
(2000) 02 KAR CK 0053
In the Karnataka High Court
Case No : Writ Petition No. 25002 of 1996

Balbir Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 7 KarLJ 126

Hon'ble Judges : R. Gururajan, J

Judgement

R. Gururajan, J.-One Ex-Subedar Clerk Balbir Singh has presented this petition seeking several prayers with regard to the denial of his promotion to the rank of Subedar Major and for a direction to reconsider of his case for promotion to the rank of Subedar Major/grant of Honorary Commission. He has also sought for consequential reliefs.

2. The relevant facts in brief are as under:-

Petitioner was enrolled as a sepoy Clerk (GD) in the Army Service Corps (ASC) of the Indian Army on 17-5-1968. On completion of training he was posted to various units of the ASC. While so serving in the various units, he was promoted in the ranks of Non-Commissioned Officers (NCOs). He was recommended for a accelerated promotion to the post of Lance Naik (Reference at Annexure-C).

3. Petitioner was promoted to the Gazetted as a Junior Commissioned Officer (JCO) in the rank of Naib Subedar on 1-5-1989. He was further promoted to the rank of Subedar in January 1991. From 22-5-1992, petitioner was performing duties as Subedar Head Clerk in his unit, namely, 5171 Army Service Corps Battalion (ASC Battalion) under third respondent at Udampur in Jammu and Kashmir.

4. The promotion from the rank of Subedar to the highest rank as a JCO, namely, is to that of Subedar Major. The said promotion is governed by the Corps Order Part I on the subject, issued by the Director General of Supplies and Transport

(DGST). The said order provided for a departmental promotion Committee for the purpose of promotion. The DPC was held during September/October every year. The fourth respondent-Officer-in-charge records was to calculate and take into account the vacancies of Subedar Major which existed as on 30th July of the year and also such vacancies certain to arise upto the 31st July of the following year, in order to arrive at the numbers of Subedars of relevant seniority for screening to fill such vacancies. It may not be out of place here to mention here that Subedar Majors had the upper service limit of only 32 years from the date of their enrolment into the Army as against 28 years in the case of Subedar. The Subedars who were enrolled upto 31st July, 1967 alone were eligible for consideration to fill the vacancies of Subedar Major likely to occur till 31st July, 1995. According to the petition averments there was no scope to include the names of Subedars enrolled right upto April 1968 in the panel for selection by the DPC.

5. The petitioner further states that the second respondent-COAS revised the provisions for the promotion to the rank of Subedar Major, vide his letter dated 18-1-1993 at Annexure-F. It was brought into force from 1-1-1995 that is to say a prospective application was given by the authority. The fourth respondent-Officer-in-charge Records was required to calculate the vacancies of Subedar Majors occurring as firmly estimated until 31st July of the year which followed the year of holding of the DPC.

6. The DPC for the year 1994 was held in September/October, 1994. According to the petition averments the Officer-in-charge of the Records calculated and vacancies well-beyond the stipulated outer limit date of 31st July, 1995. In fact, he has gone not only after 31-12-1995 but also they have gone upto April 1996. This according to the petitioner is to the detriment of the petitioner.

7. Petitioner states that petitioner was governed by Para 163 of the Regulations of the Army providing for a retirement (completion of 28 years of service). Unless he is promoted to the rank of Subedar Major. In which event he gets an additional period of four years or until he has completed 32 years of service. The petitioner as mentioned earlier was serving in the rank of Subedar and he was issued with an order dated 10-4-1995 (Annexure-B). He would be retiring on 31-5-1996 unless otherwise he is promoted in terms of the order referred to above.

