

Devendra Kumar Vs. Union of India

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Court : Delhi

Decided On : May-27-1998

Reported in : 74(1998)DLT128

Judge : K. Ramamoorthy, J.

Acts : Central Reserved Police Force Act, 1949

Appeal No. : CW.No. 2517 of 1993

Appellant : Devendra Kumar

Respondent : Union of India

Advocate for Def. : Ms. Anjana Gosain, Adv.

Advocate for Pet/Ap. : Mr. Arun Bhardwaj, Adv

Judgement :

ORDER

K. Ramamoorthy, J.

The petitioner has filed the writ petition for the following reliefs:-

'It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to _

(A) Summons the proceedings of the DPC which met in June 1990 Along with the record of the petitioner and the persons who were promoted to the rank of Second-in-Command on 3.8.1990 by superseding the petitioner.

(B) Issue a writ in the nature of mandamus directing the respondents to consider and promote the petitioner to the rank of Second-in-Command with effect from 3.8.90 instead of 27.4.1991 and to further promote him to the rank of Commandant with effect from 16.10.1991 instead of 4.11.1992 with all the consequential reliefs, namely, restoration of seniority, re-fixation of pay, arrears of salary, etc.

(C) Issue in the nature of certiorari quashing the guidelines date 10.4.1989 to the extent that these have been made operative with retrospective effect.'

2. According to the petitioner, he was working as Assistant Commandant in 1989 and the DPC held in June, 1990. His case was considered but he was not promoted. Subsequently, the DPC held and he was found fit and promoted. His grievance is that his juniors were promoted by virtue of the decision taken by the DPC held in June, 1990 and that had affected his progress in the service. In paragraph 12, he would state that as per the system then existing in 1989, the officers were categories by the superiors in the following three categories.

1. Fit for accelerated promotion.

2. Fit for promotion in turn.

3. Not yet fit for promotion.

3. According to the petitioner, all these categories had been changed, and fit for accelerated promotion was termed outstanding; fit for promotion in turn was termed as very good; and while others were termed as good.

4. According to the petitioner, by adopting this process, those who had obtained very good remarks had been promoted and others were were rejected. Mr.Bhardwaj, learned counsel for the petitioner submitted that none of the candidates who were considered in the Departmental Promotion Committee in June, 1990 had the remark 'outstanding' and by adopting some method of

equation, the petitioner was deprived of his chances of promotion and his juniors had been promoted.

5. The learned counsel, appearing for the respondents, submitted that on the 25th of November, 1988, by virtue of Section 4 of the Central Reserved Police Force Act, 1949, guidelines were issued and they read as under:-

'It has been observed that procedures followed in the different paramilitary forces in the matter of holding of DPCs and selection of officers for promotion are not uniform. It has, therefore, been decided that some common guidelines/ground rules may be communicated to the Director General, who may lay down internal procedures and criteria governing the DPCs keeping these guidelines in view, in this connection, the following guidelines followed by the Department of Personnel for assessing the ACRs are reiterated:-

(a) Undue importance, for or against, may not be given to more than two/three reports by the same reporting officer.

(b) If a reporting/reviewing officer is known, or appears, to be too liberal or too conservative in his assessment, that may be taken into consideration. Whether an officer is liberal or conservative could be inferred, to some extent. If his reports appear to be much out of tune with the earlier or later reports on the officer by other reporting/reviewing officers.

(c) Minor adverse or advisory remarks on officers holding important/difficult assignments may not be given undue importance. Similarly, highly favourable reports on officers holding unimportant/routine type of posts may have to be toned down for purposes of assessment.

2. (a) There may be more than one reporting officer in the case of some officers during a reporting period. Suitable assessment may be made in such a case where differing reports may exist.

(b) In case where the required qualifying service for promotion to a certain grade is more than 5 years, the number of CRs to be considered should be equal to the prescribed number of years of qualifying service.

(b) As per existing procedure, the DPCs should consider CRs for equal number of years in respect of all officers considered for promotion. Where such a requirement does not exist ordinarily CRs for the 5 preceding years, including the up-to-date CR, should be considered.

(c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question. If in a case even these are not available the DPC should take the CRs in the lower grade into account to complete the number of CRs required to be considered as per (a) & (b) above.

2. After going through the service records of each of the eligible officers, the DPC should give overall grading to the officers as 'outstanding', 'very good', 'good', 'average' and 'unfit'. In categorising the officers the following guidelines should be observed:-

Grading

(a) 'Outstanding' - An officer may be graded as outstanding if in the opinion of the DPC the overall service record of the officer reflects that he is of outstanding merit possessing exceptional attributes and abilities, and these characteristics are reflected in at least four of the ACRs for the last five years, including the ACR for the latest year (i.e. up to the year preceding the meeting of the Selection Committee). There should be no adverse entry in the CRs for the other years under consideration.

(b) 'Very Good' - An officer may be graded as 'Very Good' if in the opinion of the Selection Committee his overall service record reflects that the officer has done highly meritorious work and possesses positive attributes, and these characteristics are reflected in at least four of the last five ACRs including the ACR for the latest year, (i.e. up to the year preceding the meeting of the Selection Committee). There should be no adverse entry in the CR for the other years under consideration.

