

2lc Ram Vashishtha Yadav ... vs Union Of India & Others on 15 September, 2020

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw, Asha Menon

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (C) 522/2020

2IC RAM VASHISHTHA YADAV (IRLA-19667539)

.....Petitioner

Through: Mr. Ankur Chhibber, Advocate
versus

UNION OF INDIA & OTHERS

.....Respondents

Through: Mr. Sanjeev Uniyal, with Mr.
Dhawal Uniyal, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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15.09.2020

[VIA VIDEO CONFERENCING]

1. The petitioner has filed this petition pleading, (i) that he joined the respondents Border Security Force (BSF), as Assistant Commandant, on 15th April, 1997; (ii) that the petitioner, while posted near the Bangladesh border, on 22nd June, 1999, on receipt of intelligence reports of smuggling, was deputed and while in pursuit of the smugglers, the vehicle in which the petitioner was travelling was hit by another vehicle and in which the petitioner was injured; (iii) a Staff Court of Inquiry (SCoI) was ordered on 24th July, 1999 and rendered its opinion on 11th October, 1999 and the Inspector General (IG) concerned made his remarks thereon on 31st January, 2000 to the effect that the petitioner's injuries were sustained due to Operational Bonafide Government Duties; (iv) on 18th November, 2003, the petitioner was declared to be in 'low medical category', because of injuries sustained in the aforesaid incident, amounting to 42% disability; (v) that a Departmental Promotion Committee (DPC) for promotions to the post of Deputy Commandant of the year 2004-2005 was held on 23rd June, 2004 but in which the petitioner, owing to 'low medical category', was not considered for promotion; (vi) on 25th August, 2004, juniors of the petitioner were promoted to the post of Deputy Commandant;

(vii) on 27th December, 2004, the petitioner represented for a second SCoI and which was ordered on 1st April, 2005 and findings dated 30th April, 2005 therein reported in favour of the petitioner, that the disabilities of the petitioner were attributable to Operational Government Service and the

IG concerned in his remarks dated 4th June, 2005 also concurred; (viii) however the Ministry of Home Affairs (MHA) took a stand that the injuries suffered by the petitioner were not during combat action and thus the petitioner, for the purposes of promotion, was not entitled to relaxation of 'low medical category'; (ix) the medical category of the petitioner was upgraded on 19th March, 2007; (x) on 29th December, 2007, a third SCoI was ordered and which also in its report dated 21st January, 2008 found the petitioner's disability attributable to Operational Bonafide Government Duties; (xi) yet another i.e. fourth SCoI was ordered on 26th March, 2008 and the report dated 9th June, 2008 thereof also reiterated the previous stand of the respondents BSF; (xii) the petitioner, in the interregnum, on 29th March, 2008, completed the pre-promotional course and on 17th April, 2008 was promoted as Deputy Commandant, w.e.f. 25th June, 2008; (xiii) the petitioner, on 2nd June, 2010 and 10th December, 2011 represented for promotion with effect from 2004-2005, when he was wrongfully denied promotion and when his batch mates were promoted; (xiv) on 30th May 2015, pursuant to the representations of the petitioner and opinion of the Director General (DG), BSF, the remarks on SCoI were changed from 'injury attributable to government service' to 'injury suffered in combat action' and which remarks made the petitioner eligible for promotion w.e.f. the year 2004-2005 i.e. when the petitioner, but for the erroneous findings in the first SCoI, was eligible for promotion; and, (xv) though the petitioner, on 21st October, 2016 has also been promoted to the rank of Second-in- Command (2IC) but the seniority of the petitioner has not been restored owing to the erroneous findings of the SCoIs. Hence this petition.

2. The petition came up before this court first on 15th January, 2020 when the counsel for the respondents BSF appearing on advance notice took time to obtain instructions on the current status of the recommendations made by the review DPC in petitioner's case and which were stated to be pending with the MHA since 14th January, 2016. Thereafter on 12th February, 2020, the court was informed that the MHA had returned the file to the respondents BSF in October, 2018. Vide order dated 12th February, 2020, the respondents BSF were directed to file an affidavit, not later than 15th March, 2020, explaining what steps were taken in the matter, after the file was so returned and an officer conversant with the facts was also directed to remain present on 31st March, 2020. However owing to the prevalent pandemic affecting the functioning of the courts w.e.f. 24th March, 2020, the petition could not be taken up for hearing.

3. The petitioner filed C.M. Appln. No. 22331/2020 for early hearing and which came up before this court on 11th September, 2020 when the same was allowed and the petition taken up for hearing on the same day. Finding that the affidavit directed to be filed latest by 15th March, 2020, had not been filed, enquiry was made from the counsel for the respondents BSF who stated that the affidavit would be filed on that date itself. Accordingly the petition was posted for today.

4. Though an affidavit has been filed by the respondents BSF but which is highly dissatisfactory and shows a poor state of affairs. As per the said affidavit, (i) the file of the petitioner was moving between BSF and MHA and the file of the petitioner was being returned with certain objections, each time it was sent by BSF to MHA. As late as October, 2019, the file was again sent to MHA for approval and is still pending there; (ii) that earlier the case for approval of review DPC dated 14th January, 2016, held with the approval of MHA, in respect of the petitioner, was submitted to MHA under Note dated 21st January, 2016 for approval and MHA returned the file with a number of

observations; the file was again submitted on 27 th February, 2017 after making efforts to address the observations but the case of the review DPC was again returned by MHA with observations; thereafter the case was re-submitted to MHA on 23rd May, 2018 but was again returned with observations on 31st October, 2018; the file was re-submitted to MHA on 26th February, 2020 with request to consider the review DPC proceedings in respect of the petitioner and convey decision on the same but the MHA returned the file on 26th May, 2020 for some clarification; after clarification, the file has been re-submitted to MHA on 12th June, 2020 with request to consider the review DPC proceedings in respect of the petitioner and convey decision.

5. The aforesaid shows a total paralysis in decision making, between BSF and MHA, which appear to be playing ping-pong with each other.

6. In the aforesaid facts, we have given option to the counsel for the respondents BSF that either the decision, if any the MHA intends to take, be taken and conveyed to us by the next date of hearing or we proceed to decide the petition ourselves since the authorities concerned appear to be unable to take the decision on their own.

7. The counsel for the respondents BSF has opted for the latter.

8. Accordingly the DG, BSF and Mr. S.K. Shahi, Joint Secretary (P-II) (Central Armed Police Forces) in the Ministry of Home Affairs, to ensure decision making by the next date of hearing and the decision should be before us on the next date.

9. We also request Mr. S.K. Shahi, to whom we have been forced to issue several such directions in the recent past, to join the proceedings on the next date via video conferencing.

10. List on 29th September, 2020.

11. The counsel for the respondents BSF to convey this order to the DG (BSF) and to Mr. S.K. Shahi, today itself.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

SEPTEMBER 15, 2020 pkb