

Arvind Kumar Singh vs.union of India and Ors

Arvind Kumar Singh vs.union of India and Ors

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Court : Delhi

Decided On : Mar-13-2019

Appellant : Arvind Kumar Singh

Respondent : Union of India and Ors

Advocate for Pet/Ap. : Mr. Ankur Chhibber

Judgement :

\$~25 to 30 * + IN THE HIGH COURT OF DELHI AT NEW DELHI W.P.(C)
1633/2017 MANOJ KUMAR GUPTA

... Petitioner

Through: Mr.Ankur Chhiber, Advocate with Mr.Bhanu Gupta and Mr.Anshuman
Mehrotra, Advocates. versus UNION OF INDIA AND ORS

... RESPONDENTS

Through: Mr.Anurag Ahluwalia, CGSC for UOI. Mr.Vivek Kumar Singh, DC Law
CRPF with Mr.Deepak Kumar, SI CRPF. + W.P.(C) 1639/2017 + SURESH
KUMAR SHARMA

... Petitioner

Through: Mr.Ankur Chhiber, Advocate with Mr.Bhanu Gupta and Mr.Anshuman
Mehrotra, Advocates. versus UNION OF INDIA AND ORS

... RESPONDENTS

Through: Mr.Anurag Ahluwalia, CGSC for UOI. Mr.Vivek Kumar Singh, DC Law CRPF with Mr.Deepak Kumar, SI CRPF. W.P.(C) 1649/2017 RAMESH KUMAR PANDEY

... Petitioner

Through: Mr.Ankur Chhiber, Advocate with Mr.Bhanu Gupta and Mr.Anshuman W.P.(C) 1633/2017 & connected matters Page 1 of 9 + + Mehrotra, Advocates. versus UNION OF INDIA AND ORS

... RESPONDENTS

Through: Mr.Anurag Ahluwalia, CGSC for UOI. Mr.Vivek Kumar Singh, DC Law CRPF with Mr.Deepak Kumar, SI CRPF. W.P.(C) 1652/2017 SACHCHIDANAND SUMAN

... Petitioner

Through: Mr.Ankur Chhiber, Advocate with Mr.Bhanu Gupta and Mr.Anshuman Mehrotra, Advocates. versus UNION OF INDIA AND ORS

... RESPONDENTS

Through: Mr.Anurag Ahluwalia, CGSC for UOI. Mr.Vivek Kumar Singh, DC Law CRPF with Mr.Deepak Kumar, SI CRPF. W.P.(C) 1653/2017 ARVIND KUMAR SINGH

... Petitioner

Through: Mr.Ankur Chhiber, Advocate with Mr.Bhanu Gupta and Mr.Anshuman Mehrotra, Advocates. versus UNION OF INDIA AND ORS

... RESPONDENTS

Through: Mr.Anurag Ahluwalia, CGSC for W.P.(C) 1633/2017 & connected matters Page 2 of 9 + UOI. Mr.Vivek Kumar Singh, DC Law CRPF with Mr.Deepak Kumar, SI CRPF. W.P.(C) 2356/2017 RAJEEV RANJAN KUMAR

... Petitioner

Through: Mr.Ankur Chhiber, Advocate with Mr.Bhanu Gupta and Mr.Anshuman Mehrotra, Advocates. versus UNION OF INDIA AND ORS

... RESPONDENTS

Through: Mr.Anurag Ahluwalia, CGSC for UOI. Mr.Vivek Kumar Singh, DC Law CRPF with Mr.Deepak Kumar, SI CRPF. CORAM: JUSTICE S.MURALIDHAR JUSTICE I.S.MEHTA %

ORDER

1303.2019 Dr. S. Muralidhar, J.:

1. A common question of law arises in these five petitions where the facts are more or less similar. Accordingly, the petitions are disposed of by this common judgment. For the sake of convenience, the Court refers to the facts in W.P. (C) 1633/2017 filed by Mr. Manoj Kumar Gupta.

