

(2008) 08 DEL CK 0226

Delhi High Court

Case No: Writ Petition (C) No. 7115 of 2002

Shri Vijay Kumar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Aug. 27, 2008

Acts Referred:

- Central Reserve Police Force Rules, 1955 - Rule 26

Citation: (2008) 153 DLT 342

Hon'ble Judges: Sanjay Kishan Kaul, J; Mool Chand Garg, J

Bench: Division Bench

Advocate: Party in Person, L.S. Chaudhary, Ajay Chaudhary and D. Mathew, for the Appellant; Sonia Mathur and Pankaj Prasad, for the Respondent

Final Decision: Allowed

Judgement

Sanjay Kishan Kaul, J.
Rule DB.

2. At the request of the learned Counsels for the parties, the petition is taken up for final disposal.

3. The petitioner was appointed as a Constable (GD) in ITBP on 2.4.1990. The Enforcement Directorate of ITBP issued a Memorandum dated 12.4.1991 in terms whereof the period spent on completion of course was to be treated as a period on duty. The object of the same is explained in the following terms:

Dated: 12.04.91 Memo

Sub: Regarding arrangement of seats for training of Paramedical employees in courses like diploma in pharmacy, Lab-technicians and radiographer.

We are in constant touch with various Institution of the country for past several years for the purpose of excellent training of our paramedical employees. In some

of the institutions we have been allotted seats permanently; but, it has been observed that the eligibility conditions of these institutions do not suit our paramedical employees as a result of which we could not properly make use of the seats reserved. The eligibility conditions for admission into diploma course in pharmacy in the institutes of U.P. Government were suitable to our paramedical employees and we had send our six paramedical employees for pharmacy diploma course in last session (1989-90).

In the next attempt we have been informed that the next admissions for this course would be based on competitive entrance examination. Therefore, they are unable to provide reservation of seat for us in this course. We are unable to get needful co-operation from the institutes of state of this kind.

In order to over come the above mentioned difficulties it has been decided that all those paramedical employees who want to do a diploma course in pharmacy and who have not passed any medicine related course from any out side institute, they can pursue a diploma course in pharmacy from any recognized institute within India by getting a seat on the basis of either a competitive selection test or through any other medium provided they have completed at least 3 years of departmental service, basic training and basic medicine course and have a direct relation to the paramedical cadre.

If any paramedical employee pursues a diploma course in pharmacy by obtaining a seat in accordance with para 2, the duration of course pursued by him shall be treated as a period spend on duty in accordance with CRPF Rules 26 (c) his Head of office shall obtain a bond/undertaking from him that he shall serve the ITBP for a period of not less than 5 yrs. after completion of the course. The bond of like type shall also be obtained from those paramedical employees who will go to pursue courses like diploma in pharmacy, Lab technician, radiographer and any other course on the reserved sits availed through efforts of the department.

4. The petitioner was appointed as a Constable (Medic) after completing his Basic Medics Course in October 1995 and sought permission to undertake a two year diploma course in Pharmacy from M.S. Ramaiah College, Bangalore in terms of the aforesaid Memorandum dated 12.4.1991. The request of the petitioner was favourably considered in terms of the communication dated 24.11.1998 and a movement order was issued.

5. The petitioner completed the two years Pharmacy Course with first division along with practical training of 500 hours duration as part of compulsory requirement for award of the diploma certificate and reported back to duty on 14.6.2001, the next day after completing the course. The petitioner, is, however, aggrieved by the impugned order of respondent No.3 dated 7.12.2001 whereby part of the period of diploma course was not treated as period spent on duty contrary to the Memorandum dated 12.4.1991. The relevant portion of the said Memorandum

reads as under:

