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Court : Delhi

Decided On : May-26-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Appeal No. : W.P.(C) 5400/2010

Appellant : Avinash Singh and ors

Respondent : Union of India and ors

Advocate for Def. : Mr.Rakesh Tikku; Mr.M.P.Singh, Advs.

Advocate for Pet/Ap. : Ms.Jyoti Singh; Mr.A.K.Trivedi; Ms.Amardeep Joshi, Advs.

Judgement :

1. Heard learned counsel for the parties.

2. Petitioners claims to be peace loving and law abiding citizenS and thus request from the State to be fair, just and reasonable in its decision while dealing with those citizens who are peace loving and law abiding.

3. For the post of Assistant Commandant in Central Police Forces, a special selection board conducted the proceedings pertaining to appointment of persons who were eligible to be appointed as Assistant Commandant and the process was completed somewhere in the month of June, 2004.

4. Those who qualified were required to be medically examined for the reason Recruitment Rules stipulated the physical standards to be achieved.

5. Petitioners, 7 in number, were declared temporarily medically unfit. They were subjected to a review medical evaluation and on 14.10.2004 were declared fully medically fit.

6. By this date, those who had been empanelled as per the merit position assigned in the select list and were declared fit at the first instance had yet to be issued letters of appointment.

7. On 02.11.2004, a date which is after 18 days of the date 14.10.2004 when petitioners were declared medically fit, those persons who were declared fit at the first instance joined ITBP as Assistant Commandant.

8. For unexplainable reasons, why petitioners who were declared medically fit on 14.10.2004 were not issued appointment letters by 2.11.2004 remains a mystery. Their appointment process got delayed till 08.08.2005 on which date even they were appointed as Assistant Commandant.

9. On 27.08.2007 a seniority list of Assistant Commandant under ITBP was finalized. It was drawn in 2 parts. A main part and a supplementary part.

10. Those who joined on 02.11.2004 were assigned seniority in the main part of the seniority list as per their merit position in the select list. Those who joined on 08.08.2005 were assigned seniority in the supplementary list and as per their merit position in the select list, which needless to state has resulted in those who joined on 08.08.2005 being shown as junior irrespective of their merit position in the select list.

11. Suffice would it be to note that the seniority was assigned with reference to the date of joining and not with reference to the merit position in the select list prepared when the result of the recruitment process was notified in the month of June, 2004.

12. Petitioners made representations drawing attention of the respondents that the seniority required to be assigned as per the merit position in the select list and not on the fortuitous circumstance of a person joining on a particular date. Secondly, petitioners stated that they were declared medically fit on 14.10.2004 and there was no reason not to make them join by 02.11.2004 on which date, those who were declared medically fit at the first instance were made to join.

13. Hoping that peace loving and law abiding citizens would be treated fairly and not in a discriminatory manner, finding their pleas thrown to the winds inasmuch as the respondents neither have fairly nor justly nor reasonably taken a just action, instant writ petition has been filed raising a 2 fold grievance. Firstly that seniority be corrected in the post of Assistant Commandant and further petitioners be considered to be promoted as Deputy Commandant with effect from the date persons junior in their batch were promoted on account of these persons being treated senior as Assistant Commandant, which promotions we note took place in the year 2010.

14. Recruitment Rules for the post of Deputy Commandant make eligible those Assistant Commandant who have rendered 6 years regular service in the grade of Assistant Commandants to be promoted as a Deputy Commandant and we note that the promotions effected in the year 2010 rendered ineligible even those who had joined on 02.11.2004 and these persons were granted 1 year relaxation in the eligibility norm for being promoted.

15. Against the petitioners, it is stated by the respondents that they were declared temporarily medically unfit and were appointed as Assistant Commandant only upon being declared medically fit, their seniority had to be not with reference to their merit position in the select list but has to be with reference to the date of joining and secondly that the eligibility norm for being eligible to be promoted as a Deputy Commandant is 6 years service rendered as an Assistant Commandant.

16. Facts noted hereinabove make it plain clear that by 14.10.2004 the petitioners were declared fit. By that date nobody from amongst the merit list had joined as an Assistant Commandant and that a few out of the list joined as Assistant Commandant on 02.11.2004. We see no reason as to why the petitioners were not

made to join as Assistant Commandant on 02.11.2004.

17. It is settled law that if appointment is by selection, seniority of the entire batch has to be reckoned with respect to the merit position obtained in the selection and not on the fortuitous circumstance on the date on which a person is made to join.

18. We highlight in the instant case the fortuitous circumstance of the petitioners being made to join as Assistant Commandant on 08.08.2005 is not the result of anything created by the petitioners but is a result of a supine indifference and negligence on the part of the ITBP officials.

19. Thus, petitioners would be entitled to their seniority as Assistant Commandant with respect to their batch-mates in the context of the merit position in the select panel. We make it clear, the seniority as Assistant Commandant of the entire batch would be a reflection of the merit position in the select list and not the date of joining.

20. It is trite that where a thing is deemed to come into existence everything which logically flows therefrom has to be followed and the imagination cannot boggle down. In other words, the effect of the petitioners' seniority being reckoned with reference to the select panel would mean that the petitioners would come at par with their brethren who joined on 02.11.2004. Since their brethren were granted 1 year qualifying service relaxation, petitioners would be entitled to the same benefit and additionally for the reason the next below rule requires that if a person junior in the seniority position acquires the necessary qualifying service, the person above has also to be considered for promotion.

21. Thus, we dispose of the writ petition issuing the following 2 mandamus:-

A. Seniority list of Assistant Commandant be re-drawn for the select panel of the batch pertaining to the result declared in June 2004 irrespective of the date of joining and seniority be assigned with reference to the merit position in the select list.

B. Case of the petitioners be placed before a Review DPC to consider their promotion to the post of Deputy Commandant and this Review DPC would be

as of the year 2010 i.e. the year in which persons who would now be junior to the petitioners were empanelled and promotion granted.

22. Needless to state if it is found that the petitioners are entitled to be promoted, promotion order be issued and in such circumstance the petitioners would be entitled to all consequential benefits except actual salary for the post of Deputy Commandant which they would be paid from the date they assume charge as a Deputy Commandant.

23. No costs.

24. Dasti.

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