
(1996) 03 SC CK 0060

In the Supreme Court Of India

Case No : Civil Appeal No. 4742 of 1996 Arising out of SLP © No. 13573 of 1995

Union of India (UOI) and Another

APPELLANT

Vs

S.S. Kothiyal and Others

RESPONDENT

Date of Decision : 15-03-1996

Acts Referred:

Citation : (1998) 8 SCC 682 : (1999) SCC(L&S) 251

Hon'ble Judges : J. S. Verma, J;B. N. Kirpal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. Respondent 1 S.S. Kothiyal was an Assistant Commandant in the Border Security Force since 1967 and on being considered for promotion as Deputy Commandant in 1970, he was not found fit and, therefore, was not promoted. He was again considered for that promotion in 1971 but was not promoted because he was not found fit. Later, in 1972, he was found fit for promotion as Deputy Commandant and was so promoted. In 1975, he was promoted further as Commandant. It was several years even thereafter in December 1978 that he filed a writ petition in the Rajasthan High Court challenging his non-promotion in the year 1970 to the post of Deputy Commandant claiming consequential benefits. That writ petition was allowed by the learned Single Judge of the High Court who further directed the actual promotion of Respondent 1 to the post of Deputy Commandant w.e.f. 1970 instead of merely directing a fresh consideration of his case at that point of time. Further consequential benefits were also directed to be granted. The special appeal to the Division Bench of the High Court was dismissed upholding the judgment of the learned Single Judge. Hence, this appeal by special leave.

3. In our opinion, the admitted facts of this case alone are sufficient to reverse the judgment of the learned Single Judge as well as that of the Division Bench of

the High Court. According to the version of Respondent 1 himself, his representation against non-promotion as Deputy Commandant was rejected on 10-6-1971, the second such representation made on 19-8-1971 was rejected on 4-11-1974 and the third representation made on 12-4- 1977 was rejected on 11-7-1977. It is obvious that on rejection of his representation in June 1971, there was no occasion for Respondent 1 to wait any longer to challenge his non-promotion and, therefore, the filing of the writ petition 8 years thereafter in December 1978, was highly belated and deserved to be rejected on the ground of laches alone in view of the settled principles relating to interference in service matters of this kind in exercise of the power of judicial review. The learned Single Judge as well as the Division Bench of the High Court completely overlooked this aspect. The fact that Respondent 1 waited for several years till he was actually promoted as Deputy Commandant in 1972 and even as Commandant in 1975 and more than three years elapsed even thereafter before he had filed the writ petition, is itself sufficient for the rejection of the writ petition,

4. For the aforesaid reason, the appeal is allowed. The impugned judgments of the learned Single Judge as well as of the Division Bench of the High Court are set aside resulting in dismissal of the writ petition filed by Respondent 1 in the High Court. No costs.