

M.Natesan Vs. Commandant,cisf Unit

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Court : Kerala

Decided On : Nov-11-2013

Judge : Honourable Mr. Justice a.V.Ramakrishna Pillai

Appellant : M.Natesan

Respondent : Commandant,cisf Unit

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI MONDAY,THE11H DAY OF NOVEMBER201320TH KARTHIKA, 1935 WP(C).No. 37369 of 2004 (W) ----- PETITIONER(S): ----- M. NATESAN, NO.753170225 HC/GD., RPP - RFF SECTOR, CISF UNIT, V.S.S.C. THUMBA, THIRUVANANTHAPURAM. BY ADVS.SMT.S.K.DEVI SRI.SANTHOSH P.ABRAHAM RESPONDENT(S): ----- 1. THE COMMANDANT, CISF UNIT, V.S.S.C., THUMBA, THIRUVANANTHAPURAM.

2. THE DIRECTOR GENERAL, CENTRAL INDUSTRIAL SECUTIRY FORCE, 13 CG'S COMPLEX, LODHI ROAD, NEW DELHI. BY ADV. SRI.T.SANJAY, CGC THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON1111-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: PJ WP(C).No. 37369 of 2004 (W) ----- APPENDIX PETITIIONERS' EXHIBITS ----- P1: COPY OF THE SHOW CAUSE NOTICE DATED1510/2004 ISSUED BY THE1T RESPONDENT. P2:

COPY OF THE REPLY DATED 23/10/2004 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT. P3: COPY OF THE REPRESENTATION DATED 20/10/2004 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT P4: COPY OF THE

ORDER

NO.E-36017/CISF/VSSC/DOC/2004/7236 DATED 17/12/2004 ISSUED BY THE 1ST RESPONDENT P5: COPY OF THE OFFICE MEMORANDUM DATED 13/10/2004 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER P6: COPY OF OFFICE MEMORANDUM NO.E37033/CISF/VSSC/ADM/2004/6248 DTD.26-10-04 P7: COPY OF

ORDER

NO.27015/CISF/VSSC/DOC/D4 6037 DTD.15-10-2004. RESPONDENTS' EXHIBITS ----- NIL. / TRUE COPY / P.S. TO JUDGE PJ A.V. RAMAKRISHNA PILLAI, J.

----- W.P.(C) No. 37369 of 2004
----- Dated this the 11th day of November, 2013

JUDGMENT

The petitioner has come up before this Court aggrieved by Exts.P1 show cause notice issued by the 1st respondent for reverting the petitioner to the post of Constable from the post of Head Constable and the consequential Ext.P4 order reverting the petitioner from the post of Head Constable to the post of Constable even after the petitioner has submitted Ext.P3 representation.

2. The petitioner joined the Central Industrial Security Force (CISF) on 05.09.1975 under the Army quota. He was promoted to Naik from Lance Naik on 02.09.1995. Later, the Naik rank was merged with the rank of Constable with effect from 10.10.1997 on the basis of 5th Pay Commission recommendation. The petitioner was detailed from Promotion Cadre Course (PCC) at RTC, Bhilai from 12.11.1990 to 22.12.1990 (40 W.P.(C) No. 37369 of 2004 ..2.. days). Later, the petitioner was promoted to Naik on 02.09.1995. Thereafter, according to the petitioner, he was

detailed for PCC from 11.11.1996 to 18.01.1997 (70 days). The grievance of the petitioner is that if the petitioner was not qualified in the first PCC, then, naturally, as a usual course, he might have been detailed for the PCC in the year 1991. The petitioner alleges that actually, the second PCC was for the promotion from Head Constable to ASI and different duration is provided for different promotions. The duration of first PCC was 40 days and that of the second was 70 days; it is alleged by the petitioner. The petitioner would submit that after nine years of promotion, there is no justification on the part of the respondent for reverting the petitioner to the post of Constable.