8. Petitioner has referred to his exemplary service in the writ petition. He has stated that the third respondent-GOC-in-C Northern Command had awarded his "commendation Card" to the petitioner on the occasion of the Independence Day on 15th August, 1995. The same was published in daily order Part II notifying the award of Commendation Card in favour of petitioner. The same was sent to the fourth respondent-Officer-in-charge for making necessary entry of the said order in the "Sheet Roll" maintained by the ASC Records. According to the petitioner in spite of the Daily order Part II notifying the award of Commendation Card by the GOC-in-C, the fourth respondent did not make the necessary entry

in the award in the sheet role of the petitioner. In addition to this the petitioner has also stated that he was awarded for "Operational service" rendered in operation "Opactus Lily".

9. Petitioner contends that the fourth respondent-Officer-in-Charge Records is responsible as laid down in Para 36 of the Regulations of the Army for the Administration of all personnel of the Army Service Corps including JCOs and other ranks in matter concerning postings, promotions, extensions of service and maintenance of the documents recording significant personal occurrences affecting the career of the JCOs. The fourth respondent is responsible to see that all such personal occurrences including the "Commendation Card" are recorded in the "Sheet Roll" for placing the same before DPC. In the case on hand, according to the petitioner the same was not entered in the Sheet Roll and the Sheet Roll presented to DPC was not the factual details of the performance of the petitioner. Petitioner states that on account of the non-presentation of a proper faithful sheet roll, the petitioner was deprived of his rightful promotion. It is his case that if these relevant records namely, the award for operational service and the award of Commendation Card has been faithfully placed before the DPC, he would have got the discretionary quota of 18 points thereby she would have been considered for promotion. Petitioner has made several representation as I see from the Annexures filed in the petition.

10. Finally, the petitioner made a non-statutory complaint and the same has been rejected on the ground of no substances. It is in these circumstances, petitioner is before this Court seeking for appropriate relief.

11. The respondents have entered appearance and have justified their stand. The respondents do admit the various facts narrated in this petition. But, the case is that the petitioner did not score the requisite cut-off marks fixed by the promotion committee on an over all performance of JCOs consideration for promotion to the rank of Subedar Major, he was found to be not selected. It is further stated that the petitioner had only assisted in "Operational Service under "Opactus Lily" and does not actually participated in actual operation. The commendation card was not accounted while making merit list for promotion to the rank of Subedar Major by DPC. Entry in the Sheet Roll of JCOs was not made due to some technical observation. It is stated that even after adding one mark for the above award the JCO did not come upto the cut-off marks for a promotion. It is stated that now the petitioner had been granted the Honorary Subedar Major by the Respondent. In conclusion they wanted the petition to be dismissed.

12. Heard the Counsels on either side in great detail on several days.

13. Col. V.K.K. Nair (Retd.), learned Counsel for the petitioner with thorough preparations meticulously took me to the various facts and documents in support of petitioner's case. He reiterated the facts and grounds raised by the petitioner.

14. Col. V.K.K. Nair, learned Counsel contended that in the event of respondents

taking into account the "Commendation Card" and also Opactus Lily, the respondents would have considered his case also for Subedar Major. The non-inclusion of the relevant piece of evidence in the "Sheet Roll", according to him it requires an interference by me. Alternatively, he also argued that if service card is correct in all respects, he would have been considered for higher Honorary rank i.e., would have been considered for Honorary Lieutenants. In identical circumstances, one Prithvi Singh has been granted Honorary Commission in identical circumstances on account of his participation in operational service. He also argued that the discretionary marks being discretionary in character would have been given to him in which case he would have had the benefit of a promotion on account of discretionary, grant of discretionary marks. In conclusion he wanted appropriate direction to respondents be given to promote him to Subedar Major. Per contra, the Counsel appearing for the respondents contended that even then the petitioner would be getting only one mark and if that one mark is also taken into consideration, even then he will be falling short of the minimum required mark. He justified the action of the respondents.

15. The Regulation 36 for the Army Regulations reads as under:-

"36. Officer-in-charge Records.-(a) An Officer-in-charge records is responsible for the custody and maintenance of the records of JCOs, or Civilians, Non-Combatants enrolled and unenrolled personnel of their respective regiments/corps and affiliated TA units. The locations are shown in the list of units.

