

(2002) 11 DEL CK 0151
In the Delhi High Court
Case No : C.W. No. 6646 of 1999

Surender Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Citation : (2003) 1 SLJ 98

Hon'ble Judges : Jiwan Dass Kapoor, J;B.A. Khan, J

Bench : Division Bench

Advocate : Ashok Sapra, for the Appellant; Arvind Shah, for the Respondent

Final Decision : Allowed

Judgement

J.D. Kapoor, J.—Petitioner joined the service of R-2 CISF as a Constable on 3rd January, 1985. Some time in 1991 he was awarded punishment of censure on the allegation that at the time of duty he was found sleeping. In or about the end of February or beginning of March, 1991 the office of R-2 took out the notice that personnel already working as Constable CISF would appear in any of the recruitment camps, scheduled to be held on 25th March, 1991 at different places in the country for recruitment to the post of the Head Constable/Driver-cum-Pump Operator (Fire). There was advertisement for open selection from the public in general also. The petitioner was one of the successful candidates and joined his duties as Head Constable on 16th November, 1991 and was sent to a training camp at Fire Service Training Institute, Deoli, Rajasthan. Incidentally, he received second censure when he was posted as HC on account of his having lost Identity Card though he took the plea that the said Card was lost when he was on active duty of extinguishing the extensive fire in the Indian Petro Chemical Limited Plant, Nago Thane.

2. However in 1996 he was superseded for the post of Assistant Sub-Inspector which was through promotion as he could not obtain requisite qualifying 50 marks due as 3 marks were deducted on account of minor punishment of

"censure" awarded to him when he was a Constable, and 3 more marks were also deducted as he was again administered punishment of "censure" as Head Constable. His total tally reached 47 as against 50. Feeling aggrieved he made representation to the Director General but it did not find favor with him and was rejected. Hence this petition.

3. Guidelines for the Departmental Promotion Committee for non-gazetted personnel of the CISF are contained in circular No. Fire/03/94. The eligibility from amongst the Head Constables (Fire) and Head Constable (Driver)/Operator/ Fire) for promotion to the rank of ASI is as under:-

"From amongst Head Constables (Fire) and Head Constable (Dvr/Optr/Fire) who had completed 5 years regular service in the rank and have successfully qualified the Promotion Cadre/Course While counting the qualifying service in the rank, the regular service rendered by a person in the equivalent rank of executive cadre may also be taken into consideration. The zone of consideration/cut off year in order of seniority will be issued by Force Hqrs. In case of personnel observed from Public Sector Undertaking etc. as opted ,the service rendered by them in the grade equivalent to HC(Fire) will also be counted."

4. Admittedly as per recruitment rules the vacancies of ASI's are to be filled from amongst Head Constable (Driver)/Operator(Fire) with 5 years regular service as Head Constable(Fire)/Head Constable(Driver)/ Operator(Fire) and having successfully completed the course, training as may be prescribed by Central Government from time to time in the ratio of 1:1 and in the absence of Head Constable/Driver/Operator all vacancies are to be filled up from Head Constable(Fire). According to the respondent on completion of 5 years regular service by the petitioner, his suitability for promotion to the post of ASI was assessed Along with others by the Departmental Promotion Committee (DPC) held in the year 1996. The DPC assessed him as "Not Yet Fit" on the basis of record of service and, Therefore, his name could not be included in the list of HC/ DCPO up to PSL No. 105-B whose promotion to the rank of ASI/Fire were released against the year 1996.

5. The next DPC was held in the year 1997. It considered the case of the petitioner Along with others and declared him "fit" but he could nt be promoted for want of vacancies as per the panel of 1977, HC/DCPO up to PBL No. 72 only were promoted and adjusted against the vacancies of ASI.

6. Main plank of the petitioner"s case is that not only the declared policy of the respondents prescribes that punishment of censure does not come in the way of promotion of an official but also the punishment of censure awarded while functioning as Constable could not have been taken into account as recruitment to the post of Head Constable was the direct recruitment and not a promotion from the rank of Constable.

7. Admittedly the petitioner was selected as direct recruit to the post of Head Constable as a Departmental Candidate though 50% posts were also filled up

from outside through open competition. Once the petitioner was selected as a direct recruit as Head Constable his past service as Constable though could have been counted for the purpose of pensionary benefits but any censure or any kind of punishment awarded to him as a Constable was rendered inconsequential for the simple reason that the punishment of censure awarded to him during his tenure as a Constable was taken into consideration while selecting him to the post of Head Constable. Thus the appointment to the post of Head Constable by way of competition wiped off any censure or any other punishment incurred by the petitioner as a Constable for the purpose of his future promotions from the rank of Head Constable.

8. Apart from this it was not open to the respondents to digress from the eligibility criteria for promotion to the rank of ASI (Fire) from Head Constable Constables(Fire) and Head Constable (Driver)/Operator/ Fire). As per this criteria only those Head Constables were eligible to be considered who had completed five years regular service in the rank of Head Constable and while counting the qualifying service the regular service rendered by a person in the equivalent rank of executive cadre was also to be taken into consideration. So much so the zone of consideration i.e. cut off year in order of seniority was also prescribed. Again the vacancies of ASI's were to be filled up from amongst the Head Constable alone. Having once laid down this eligibility criteria or essential conditions for promotion to the rank of ASI from the rank of Head Constable the respondents were precluded from deducting three marks for the censure awarded to the petitioner when he was Constable and that too more than 10 years back. By resorting to this methodology the respondents have deprived the petitioner of his rightful claim of promotion to the rank of ASI on the basis of the record or performance as Head Constable.

9. Respondents acted as if they were promoting the petitioner from the rank of Constable to Head Constable and, Therefore, penalised the petitioner by deducting three marks on account of the censure administered to him when he was posted as Constable. This monumental lapse on the part of the respondents have caused the petitioner to pay through his nose. On the one hand he was not approved for promotion by the DPC held in 1996 by virtue of deducting three marks from his total tally on account of punishment of censure as a Constable. While on the other hand in the next DPC held in the year 1997 when he was declared fit for promotion as ASI he was not promoted from the panel of 1997 due to non-availability of sufficient number of vacancies.

10. The obvious result of the aforesaid discussion is that the deduction of three marks while preparing the panel of 1996 on account of punishment of censure awarded to the petitioner when he was a Constable was invalid, unwarranted and uncalled for.

11. In the result the petition is allowed in the following terms:-

"Petitioner's case for promotion to the post of ASI from the post of Head

Constable is to be re-considered for the purpose of panel of promotion prepared by the DPC held in 1996 on the basis of record/ACRs as Head Constable and if he succeeds for the promotion he shall be assigned a proper seniority position pursuant thereof. All consequential benefits depending upon the result will accrue"