

(2011) 08 DEL CK 0084
In the Delhi High Court
Case No : Writ Petition (C) 8640 of 2010

Yadunath Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

BSF (Chief Law Officers and Law Officers Recruitment and Conditions of Service) Rules 1999 — Rule 7

Citation : (2011) 08 DEL CK 0084

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Rekha Palli and Punam Singh, for the Appellant; Rajdipa Behura, for the Respondent

Judgement

Pradeep Nandrajog, J.

1 The facts are not in dispute and thus we may note the same in brief.

2 Joining service under BSF on 7.9.1970, Yadunath Singh earned a promotion and became an Assistant Commandant on 6.11.1998. He earned another promotion when he became a Deputy Commandant on 28.6.2005.

3 He was taken on deputation in the Law Department as a Law Officer Grade II on 13.7.2005 and was permanently absorbed in the law cadre as Law Officer Grade II on 19.12.2006.

4 As per BSF (Chief Law Officers and Law Officers Recruitment and Conditions of Service) Rules 1999, vide Schedule II, eligibility to be promoted as Law Officer Grade I was as under:

(a) Law Officer Grade II with 9 years" regular service in the grade; failing which

(b) Law Officer Grade II with 4 years" regular service in the grade and having total 9 years" regular service in the pay scale of ` 10,000-15,200/-in the Force with total 9 years experience in legal affairs.

5. Yadunath Singh admittedly did not have the requisite service either as per sub-para (a) or sub-para (b) above. In spite thereof, he and persons junior to him, but who were otherwise eligible having requisite service, were considered for promotion at a DPC which met on 12.1.2001.

6. Yadunath Singh was empanelled for promotion and realizing that he had yet to attain the eligibility in terms of qualifying service matter was sent to the Cadre Controlling Ministry for relaxation to be granted in favour of Yadunath Singh.

7. We may highlight that the department very strongly recommended that relaxation should be granted to Yadunath Singh.

8. The Cadre Controlling Ministry took a stand that in terms of OM dated 25.3.1996, relaxation could not be granted. The undernoted extract of the office memorandum was held against the Petitioner:

Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying/eligibility service.

9. The Recruitment Rules in question i.e. BSF (Chief Law Officers and Law Officers Recruitment and Conditions of Service) Rules 1999, vide Rule 7 thereof, contains a power to relax the rules.

10. Rule 7 reads as under:

7. Power to relax - Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.

11. It is apparent that the power under Rule 7 is to accord relaxation from any of the provisions of the rules with respect to any class or category or persons where the Central Government is of the opinion that it is necessary or expedient so to do.

12. This power is quite independent of the requirement of OM dated 25.3.1996 which simply states that where juniors have completed the qualifying/eligibility service and are being considered for promotion, persons senior to them would also be considered provided the seniors are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or 2 years; whichever is less.

13. We clarify. The OM would come into play where persons junior, having attained the qualifying service, are considered for promotion and it is found that a person senior has not achieved or attained the qualifying service. Said person

would become eligible to be considered for promotion, if as per the OM, the person concerned has a shortfall in service being not more than half the qualifying service or 2 years; whichever is less. The OM does not envisage a situation where the eligibility condition has to be relaxed.

14. Power under Rule 7 is an entirely different power and operates in a totally different area.

15. Power to relax the rule operates in an area where the facts warrant, either due to necessity or expediency, relaxation being accorded from the provisions of the rules.

16. Since the Cadre Controlling Ministry has misdirected the inquiry and has treated the case as if OM dated 25.3.1996 was attracted; neither BSF nor the Petitioner was wanting a benefit under the said OM; what was sought from the Cadre Controlling Ministry was the Central Government's power of relaxation under Rule 7 to be exercised, we dispose of the writ petition quashing the order dated 28.4.2010 rejecting the request that power be exercised under Rule 7 of the Rules: We issue a mandamus to the Cadre Controlling Ministry to re-consider the matter with reference to the power of the Central Government under Rule 7 of the BSF (Chief Law Officers and Law Officers Recruitment and Conditions of Service) Rules 1999.

17. Needful would be done within a period of 8 weeks from today.

18. No costs.

19. Dasti.