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**V.P. Mathur Vs. Union of India**

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**Court** : Delhi

**Decided On :** Jan-07-1988

**Reported in** : 77(1999)DLT448; 1999(48)DRJ402

**Judge** : K. Ramamoorthy, J.

**Acts** : Central Reserve Police Force Rules, 1955 - Rule 8

**Appeal No.** : Civil Writ Appeal No. 12 of 1988

**Appellant** : V.P. Mathur

**Respondent** : Union of India

**Advocate for Pet/Ap.** : Sanjiv Ralli,; B.K. Aggarwal,; Sushmita Lal and;

**Judgement** :

**K. Ramamoorthy, J.**

(1) The facts that are necessary for the disposal of this writ petition could be stated briefly thus:

On the 2nd of February, 1964, the petitioner joined the Indian Army as Emergency Commissioned Officer. On the 31st of August, 1968, he was released from the Indian Army. On the 11th of December, 1971, the petitioner applied for the grant of Special Short Commission in the Indian Army. On the 18th of December, 1971, the

Army Headquarters informed the petitioner that he had been selected. The letter dated 18.12.1971 reads as under:- 'Reference your application dated 11 Dec 71 for grant of Special Short Commission.

2.You have been selected for grant of Special Service Commission subject to your being placed in SI.H1 A1 E1 by the Medical Board. You should now report to the Military Hospital Bareilly for Medical Board.

3.In case you are placed in Medical Category B1 H1 A1 P1 E1 you should report to Eme School Baroda with five days of the completion of Medical Board. You will be intimated your personal number on receipt of the indirection of 9your Medical Category from the Hospital concerned.

4.You will be commissioned in the rank of 2/Lt with effect from the date you report for duty. You will be allowed previous service of 4 days and 202 days for seniority for promotion and pay.

5.On receipt of personal Number intimate the Controller of defense -Accounts (Officers), Poona immediately the following:- (a) Address of your bankers with A/c number. (b) Your previous A/c number with Cda (O) Poona.

6.If you are placed in Medical Category lower that S1 H1 A1 P1 E1 then you are not eligible for grant of Special Short Service Commission. You will in that case not take actions indicated in paras 3,4 and 5 above.

7.The attached form duly completed will be dispatched to this Hq immediately, through proper channel. A copy of Ai 5/S/71 is attached.'

(2) The petitioner was given the benefit of previous service of four years and 202 days for the purposes of seniority, promotion and pay.

(3) From 29.12.1971 to 19.7.1973 the petitioner rendered the service in the Special Short Commission. While doing service in the Special Short Commission, through proper channel, the petitioner applied to the Central Reserve Police Force. The petitioner was released from the Short Service Commission in the Indian Army on the 20th of July, 1973. On the 25th of July, 1973, the petitioner joined the

Central Reserve Police Force as Deputy Superintendent of Police. On the 28th of February, 1976, the Ministry of Finance, Department of Expenditure, Government Of India, had issued an Office Memorandum with reference to the simplification of procedures with a view to eliminating delays in the payment of superannuation pension and death-cum-retirement gratuity. The relevant portion of that office memorandum reads as under:- Breaks in Service In the absence of a specific indication to the contrary in the service records, an interruption between two spells of service rendered in the Central Government including service paid out of defense Estimates or Railways Estimates will be treated as automatically condoned and the pre-interruption service treated as qualifying service for pension, except where it is otherwise known that the interruption was caused by resignation/dismissal or removal from service or participating in the strike. The period of interruption itself will under no circumstances be reckoned as qualify service for pension.'

(4) On the 16th of August, 1982, the Inspector General of Police had issued an Office Order. The same reads as under:-

'On his release from the Army Shri V.P.Mathur was appointed as Dy.S.P. in Crpf w.e.f.25.7.73. The officer was confirmed as Dy.S.P. in the Force w.e.f.19.3.81 and soon after the confirmation he opted to refund Rs.4,500.00 (Rupees four thousand five hundred) only received by him from defense Establishment as terminal gratuity and also to have his former Emergency Commissioned and Special Short Service Commissions services counted towards pension in CRPF. Prior to joining the Crpf, Shri V.P.Mathur had served in the Army as Eco from 2.2.64 to 31.8.68 and as Sssco from 29.12.71 to 19.7.73.

