
(2002) 08 DEL CK 0260
In the Delhi High Court
Case No : CWP No. 1467 of 2002

Capt. Sunil Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-08-2002

Acts Referred:

Citation : (2002) 08 DEL CK 0260

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : K.C. Mittal, for the Appellant; Alakh Kumar, for the Respondent

Judgement

A.K. Sikri, J.—The petitioner was taken as Short Service Commissioned Officer of SSC -63 (Non-technical Batch). He was granted commission for a period of five years which period was coming to an end on 7th march, 2002. There is a provision for further extension of this short Service Commission by another five years. However, the petitioner is not given this extension and by order dated 13th December, 2001 he was informed that he would be relieved of his duties with effect from 7th March, 2002 (AN) after completing five years, tenure of SSC service. The petition has challenged the action of the respondents in not extending his tenure by another five years and has also prayed for quashing of the aforesaid release order dated 13th December, 2001 by means of present writ petition.

2. It is averred in the writ petition that although the petitioner was commissioned in the Army Service Corps but as per the policy in vogue, to begin with, he was attached to serve with an Infantry Unit for a period of three years. During this period he took part in counter insurgency operations called "Operation Hifazat" in Nagaland .However, while on duty, on 27th April, 1998 he sustained "head injury and Pan Brachial Plexus" injury (left arm) of severe nature in a vehicular accident. After treatment in Research and Referral Hospital, Delhi he was discharged on 24th July, 1998 as "low medical category S1H1A3 (T-24) PIEI" for six months. The injury was attributed to "Military Service in Peace Area".

3. The petitioner kept on receiving medical treatment while performing military duties assigned to him. The Medical Boards to assess the medical condition and physical performance of the petitioner were also held from time to time. Based on the reports of the Medical Boards, the petitioner was placed in medical classification S1H1A3P1E1 (permanent) with effect from 21st June, 1999 for two years. The petitioner states that notwithstanding the aforesaid disability he was fit to perform normal military duties anywhere except in high altitude area (above 2700 meters - 900 ft.) and places that have sub-zero temperature for more than three months in a year.

4. After completing three years attachment with Infantry Unit on 8th March, 2000, the petitioner was reverted back to his parent Army Service Corps where he kept on performing his duties. On 14th July, 2001 he applied for grant of Permanent Commission/Extension of Service which was also recommended by his Commanding Officer and other senior officers in chain. He was, however, surprised to find when the result of No.5 Selection Board of his batch (SSC-63) Course was announced on 6th December, 2001 wherein the Selection Board had recommended withdrawal of his name from the Board and had not considered his case for grant of or for rejection of his case for grant of permanent Commission/Extension of service. Thereafter, he received impugned release order dated 13th December, 2001. He made representation against the same pursuant to which he was interviewed by the representative of the respondent No.3. However, since the respondents did not accede to his request to withdraw the aforesaid release order and give him extension, he filed the present writ petition.

5. It is not in dispute that the petitioner suffered the injury which is attributable to military service. It is also not in dispute that while grading him in low medical classification, i.e., S1H1AS3P1E1, it is stated that he is fit for normal military duties not involving strenuous exertions. It is further not in dispute that the petitioner is categorised as A3 and per Army Instructions No. 3/S/70 dated 30th April, 1970 the petitioner satisfied medical fitness criteria as para 2(b) of the aforesaid Army Instructions, inter alia, stipulates that the medical category of the official should not be lower than A3.

6. Army Order 18/88 prescribes "Systems of Selection for Grant of Permanent Commission to Short Service Commissioned Officers". Para 13 thereof deals with "Guidelines for Assessment" and Sub-para (e) thereof stipulates:

"13 (e): Low Medical Category of the officer does not influence the assessment as it is an administrative restriction and not a criteria for assessment."

7. Likewise, para 21 dealing with the "Medical Fitness" reads as under:

"21. Officers should satisfy the following conditions:-

"Their med cat should not be lower than S1 or H2 or A3 or P2 or E2 or H2E2 or H2A3 or H2P2 or E2A3. However, grant of PC to LMC SSCO will be subject to recondition of the requisite certain terms of Ao/75".

(ii) The low medical categorisation should not be due to medical reasons-whether attributable or not but should have been caused as a result of casualties suffered in action during operations or due to injury or other disability sustained during duty (for example, while traveling on duty, playing organized games under regimental arrangements, during training exercises and so on."