2. Mr. Gupta joined the Central Reserve Police Force (CRPF) in the rank of W.P.(C) 1633/2017 & connected matters Page 3 of 9 Constable on 9th September 1992 and was promoted as Head Constable (Radio Operator) [HC (RO)]. on 13th November 1997. He was further promoted as Assistant Sub Inspector Ministerial (ASI/M) on 22nd February 2001. Thereafter, the

... Petitioner

was promoted to the rank of Sub Inspector Ministerial (SI/M) in the pay scale of Rs.9300-34800 + Grade pay Rs. 4200/- (pre-revised).

3. On 8th August 2013 a circular was issued by the

... RESPONDENTS

inviting applications from amongst combatised ministerial employees of CRPF/Central/State Police organization for the post of Inspector (Hindi Translator) [Inspector/HT]. in the CRPF. It was indicated in the said Circular that the post of Inspector/HT was to be filled up by deputation/absorption failing which by direct recruitment from amongst combatised ministerial employees of CRPF/Central/State Police organization.

4. In other words, there were only two modes of appointment envisaged, one being deputation/absorption and the other being direct recruitment from amongst the existing ministerial employees of the CRPF/Central/State Police organization. Although the expression used is direct recruitment, it was in fact conducted

through a limited departmental competitive exam (LDCE).

5. Mr. Gupta, and each of the other

... Petitioner

s in this batch of petitions, applied pursuant to the above Circular and was successful in the exam. The facts in the remaining petitions are more or less similar. One common feature is that each of the other

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s at the time of applying for the W.P.(C) 1633/2017 & connected matters Page 4 of 9 post of Inspector/HT pursuant to the above circular was already serving as SI/M in the CRPF. Each of the

... Petitioner

s was selected for the said post.

6. At the time of being appointed as Inspector/HT, each of the

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s furnished an undertaking that they will claim their seniority in the order of merit in the test and the grade of Inspector/HT and that they will not have any claim of seniority, promotion, etc. in their respective rank of SI (M)/previous rank. 7. Each of the

... Petitioner

s tendered a technical resignation as SI/M pursuant to the above Circular and their names were struck off from the strength of the respective cadres where they were serving. On reporting to the Group Centre, each of them was appointed as Inspector/HT in the pay band of Rs.9300- Rs.34800 with Grade pay of Rs.4600/-. By inter office order dated 8th April 2014, the pay of the

... Petitioner

s was fixed at Rs.12,540 with Grade Pay of Rs.4600/- with effect from 28th February 2014.

8. Each of the

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s submitted their option certificate for fixation of pay initially in the manner as under Fundamental Rule (FR) 22 (I) (a) (1) and which could be re-fixed on the basis of FR-22(C) on the date of accrual of his accrual of next increment in the scale of pay of the lower post. According to the

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s it was more beneficial for each of them to draw pay in the lower post till the next increment.

9. The

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s in W.P.(C) 1633/2017, W.P.(C) 1652/2017 and W.P.(C) 2356/2017 were given the benefit of FR22. However, subsequently by the W.P.(C) 1633/2017 & connected matters Page 5 of 9 Directorates Signal dated 11th August 2015, their cases were directed to be reviewed. Subsequently by an order dated 16th April 2015, the benefit of the FR22 given to these

... Petitioner

s was withdrawn. The present petitions have been filed challenging the orders withdrawing the benefit of the FR-22 to these

... Petitioner

s and the non-grant of the benefit to the others.

10. Mr. Ankur Chhibber, learned counsel for the

... Petitioner

s, points out that the process by which the

... Petitioner

s were appointed as Inspector/HT could not be characterised as direct recruitment. It was an LDCE process. Relying on the decision dated 21st December 2012 of the Division Bench of this Court in W.P.(C) 2887/2012 (Man Singh v. Union of India) he submits that the appointment by way of LDCE should be treated as

equivalent to an appointment by way of promotion. In such event, the

... Petitioner

s will not gain promotions in their original cadre of SI/M. They have in fact given an undertaking to that effect. As far as their pay is concerned, that was to be governed by FR-22. Mr. Chhibber submitted that there was no justification in the

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reversing the orders in case of three of the

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s after granting them the benefit of FR22and altogether denying that benefit in respect of the remaining

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S.

