

(2004) 05 DEL CK 0084

In the Delhi High Court

Case No : Writ Petition (C) No. 6131 of 2003

Brigadier J.K. Bansal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-05-2004

Acts Referred:

Citation : (2004) 111 DLT 626 : (2004) 74 DRJ 649

Hon'ble Judges : V.K. Jain, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : K. Ramesh, for the Appellant; Maninder Acharya, for the Respondent

Final Decision : Allowed

Judgement

Vijender Jain, J.—Rule D.B.

2. By this writ petition the petitioner challenges the order issued by Director, Institute of Nuclear Medicines and Allied Sciences (INMAS) dated 3rd September, 2003 under the authority of Head Quarter, Western Command. By the said impugned order the petitioner Brigadier J.K. Bansal, VSM has been attached with Head Quarter Technical Group EME, Delhi Cantt. This has been done pursuant to a complaint by one civilian Trilok Chand. The complaint was that the petitioner got admission of his daughter in Netaji Subhash Institute of Technology in B.E. Course on the basis of false certificate about his disability, under defense Quota rules of Delhi University.

3. It was contended before us by Shri Ramesh, learned counsel for the petitioner that the petitioner suffered injury in 1984 in the field operation during Operation Blue Star and second injury in 1989 at peace station. It was contended that pursuant to the guidelines of Delhi University pertaining to defense Quota, the daughter of the petitioner was entitled for availing admission in the Netaji Subhash Institute of Technology on the basis of injury suffered by the petitioner. It was contended that the petitioner neither misrepresented nor gave any false declaration in order to get admission of his daughter under defense quota. It was

contended that if a complaint was received by the respondent the respondent ought to have held a court of inquiry to ascertain the facts but without ascertaining the facts, passed the impugned order which is not only arbitrary but also irrational, whimsical and illegal. It was contended by counsel for the petitioner that the petitioner was on the permanent roll of defense Research & Development Organisation (DRDO). In this regard a list of permanent appointed officers in the DRDO is filed, the same is at page 73 of the paper-book. It was contended before us that the petitioner joined as Major in the DRDO and thereafter got all his promotions in the DRDO itself. It was further contended that a departmental inquiry was conducted in the DRDO on the basis of the complaint of Trilok Chand and that inquiry fully exonerated the petitioner. However, that enquiry report was neither taken into consideration nor any reason for not agreeing to the said report has been shown to us. Even if DRDO was a different department, non-consideration of relevant material vitiates the process of passing the impugned order. It was further contended that later on the petitioner was approved for consideration for promotion to the rank of Major General. However, since 4th June, 2003 result of said promotion board has not been declassified.

4. On the other hand, Ms.Maninder Acharya, learned counsel for the respondents has contended that the Court of Inquiry was not conducted as there was overwhelming evidence of cheating and misrepresentation on the part of the petitioner. It was contended by learned counsel for the respondents that the certificate dated 14th April, 2000 issued by Major General S.K. Dewan was not correct in view of the court of inquiry held pursuant to the injury received by the petitioner in 1984 and report received thereon. Ms.Acharya has contended that what the petitioner received was an injury and, Therefore, that would not be termed as disability as at the time of issuance of the certificate, the petitioner was fit and was in Shape I. Another argument of Ms.Acharya was that during the pendency of this writ petition, the respondent has now issued charge-sheet to the petitioner. However, the General Court Martial has been stayed by this Court. On the basis of aforesaid arguments, it was contended that the petitioner has submitted a disability certificate though he was not disabled, he has submitted a false certificate, even though it might have been issued by superior officer. The petitioner ought not to have utilised the said certificate for the purposes of admission of his daughter.

5. We have given our careful consideration to the arguments advanced by learned counsel for both the parties. In order to understand the controversy it is relevant to quote the Delhi University Rules regarding defense quota. The same is as follows :

" (b) defense Quota 5% of total seats in each institution for children/widows of personnel of Armed/Para Military Forces, killed/disabled in action during the hostilities in the following priorities:

Priority I : Widows/Wards of defense Personnel killed in action.

