

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/7/2004

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA

AND

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.P.No.20038 of 1998

P.C.Abraham .. Petitioner

-Vs-

1. The Union of India, rep. by
the Secretary,
Ministry of Home Affairs,
New Delhi.

2. The Director General,
Central Industrial Security Force,
CISF Headquarters, Block 13,
CGO's Complex, Lodhi Road,
New Delhi-110 003.

3. The Group Commandant,
CISF 'D' Block, Rajaji Bhavan,
Besant Nagar, Chennai-90.

4. The Group Commandant,
CISF Group Headquarters,
Vennela Post, Cochin-28, Kerala.

5. The Assistant Commandant,
CISF, Madras Fertilizers Limited,
Manali, Chennai-68. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a writ of certiorariafied mandamus, to call for the
records relating to the impugned order of the fourth respondent in
Proc.No.E-31014/GHC/Ct.-HC/DPC/98/2417, dated 28.5.1998, quash the same and
direct the respondents to promote the petitioner to the post of Head Constable
with effect from the date of promotion of the petitioner's juniors and grant
him all attendant benefits including arrears of pay.

!For petitioner : Mr.T.N.Sugesh

^For respondents: Mr.G.Jayachandran, ACGSC

:ORDER

(The Order of the Court was made by F.M.Ibrahim Kalifulla,J.)

The petitioner is aggrieved against the rejection order of the fourth respondent dated 28.5.1998, in and by which his representation as regards non-consideration of his promotion earlier to the year 1998, was sought to be remedied.

2. Brief facts which are required to be stated are:

The petitioner joined as a Constable in the Central Industrial Security Force (C.I.S.F.) on and from 12.3.1982. In the year 1995, he was imposed with the punishment of reduction of pay by two stages, i.e. from Rs.900/- to Rs.870/-, which was to operate for a period of one year with effect from 1.2.1995. By virtue of the said punishment imposed, he was not considered for promotion in the review Departmental Promotion Committee (D.P.C) held for the year 1994 for being promoted from the post of Constable to the post of Lance Naik. Subsequently, he was promoted to the post of Lance Naik notionally with effect from 1.2.1996, i.e. after completion of the punishment period. Thereafter, his case fell for consideration for promotion to the post of Head Constable. By applying the Circular Instructions 5/91, the petitioner was found "BELOW AVERAGE / NOT FIT". Thereafter, the turn for being promoted to the post of Head Constable occurred only in February 1998 and accordingly, he was promoted notionally with effect from 26.12.1998 and he physically assumed charge as Head Constable (G.D) on and from 25.9.1999. Aggrieved against such belated promotion, and also expressing the grievance that his juniors got promoted earlier in point of time, the petitioner appeared to have made a representation, which came to be rejected by the order impugned in the writ petition.

3. Assailing the said order, Mr.T.N.Sugesh, learned counsel appearing for the petitioner would contend in the first place that the punishment of reduction in the lower post by two stages for a period of one year, was not a major punishment and therefore, reduction of more than two marks for the suffering of the said punishment, because of which he was denied the promotion prior to 1998, was not justified, and that the same was contrary to Central Civil Services (C.C.S) Classification Control and Appeal Rules (C.C.A) Rules, which would be applicable to the case of the petitioner. The petitioner relied upon Rule 11(iii)(a) of the C.C.S. (C.C.A) Rules, where the reduction to a lower stage in the time-scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension, has been prescribed as one of the minor penalties which could be inflicted upon a Government servant.

4. As against the above submission, Mr.G.Jayachandran, learned Additional Central Government Standing Counsel (ACGSC) would contend that Rule 11 of C.C.S. (C.C.A) Rules will have no application to the case on hand. Learned ACGSC drew our attention to Rules 18, 31, 34 and 70 of the C.I.S.F. Rules, 1969 and contended that when specific rules relating to the manner in which the promotion is to be made, and consideration of major and minor punishments, as also specifying which are the major and minor punishments, application of C.C.S. (C.C.A) Rules, stood automatically excluded. Learned ACGSC therefore contended that going by the relevant rules under the C.I.S.F. Rules, the petitioner was not eligible to be considered for promotion from the

post of Lance Naik to the post of Head Constable in any year other than the year 1998. In this context, learned ACGSC would submit that the application of Circular Instructions contained in Force Headquarters Circular No.5/91, was correctly applied to the case of the petitioner.

5. After hearing learned counsel for either parties, we are convinced that the order impugned in the writ petition was well justified and the same does not call for interference.

6. We feel it appropriate to refer to Rule 70 of the C.I.S.F. Rules, in the first instance, which is to the following effect:

"70. Other conditions of service: The supervisory officers and members of the Force shall, in respect of all other matters regarding conditions of service for which no provision or insufficient provision has been made in these rules, be governed by the rules and order for the time being applicable to officers holding corresponding posts in the Central Government in respect of such matters."