11. Mr. Anurag Ahluwalia, learned Central Government Standing Counsel, referred to the counter affidavit in which the stand of the

... RESPONDENTS

is that there is no provision in the recruitment rules for filling up the vacancies to the post of Inspector/HT by promotion or through LDCE, as these vacancies were to be filled up by selection. It is further contended that the Ministerial and Official Language cadres are two different cadres and are not inter- W.P.(C) 1633/2017 & connected matters Page 6 of 9 changeable, as the selection procedure, qualification and Recruitment Rules for both cadres are different. It is submitted that once the

... Petitioner

had qualified as Inspector/HT in the Official Language cadre, it was in lieu of him having tendered a technical resignation to his old cadre. Therefore, it was not feasible for him to claim promotion on the basis of the previous cadre. These

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s could not claim that their selection as Inspector/HT was by way of promotion. It is contended that the said appointments were by way of direct recruitment and therefore, the benefit of FR-22 cannot be extended to the present

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s.

12. The above submissions have been considered. The decision dated 21st December 2012 of this Court in W.P. (C) 2887 of 2012 (Man Singh v. Union of India) makes it clear that in the absence of any actual direct recruitment for a particular post, the appointment of persons from within the organization by way of LDCE would be treated as a promotion to such post. The advertisement in the present case does not envisage direct recruitment to the post of Inspector/HT by inviting applications from general public but restricts it to persons who are already serving as combatised ministerial employees of the CAPFs. Therefore, the terminology direct recruitment used therein is a misnomer as far as the appointment of

... Petitioner

s as Inspector/HT is concerned. Admittedly, they sat for the written exam conducted for serving personnel of the CAPFs and subsequently qualified for the said post. Since this examination is not open to the general public, this method of recruitment of those serving in the CAPFs through a written examination had to be necessarily characterized as LDCE. W.P.(C) 1633/2017 & connected matters Page 7 of 9 13. In view of the decision in Man Singh v. Union of India (supra), the only conclusion that is possible is that such appointment was through the process of LDCE which was equivalent to promotion. Mr. Chhiber has also drawn the attention of the Court to a communication dated 2nd August 1984 from the Ministry of Home Affairs clarifying that the benefit under FR-22 C will be available to a person promoted or appointed to a higher post. Therefore the benefit of FR22 is available to both persons promoted as well as those appointed to a higher post. In that view of the matter, the stand of the

... RESPONDENTS

that the appointment of the

... Petitioner

s to the post of Inspector/HT) should be treated as direct recruitment is not acceptable.

14. The next question concerns the benefit under FR-22. A perusal of the FR-22 makes it clear that it makes no distinction between appointments from Ministerial post to an Official Language post. In other words, FR22 does not envisage denying the benefit thereunder only because a person in a Ministerial cadre has shifted on promotion or appointment to an Official Language cadre. With there being no such restriction in FR-22, the Court sees no reason why the

... Petitioner

s requests that they should be granted the benefit of FR-22 should not have been acceded to. In other words there was no justification for the

... RESPONDENTS

refusing the request of the

... Petitioner

s that their pay should be fixed in terms of FR-22.

15. The

... Petitioner

s have depicted the effect of their being extended the benefit of FR22(I) (a) (1). It means that their basic pay with effect from 1st July 2014 would be Rs.12880/-, the pay that they were drawing and not W.P.(C) 1633/2017 & connected matters Page 8 of 9 Rs.12540/- which is the entry pay for Inspector/HT.

16. Consequently, the

... RESPONDENTS

are directed to grant the benefit of the above pay fixation in terms of FR22(I) (a) (1) in the post of Inspector (HT) to each of the

... Petitioner

s from the date of their initial appointment. The arrears will be paid to each of the

... Petitioner

s within 12 weeks failing which the

... RESPONDENTS

would be liable to pay simple interest @ 6% per annum on the said sum till the date of release of the amounts. The consequential orders correctly fixing the pay of the

... Petitioner

s in terms of this judgment will be issued within eight weeks.

17. The writ petitions are allowed in the above terms. S. MURALIDHAR, J.

I.S. MEHTA, J.

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