Priority II : Wards of serving personnel and ex-servicemen disabled in action.

Priority III : Widows/Wards of defense Personnel who died in peace time with death attributable to Military Service.

Priority IV : Wards of defense Personnel disabled in peace time with disability attributable to Military Service."

Priority II in the aforesaid rules makes it manifestly clear that wards of serving personnel and ex-servicemen disabled in action would be entitled for availing of defense quota. Priority IV goes a step further whereas wards of defense Personnel disabled in peace time are also entitled to defense quota. If the disability certificate issued by the authorities was in terms of the rules of Delhi University, no fault can be found with the petitioner. Petitioner has not issued the certificate of disability. Petitioner could have been charged for giving false declaration if anything wrong has been mentioned in the application of the petitioner for issuance of the disability certificate. To arrive at conclusion whether he has misled or not, we have to see the application made by the petitioner in this regard. At page 56 of the paper-book is the application made by the petitioner to Major General T. Ravindranath, AVSM, VSM, the Additional Director, INMAS where the petitioner was working. It is in the following terms :

" In 1989 while on official duty I sustained moderately severe injury to my back resulting in prolepses inter vertebral disc L5S1. Copy of injury report duly signed by competent authority is hereby attached. I request you to kindly issue me a certificate accordingly."

6. Pursuant to the said application, Major General T. Ravindranath issued a disability certificate on 21st March, 2000 in the following terms :-

" Certified that Brig.J.K. Bansal, VSM is a defense personnel serving in Armed Forces Medical Services presently posted with defense Research & Development Organisation, Ministry of defense, Institute of Nuclear Medicine & Allied Sciences (INMAS), Lucknow Road, Timarpur, Delhi. He sustained injury to his back causing moderately severe inter vertebral disc prolepses on 07 Feb 1989 while he was performing military duty. The disability occurred in peace area and is attributable to military service."

7. It would be pertinent to mention here that injury report stated that the petitioner sustained head injury while going in Jonga Ambulance for attending a call in hospital and that the petitioner was in performance of military duty. The same is at page 25 of the paper book. After 1989 injury received by the petitioner, a report was submitted and we have perused the original file. There is column E which says "has any Court of inquiry being held or will be held". Against the said column it has been written "Yes, the court of inquiry held". Thereafter it has been mentioned that the injury/disability occurred in peace area and is attributable to military service (CRAI). The injury occurred in peace station area and attributable to military service.

8. Thereafter the recommendation of the court of inquiry has been signed by three members which is at page 31 of the paper-book. The recommendation of court of inquiry was sent for opinion of the Director, INMAS. At page 32 of the paper-book, Major General M.L. Sapra, Director has recorded as follows :-

" I agree with the findings & opinion of the court of inquiry & recommend that the injury sustained by Lt. Col. J K Bansal, AMC be treated as attributable to service."

9. The application of the petitioner for grant of certificate in terms of rules of Delhi University for the purpose of defense quota did not say that the injury sustained by him in 1989 was in field area. From the opinion of the court of inquiry as well as the opinion of Director, INMAS, Major General M.L. Sapra, by no stretch of imagination it can be said that the petitioner had made any false statement in order to obtain admission of his daughter in the Netaji Subhash Institute of Technology.

10. Let us come to the report of the Dr. W. Selvamurthy. After receiving the complaint from a busy bee, we do not know how and why without conducting any preliminary enquiry so much credence was given to the complaint of Trilok Chand. It seems that some invisible hand was working to stop the promotion of the petitioner to the next higher rank. DRDO where the petitioner was working, had constituted a departmental inquiry committee. Its report which has been filed by the petitioner along with his rejoinder affidavit is at pages 31-32 of the rejoinder. It is not necessary to reproduce the full text of the inquiry conducted by Dr. W. Selvamurthy, Scientist Adviser Biomedical Sciences. However, the finding of the said report is to the following effect :-

" Findings

(a) Valid documents available confirm that Brig. Bansal got disabled by sustaining injury to brain and spine. Both injuries are attributable to military service. As per AFMSF-15A Medical Board Proceedings issued by Army Hospital Delhi Cantt. injury of this kind itself is termed as disability.