7. A reading of Rule 70 of the C.I.S.F. Rules, makes it clear that in respect of the members of the C.I.S.F. and as regards the conditions of service for which if no provision is made or the provisions contained in the Rules are insufficient, then and then only the members would be governed by the other Rules applicable to the corresponding post in the Central Government, namely C.C.S. (C.C.A) Rules.

8. With that background, when Rule 18(1) of the C.I.S.F. Rules are perused, the same would prescribe the procedure to be followed in the matter of promotion. For the sake of clarity, Rule 18(1) of the C.I. S.F. Rules is also extracted, which is to the following effect:

"18. Promotion -- (1) Promotion from one rank to another or from one grade to another in the Force shall be made on the basis of selection made in accordance with the procedure laid down by the Inspector-General in this behalf."

A reading of Rule 18(1) of the C.I.S.F. Rules makes it clear that promotion from one rank to another could be made on the basis of the selection made in accordance with the procedure laid down by the Inspector General in that behalf.

9. Therefore, a reading of Rule 70 along with Rule 18(1) of the C.I.S.F. Rules, makes it clear that there is not only a specific provision relating to promotion, that provision is also sufficient enough to govern all cases wherever the promotions are to be made including the cases where the persons suffer from any punishment.

10. Inasmuch as under Rule 18(1) of the C.I.S.F. Rules, the Inspector General has been empowered to lay down the procedure, the Circular Instructions contained in Force Headquarters Circular No.5/91 which specifically provides the manner in which the punishments suffered by a member of the Force is to be considered in the matter of promotion, it will have to be held that there was sufficient provisions contained in the Rules themselves to regulate the promotions to be made in respect of the members of the Force.

11. Again, when we refer to Circular Instructions No.5/91, the provision is to the following effect:

"Punishments:- During the past five years period which the DPC will consider, 2 marks will be deducted for each 'Minor punishment'. He will be declared 'BELOW AVERAGE / NOT YET FIT' in case of Major punishment in the preceding year of holding DPC, otherwise 5 marks will be deducted for each 'Major punishment'. "

12. When we come to the question as to whether the punishments suffered by the petitioner in the year 1995 was a major punishment or a minor punishment, here-again, we had to refer to Rules 31 and 34 of the C.I.S.F. Rules, with particular reference to Rule 70 thereunder. Rule 31 prescribes the nature of penalties which can be imposed on a member of the Force. Clause (d) to Rule 31 prescribes the punishment, namely reduction to a lower stage in the time-scale of pay. Though under Rule 31, no distinction has been shown as to which would be the major punishment and which would be the minor punishment, when we read Rule 31 along with Rule 34 of the C.I.S.F. Rules, which is the procedure prescribed for imposing major penalties, we find under Rule 34 it is specifically provided that no order imposing on a member of the Force any of the penalties specified in Clauses (a) to (d) of Rule 31 should be passed, except after an enquiry held as far as may be in the manner provided therein. The caption of Rule 34 is that " Procedure for imposing major penalties". Rule 35 of the C.I.S.F. Rules has been captioned "Procedure for imposing minor penalties".

13. Therefore, a conjoint reading of Rules 31, 34 and 35 of the C.I.S.F. Rules makes it clear that while Clauses (a) to (d) of Rule 31 would be governed by Rule 34, meaning thereby that those punishments are major penalties, the punishments falling under Clauses (e) to (h) of Rule 31 by virtue of the procedure prescribed under Rule 35, are minor penalties. Therefore, to that extent, the Rules are specific and makes a clearcut distinction as between major penalties and minor penalties and therefore we do not find any compelling necessity to invoke Rule 11 of the C.C.S. (C.C.A) Rules. In other words, by virtue of Rules 18, 31, 34 and 70 of the C.I.S.F. Rules, we are inclined to hold that there is an implied non-application of any Rule concerning the treatment of any punishment imposed on the petitioner in the manner done by the respondents herein, and the same did not call for invocation of Rule 11 of C.C.S. (C.C.A) Rules.

14. Having regard to the said legal position, the impugned order dated 28.5.1998, in and by which it was held that by virtue of Circular Instructions No.5/91, since the petitioner had suffered a major punishment in the year 1995, which was within the five year period prescribed under the said Circular, the fourth respondent (The Group Commandant, C.I.S.F. Group Headquarters, Vennela Post, Cochin-28, Kerala) was fully justified in rejecting the petitioner's representation on the ground that the petitioner dis-entitled himself to be considered for promotion in any year prior to 1998.

15. We therefore do not find any flaw in the order impugned in this writ petition. The writ petition therefore fails and the same is dismissed. No costs.

Index: Yes
Internet: Yes
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To

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