

(2014) 09 DEL CK 0055

Delhi High Court

Case No: W.P.(C)No.947/2013

Jasbir Singh Gill

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Sept. 12, 2014

Hon'ble Judges: Gita Mittal, J; Deepa Sharma, J

Bench: Division Bench

Advocate: R.K. Saini, Advocate for the Appellant; Sumeet Pushkarna, CGSC and Jasmeet Singh, Advocate for the Respondent

Judgement

Gita Mittal, J.

By way of the instant writ petition, the petitioner challenges the action of the respondents in rejecting the recommendations of the Departmental Promotion Committee ("DPC" hereafter) with regard to the petitioner for promotion to the post of Additional Director General of the Central Reserve Police Force after relaxation of the prescribed residency period and thereafter approving similar recommendations in identical circumstances of a later DPC, after the retirement of the petitioner on superannuation, and granting promotion to the said junior even though the requisite relaxation in the case was for a period longer than that required by the petitioner. The petitioner is aggrieved by the denial of promotion to the said post on the ground that the deprivation was effected in an illegal, arbitrary, discriminatory and unjust manner and that the action reflected bad faith on the part of the respondents. The petitioner has prayed for grant of said promotion with retrospective effect contending that the same would not have affected the later promotion to his junior as the petitioner has since superannuated from service.

2. We have heard Mr. Rakesh Saini, Advocate for the petitioner and Mr. Sumeet Pushkarna, Standing Counsel for the Central Government extensively in the matter who took us through the record.

3. The facts giving rise to the instant writ petition are within the narrow compass and are briefly noted hereafter. The petitioner joined the Central Reserve Police

Force ("CRPF" hereafter) on the 11th September, 1972 as a Deputy Superintendent of Police. After a meritorious and decorated service, he came to be promoted on 1st of May, 2010 to the rank of the Inspector General of Police ("IGP").

4. It is an admitted position before us that on the 1st of April, 2011, the petitioner was the senior most officer in the CRPF and was eligible for promotion for cadre officers to the next higher post of Additional Director General (ADG) against the vacancy for the year 2011 and 2012.

5. The recruitment rules for promotion to the post of Additional Director General prescribed the following:

Thus the rules for promotion to the post of Additional Director General required 30 years Group ♦ A service out of which three years should be in the rank of Inspector General of Police as the eligibility condition. The period of three years in the rank of Inspector General of Police is referred to as the "residency period".

6. It is pointed out that for the year 2011-2012, three officers, namely, Shri Srikant, Inspector General of Police, the present petitioner J.S. Gill and Shri A. Punnuswamy were eligible for promotion to the rank of the Additional Director General. The respondent no.3 however forwarded only the name of Shri Srikant.

7. The Department of Personnel and Training ("DOP&T" hereafter) vide its Memo No. 22011/9/98/Estt.(D) dated 8th September, 1998 had prescribed a model calendar for Departmental Promotion Committee ("DPC" hereafter) prescribing that the process of the DPC has to start at least six months before actual start of the vacancy year. As per this schedule, for the year 2011-2012, process should have started by the 15th of July, 2010.

8. It is on record that the process was started timely only for Shri Srikant, Inspector General of Police who was granted relaxation of the six months in the requirement of the residency period. The DPC was held in the month of December, 2010 and he came to be empanelled as Additional Director General on the 15th of February, 2011. Shri Srikant was promoted as Additional Director General on the 1st of April, 2011 which was the very date on which the post was vacant. Shri Srikant also retired on the 30th of September, 2011.

9. On the 1st of October, 2011, a vacancy arose for the post of Additional Director General on account of superannuation of Shri Srikant on 30th September, 2011. By this date, the petitioner had completed one year five months service as Inspector General of Police.

10. This post was kept vacant till 22nd March, 2012, while the petitioner was permitted to retire on the 31st of January, 2012.

11. Despite the vacancy on the 1st of October, 2011 on the retirement of Shri Srikant, which fact was known well in advance to the respondents, no action was

taken till the petitioner was compelled to make a representation dated 25th of March, 2011 with regard to relaxation of the residency period for his consideration. The petitioner pointed out the aforesaid instances to the respondents wherein relaxation in the residency period had been granted. Applicable CRPF Group A (GD) Officer Recruitment Rules, 2010 empowered the Central Government to relax the provision of the rules with respect to any class or category of persons.