(b) Under such instructions as may be issued from Army HQ an Officer-in-charge records is responsible for the administration of the personnel, other than officers, of the regiment/corps whose records are in his charge as regards posting, promotion, appointment, extension of service, transfer to reserve and retirement. He will also ensure that the WEs/PEs of the units are adhered to. His decision in these matters are final subject only to their being reversed on appeal to Army HQ. Such appeals will be forwarded to Army HQ by the Officer-in-charge records concerned, who will send the views of the unit commanders in full together with his own remarks on the case.

(c) He is under the direct control of Army HQ for all matters connected with records, documentation and allied questions on which he is authorised to correspond direct with Army HQ. In other matters he will deal with the local commander.

(d) He will carry out the duties as laid down from time to time in connection with pay and allowances, family allotments, gratuities and pensions.

(e) He is responsible for guiding the units in the correct publication of part II orders and for ensuring that documentation is correctly done. He may visit units of his regiment/corps to assist them in documentation".

A careful reading of the same would show that a duty cast on the Officer-in-charge of records for responsible administration of the personal records, as

regards posting, promotion, appointment, extension of service, transfer to reserve and retirement. He is under the direct control of Army Headquarters for all matters connected with records, documentation etc. He is responsible for guiding the units in the correct publication of Part II orders for ensuring the documentation is correctly done. In the case on hand, it is an admitted position that two important service records have not been included in the Sheet Roll. The same had been pleaded in the petition and the same is also accepted by the respondents in the objection statement.

16. In the circumstances, Mr. Col. Nair, learned Counsel is right in his submission that incomplete and inaccurate records have been placed before DPC. The selection for promotion has been made by the respondents on this inaccurate material. Therefore, in my opinion injustice is caused to the petitioner on account of the non-inclusion of his vital service particulars in the Sheet Roll.

17. The answer of the respondents is that the petitioner would not have been benefited even that cannot be accepted. What discretionary marks could have been or would have been awarded by the DPC cannot be gone into in these proceedings. As alternatively pointed by Col. Nair, learned Counsel is that if proper materials are placed before the authorities, probably the petitioner also might have been considered for Honorary Commission Lieutenants. At any rate, on the facts and circumstances of this case, I am clearly of the view that the non-selection of the petitioner for the promotion to the post of Subedar Major is done with inaccurate records and contrary to the Regulation 36 of the Army. Though elaborate arguments have been advanced with regard to the other issues including grant of discretionary marks for promotional avenue, the Vacancies etc., I do not want to deal with those contents in this petition in view of my findings that selection suffers an account of non-consideration of relevant material.

18. It is well-settled that in the decision taken process, particularly by a DPC if relevant material has not been placed any such decision taken without the relevant material is to be interfered with, since the said decision is nothing but an arbitrary decision in the eye of law. Therefore, the petitioner has proved before this Court that his non-selection is on account of non-inclusion of relevant material in the Sheet Roll.

19. Moreover, the consideration of all material is necessary on account of the extension of service and other benefits available to the petitioner on promotion to the post of Subedar Major.

20. This Court cannot direct promotion of the petitioner to the post of Subedar Major. That has to be done on consideration of all the records by DPC and orders have to be passed on the basis of the said selection. Therefore, while denying the relief of a direction for promotion by the Court. A direction shall be issued to respondents to include these materials in the Sheet Roll and the same has to be placed before the DPC in the next selection meeting. A direction is issued to DPC

to consider in its right perspective, all the records in terms of Regulation 36 and consider the case of the petitioner for the promotion to the post of Subedar Major. In the event of the petitioner being selected for the promotional post then the respondents are further directed to consider his case for all benefits. If for any reason, the petitioner is not selected under the regulation to the promotional post of Subedar Major, the respondents are directed to consider his case for grant of Honorary Commission for Lieutenants after taking into consideration the Sheet Roll in its entirety including "Commission Card" and "Opactus Lily". Ordered accordingly. No costs.