(b) Record Office of unit/regiment keep personal record of JCO & OR only. While in case of military officer, service head quarters maintain personal dossier of officer. In case of AMC officer permanently seconded to DRDO, personal dossier is transferred to DRDO HQ and is being maintained further. Accordingly any certificate related to the officer is to be issued from there only.

(c) There had been no manipulation whatsoever to help Brig Bansal.

Opinion

Both certificates issued by Maj Gen T Ravindranath as well as Maj Gen S.K. Dewan were based on documentary evidence. Certificates issued were genuine, valid and absolutely in order. Both the senior officers (Maj Gen Ravindranath and Maj Gen S.K. Dewan) are not beneficiary in the case."

11. From the perusal of the above documents where a scientist an independent person, has recorded his opinion on the basis of investigation and material before him that the certificate issued by Major General T. Ravindranath as well as Major General S.K. Dewan were based on documentary evidence and the said certificates were genuine, valid and absolutely in order, no efforts were made by the respondents to further investigate the matter or to have conducted their own court of enquiry. Nothing has been brought on record to show why this report was not considered in the Army Headquarters even though it was conducted by DRDO. Even if the said report was not binding on the Army Headquarters, the same ought to have been taken into consideration for disagreement. No material has been brought before us by the respondent in this regard. Therefore, we hold that the petitioner has not misrepresented to the respondent for getting a certificate for the injury which he received in 1989. He has neither concealed any material fact nor has misrepresented facts which were not on record.

12. Let us examine the argument of the respondent with regard to the certificate issued by Major General S.K. Dewan. It was contended before us that the certificate obtained from Major General S.K. Dewan was incorrect as the disability has not occurred in action. To our mind this argument cannot be sustained as there is no material before us to indicate that said certificate was given on the basis of the application filed by the petitioner which we have reproduced above. The petitioner was working in a different organisation, i.e. INMAS under DRDO. The petitioner has stated that when he gave the certificate issued by Major General T. Ravindranath who was the Additional Director of DRDO, the university authorities wanted that he should get a certificate from outside his organisation and from a superior officer and that is why the petitioner got a certificate by Major General S.K. Dewan. It is a fact that the petitioner received an injury in 1984 which will be evident from page 28 of the paper-book stating that J.K. Bansal sustained injury on 21.10.84 at 2330 hrs. and the injury is attributable to military service in field area. By no stretch of imagination, it can be said that the certificate was procured by the petitioner on misrepresentation of facts or otherwise. There is only one application filed by the petitioner with the respondent for issuance of the certificate. As a matter of fact, petitioner in his application the contents of which we have reproduced above, had not asked for issuance of a certificate for injury sustained in 1984. If Major General S.K. Dewan, on the basis of the report of the petitioner, has issued a certificate for entitlement for 1984 injury, no fault can be found with the petitioner. In any event of the matter, Major General Ravindranath who had issued the certificate relating to 1989 injury has been promoted as Lt. General. No enquiry has been conducted against Major General Ravindranath or Major General S.K. Dewan. No action has been taken against Major General Ravindranath or Major General S.K. Dewan. In the face of allegations against petitioner no action has been taken against these two persons by the respondents. Then on what basis the petitioner is being penalised. The whole exercise of the respondent it seems, is to deny the legitimate consideration for promotion to the next higher rank of Major General.

Let us now deal with the argument of the respondents that there is a difference between injury and disability :-

" Para 6 & 8 of Page 16 in "Guide to Medical Officers (Military Pensions) 2002" is reproduced verbatim,

"Disablement is to be accepted as due to military service, provided it is certified by the appropriate medical authority that the disablement is due to injury which is attributable to military service. Attributability shall be conceded if casual connection between the disablement and military service is certified by appropriate medical authority."