12. The petitioner had also placed several awards received by him supporting his merit. It was pointed out that promotion to the rank of Inspector General of Police is earned at the fag end of service after rendering more than 35 years of service and that it was not possible to complete the residency period as promotion to the rank of Inspector General and if the Cadre Controlling Authority does not recommend relaxation in residency period of Inspector General for promotion to Additional Director General, then no cadre officer upto the recruitment year 1983, would ever become Additional Director General and the purpose of allowing promotion as ADG to the cadre officers of the CRPF would be defeated.

13. On the 15th of April, 2011, the Director General of the CRPF requested the Ministry of Home Affairs to obtain and to convey the approval of the competent authority for according the relaxation in the residency period. It was pointed out that, out of the five officers who fell in the zone of consideration, four were retiring before the vacancy arising in the year 2011 and that the petitioner alone remained available for promotion. The Ministry of Home Affairs, respondent no.1 however, unduly kept the matter pending. The petitioner's request was not favourably considered on the ground that the period of relaxation was rather long.

14. The respondent no.3 sent a second proposal to the respondents on the 9th of June, 2011 requesting the respondent no.1 to reconsider its decision pointing out that the promotion to the rank of Additional Director General to the cadre officer was a matter of great incentive and recommending the case of the petitioner who was a brilliant and exceptional officer of the CRPF and stating that his case be favourably considered for grant of the relaxation in the residency period as a special case in view of the outstanding merit of the officer.

15. The petitioner also submitted representations dated 8th of June, 2011 and 8th of October, 2011 in this regard which were of no avail.

16. The proposal of the Ministry of Home Affairs for relaxation in the residency period to the petitioner was however rejected by the DOP&T (respondent no.2 herein) on the 2nd of November, 2011 on the ground that the petitioner had completed only eight months regular service in the grade as on 1st of January, 2011.

The petitioner makes a grievance that there was discrimination in action qua him, as his case was not taken up in timely manner as well as in consideration of the relaxation in the residency period.

17. On 1st of October, 2011, the petitioner needed relaxation in the residency period of one year and seven months. This period was less than the relaxation accorded to Shri P. Valsa Kumar and Shri A. Ponnuswamy.

18. The matter however did not end here. On 11th of November, 2011, the respondent no.3 took up the case with the Ministry of Home Affairs (respondent no.1) for amendment of the recruitment rules. This was further taken up by the respondent no.1 with the respondent no.2. On the 19th of December, 2011, respondent no.2 informed the respondent no.1 that its proposal for amendment of the CRPF Group A (GD) Officer Recruitment Rules, 2010 regarding the eligible service for promotion to the post of Additional Director General may be amended. Finally by the notification dated 28th of December, 2011, recruitment rules for the post of Additional Director General were amended and it was required that instead of three years of regular service in the Grade - A in the rank of Inspector General of Police, requirement of only one year regular service in the rank of Inspector General of Police was prescribed.

19. So far as petitioner was concerned, the respondent no.1 again referred the case of the petitioner on 29th of December, 2011 to the respondent no.2 for grant of relaxation, now for the period of four months in the residency period. The respondent no.1 pointed out that despite the amendment in the rule position, the petitioner who was the senior most Inspector General of Police followed by Shri A. Punnuswamy who was junior to him. Unless relaxation of four months was granted to the petitioner and of eight months to Shri A. Punnuswamy, neither could ever be promoted to the post of Additional Director General before their respective retirement dates and that there was a strong case in their favour for consideration of relaxation of their cases.

20. Finally after a delay of almost nine months, the DOP&T, respondent no.2 passed order dated 20th of January, 2012 according the relaxation to the petitioner of one year and seven months in the residency period from the date of occurrence of the vacancy on the 1st of October, 2011. It is noteworthy that the respondent no.2 was still treating the eligibility requirement as being three years of residency period. The DOP&T, respondent no.2 also directed denotification of the amendment notified on the 28th of December, 2011 in consultation with the Ministry of Law. One essential fact which needs bearing in mind was that the petitioner was to retire on the 31st of January, 2012 while Shri A. Punnuswamy was to on the 31st of March, 2012.