SRL. NO.	PERIOD	TREATMENT OF THE PERIOD
1.	4.12.98 to 13.12.99	Pharmacy course period regularized as duty in terms of provisions contained in CRPF Rule 26 (c), FR-9(6)(b)(I) and GDI (6) below FR-9
2.	4.12.99 to 20.5.2000	(169) days regularized as earned leave (pharmacy course period)
3.	21.5.2000 to 30.6.2000	(41) days regularized as HPL (pharmacy course period)
4.	1.7.2000 to 30.7.2000	(30) days regularized as Earned leave (pharmacy course period)
5.	31.7.2000 to 20.11.2000	(113) days regularized as HPB (HPL) (pharmacy course period)
6.	21.11.2000 to 21.2.2001	(93) days regularized as EOL (absent period.)
7.	22.2.2000 to 15.3.2001	(22) days E/L (Hospital Training)
8.	16.3.2001 to 19.5.2001	(65) days HPL (Hospital Training)
9.	20.5.2001 to 13.6.2001	(25) days EPL (Absent Period)

2. Besides above, the 30 days period w.e.f. 13.8.2001 to 11.9.2001 availed as E.L. by the individual is also regularized as under: in view of above casualty. 13.8.2001 to 28.8.2001 (15) days Earned Leave 28.8.2001 to 11.9.2001 (15) days EOL as LKD

6. Learned Counsel for the petitioner submits that the impugned order dated 7.12.2001 is ex facie contrary to the Memorandum dated 12.4.1991.

7. Learned Counsel for the respondents has been unable to justify the impugned Memorandum but contends that even if the two years course period is treated as on duty, the six (6) months period training thereafter should not be treated as on duty as the respondents did not give permission for the same.

8. Learned Counsel for the petitioner, on the other hand, has pointed out that the training was an essential part of the course and the petitioner could not have been awarded the diploma certificate without completion of the training period. The relevant communication of the Pharmacy College in this behalf is as under:

M.S. RAMAIAH COLLEGE OF PHARMACY

M.S. Ramaiah Nagar, M.S. R.I.T. Post, Bangalore-56054.

Ref No.MSRCP/1062001 Date: 20.02.2001

To,

The Commandant

18th Battalion ITB Police,

Post Matli,

District Uttar Kashi (U.P.)

Sir,

Subject: Permission for Hospital Training

Sri VIJAY KUMAR SINGH was a student of this college studied 2 years D. Pharm course from 1998-2000. He has completed his II D. Pharm Course during October 2000, result of which is announced during January 2001 and he has passed in I Class.

He has to undergo D. Pharm Part II Course that is Pharmacy training for 500 hours in 3 months period and then only he will be awarded his Diploma Certificate.

For information.

Thanking you,

Yours faithfully,

Sd/-

(Prof. V. Madhavan)

Principal

Seal of:

M.S. RAMAIAH COLLEGE OF PHARMACY

9. In our considered view, the action of the respondents is totally unsustainable. The training being an essential part of the Diploma course without which the petitioner could not have been granted the diploma certificate, the period spent in the said training has to be treated as one on duty. It must be kept in mind that the Memorandum dated 12.4.1991 was issued as the respondents were in need of such persons who are qualified and the incentive of treating the period as on duty was given for the same. It is in these circumstances that the request of the petitioner to complete the course had been considered favourably.

10. A further relief sought for by the petitioner is for reimbursement of the expenses incurred by him during the course. The averment in this behalf has been made in para 15 of the writ petition while stating that similarly situated six other persons have been granted the benefit. The relevant portion reads as under:

15. That the petitioner submitted a representation dated 22.3.2002 to the respondent No. 3 requesting that the period spent on diploma course should be treated as the period spent on duty and full salary for this period was rightly paid to him. The petitioner also claimed the reimbursement of the expenses incurred by him on the said course. The petitioner also staked his claim for his appointment to the post of SI (Pharmacist) as has been done in the case of other similarly circumstanced six persons whose particulars are given below:

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7.	22.2.2000 to 15.3.2001	(22) days E/L (Hospital Training)
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9.	20.5.2001 to 13.6.2001	(25) days EPL (Absent Period)

The respondent No. 3 forwarded the said representation to the respondent No. 2; but, no reply has been given to the petitioner so far. A copy of the said representation is annexed hereto and marked as Annexure-P/12.

