

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION No. 5495 of 1999

Between:

Mr. Rohtash S/o. Sri Kanwal Singh,
R/o. Lance Naik, NISA, Hyderabad. PETITIONER

AND

- 1 The Secretary, Ministry of Home Affairs,
Government of India, New Delhi.
- 2 Director General, Central Industrial Security Force,
13th Block,CGO's Complex Lodhi Road, New Delhi.
- 3 Director/Deputy Inspector General,
NISA Hakimpet, Hyderabad.
- 4 Commandant, RTC, Deoli, Rajasthan. ...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order, or direction more especially one in the nature of Mandamus directing the Respondents to promote the petitioner to the rank of Lance Naik w.e.f. 12-2-1994 when his juniors were promoted and to give all consequential benefits.

Counsel for the Petitioner : Mr.Y.S.SAI VARA PRASAD

Counsel for the Respondents : Mr.P.CHANDRA SEKHAR REDDY

The Court made the following :

ORDER:

This writ petition is filed seeking a Mandamus directing the respondents to promote the petitioner to the rank of Lance Naik w.e.f. 12.2.1994 when his juniors were promoted and also for consequential benefits on par with them.

It is the case of the petitioner that he was appointed as a Constable in Central Industrial Security Force w.e.f. 5.4.1981. In the year 1993, a Departmental Promotion Committee was constituted for the purpose of considering promotions of Constables to the posts of Lance Naik. The DPC was sat on 28.2.1993. Even the petitioner was also selected for promotion. But however, his promotion was not effected to the cadre of Lance Naik, but whereas all his juniors and batch mates were promoted to the post of Lance Naik as per the proceedings of the DPC dated 12.2.1994. He made several representations to the respondents, but his case was not considered. However, in the DPC held in the year 1994, the petitioner was promoted as Lance Naik w.e.f. 27.9.1994. The petitioner accepted the said promotion, however, after more than 3 years thereafter, he filed the present writ petition stating that he is entitled for being promoted to the post of Lance Naik along with his batch mates w.e.f. 12.2.1994. In this regard, he made representations dated 13.9.1996 and 31.10.1996 to the respondents, but the same were not considered. The denial of his promotion along with his batch mates w.e.f. 12.2.1994 to the post of Lance Naik is being questioned in this writ petition.

A detailed counter affidavit has been filed by the respondents denying the allegations made by the petitioner. In the counter affidavit, it is asserted that though the DPC constituted in the year 1993 had selected the petitioner for promotion to the post of Lance Naik, the same was not implemented as he was awarded with the penalty of 'censure' for overstaying leave w.e.f. 5.7.1993 to 13.9.1993 unauthorisedly, which amounts to gross misconduct on the part of a member of the Armed Force. As per the rule in force, if any incumbent subsequent to empanelment of promotion and before the actual promotion takes place, commits any misconduct and was awarded punishment, he would not be promoted even though he had been empanelled. However, it is further stated that the DPC constituted in the year 1994, considered his promotion and found him fit and accordingly he was promoted as

Lance Naik w.e.f. 27.9.1994. It was further asserted that the petitioner is not entitled to claim promotion w.e.f. 12.2.1994 on par with his batch mates in view of the censure imposed on him. The learned counsel for respondents also drawn attention of this Court to show that censure is included in the minor penalties as per Rule 34 of the Central Industrial Security Force Rules, 2001, which reads as under:

34. Nature of Penalties : The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on an enrolled member of the Force, namely:

Minor Penalties:

- i. Censure;
- ii. Withholding of his promotion;
- iii. Reduction to a lower stage in the time scale of pay for 3 period of not exceeding three years, without cumulative effect and not adversely affecting his pension;
- iv. Withholding of increment of pay;
- v. Fine to any amount not exceeding of 7 days' pay.

He also drawn the attention of this Court to Part-V of the Departmental Promotion Committee Rules, particularly to Rule 17.6.2, which reads as under:

“If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His cases for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him”.

In view of the above, I am of the considered opinion that the authorities have not committed any error in denying promotion to the petitioner for the post of Lance Naik along with his batch mates w.e.f 12.2.1994, however, he was subsequently considered in the year 1994 and the DPC rightly promoted him w.e.f. 27.9.1994

Therefore, the writ petition is devoid of merits and is accordingly dismissed.

C.V.RAMULU, J

Date: 3.3.2005

DA

To

- 1 The Secretary, Ministry of Home Affairs,
Government of India, New Delhi.
- 2 The Director General, Central Industrial Security Force,
13th Block,CGO's Complex Lodhi Road, New Delhi.
- 3 Director/Deputy Inspector General, NISA Hakimpet, Hyderabad.
- 4 The Commandant, RTC, Deoli, Rajasthan.
- 5 Two CD copies.