21. The DPC met on the 23rd of January, 2012 to consider the case of the petitioner for promotion to the post of Additional Director General of CRPF and recommended the name of the petitioner. The recommendations of the DPC were sent to the respondent no.2 for approval.

22. On the 24th of January, 2012, the respondent no.1 had also approved the recommendations of the DPC regarding the promotion of the petitioner to the post

of ADG. These recommendations were sent to the Appointments Committee of the Cabinet ("ACC" for brevity) for final approval. However, no approval was received from the ACC till the petitioner superannuated on the 31st of January, 2012.

23. The file remained pending in the ACC till 31st of January, 2012 (on which date the petitioner superannuated). It was only on the 3rd of February, 2012 that the Under Secretary intimated the rejection of the proposal of respondent no.1 for empanelling the petitioner and Shri A. Punnuswamy for promotion to the post of Additional Director General noting the following:

i) xxx xxx xxx

ii) The ACC also observed that the relaxation agreed to by the DOP&T taking into account the date of occurrence of vacancy instead of taking the crucial date of eligibility was also not in order.

iii) Moreover, the proposal was badly delayed and submitted to the ACC when the officer was due to retire within a few days leaving behind any scope for detailed examination of the case." The petitioner was able to procure a copy of this communication on a request made by him under the Right to Information Act from the authorities.

24. It is pointed out that after the petitioner retired, the respondent no.1 again took up the case of Shri A. Punnuswamy for relaxation in the residency period. This time the DOP&T ♦ respondent no.2 granted relaxation of two years and eight months and one day from the 1st of January, 2011 which was crucial.

25. The case was taken up on the 22nd of February, 2012 for the relaxation. The DOP&T accorded the relaxation on the 27th of February, 2012 of the residency period to Shri A. Punnuswamy. The DPC held on 1st of March, 2012 considered the candidature of Shri A. Punnuswamy for appointment as Additional Director General. Even though Shri A. Punnuswamy was scheduled to retire on the 31st of March, 2012, the ACC examined the recommendations of the DPC and approved the appointment to Shri A. Punnuswamy promoting him as Additional Director General on the 22nd of March, 2012 itself.

26. Shri A. Punnuswamy superannuated from the service on the 31st of March, 2012. Neither the length of the period of relaxation of the residency period, nor the date of his superannuation barely a week after his promotion came in the way of appointment of Shri A. Ponnuswamy as ADG before the authorities. Whereas the petitioner had required lesser relaxation of the residency period, he was denied the same. The rules and circumstances qua both of them on all relevant dates remained the same. The petitioner has assailed his rejection inter alia on the grounds of rank arbitrariness and bad faith.

27. The petitioner points out that so far as Shri A. Punnuswamy was concerned, the entire process from holding the DPC to the recommendations by the Ministry of

Home Affairs as well as the consideration by the ACC was completed in 11 days and that Shri A. Punnuswamy retired as Additional Director General on the 31st of March, 2012. On the other hand, in the case of the petitioner, the matter was unduly and unreasonably delayed by the respondents at every stage.

28. It is pointed out that the case for relaxation of the residency period was not taken up as per the DOP&T circulars and guidelines whereas in the case of Shri Srikant, the relaxation was accorded on 15th October, 2010 many months before the 1st of April, 2011 when the vacancy of Additional Director General fell due. We are hereunder extracting the tabulation placed by the petitioner before us which manifests the rank arbitrariness in the proceedings of the respondents and the discrimination met out by the petitioner:

29. The petitioner had thus retired as IGP on 31st of January, 2012 without being granting promotion as ADG. He made a representation to the Secretary of the MHA with a request that his case be taken up with the ACC as he fulfilled all eligibility conditions on the date of the DPC till proceedings of officers who were promoted from back date even after retirement.

30. It appears that on 27th of February, 2012 DoP&T approved the MHA approval for grant of relaxation in the residency period for the post of ADG and also denotified the notification dated 28th of December, 2011 in consultation with the Ministry of law. On the 22nd of March, 2012, Shri A. Punnuswamy was promoted as ADG of the CRPF granting him relaxation of two years and eight months in the residency period while the DPC held on 11th of March, 2012.