11. In response to the same in para 15 of the counter affidavit it is stated as under:

15. The contents of para 15 are denied because the period of training as well as the absence period of the Petitioner was correctly regularized. As regards the representation is concerned, it is submitted that the Petitioner has submitted an application on 26.11.2002 for withdrawal of his representation regarding regularization of his Training absence period. The bills regarding fee and tuition fee have not been submitted by the Petitioner till date. It is further submitted that the stake of the Petitioner for appointment as S.I./Pharmacists is not tenable as there is no provision exists in the Recruitment Rules for the appointment of a person merely by passing the Diploma Course. The personnel named in this para were never appointed by virtue of their passing the Diploma course. In fact all these personnel appeared in an open recruitment rally held at ITBP Tigri Camp, New Delhi in November/December 1992 and after going through the normal recruitment process viz. 1 star Test, professional test and interview etc. and after successfully passing the recruitment test they were given offer of appointment and appointed as S.I./Pharmacist after tendering the technical resignation from their previous appointment. The Petitioner may also appear in the open recruitment rally as and when it is held.

12. The aforesaid shows that there is no denial either of similar benefits being extended to other persons or of the petitioner not being entitled to the said benefit. What is stated is that the petitioner has not submitted the relevant bills for payment but the said bills already stand forwarded to the respondents as per the various communications of the petitioner. The petitioner is, thus, entitled to the reimbursement of the amount spent on the course.

13. Learned Counsel for the petitioner points out that the petitioner has not earned his promotion as the petitioner was not treated on duty for the period of six (6) months when he was carrying out the training in the Pharmacy course. The petitioner addressed a letter dated 25.10.2000 to the Commandant of the Battalion pointing out that the second year of the diploma would be completed only in January-February 2001 and thereafter compulsory training would be required to be taken from some hospital. The diploma certificate could be issued only thereafter. A request was made to permit the petitioner to complete the course and the practical training. The certificate issued by the Pharmacy College dated 20.2.2001 referred to aforesaid was subsequently forwarded.

14. The request of the petitioner, however, did not find favour with the respondents in term of memorandum dated 15.3.2001 on the ground that the petitioner was to complete the course within a period of two (2) years of seeking permission and he ought to have taken permission to proceed for hospital training. The memorandum was replied to by the petitioner on 25.4.2001, once again, emphasizing that the completion of hospital training was an essential part of the two (2) year diploma course and the diploma certificate could not have been issued without completing

the said training. The subsequent representation was also made on 19.6.2002 pointing out that the petitioner had joined on 14.6.2001 immediately on completion of hospital training, which was from 22.2.2001 to 13.6.2001. The repeated reminders elucidated no positive response.

15. The facts and circumstances of the case show that the on completion of the course the declaration of result was delayed as apparent from the representation and that is the reason there was some delay in completion of hospital training. The petitioner reported the very next date after completion of the hospital training. It is not in dispute that the petitioner would not have been issued the diploma certificate without completion of hospital training. The sanction for attending to the course must be read in that context as it can hardly be expected that the petitioner should rejoin back on completion of course without hospital training and deprive himself of the diploma certificate. The petitioner took care even to write to the Commandant at the relevant stage and thus the action of the respondents in insisting that the petitioner must join back cannot be sustained. The period spent by the petitioner on training has to be treated on duty.

16. The result of the aforesaid is that the petitioner being treated on duty would be entitled for consideration of promotion on the said basis. The promotion would take effect from the date when six other persons were so promoted in case on consideration he is found fit for promotion.

17. A writ of mandamus is issued directing the respondents to consider the total period the petitioner spent while completing the course including the training period as on duty and the consequent emoluments payable to the petitioner which have not been so paid be remitted to the petitioner within a period of three (3) months from today. Thus, the amount is payable for the said period as on duty without any deduction. The amount having been unreasonably detained, the petitioner shall also be entitled to interest on the amount from the due date till date of payment @ 9 per cent per annum (simple interest). The petitioner is also held entitled to reimbursement of expenses spent on completing the course which should also be remitted within the same period of time.

18. The case of the petitioner for promotion should be considered at par with six other persons as the petitioner is to be treated on duty for the full period of the course including the training period of the course and the date of promotion would take effect from the date when the other six persons were so promoted. The necessary action in this behalf be taken within a period of three (3) months from today. The petitioner on promotion would also be entitled to all consequential reliefs including monetary benefits.

19. The petition is allowed with costs quantified at Rs. 5,000.00.