(c) 'Good' - An officer may be graded as 'Good' if in the opinion of the Selection Committee the service records reflect that the officer's performance has been generally good and he is considered fit for promotion, and these characteristics are reflected in at least three of the last five ACRs including the ACR for the latest year (i.e. up to the year preceding the meeting of the Selection Committee.) There should be no adverse entry in the CRs for the other years under consideration.

(d) 'Average' - An officer may be graded as 'Average' if in the opinion of the Selection Committee his overall service record reflects that the officer's performance has been routine and generally average and he has not more than two 'Very Good' in the last five ACRs. There should be no adverse entries in the CRs for the other years under consideration or if there are some adverse entries they should not be of a very serious nature.

(e) 'Unfit' - An officer may be graded as 'Unfit' if the officer's overall reports are lacking any positive merit and his ACRs, particularly in the last 5 years, reflect adversely on his suitability for promotion, or his ACRs contain orders of penalty for acts and omissions, which in the opinion of the Select Committee would render the officer unsuitable for promotion and who according to the guidelines laid down above cannot be given the grading of 'Good'.

For promotion up to the level of 2nd in Command only those officers who have earned an overall grading of 'Good' or above, in terms of the guidelines laid down above, shall be considered.

For promotion to the level of Commandant and above, stricter criteria shall be applied. Hence officers recommended for promotion should have earned an overall grading of 'Very Good' or above.

While drawing up the final panel, officers graded as Outstanding, included in the panel, will rank en bloc above officers categorised as Very Good will rank en bloc above officers graded as Good.

The Government's existing instructions regarding, promotions of SC/ST category of officers will not be affected by the above guidelines.

The CPOs may issue guidelines for DPCs where they do exist or modify the guidelines where they exist to conform to general guidelines herein arrived at a meeting with the DGs.

6. According to the learned counsel for the respondents, the DPC considered the ACRs as per these guidelines and the petitioner had secured very good only for three ACRs. therefore, those who had secured very good for four ACRs have been promoted. The learned counsel for respondents also referred to the guidelines dated 6/8th of February, 1991 wherein guidelines were issued with reference to part 3b of the earlier guidelines reducing the period of consideration for four years ACRs to three years ACRs. Those guidelines read as under:-

"Para 3(b): 'VERY GOOD'

An officer may be graded as 'Very Good' if in the opinion of the Selection Committee his overall service record of the Selection Committee his overall service record reflects that the officer has done highly meritorious work and possesses positive attributes and these characteristics are reflected in east 3 of the last 5 ACRs. Further, in the opinion of the Selection Committee, the remaining ACRs under consideration of the Committee should reflect that the officer's performance is generally good, during the period of report. There should be no adverse entry in any of the ACRs under consideration of the Selection Committee.'

7. The learned counsel for respondents submitted that the DPC had followed the guidelines and acted in accordance with law. Section 4 of the Central Reserved Police Force Act, 1949 reads as under:-

'Appointment and powers of Superior Officers._(1) The Central Government may appoint to the force a Commandant and such other persons as it think fit to be Assistant Commandants and Company Officers.

(2) The Commandant and every other officer so appointed, shall have, and may exercise, such powers and authority as may be provided by or under this Act.

8. The power of the respondents to issue guidelines by virtue of Section 4e Central Reserved Police Force, Act, 1949 is not challenged.

9. The argument on behalf of the petitioner is that the guidelines could have only prospective operation and while considering the case of the petitioner in the Department Promotion Committee in June, 1990, the ACRs recorded in his service, as per the existing system prior to the 25th of November, 1988, should alone be the basis. If what has been done by the DPC is allowed, then that would mean that the respondents had the power to issue guidelines having retrospective operation. There is a fallacy in the argument of the petitioner. When there is a source of power empowering the respondents to issue guidelines in the interest of administration, those guidelines have to be applied existing as on the date of consideration. There is no question of giving any retrospective operation. That concept is wholly alien to this case. The petitioner cannot have the same criteria which obtained on the date of his entry into service and the criteria for selection could always be changed by the employer and by this process, the chances of promotion of the petitioner are not affected and that is a well settled proposition. The petitioner has not been able to make out any case of illegality, impropriety or procedural irregularity in the method adopted by the respondents.

10. In law the petitioner can only ask for consideration of his case in accordance with law and that has been done by the respondents. The petitioner applying the principle of prospective and retrospective operation of law cannot challenge the selection made by the respondents.

11. The learned counsel for respondents raised a preliminary point that the officers who had been promoted had not been made parties to the writ petition and on that ground the writ petition is liable to be dismissed. I am afraid that such a contention runs counter to the principle laid down by the Supreme Court when in a given case question of policy is involved and that is to be defended by the department. The officers who have been promoted need not be made parties to the writ petition. The preliminary objection has absolutely no force.

12. The learned counsel for the respondents submitted that the officers selected came under the category of 'very good' for four years and, therefore, there is no illegality in the selection made by the respondents. The writ petition is dismissed.

13. There shall be no orders as to costs.

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