31. The petitioner had filed earlier WP(C) No. 2847/2012 in this court. Vide an order dated 14th of May, 2012, this writ petition was dismissed as withdrawn in order to enable the petitioner to pursue other remedy and thereafter leaving it open to the petitioner to raise all questions including those raised in that petition if so advised at later stage. On 16th of December, 2012, the petitioner made a detailed representation to the respondent pointing out that all cadre officers became eligible for promotion only after giving relaxation in the residency period and that the petitioner was the only officer who was denied such promotion. After calling for the comments of the DoP&T on this representation, the respondent no.1 rejected the same on the 2nd of November, 2012 submitting inter alia on the ground that the ACC did not accept the recommendations of the DPC.

32. The respondents do not dispute the impeccable distinguished record of service of the petitioner on the above facts. In fact, the respondent no.3 has repeatedly recommended the petitioner's case for accord of relaxation of the residency period as well as his case for appointment.

33. It is noteworthy that on the 3rd of February, 2012, the ACC had considered and rejected the cases of both the petitioner as well as Shri A. Punnuswamy. No circumstance had changed between then and 22nd March, 2012 when Shri A.

Punnuswamy was promoted as Additional Director General (CRPF) by the ACC. We therefore find substance in the petitioner's contention that there was arbitrariness and discrimination in denying the appointment to the post of Additional Director General to the petitioner even though his empanelment and appointment was recommended by the DPC as well as Ministry of Home Affairs.

34. Mr. R.K. Saini, learned counsel for the petitioner has placed reliance on the DOPT Memo No. 22011/4/98/Estt.(D) dated 12th October, 1998 to submit that retired officers are also required to be included in the panel when the DPC could not be held for the year(s) even though vacancy arose during the year(s). There is no dispute that there are instance when retired officers have been empanelled after retirement and given pension and other retiral benefits.

35. The petitioner has placed before this court, minutes of the Supplementary Promotional Committee which was convened on 5th of March, 2012. This meeting was held in the chamber of the Home Secretary (MHA) to consider the cases of Inspector Generals" for promotion as Additional Director Generals" in the CRPF to draw a second panel for vacancy of Additional Director General which arose on 1st of October, 2011 for the vacancy year 2011-2012. So far as the consideration by the supplementary DPC are concerned, it was noted as follows:

"5. Under DoP&T's instructions, zone of consideration for One vacancy But none of the serving officers has completed 3 years service in the rank of IGP as on 01/01/2011. However, following 02 senior most officers in the feeder grade are otherwise eligible (having completed 30 years of Group - "A" service) short of the residency period as on 01/01/2011 by 2 years and 04 months and 2 years 8 months and 1 day respectively, according to their date of promotion as IG as per details mentioned against each:-

6. DoP&T considered the case of both the above officers and have vide their ID No.AB.14017/13/2012-Estt.(RR) dated 20.01.2012 has granted the requisite relaxation in residency period to Shri J.S. Gill. Furthermore, DoP&T vide their ID No.AB14017/13/2012-Estt (RR) dated 27.02.2012 has granted the requisite relaxation in residency period to Shri A. Ponnuswamy. Accordingly, both the said officers are eligible for being considered for promotion to the rank of Addl. Director General in terms of the CRPF Group "A"(General Duty) officers Recruitment Rules, 2010 and vide their ID note dated 27/02/2012 have accorded relaxation in the residency period by two years, eight months and one day as on 01/01/2011 to Shri A. Ponnuswamy, IG. Thus the officer has become eligible for consideration for promotion from IG to the rank of Addl. DG."

36. The cases of both the eligible officers were considered and they are graded as under:

37. After so noting, this supplementary DPC made the following recommendations:

"12. Keeping in view of the bench mark grading, the DPC recommends that Shri J.S. Gill IG may be brought on panel for promotion to the rank of Addl. DG for the vacancy year 2011-12. However, since Shri J.S. Gill, IG has already, superannuated w.e.f. 31/01/2012 in pursuance of DoP&T OM No. 22.11/8/87-Estt (D) Dated 09/04/1996, the DPC recommends that the Shri A. Poonuswamy officer may be brought on extended panel to till up the vacancy of Addl. DG, CRPF which arose on 01.10.2011."

38. It is submitted by the petitioner that the respondent no.1 was bound to have included the petitioner's name for empanelment having been declared fit, he was entitled to be given notional promotion till his retirement; fixation of his terminal dues, pension and retiral benefits for the said post.

