

Union of India and Another

Vs

R. C. D'souza

Civil Appeal No. 145 of 1979

(CJI R. S. Pathak, Ranganath Misra JJ)

20.02.1987

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal by special leave is against the judgment of the Andhra Pradesh High Court in a writ appeal arising out of the judgment of a learned Single Judge in an application under Article 226 of the Constitution.

2. The respondent on taking premature retirement on compassionate grounds from the Indian Army at the age of 33, was offered appointment as Assistant Commandant in the Central Reserve Police Force (CRPF for short) and was given appointment initially for a period of three years. Early in 1970 he was promoted on temporary basis as Commandant on the basis of selection. In October 1970, the President sanctioned his continued re-employment for one year as Commandant. The respondent was asked to opt for absorption. In the meantime, his promotional appointment as Commandant was extended from time to time. In June 1976, he was informed by the Director General of the CRPF that in view of the Rule 107 of the Central Reserve Police Force Rules, 1955, he was not entitled for absorption in the Force. A representation of the respondent was rejected by the President. Thereupon, he applied to the Andhra Pradesh High Court under Article 226 of the Constitution for a direction for his absorption in the Force. The learned Single Judge referred to Rule 105 which deals with recruitment and Rule 107 dealing with tenure and on the basis that there was nothing in these rules to disentitle a retired or released army officer from absorption, directed the appellants to consider the respondent's permanent absorption. The Division Bench upheld the direction and dismissed the appeal of the appellants.

3. Rule 105(3-A) dealing with recruitment inter alia, provides that the post of Assistant Commandant shall be filled :

#(i) * * *##

(ii) by re-employment of retired or released Army Officers or substantive Majors of the Territorial Army of Indian Police Service Officer (Senior Scale) or with four years of service as such or State Police Officers holding the posts of Superintendent of Police or equivalent posts preferably with experience of Armed Police duties or Assistant Commandants of the Central Reserve Police Force or

#(iii) * * *##

Indisputably the respondent had been recruited as Assistant Commandant on the footing that he was a retired/released Army Officer.

4. Rule 107(2) dealing with tenure then provided :

In the case of retired/released Army Officers, they will be under re-employment for an initial period of one year, extendable by mutual consent for one year, at a time subject to premature termination should administrative exigency, and/or unsuitability or any other unforeseen factors so demand. The service shall be temporary subject to all rules and orders applicable to the Central Government employees in temporary service in general.

5. Sub-rule (2) has been substituted with effect from September 20, 1985. The notification of that date clearly provides that the amendment comes into force on the date of publication in the official gazette. The amended rule runs thus :

(a) In the case of officers re-employed after they had retired/discharged/released from Army prior to the attainment of age of superannuation in the civil posts, will, if appointed to civil posts, be treated as direct recruits and their seniority in the grade fixed accordingly as under :

(i) the inter se seniority of persons so re-employed shall be determined in accordance with the orders of their selection;

(ii) the relative seniority of persons so re-employed in relation to direct recruits and promotees shall be determined on the basis of chronology of selection;

(iii) their confirmation and promotion to higher posts would take place with reference to seniority so fixed subject to fulfilment of other laid down conditions regarding probation.

(b) The ex-army officers re-employed after they have attained the age of superannuation in civil posts shall not form part of the cadre and would be treated as if appointed on contract basis and such re-employments on contract basis shall be extendable on year to year basis.

6. Rule 107(2) made under the Central Reserve Police Act, 1949 prior to the amendment of 1985 clearly provided that the service shall be temporary and rules and orders applicable to Central Government employees in temporary service would apply.

7. It is true that Rule 105(3-A) dealing with the post of Assistant Commandant prescribes three alternate modes of recruitment. Rule 107 provided that in case of recruitment by the second mode in Rule 105(3-A) temporary status only would be conferred. Absorption on permanent basis would run counter to the scheme of the rules. The High Court has found as a fact that the departmental authorities called for the option to the respondent for absorption. Such a step contrary to the statutory rules would not operate as an estoppel nor confer any right to claim absorption. The scheme of the rule is indicative of the position that in regard to that category of officers benefit of absorption was not admissible and we are inclined to agree with the submission of the appellants that the High Court was in error in saying that there was nothing which stood in the way of absorption.

8. It is a fact that the respondent has been given a promotion and in the promotional post he has worked for about 16 years. On the basis of such promotion on temporary basis the respondent would not be entitled to absorption as well. The respondent was being continued in the promotional post by orders of the President from time to time which is clearly indicative that the arrangement was on temporary basis.

9. Even though under sub-rule (2) of Rule 107 as it stood, the respondent was not entitled to claim absorption, he is certainly entitled to the benefit of the amended provision from September 20, 1985. Sub-rule (2) as amended in terms applies to him and counsel for the appellants has also accepted this position. Therefore, the respondent is entitled to absorption in the cadre with effect from the date the amended rule came into force and he is, therefore, to be confirmed in the post of Commandant and absorbed in the appropriate cadre from that date. Admittedly the respondent has put in continuous service of more than 20 years in the Force and it would be totally unjustified to deprive him of credit of service. Though he may not be entitled to other advantages of such service prior to the date of absorption, in our view, he should be entitled to count that period for pension entitlement. We, therefore, allow the appeal to the extent that the direction of the High Court to absorb the respondent from the date of his appointment stands set aside and in its place the respondent shall be entitled to absorption with effect from September 20, 1985. His seniority in the post of Commandant shall run from that date and he would be entitled to all service advantages on the basis of such absorption from September 1985. He would, however, be entitled to credit of continuous service for the entire period of service as Assistant Commandant and Commandant for the limited purpose of pension.

10. Learned counsel for the respondent pointed out in course of argument that there were some similarly placed officers as the respondent but they have been given the benefit of absorption. This is a matter which the appellants should look into and anomaly on such score should be considered by them. In the absence of such officers, if any, we are not inclined to give any direction to deprive them of any benefit which may have been obtained by them. Both parties are directed to bear their own costs throughout.

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