
(2008) 06 GAU CK 0030
In the Gauhati High Court
Case No : Writ Appeal No. 416 of 2007

Union of India (UOI) and Others

APPELLANT

Vs

Brij Pal Tanwar

RESPONDENT

Date of Decision : 02-06-2008

Acts Referred:

Citation : (2010) 4 GLR 801

Hon'ble Judges : Jasti Chelameswar, C.J; Anima Hazarika, J

Bench : Division Bench

Advocate : H. Rahman and C. Baruah, for the Appellant; M. Bhuyan, for the Respondent

Judgement

Jasti Chelameswar, C.J.—Aggrieved by judgment dated 18.9.2007 in WP(C) No. 87/07 the respondent therein preferred the present appeal.

2. The sole respondent herein joined the Indian Air Force on 4.11.1988 as a Regular Airman. Presently he is serving as a Sergeant. The complaint of the respondent/writ petitioner in the writ petition was that the Airmen junior to him were illegally included in the promotion panel for the year 2006-07 for promotion to the next higher grade of Junior Warrant Officer (JWO) and he was illegally excluded from the consideration for promotion on the basis of certain instructions contained in a Circular dated 23.(sic)2002 issued by the Chief of Air Staff. According to the petitioner such instructions are in contravention of the guidelines issued by the Government of India from time to time known as "Air Force Instructions". According to the petitioner the instructions issued by the Government of India are statutory in nature whereas the instructions issued by the Chief of the Air Staff are unauthorized by law.

3. Admittedly, the exercise undertaken by the appellants herein in connection with preparation of the panel for promotion to the post of JWO in the year 2006-07 was an exercise to make temporary promotions, as they are known in the context of the "civil services" in this country. The Armed Forces, more

particularly the Air Force, apparently adopts a different jargon. Such promotions are termed as-"Acting (Paid) Promotions". The substance of the matter is that they are not substantive promotions but only temporary promotions.

4. The relevant instruction of the Government of India in the context of promotion to the post of JWO is as follows:

Promotion to Junior Warrant Officer will be made by selection within the authorised establishments and will be confined to Sergeants who have served in the rank for four years or have completed 16 years total service, whichever is later.

Whereas the instructions issued by the Chief of Air Staff, insofar as they are relevant for the present purpose, are as follows:

All airmen who have completed the minimum length of service as mentioned below for promotion to the rank of JWO and above as on 30th June of the year (proceeding the promotion panel), would be considered for promotion (e.g., 30th June, 2003 for promotion year 2003-04).

Rank

Min length of service

(a) Sgt to JWO

17 years

(b) JWO to WO

23 years

(c) WO to MWO

28 years

In substance, they prescribe a minimum total service of 17 years for being considered for promotion to the post of JWO.

5. The learned Judge by the judgment under appeal came to the conclusion that the instructions issued by the Chief of Air Staff are inconsistent with the instructions issued by the Government of India and unauthorized by law. Therefore, the learned Judge directed that the case of the respondent/writ petitioner be considered for promotion without any reference to the instructions issued by the Chief of Air Staff.

6. We are of the opinion that the writ petition itself is without any cause of action. It is to be mentioned here that nowhere in the writ petition the petitioner alleged that his case was not considered for promotion while considering the cases of officers junior to him. On the other hand in the affidavit in opposition filed by the respondents (appellants herein) in the writ petition it is categorically stated that the case of the writ petitioner/respondent was also considered for

promotion during the year 2006-07. At paragraph 6 of the affidavit in opposition it is stated as follows:

(6) That with regard to the statements made in paragraph 5 of the petition, the deponent states that the petitioner was considered for promotion to next higher rank during the promotion year 2006-07 in grade III as per his length of service. Since the petitioner did not make merit within the available vacancies in the trade, rank and grade, he was not empanelled in the promotion panel. Airmen junior to the petitioner who could, make merit within the available vacancies were empanelled.

It is clear from the above extract that the case of the petitioner was also considered and as the competent authority making the assessment of suitability of the petitioner and others who are considered for promotion found that the petitioner is less meritorious than the other who are actually promoted. At the cost of repetition it must be stated that the said promotions were temporary in nature.

7. An important aspect of the matter is that neither the writ petitioner nor the Sergeants who are junior to the writ petitioner but considered more meritorious and promoted did actually complete four years of service as Sergeants, as contemplated under the instructions issued by the Government of India. Nonetheless, all of them were considered and on an assessment of their relative merits the writ petitioner was considered not fit for promotion.

8. Such being the case it is really a matter of no consequence whether the instructions issued by the Chief of Air Staff are inconsistent with the instructions issued by the Government of India and unauthorized by law because the petitioner was not denied his promotion on the ground that he did not satisfy the requirements of the instructions given by the Chief of Air Staff but denied on the ground that he is less meritorious than the others who are eventually promoted.

9. As of now the question of law regarding the legality of the instructions issued by the Chief of Air Staff, insofar as the writ petitioner is concerned, is purely academic because by now the petitioner is clearly eligible to be considered for promotion even according to the standards stipulated by the instructions issued by the Chief of Air Staff. In the circumstances we do not see any necessity to examine the legality of the instructions issued by the Chief of Air Staff which is questioned in the writ petition as such an exercise would be academic in the context of the respondent/writ petitioner.

10. In the circumstances the judgment under appeal is modified directing the appellants to consider the case of the respondent/writ petitioner for promotion to the post of JWO as and when such an exercise is undertaken by the appellants and decide the same in accordance with law.

11. The appeal is accordingly disposed of but in the circumstances without costs.