Mr. R.K. Saini, learned counsel has placed before this court a judgment dated 19th July, 2010 passed in WP(C) No. 635/2005 in the case of Dr. K.K. Saini v. Union of India & Another (page 165). In this case the petitioner was promoted to the post of Additional Director General (Medical) after his superannuation from the back date. The respondents do not dispute that this pronouncement has attained finality. In this case also there was no denial or objection to the petitioner's eligibility for appointment to the post in question on the date when his consideration was deferred on the ground that recruitment rules were not in place and the respondent no.3 was directed to forthwith convene a Departmental Promotion Committee for consideration of the petitioner for promotion to the post of Additional Director General (Medical) in the Central Police Forces within four weeks, having regard to the seniority and other relevant conditions as subsisted on 16th December, 2004. It was further directed that if the name of the petitioner is recommended, the consequential orders and action in the matter shall be taken expeditiously.

We are informed that these directions have been complied with and Dr. Saini has since been promoted as Additional Director General (Medical) from the back date and has received all retiral benefits for the said post.

39. The petitioner has submitted that until the filing of the writ petition in the year 2013, all the officers who had been promoted as Additional Director General could be so done only after granting them relaxation in the said residency period varying from six months to two years eight months and one day. The petitioner has extracted the following before us:

40. The petitioner has additionally placed the approval of the relaxation in the qualifying service in the grade of Inspector General of Police granted by the Ministry of Home Affairs for promotion to the rank of Additional Director General for the year 2013 - 2014:

The respondents admit these factual assertions before us.

41. By the order dated 21st of June, 2013, it was informed that the Appointment Committee of the Cabinet ("ACC" hereafter) had approved the proposal for empanelment of Shri H.R. Singh and Shri M.S. Raghava IGs for promotion as Additional Director General in the CRPF for the vacancy year 2013-2014. There is no dispute to the above factual narration which substantiates the petitioner's grievance that it was unfairly and arbitrarily denied the appointment even though he was identically placed petitioner in these circumstances.

42. The petitioner joined the CRPF on the 11th of September, 1972. It is an admitted position that Shri A. Punnuswamy joined the CRPF one year thereafter on the 16th October, 1973. While the petitioner was promoted as Inspector General of Police on the 1st of May, 2010, Shri A. Punnuswamy became Inspector General of the CRPF on the 1st of September, 2010

The petitioner was therefore the senior in service to Shri A. Punnuswamy by one year, one months and five days. He was senior in the post of Inspector General of Police by four months to Shri A. Punnuswamy. Whereas the petitioner required relaxation of only two years and four months in the residency period, Shri A. Punnuswamy required and was accorded relaxation of two years, eight months and one day.

43. It is noteworthy that on 24th January, 2012 when the matter was placed before the ACC, the petitioner had a period of one week of service prior to his superannuation. In identical circumstances, Shri A. Punnuswamy, Inspector General of the Police was approved for promotion as Additional Director General by the ACC on the 22nd of March, 2012 for about eight/nine days and he superannuated on the 31st of March, 2012. The fitness and merit of the petitioner is not disputed by the respondents.

44. The above narration also shows that whereas in the case of petitioner, it was stated that the proposal was delayed and submitted when the officer was nearing retirement, the case of Shri A. Ponnuswamy was approved by the ACC even though the facts were identical and Shri A. Ponnuswamy was appointed for the one week service remaining before he retired.

In view of the identity in the circumstances, we find that there is no justification or merit in the reasons for denying the petitioner the benefit of the promotion and granting the same to his junior shortly thereafter.

45. Mr. Saini has also placed a copy of the decision dated 5th of October, 2009 passed in WP(C) No. 423-424/2006 titled Union of India & Another v. S.K. Thakral wherein Union of India had challenged a judgment dated 19th April, 2005 passed in O.A. No.2130/2002 by the Central Administrative Tribunal directing the petitioners to consider afresh the case of the respondent for notional promotion to the post of Additional Director General of Works.