3. The respondents filed a detailed counter affidavit refuting all the allegations. In the counter, the 1st respondent admitted that the petitioner was detailed to the course only during the year 1995 for the period W.P.(C) No. 37369 of 2004 ..3.. commencing from 08.05.1995 to 01.07.1995. According to the respondents, it was for the reason that the allocation of the course is purely based on the availability of space in the training institute and various other convenient factors and not on account of any reasons alleged in the writ petition. According to them, there is no hard and fast rule to permit persons, who fail in the course to avail further six chances as averred in the writ petition and; the number of chances for qualifying PCC is specifically stipulated as three. In support of the said contention, a true copy of the CISF circular no.15/92 stipulating the number of chances to be availed by the respective candidates is produced and marked as Ext.R1 (b). It was further pointed out that the duration of Promotion Cadre Course from Constable to Head Constable is six weeks as per the relevant Training Calendar and the petitioner was detailed for PCC of Constable to Head Constable/GD, in which the petitioner failed to qualify. Ext.R1(c) is the Promotion Cadre Course W.P.(C) No. 37369 of 2004 ..4.. result published on 29.04.1997.

4. Arguments have been heard.

5. It is an admitted case that the petitioner was promoted to the rank Lance Naik with effect from 11.09.1985 and to the rank of Naik with effect from 02.09.1995 subsequently. The aforesaid ranks were merged in the rank of Constable and Head Constable respectively with effect from 10.10.1997 on the recommendation

of the 5th Pay Commission for abolition of the aforesaid posts in CISF. These facts are admitted. Accordingly, the petitioner was promoted to hold the rank of Head Constable at CISF with effect from 10.10.1997. On merger of the post of Naik with that of Head Constable, a condition was prescribed therein for holding the post of Head Constable that the petitioner should qualify with the relevant PCC within a period of two years from the date of promotion to further continue in the aforesaid post. However, though sufficient opportunities were afforded to the petitioner for acquiring the same, W.P.(C) No. 37369 of 2004 ..5.. the petitioner was not able to qualify the respective PCC and, accordingly, he was reverted by Ext.P4. This Court finds no genuine reason for interfering with Ext.P4.

6. Now, it is submitted that the petitioner has demitted his office on superannuation. The learned counsel for the petitioner would submit that if Ext.P4 is not interfered with, certainly, it would affect his service benefits. But, as rightly pointed out by the learned Standing Counsel for the Central Government, though the promotion given to the petitioner was an error committed by the respondents, the respondents have every right to correct the error and, therefore, Ext.P4 is valid in the eye of law.

7. Though this Court feels that there is no scope for interference with Ext.P4, the fact remains that the petitioner has worked as Head Constable for a long time. Since the nature of duty of Head Constable is entirely different from that of Constable, there is no justification in withholding the salary of the petitioner relating to the W.P.(C) No. 37369 of 2004 ..6.. period, during which he worked as Head Constable.

8. It is submitted by the learned Standing Counsel for the respondents that the respondent has not taken any steps for recovering the amounts due to the petitioner related to the period, during which he has worked as Head Constable. It is submitted by the learned counsel for the petitioner that now, a sum of 8,216/- is withheld by the respondents. According to the respondent, it is the sum, which was paid to the petitioner as Assistant Sub Inspector though he had not promoted as Assistant Sub Inspector. At the time of reversion, an amount of 10,575/- was worked out to be recovered from the petitioner and 2,359/- was recovered from

him. It was at this juncture, this writ petition was filed. The petitioner's pensionary benefits were paid to him after withholding the aforesaid amount, which, according to the respondents, was due to them as per the interim direction of this Court on 29.09.2006, in which the right of the petitioner for claiming the said W.P.(C) No. 37369 of 2004 ..7.. amount was left open to be decided at the finalization of this case.

9. Here, I would like to note that the petitioner has demitted his office on superannuation. The aforesaid sum of 10,575/- worked out by the respondents was paid to the petitioner on account of an error or mistake committed by the respondents for which the petitioner was not responsible. However, there was large delay in correcting the same. Therefore, taking into account the entire facts and circumstances of the case, this Court is of the view that the balance amount of 8,216/-, which has now been withheld by the respondents, shall also be paid to the petitioner. With the aforesaid observation, this writ petition is disposed of. Sd/- A.V. RAMAKRISHNA PILLAI, JUDGE bka/-

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