

SUPREME COURT OF INDIA

The Director General Central Reserve Police Force

Vs.

Cpl.Sunil Singh

C.A.No.10800 of 2017

(Madan B.Lokur and Deepak Gupta,JJ.,)

23.08.2017

JUDGMENT

Deepak Gupta,J.,

SLP (Civil)No.33370 of 2015

1. Leave granted.

2. Both the appeals are being disposed of by a common judgment since the facts involved are similar and the legal issues involved are identical. Respondent No.1 in both the cases i.e., writ petitioners before the High Court had initially joined service as Airmen in the Indian Air Force. An advertisement was issued by the Union Public Service Commission in May, 2010 inviting applications for filling up of Group 'A' post of Assistant Commandant in the Central Reserve Police Force. Admittedly, the respondents (i.e., the original writ petitioners) had applied for this post but it now stands established on record that they had not sought permission of their higher authorities before submitting the application. It is not disputed that at the relevant time the original writ petitioners had not completed 7 years of service in the Air Force. It is also not disputed that as per Air Force Order No.14 of 2008 and Air Force Order No. 4 of 2012, a person employed in the Air Force must seek permission of the higher authority before applying for any post and is not eligible for applying for a civil post before completing 7 years of service in the Air Force.

3. The respondents-original writ petitioners were successful in the written examination and were selected. It was only thereafter that they apprised the higher authorities in the Air Force that they had applied for a civil job. After appearing in the interview they were selected but the Air Force did not relieve them on the ground that they could not have applied for civil employment without permission of the competent authority and before completion of 7 years of service in the Air Force.

4. The writ petitioners filed petitions in the High Court. The High Court in the case of Cpl. B.S. Siddha, held that the original writ petitioner was guilty of making a mis-statement that he had sought prior permission. However, taking into consideration the future of the petitioner and the fact that 7 years of service had been completed by that time, the petitioner was permitted to join the civil post. The Air Force was directed to issue Discharge Certificate and relieve the petitioner within a period of 6 weeks from the date of the order and the petitioner was directed to undergo basic training in the Para Military Forces. Thereafter, the Court also directed that late joining of the petitioner will not affect his seniority which will be reckoned as per his merit along with other batch mates. In the case of Cpl. Sunil Singh following Cpl. B.S. Siddha's judgment (supra), a similar direction was issued.

5. The appellants herein are aggrieved only by the last portion of the judgment whereby the seniority of the original writ petitioners is to be reckoned as per the merit in the batch in which they were selected.

6. Having considered the case we are of the view that writ petitioners could not have been granted this relief. Admittedly, they had applied for the civil employment without informing their superior authorities. It is also admitted that they had not completed 7 years of service in the Air Force at the relevant time. Cpl. B.S. Siddha had joined the Air Force as an Airman on 27.12.2006 and completed 7 years on 26.12.2013. As far as Cpl. Sunil Singh is concerned he joined the Air Force on 27.12.2005 and completed 7 years on 26.12.2012. Therefore, obviously they could not have applied for the job in the year 2010 and could not have appeared in the Examination which was conducted in the year 2012. No doubt by the time they were selected, one of them had completed 7 years of service but as far as Cpl. B.S. Siddha is concerned he had not even completed 7 years of service. The writ petitioners were given relief on compassionate and equitable basis and since that portion of the judgment has not been challenged before us, we refrain from commenting on the same. However, the writ petitioners who were not eligible when they applied for the post and have been given benefit by the High Court by treating their case compassionately, cannot claim seniority from the date when they were not even eligible. Their seniority may be fixed by considering them to be the senior most in the batch in which they underwent training.

7. The appeals are allowed in the aforesaid terms. Pending application(s), if any, stand(s) disposed of.