The respondent's name for promotion to such post was not included in the panel approved on 3rd of August, 2011 by the Appointment Committee of Cabinet even though it featured in the panel recommended by the DPC and stood approved by the Ministry of Defence. The respondent had also retired from service with effect from 30th of June, 2000. The respondent had learnt that as per the policy decision of the ACC, Chief Engineers having less than three months of service were not considered for promotion to the post of Additional Director General of Works. The Tribunal was of the view that the recruitment rules did not lay down any such restriction on the promotion of Chief Engineers to the post of Additional Director General (Works) on the ground that they had less than three months service left before retirement and that executive instructions could not have been issued in contravention of statutory rules. It was held that the respondents could not enforce the limitation on the right of a candidate to be considered for promotion under the recruitment rules on the ground of the length of his remaining service. In support of its decision, the Tribunal placed reliance upon the decisions of the Supreme Court in [S.L. Sachdev and Another Vs. Union of India \(UOI\) and Others, ; Comptroller and Auditor General of India and others Vs. Mohan Lal Mehrotra and others,](#) and [Chief Settlement Commissioner, Rehabilitation Department, Punjab and Others, etc. Vs. Om Prakash and Others etc.,](#).

46. The additional ground considered by the Central Administrative Tribunal, which was identical to the instant case, was that the delay in considering the panel proposed by DPC and approved by Defence Ministry, was on account of the acts on the part of the ACC which were not justifiable. In these circumstances, this court did not interdict the ACC from considering the grant of notional promotion to the respondent from the date of his superannuation, so that he may get the benefits of higher pension and pensionary benefits, considering the fact that he was the senior most Chief Engineer and was recommended by the DPC and even granted approval by the Defence Ministry.

The vacancy in question stood created on 31st of March, 2000; the DPC recommended panel on 20th of April, 2000 stood approved by the Ministry of Defence in May, 2000. This court approved the decision of the Tribunal to grant promotion to the respondent with effect from 30th of June, 2000 and not from 31st of March, 2000 when the vacancy had occurred. This would be the date after the approval of the DPC recommendation by the Ministry of Defence.

47. So far as the present petitioner is concerned, his case was duly recommended by the DPC on the 23rd of January, 2012 which was approved by the Ministry of Home Affairs on the 24th of January, 2012. It was at the stage of consideration by the ACC that the proceedings and recommendations of the DPC were not approved.

48. The DPC had recommended that the petitioner may be brought on the panel for promotion to the rank of Additional Director General for the year 2011 - 2012. The DPC further recommended that Shri A. Punnuswamy may be brought on the

extended panel to fill up the resultant vacancy for the year 2011-2012 consequent, upon the retirement of the petitioner on the 31st of January, 2012. This recommendation was rejected by the ACC on the 3rd of February, 2012 which has to be set aside and the matter be reconsidered. Shortly thereafter, in identical circumstances, the ACC has approved the promotion of Shri Ponnuswamy to serve for barely a week manifesting arbitrariness in the consideration and discrimination against the petitioner. Therefore, so far as consideration of the petitioner is concerned, it is the ACC which has to reconsider the matter.

49. We also find that even though the petitioner had retired, on 31st of January, 2012, the action of the DPC on 5th of March, 2012 in not empanelling him even though the petitioner was fit for empanelment as well, is contrary to the DoP&T memorandum dated 12th of October, 1998. Therefore the petitioner would in any event be entitled for a DPC to be convened afresh for consideration of his name for empanelment for the post of ADG on the 1st of October, 2011. However in as much as we have faulted the consideration and decision by the ACC, we do not propose to make directions in this regard.

50. Needless to say, given the fact that the petitioner has since superannuated, he would be entitled to benefit of notional promotion and consequential benefits.

51. Accordingly, the rejection of the ACC as communicated in the order dated 3rd of February, 2012 and the order dated 2nd of November, 2012 rejecting the representation of the petitioner are hereby set aside and quashed. A direction is issued to the respondent to consider afresh from the stage of consideration by the ACC of the recommendations dated 23rd January, 2013 of the DPC and 24th January 2014 of the respondent no.1 for the grant of promotion to the petitioner to the post of ADG, CRPF; grant of such notional promotion to the petitioner with effect from 24th of January, 2012 till he superannuated on the 31st of January, 2012 as well as to further consider fixation of pay and allowances to the petitioner from such date notionally and to grant pension and other pensionary benefits based thereon.

The petitioner shall be entitled to costs which are quantified at Rs.20,000/-.