2.Sanction is hereby accorded to the recovery of Rs.4,500.00 (Rupees four thousand five hundred) only from the monthly pay of Shri V.P.Mathur, Dy.S.P., Gc, Crpf, Rampur in 36 Installments @ Rs.125.00 p.m. in terms of MHA's letter No.P.12/10/64-P.II dated 2.7.60 read with Mop Om No. 1.3(30) EVA/62 dated 20.10.62 and to the counting of the former Eco service from 2.2.64 to 31.8.68 and Sssco service from 29.12.71 to 19.7.73 rendered by the officer in the Army towards pension in CRPF.

3.The breaks between the Army and Crpf services from 1.9.68 to 28.12.71 and 20.7.73 to 24.7.73 have been automatically condoned in terms of para 4 of Govt. of India Mof Om NO.F.II(3) EV(A)/76 dated 28.2.76.

4.The right to count the above Army services as qualifying service for pension in Crpf shall however, not revive until the whole amount of terminal gratuity has been refunded and a certificate to that effect attached with the service records of the officer.'

(5) By this the Inspector General of Police had stated that the breaks between the Army and Crpf services stood automatically condoned.

(6) It is stated, in the list of dates, by the learned counsel for the petitioner that the petitioner was promoted to the post of Assistant Commandant which was later termed as Deputy Commandant. On the 25th of September, 1986, it is stated in the list of dates that the petitioner was promoted to the post of Commandant.

(7) On the 15th of June, 1987, a show-cause notice was issued to the petitioner, which reads as under:-

'SHRIV.P.Mathur, Commandant of Crpf is hereby informed through this notice that it is proposed to rectify in the seniority list of Dy.Ss. P and Assistant Commandants issued vide this Directorate letter No.S.VIII-1/86-Ectt.I dated 26.2.86 and No.S.VIII-2/86-Estt.I dated 24.9.86 in view of the fact that the said Shri V.P.Mathur prior to joining Crpf as Deputy Ss. P/Coy Commander served as Eco in the Army with effect from 2.2.1964 to 31.8.1968 and after his release again as Ssco in the Army with effect from 29.12.71 to 20.7.73. But inadvertently he was assigned the seniority in the above cited both seniority lists after reckoning the length of both Ec and Ssc service rendered by him in two separate spells. In the spirit of Rule 8 of Crpf Rules, 1955 read with the judgments of both Delhi High Court and Supreme Court of India delivered in W.P.44 of 1975 in the case of Ubs Teotia & Others v. Union of India and others, the service rendered by Shri V.P.Mathur as Eco in the Army for the period from 2.2.64 to 31.8.68 is not countable under rule 8__(1) of Crpf Rules, 1955 and in compliance with the judgment of Delhi High Court/Supreme Court, mentioned above.

2.To comply with the Supreme Court judgment dated 21.1.86 and to rectify the seniority lists accordingly issued on 26.2.86 and also Assistant Commandants issued on 24.9.86, it is proposed to place the name of said Shri V.P.Mathur at Seriall No.520-A i.e. below Shri I.M.Varghese (Sl.No.520) and above Shri Bhoop Singh (Sl No.521) of the Gradiation Lists of Dy.Ss.P. and similarly at Sl.No.444(A) i.e. below Shri Agya Ram (Sl.No.444) and above Shri D.P.Yadav (Sl.No.445) in the Gradiation Lists of Assistant Commandants after reckoning his Ssc service of the Army towards his seniority in the CRPF.

3.Shri V.P.Mathur is further informed that if he wishes to make any submission against the proposed rectification in the Gradiation Lists of both Dy.Ss.P. and Assistant Commandants, he may do so within 15 days from the date of receipt of this notice, failing which it shall be presumed that he has nothing to say against the proposed action.'

(8) On the 23rd of June, 1987, the petitioner sent his Explanationn. The same reads as under:-

'I have the honour to refer to the Directorate General Crpf, New Delhi Memo No.D.II-1136/73-Estt(CRPF) dated 15 June 1987 forwarding a notice regarding proposed rectification of seniority lists of Dy.S.s.P. and Assistant Commandants in question. I wish to make following representation and submit as under against the said proposal.

