

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 14th February, 2011

+ **W.P.(C) 12165/2009**

KAMALJEET SINGH Petitioner
Through: Mr.Bijender Singh, Advocate

versus

UOI & ANR. Respondents
Through: Mr.Ankur Chhibber, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. Heard learned counsel for the parties.
2. The hiatus between what ought to have happened and what actually happened is creating a problem for the petitioner.
3. In view of the facts which we would be hereinafter noting and the law on the subject, petitioner would be entitled to relief.
4. Holding the post of Deputy Commandant and eligible to be considered for promotion as 2-IC, at the DPC which met on 19.04.2004, petitioner was declared unfit and persons junior to him were promoted.
5. Reason why petitioner was declared unfit at the DPC was an adverse remark entry in his ACR for the year 2000-01.
6. Not being communicated to him and the adverse remark being taken note of by the DPC, claim of the petitioner in WP(C)

No.6269/2006 for review DPC to be held and the uncommunicated adverse remark being ignored succeeded, when vide judgment and order dated 24.05.2007, allowing WP(C) No.6269/2006 was allowed with a direction issued by the Division Bench of this Court that within 3 months of the date of the order, review DPC be convened and at the review DPC, case of the petitioner be reconsidered ignoring the adverse entry in the ACR for the year 2000-01.

7. A belated review DPC was held. Petitioner was found fit to be promoted. On 27.05.2008, a promotion order was issued promoting petitioner to the rank of 2-IC with effect from 29.06.2004 i.e. the date when persons junior to him were promoted with reference to the DPC held on 19.04.2004.

8. The petitioner faced further problem inasmuch as by the year 2008, the persons who were junior to the petitioner had earned further promotion to the rank of Commandant.

9. Petitioner made a representation praying that even he be promoted to the rank of Commandant, which request was negated on two counts. Firstly, it was held that the mandatory requirement of rendering 2 years' service in a duty battalion as 2-IC was not met by the petitioner. It was stated against the petitioner that his working as 2-IC in a duty battalion was short by 6 months. The second thing held against the petitioner was his not having cleared the Senior Command Course.

10. With respect to the first ground held against the petitioner, suffice would it be to state that in view of the judgment and order dated 27.10.2009, allowing a batch of writ petitions, lead writ petition being WP(C) No.21900/2005 Ashok Kumar vs. UOI & Ors., relief of being entitled to relaxation has to be granted to the petitioner.

11. In a nutshell, the reasoning of Ashok Kumar's case may

be noted.

12. Till Border Security Force (Ground Duty Officers) Recruitment Rules were framed, the Border Security Force (Seniority, Promotion and Superannuation of Officers) Rules 1979 and the Border Security Force (Assistant Commandant) Recruitment Rules 1985 were in force and as per the said rules, eligibility criteria for promotion to the post of 2-IC did not mandate that the Deputy Commandant should have worked for at least two years in a duty battalion. When the new Rules were notified, for the first time a stipulation was added that Deputy Commandant should have worked in a duty battalion for at least two years before becoming eligible to be considered for promotion as 2-IC.

13. There existed a provision in the Rules for relaxation.

14. What had happened was that in March, 2004 there was a quantum jump in the sanctioned strength of 2-IC. Existing posts being 161 were enhanced to 227.

15. Those who were way below in the seniority list would not be bothered to be deputed to duty battalions for the reason they would reasonably believe that by the time they become senior they would be sent to duty battalions. With the sudden quantum jump in the sanctioned strength, these calculations went haywire and the result was that large number of junior persons, having fortuitously worked in the duty battalion, were promoted ahead of their seniors.

16. In view of the fact that a power of relaxation existed in the Rules notified in the year 2001, and taking note of the fact that an unexpected situation had come into being, the writ petitions were allowed with the directions that the competent authority would consider grant of relaxations on account of the unexpected events. The competent authority decided to grant the

necessary relaxation and the writ petitioners whose writ petitions were decided on 27.10.2009 were granted the benefit of relaxation i.e. were promoted with retrospective effect from the date persons junior to them were promoted.

17. Petitioner being similarly situated would be entitled to be treated at par with Ashok Kumar and others.

18. Having overcome the first problem, a further fact needs to be noted. The petitioner has since completed the Senior Command Course and has now earned promotion as Commandant on 01.05.2009, but has been ranked junior.

19. Suffice would it be to state that since the petitioner was not promoted as 2-IC when persons junior to him were promoted, he could not be deputed to undergo the Senior Command Course. As a result of retrospective promotion granted to the petitioner as 2-IC, the hiatus between notional promotion and actual promotion has to be resolved. Had the DPC which met on 19.04.2004 not considered the un-communicated adverse remark in the ACR of the petitioner for the year 2000-01, he would have earned promotion as 2-IC on actual basis with effect from 19.04.2004. In normal course of events he could have been sent for the Senior Command Course and upon successful completion thereof, would have earned further promotion. The fact that due to an error committed by the respondent, petitioner was granted benefit of notional promotion and seniority, the consequences of the said notional benefit must flow to the logical conclusion and for this the petitioner, who has since cleared the Senior Command Course and has been promoted as Commandant with effect from 01.05.2009 would be entitled to be accorded seniority with effect from the date persons junior to the petitioner were promoted.

20. Writ petition stands disposed of directing that treating the petitioner eligible as of 24.01.2008, review DPC would

consider the candidature of the petitioner and if found fit for promotion, the petitioner would be granted promotion as Commandant with effect from the date persons immediately junior to him were promoted; with benefit of seniority. Consequential benefit of pay fixation except arrears would be granted to the petitioner.

21. Needful be done within 12 weeks from today.
22. No costs.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

FEBRUARY 14, 2011
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