13. In terms of the aforesaid rule if injury is sustained that results into disability. There is a close proximity between injury and disability. We have already referred that a certificate was issued to the petitioner that the petitioner's injury was attributable to military service in peace station in 1989. If a person sustains injury, that injury leads to disablement. Disablement may be of temporary character or of permanent character. Therefore, the argument of the respondent that it was only an injury is devoid of any merit, today that petitioner is fit, Therefore, issuance of disability certificate was incorrect, is also misconceived. From the perusal of the application of the petitioner, we find that the petitioner has only represented true facts. No motive could be attributed to the petitioner. The Delhi University rules pursuant to which the defense quota of 5% has been made available for the defense services officers, said rule does not state that disability has to be of permanent nature or the person seeking admission under the defense Quota should be disabled on the date of application. Therefore, the submission of the respondent that the petitioner was in Shape I at the time of issuance of certificate is of no consequence. If a person was disabled in 1989, the rules of the Delhi University do not require that a person should be permanently disabled or incapacitated for all times to come. What is not in the rule cannot be interpreted or substituted by the respondent at their own whims and fancies.

14. Judging from any angle we are not in a position to persuade ourselves that the exercise on the part of the respondent was bona fide in not declassifying the result of the promotion board for the rank of Major General on 4th June, 2003. Another aspect of the matter, which cannot be overlooked is that defense quota was not fully utilised by the defense personnel. At page 65 of the paper-book is a letter dated 11.8.2003 from Netaji Subhash Institute of Technology addressed to Brig. Anil Malhotra, Additional Directorate of General Discipline and Vigilance, Adjutant General's Branch, Army Headquarters, which inter alia, states that in the academic session 2000-01 the total number of seats available under defense category was $26 + 10\% \text{ extra} = 26 + 3 = 29$ seats. However, out of these seats only 10 seats could be filled. None of the candidates from this category was deprived admission for want of seats. We are observing this letter only for the limited reason that no other candidate who could have been eligible for admission under defense quota was denied admission.

15. Lastly, this writ petition was filed by the petitioner in September, 2003. On 15th March, 2004 while we were to render the judgment, respondent sought adjournment on the ground that two weeks" time may be granted and it was possible that after taking into consideration the summary evidence, charge may be framed or may not be framed against the petitioner. We had allowed the request of the respondent and adjourned the matter at their request. On 22nd March, 2004 when the matter was listed in Court it was brought to our notice that instead of waiting for the date fixed, the respondent has passed order for General Court Martial. In the peculiar facts and circumstances we had stayed the said proceedings. We deprecate the conduct of the respondent. At the one hand they are seeking adjournment in this court when Court was to render the judgment and on the other hand no inquiry having been conducted in terms of the rules before filing of the writ petition, all of a sudden summary of evidence has been recorded after taking an adjournment from this Court on 15th March, 2004, when the judgment was to be rendered, memo of charges have been issued, order passed for General Court Martial, all these actions to say the least were simply to overreach this Court. In normal circumstances this Court would refrain from commenting on the matters pending adjudication in proceedings before General Court Martial as the decision making process may be affected. But keeping in view the manner and method used in the present case we are of considered opinion that the exercise undertaken by the respondent was not bona fide. Therefore, proceedings of the General Court Martial initiated on the basis of charges, which we are declaring as motivated and mala fide, cannot be permitted to go further simply to delay the declassification of the result of the petitioner. Our judicial conscience does not permit us to perpetuate an act of irrationality, arbitrariness and illegality, which we find on the basis of the record in the impugned action of the respondent. Therefore, we quash the impugned order dated 3rd September, 2003. We also quash the General Court Martial proceedings initiated on the basis of charges on which we have rendered our judgment. We further direct the respondent to declassify the result of the promotion board held on 4th June, 2003 within a period of one week. We would have liked in such cases of blatant injustice cost to be borne by the officers concerned who have been responsible for taking such an arbitrary and illegal decision, however, keeping in view that it may not be possible for us to identify the main culprit who had seen that petitioner who is a doctor by profession in the service is not among his patients but sitting idle, a person who has been considered for promotion to the rank of Major General, his result is not classified on such flimsy grounds on account of impugned order, we impose a cost of Rs. 50,000/- on the respondents. Petition is allowed.

16. Rule is made absolute.