2.The second term of my service in the Army from 29 Dec. 71 to 19 Jul 73 (I was released from this term with effect from 20 Jul 73) was not in continuation of my service as Eco but it was a separate spell of my service in the Army as a Special Short Service Commissioned Officer. Thus there was no question of any break in service involved in my services as an Eco, the Emergency Commission having been expired and terminated on my release from Army as an Eco with effect from 1 Sep 68.

3.The Special Short Service Commission was granted on a different occasion and during 1971 war as a separate term of service in the Army. There were no periods of any breaks in service during my terms of service in the Army as an Eco from 2

February 64 to 31 Aug 68 and as a Special Short Service Commissioned Officer from 29 Dec 71 to 19 Jul 73.

4.Both the judgments of the Delhi High Court and the Supreme Court mentioned in you above said notice entitle me to have the lengths of my services in the Army as an Eco and as an Ssoc to add for the purpose of reckoning my seniority. Each of the term of service in itself is an unbroken service in the Army. The Certificate of my release from the Army clearly states that I was `also' granted Special Short Service Commission on 29 Dec 71. I enclose herewith a copy of my release certificate issued vide Ms Branch, Army Headquarters vide their letter No.36232/43/MS7B dated 27 Apr 79 in this regard for your kind perusal.

5.I further submit that under the provisions of Special Army Instructions 5/S/71, under which the Special Short Service Commissions were granted, I was also allowed the benefit of my past service in the Army as an Eco, a total period of 4 years and 212 days, to count for assigning my seniority in the Army as a Special Short Service Commissioned Officer for promotion and pay. I also enclose copies of Army Headquarters, Military Secretary's Branch, Dhq, Po New Delhi letter No.37202 P/NS7 dated 18 Dec. 71 offering me the grant of Special Short Service Commission in the rank of 2 Lt and allowing my previous service for seniority for promotion and pay, and also of my letter dated 6 Jan 72 addressed to the Commandant, Ene School, Baroda requesting for correcting the total period of my service in past as an Eco to 4 years and 202 days for counting for my seniority and promotion. This was subsequently accordingly granted.

6.Thus it is clear that the said two spells of my service in the Army were separate and there was no break in service involved. I was commissioned again as a Special Short Service Commissioned Officer in the rank of 2 Lt and then promoted to the rank of a Captain retrospectively with effect from 29 Dec 71 on the weightage of my seniority for service in the Army as an ECO. The Supreme Court judgment of 21 Jan 86 entitles me to count my service in the Army both as an Eco and as an SSCO. I thus stand fully entitled for having my total accumulated service in the Army to count for my seniority in the force.

7.It is, thereforee, submitted that any change in my seniority to a lower position as envisaged in your above said notice is entirely uncalled for and would deprive me of my legitimate seniority in the Crp Force.

8.I further submit that vide your office memo No.P.I.1/85.Estt. I dated 24th Dec. 85 I have been denied the additional increment in initial fixation of my pay on my joining Crpf for my service in the Army as a Special Short Service Commissioned Officer. As this service is also to count for my seniority the grant of this additional increment may kindly also be reconsidered and the same be released to me with retrospective effect.

9.I shall remain most grateful for your kind consideration and necessary action in the matter in order that I am not deprived of what is legitimately due to me.'

(9) The petitioner has given reasons for his Explanationn as to how his past service should be taken into account, which was accorded by the Ig, Crpf, Calcutta on the 16th of August, 1982. The Director General, Crpf had rejected the representation of the petitioner by his order dated 21.8.1987. The order dated 21.8.1987 reads as under:-

'Please refer to your letter No.G.II-1/87-PS dated 24.67.87 forwarding therewith representation of Shri V.P.Mathur, A.D.

2.This D.G. after careful consideration of the representation submitted by Shri V.P.Mathur, A.D.ISA, Crpf on the subject cited above has rejected the same as it has no convincing argument to counter the proposed action based on the view that he had been wrongly assigned the seniority earlier.

3.The officer may please be informed suitably.'

