

The Petitioner Was Enrolled as a Constable in the Border Security Vs. Union of India and Others

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Court : Punjab and Haryana

Decided On : Aug-19-2013

Appellant : The Petitioner Was Enrolled as a Constable in the Border Security

Respondent : Union of India and Others

Judgement :

CWP No.18382 o

1. IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CWP No.18382 of 2011 Date of Decision:

19. 8.2013 Constable P.

Selvarajan ..Petitioner Versus Union of India and othersRespondents CORAM:- HON'BLE Mr.JUSTICE RAJIV NARAIN RAINA Present: Mr.Vivek Salathia, Advocate for the petitioner Mr.Ajay Kaushik, Sr.Panel Counsel, Govt.

of India for respondents no.1 to 3 ..1.

To be referred to the Reporters or not?.

2. Whether the judgment should be reported in the Digest?.

RAJIV NARAIN RAINA, J.

The petitioner was enrolled as a Constable in the Border Security Force (for short the BSF.) on 25.9.1987.

After training, he joined the 41st Battalion of the BSF organization.

During BSF Battalion movement from Jammu to Srinagar for counter insurgency duty, the BSF vehicle in which the petitioner was travelling along with his weapons met with an accident near Udhampur as a result of which the petitioner suffered multiple injuries.

He remained admitted indoor in Army Command Hospital, Udhampur, Jammu and Kashmir.

The petitioner suffered compound fracture and dislocation of the left ankle.

In the court of enquiry that followed, a finding was recorded that the injuries suffered by the petitioner Khan Md.Firoz 2013.08.29 12:56 and other BSF personnel in the vehicle were attributable to service.

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2. In the process of promotion from Constable to Head Constable at 109 Battalion BSF Coochbehar (West Bengal).the petitioner remained unsuccessful in written paper-I held at the end of 2001, and therefore, could not clear the PPC test required for further promotion.

However, the petitioner cleared the PPC test held during 4.2.2002 to 13.4.2002, and the written examination, but failed to pass the FPET on account of old injury.

The reason for failure in the physical test was on account of the fact that the petitioner could not clear the 9 Feet Ditch test.

He was declared failed in FPET.

The matter of injuries received through accidents while on active duty has been dealt with by the Government of India in the Ministry of Home Affairs vide letter dated 26.8.2002 (P-2). These instructions were notified for the introduction of Medical Category Shape-I for the purpose of promotion in CPMFs-Medical Examination of individual personnel of the Force.

Optimum medical category has been re-fixed in certain cases such as that in the case of the petitioner who had suffered injuries on active duty.

Certain lower categories have been identified as eligible for promotion.

5 categories have been identified.

The petitioner falls in Category S1H1A2(L)P1E1.

The petitioner's case is that he falls in relaxed standard and has been denied promotion arbitrarily in violation of these instructions.

The petitioner has not been able to secure promotion on account of his residual effect of injuries in his ankle.

The 21C/Commandant, 41st Command Battalion BSF vide his recommendation dated 12.3.2005 has recommended the case of the petitioner for promotion in the following terms:- 2. Prior to his injury he was a tough constable and a good racer who usually stood 1st in FPET.

Though he is not in his formal self because of the injuries, you even not he has maintained his physical toughness and can endure considerable physical strain of duties on border, IS Duties.

3. His present medical category is S H A(D) P E which is acceptable for promotion to next rank.

He has not been able to clear PPC mainly because of repeated failure in FPET (specifically fire man lift and 9 feet ditch). 4. Board of Officers detailed by SHQ CBR for PPC during 2002 has not awarded any grace mark to individual to help clear in PPC/FPETs, strictly in Khan Md. Firoz 2013.08.29 12:56 accordance of policy on

the subject.

I attest to the accuracy and integrity of this document punjab and haryana high court 5.Individual has been informed about the policy on the chandigarh CWP No.18382 o

3. subject that he can appear in the PPC for five times i.e.Three times with admissible TA/DA and two times without TA/DA.

He can make three more attempts to clear PPC.

6.In view of his difficulties in clearing PPFT each time even after having acquired the required standard of professional knowledge and competence and clearing all other rests case is recommended for sympathetic consideration, as he is otherwise fit and capable to lead a section in capacity of HC/Section Comdr.

No action has been taken on the recommendation so far and the petitioner states that he has made representation (P-4) and served several legal notices (P-5 Colly.) on the competent authority drawing attention to the facts of his case and for redressal of his grievance originating only on account of the fact that he is unable to clear the 9 Feet Ditch.

Other than that he is robust and physically fit to discharge duties of the higher post.

Notice of motion was issued to the respondents who have entered appearance and have contested the case by filing written statement.

It is defended that as per Rule 6 of the BSF GD Cadre (Non-Gazetted) Recruitment Rules, 2002 (for short the Rules of 2002).the person in the Feeder rank shall be detailed to undergo qualifying couRs.before completing service eligibility period for promotion to higher rank in order of their seniority.

Every such member of the Force shall, before any promotion, is required to pass pre-promotion Courses.

SLC is one of the eligibility conditions for promotion to the rank of Head Constable.

Though medical category of the individual falls under the relaxed category given by Ministry of Home Affairs (MHA).but no relaxation from undergoing certain part/portion of the couRs.has been extended by MHA to SOS and ORS.The respondents further submit that the case of the petitioner was not considered by FHQ BSF (Per Dte) vide L/No.17/13/2002- Pers/BSF/Pt-III/8622-23 dated 2nd March, 2006 on the ground that every member of the force before his promotion is required to pass pre- promotion courses.

