities that Clause 17(b) of the SO-1/2003 cannot be invoked in the case of the petitioner, does not hold water, there is, therefore, no impediment in granting the ACP and promotion to the petitioner. Refuting the contention of the learned counsel for the petitioner, the learned Central Government Counsel particularly stresses the fact that Clause 17(b) of the SO-1/2003 is regulated by the subsequent Clause 17(c) and so read, the medical category of the petitioner cannot but be SHAPE-2, thereby making him ineligible to take the benefit of the ACP Scheme or promotion. He also submits that as per the final orders of the Court of Enquiry passed by the Addl. DIGP, Group Centre, CRPF, Guwahati on 05.09.2003 as the accident occurred while performing government duties, if he was subsequently found unfit for government service in the later stage because of the injuries sustained by him, he will be entitled for all the service benefits, such as pension and gratuity admissible to a government employee, but will not be entitled to benefits like promotion, financial upgradation under ACP Scheme, etc. He, therefore, strenuously urges this Court to dismiss the writ petition, which has no merit.

5. On perusing the pleadings of the parties and after hearing the learned counsel appearing for the rival parties, it becomes obvious that the question, which falls for consideration in this writ petition, is whether the petitioner was performing an official duty when the accident took place on 19.06.2003. The case of the petitioner is that as the Regular Fund Cashier of Group Centre, CRPF had taken two days casual leave, he was assigned the additional duty of Fund Cashier on 19.06.2003 and 20.06.2013; that on 19.06.2003, the then Administrative Officer and the Head Clerk had informed him that as per office note dated 18.06.2003, he was deputed to liaise with the Senior Auditor, Auditor General, Beltola, Guwahati to ascertain the requirement of certain documents and derailment of the staff of the Sr. Auditor, as well as, the status of pending audit paras of the Group Centre, CRPF and that he was, accordingly, ordered to proceed to the office of the Senior Auditor, Beltola for that purpose on 19.06.2003. It was, on that day that he met with the accident while proceeding from Group Centre towards the office of the Auditor General at Beltola, which resulted in causing

multiple fractures on his left elbow and severe bleeding from head, foot and mouth. The respondent authorities in their affidavit, did not deny that the petitioner was asked to visit the office of the Accountant General, Beltola in connection with settlement of pending audit paras of the Group Centre as well as for ascertainment of some information from the Senior Auditor of the Accountant General office. Their main case is that he had taken casual leave on that day to attend to some urgent domestic problems. In my opinion, once a person is assigned official duty even if he was on casual leave, it cannot be said that he was not on active duty.

6. Moreover, as held in Swamy's Handbook 2010, casual leave is not a recognized form of leave and is not subject to any rules made by the Govt. of India. An official on Casual Leave is not treated as absent from duty and pay is not intermitted. The fact that an official on Casual Leave is not to be treated as absent from duty, coupled with the fact that the petitioner was given a particular assignment to do official work in the office of the Auditor General, Beltola, Guwahati would go to show that that he was on active duty on 19.06.2003 when the accident causing injuries to him took place. Once it is held that the petitioner was on active duty when he met with the accident, he could not be denied of the relaxation of SHAPE-1 medical category provided for in Clause 17(a) of the SO-1/2003, issued by the Director General, CRPF, which is in the following terms:-

17. The relaxation in SHAPE-1 medical category will be admissible to the following two categories of CPMFs personnel to the extent detailed below:-

(b) Officers/men who are wounded/injured during field firings/accidental firings/explosion of mines or other explosive devices and due to accidents while on active Government duty in India or abroad will be eligible for promotion in the following SHAPE categories:-

i) S1 H1 A2 P1 E1

ii) S1 H1 A1 P2 E1

iii) S1 H2 A1 P1 E1

iv) S1 H1 A1 P1 E2

V) S1 H2 A1 P1 E2.

7. In other words, though the petitioner was found to be in SHAPE-2 medical category, he was, by virtue of Clause 19(b) of SO-1/2003, deemed to be in SHAPE-1 medical category as he was injured due to accident while on active government duty for promotion to the post of Sub-Inspector (Ministerial) and for the financial upgradation. In my opinion, the decision of the respondent authorities in denying the financial upgradation under the ACP Scheme and/or promotion to the petitioner for the post of Sub-Inspector (Ministerial) suffers from the vice of non-application of mind and is contrary to the provision of

Clause 17(b) of the SO-1/2003. This calls for the interference of this Court. For what has been stated in the foregoing, this writ petition succeeds. The respondent authorities are, accordingly, directed to consider the case of the petitioner for promotion from the post of Assistant Sub-Inspector to Sub-Inspector with effect from the date when his juniors were promoted to that post and extend the benefits of financial upgradation under the ACP Scheme in the relevant year. The entire exercise shall be carried out by the respondent authorities within a period of 3 months from the date of receipt of the certified copy of this order. The petition stands disposed in the above terms. No costs.