(10) The petitioner made representation to the Secretary, Ministry of Home Affairs, Government of India on the 3rd of September, 1987. On the 11th of December, 1987, the Ministry of Home Affairs, Government of India, passed an order rejecting the claim of the petitioner, which reads as under:-

'SHRIV.P.Mathur, Commandant, presently posted as Assistant Director at Isa, Mount Abu, on release from Army on 19.7.73 had joined Crpf in the rank of Coy Commander w.e.f.25.7.73. While in the Army he had served in two spells, firstly as an Eco from 2.2.64 to 31.8.68 and then as Ssco from 29.12.71 to 20.7.73. However, on joining Crpf Shri Mathur had been wrongly extended the benefit of his entire army service of both the spells mentioned above towards his seniority. Consequently he was placed at Sl.No.310 in the Dy.S.P. Seniority list of 2/86.

2.In a writ petition No.44 of 1975 filed in the Delhi High Court by some of the Ex-EC Officers of Crpf who had not been given the benefit of their Army Service towards seniority, the Delhi High Court as confirmed by Supreme Court vide judgment dated 2.9.85 held that all ECOs SSCOs were entitled to add the length of their unbroken service as ECOs/SCCOs for the purpose of reckoning their seniority in the Crpf under rule 8 of the Crpf Rules. Shri V.P.Mathur, thereforee, is not entitled to the benefit of both spells of his army service since there was a break of about 3 years in between the two spells. He is entitled to add only his last spell of army service as Ssco which is unbroken and which is continuous to the service in the CRPF.

3.It is, thereforee, necessary to rectify the seniority list of Dy.S.P. and Assistant Commandants issued vide this Directorate General letter No.S.VIII-1/86-Estt.I dated 26.2.86 and No.S.VIII-2 86-Estt. dated 2.4.86 respectively, in which the said Shri Mathur had been inadvertently given the benefit of his Army service of both the spells as mentioned above. A show cause notice was accordingly issued to Shri Mathur on 15.6.87.

4.His representation dated 23.6.87 addressed to D.G.,CRPF and dated 3.9.87 addressed to the Secretary to Ministry of Home Affairs have been duly examined, considered and rejected.

5.No, thereforee, in compliance with the judgment of Delhi High Court upheld by the Supreme Court as stated above and Rule 8(b)(i) of the Crpf Rules, Shri V.P.Mathur is placed at Sl.No.520(A) i.e. below Shri I.M.Verges (Sl.N.520) and above Shri Bhoop Singh (Sl.N.521) of the Gradiation List of the Dy.S.P. and similarly at Sl.No.444(A) i.e. below Shri A Y Ram (Sl.No.444) and above Shri

D.P.Yadav (Sl.No.445) in the Gradiation List of Assistant Commandants after reckoning his Ssc service in the Army towards his seniority in the CRPF. Consequently, he stands reverted to the post of Assistant Commandant in accordance with his revised seniority.'

(11) The Ministry had given the benefit to the petitioner of his previous service in the Special Short Service Commission and the service rendered by the petitioner from the 2nd of February, 1964 to 31st of August, 1968 had been ignored. Challenging this, the petitioner has filed the writ petition.

(12) MR.SANJEEV Ralli, the learned counsel for the petitioner submitted that on a proper interpretation of Rules 8 & 105 of the Central Reserve Police Force Rules, 1952, the respondents ought to have taken into account both the spells of the periods for the purpose of seniority and giving the benefit of only one period rendered between 29.12.1971 to 20.7.1973 is not proper exercise of power and it is all against the principles of fairplay and justice. According to the learned counsel for the petitioner, whatever the case may be, between the two periods the larger period served by the petitioner should have been taken into account in all fairness to the petitioner who had served in the Emergency Commission with all devotion to duty and sincerity.

(13) The learned counsel for the petitioner, Mr.Sanjeev Ralli, referred to the judgment of this Court in 'UBS Teotia & Others v. Union of India & Others' 1986 (1) All 93. The said judgment of this Court was upheld by the Supreme Court on the 10th of November, 1998 in IA.No.4 in WP.(C) No.1177/89 titled 'R.C.Sahi & Others v. Union of India & Others'.

(14) I went through the judgments mentioned above. I do not find anything which could be of any assistance to the petitioner. In the light of the facts and circumstances, I am of the view that the order dated 11.12.1987 is in accordance with law and no interference is called for. Accordingly, the writ petition is dismissed.

(15) There shall be no order as to costs.

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