SLC is one of the eligibility conditions for promotion to the rank of Head Constable.

In short, the case set up by the respondents is that there is no scope for promotion to higher rank unless individual successfully undergoes Khan Md.Firoz 2013.08.29 12:56 mandatory promotion couRs.in every detail which has not been done by I attest to the accuracy and integrity of this document punjab and haryana high court chandigarh CWP No.18382 o

4. the petitioner and therefore, there is nothing wrong in not promoting the petitioner to the higher post of Head Constable.

Rules permit five opportunities to clear test.

The petitioner appeared twice and three more chances are available to him to qualify the pre-promotion course.

In the written statement, reference has been made to letter No.17/13/2002- Pers/BSF/PT-III/69074 dated 26th December, 2011 that as per the Rules of 2002, Section Leader CouRs.has been prescribed as mandatory couRs.for promotion to the rank of HC(GD) and a Constable has to qualify the same before he is considered for promotion.

Further, the aspect of qualifying Pre-promotion CouRs.by the personnel injured/wounded during the couRs.of active Government duty, has been got clarified through the MHA and as per the clarification received vide MHA UO No.1-45024/5/2002-Pers-II dated 17.5.2002, it is necessary for all CPMFs personnel to undergo pre- promotion courses as prescribed in the Recruitment Rules.

Therefore, one has to qualify Pre-promotion couRs.to get further promotion despite being Low Medical Category.

Besides the MHA has not extended the benefit of relaxation from undergoing certain part/portion of the CouRs.of Sos/ORS.I have heard learned counsel for the parties and have gone through the paper-book.

The Rules of 2002 lay down pre-condition of passing Pre-promotion test, but the instructions dated 26.8.2002 which accord relaxation for injuries suffered while on duty have not been explained or rebutted in their application in the written statement in paragraph 11, but I find that the instructions issued in the same year after promulgation of Rules grant relaxation in favour of the petitioner.

It is not that the petitioner has failed in the written test.

He has cleared it in the second attempt in 2002.

He also cleared all the other physical tests.

He has failed to clear only one test of FPET (specifically fire man lift and 9 feet ditch).He is unable to do this because of his ankle injury sustained long ago while on active duty travelling in connection with counter insurgency operations in J & K.

In all other physical parameteRs.the petitioner is fit.

It has been so certified in 2005 by the Commandant 41st Battalion BSF in the most admirable terMs.His present medical category according to his superior officer is S H A (D) P E which is acceptable for promotion to the rank of Head Constable.

Otherwise, it has been opined that prior to injuries, the petitioner was a Khan Md.Firoz 2013.08.29 12:56 of this document punjab and haryana high court tough Constable and good racer.

He usually stood 1st in FPET, but he is I attest to the accuracy and integrity chandigarh CWP No.18382 o

5. not in his formal shape because of injuries as a result of accident in the couRs.of duty.

Yet it has been opined by the Commandant that even not he has maintained his physical defence and can endure considerable physical strain of duties on Border and Intelligence Services duties.

His ankle has become his Achilles heel.

The Commandant is the person closest to the Constable and his advice should normally be valued.

The petitioner has served as a Constable for 26 years with no promotion in sight.

The Medical Boards have been deferring his case for two years at a time on account of the Low Medical Category due to injury in the left ankle sustained by the petitioner 20 years ago.

It appears from the documents produced in the written statement that no one has paid any attention to the recommendation made by the Commandant in 2005.

The order rejecting his legal notice has been placed on record with the written statement.

The same had been decided in terms of the directions of this Court to decide the representation within a time bound period.

The reason for rejecting the case of the petitioner for promotion is that the Section Leader CouRs.required under the Rules of 2002 is mandatory for promotion to the rank of Head Constable (General Duties).Reliance is also placed on the clarification issued by the Ministry of Home Affairs dated 17.5.2002 that it is necessary for CPMFs personnel to undergo pre-promotion couRs.to get further promotion, despite being Low Medical Category.

However, it has not been disclosed in the written statement as to what is the effect of instructions dated 26.8.2002 (P-2) which have been issued in furtherance to the instructions dated 8.8.2002 which grants concessions and relaxations.

Learned counsel for the petitioner refers to para 18 (b) of the Circular to contend that this vital document has not been taken into consideration.

A perusal of the impugned orders placed with the written statement shows that these instructions have not been taken into account while rejecting the case of the petitioner.

This relevant fact has not been taken into consideration, and therefore, the order dated 17.1.2012 is not sustainable.

Resultantly, this petition is allowed.

The order dated 17.1.2012 is quashed.

A direction is issued to the respondents to pass a fresh order, in accordance with law, keeping in view instructions dated 26.8.2002 (P-2).Khan Md.Firoz 2013.08.29 12:56 of this document punjab and haryana high court The decision making authority is directed to pass a fresh speaking order I attest to the accuracy and integrity chandigarh CWP No.18382 o

6. within 60 days from the date of receipt of a certified copy of this order, after affording an opportunity of hearing to the petitioner.

(RAJIV NARAIN RAINA) 19.08.2013 JUDGE MFK Khan Md.Firoz 2013.08.29 12:56 I attest to the accuracy and integrity of this document punjab and haryana high court chandigarh

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