8. Those who are in law permanent medical category may not be granted permanent commission but in terms of para 26 of the aforesaid Army Order they are to be allowed to continue in service for full extended tenure of five years beyond initial tenure of five years. Para 26 is in the following terms:

"Para 26. SSCOs who cannot be granted Permanent Commission due to their being in Permanent Low Medical Category will be allowed to continue in service for the full extended tenure of five years beyond initial tenure of five years, provided suitable sheltered appointments to accommodate them are available."

9. In view of the aforesaid provisions contained in Army Order 18/88 if the petitioner was in permanent low medical category, he was entitled to be considered for extension of his tenure by another five years in short Service Commission.

10. However, the reason for not doing so, as disclosed in the counter affidavit, is that these Short Service Commissioned officers are required to qualify Basic Young Officers (BYOs) Course within four years of service as per SAI 1/S/65 as amended vide SAI 26/S/89 and since the petitioner failed to qualify this course, he could not be considered for extension. The counter affidavit further stipulates that the petitioner was detailed on the aforesaid course provisionally thrice with the provision of his applying for waiver of the medical category as under:

(i) ASC Young Officers Course (YO 22) from 17th July, 2000 to 16 Dec, 2000 vide Army HQ A/6900/YO-22/MS-14 dated 10.05.2000.

(ii) ASC Young Officers Course (YO-24) from 16.07.2001 to 15.12.2001 vide our A/69004/UO-24/MS-14/Trg dated 29.03.2001.

(iii) ASC Young Officers Course (YO-25) from 14.01.2002 to 13.01.2002 vide Army HQ A/69004/YO-25/MS-14/Trg dated 29.10.2001. The petitioner thus not having availed the opportunities afforded to him cannot claim that he could not have been admitted to the course being not in acceptable medical category.

11. For this purpose, the respondents placed reliance upon paras 18A and 20 of the aforesaid Army Order which are to the following effect:

"Para 18A: All Short Service Commissioned Officers are required to qualify in BYO's Course of their respective arm/service within four years of the date of grant of Commission. Short Service Commissioned Officers who fail to qualify in the BYO's Course in the first chance will be eligible to have a second chance.

Para 20: Short Service Commissioned Officers who fail to qualify in the BYO's Course or the Departmental Examination as applicable, even after availing of the

second chance will be given the option to resign their Commission, failing which their Commission will be terminated under the provisions of SAI 1/S/85. Such officers are also considered unfit for grant of Permanent Commission/Extension."

12. On the basis of the provisions contained in the aforesaid paras, it was submitted by the respondents that as the petitioner failed to qualify in the BYOs" Course for which he was to get two chances stipulated in para 18A, his commission had to be terminated under provisions of SAI 1/S/85.

13. No doubt, in normal course, if a short Service Commissioned officer fails to qualify in the BYO"s course even after availing two chances, he is not entitled to get any extension of Short Service Commission and he is not to be considered for grant of permanent commission as well. However, the question which falls for consideration is as to whether these provisions would apply in the facts and circumstances of the present case. The answer has to be in the negative. The reasons in support of this answer can be enumerated as under:

a) The petitioner was attached with the Infantry Unit for three years, i.e., from 8th March, 1997 to 8th March, 2000 and, Therefore, during this period he could not undergo this course. As a result thereof he was left with only one year (before he could apply for grant of permanent of commission/extension of service) and thus because of no fault of his, he could not attend the aforesaid BYPs" course and qualify the same.

b) While his attachment with the Infantry Unit, the petitioner had met with an accident which put him on low medical category. He was classified as A3. Because of this classification when the result of No.5 Selection Board of batch course was announced on 6th December, 2001 the Selection Board recommended for withdrawal of his name from the Board.

It is strange that while a person with A3 category is considered eligible for extension of his short Service Commission, such a person with this category is not permitted to undergo the BYOs" course. Be as it may, once a person with A3 classification is entitled to get extension of Short Service Commission even if he cannot be granted permanent commission as per para 26 of the Army Order 18/88, there is no reason to deny him to undergo BYOs" course and then make it the basis, i.e., failure to pass the said course to deny him the extension.

c) It may be noted that as per respondents" own stand taken int he counter affidavit, the petitioner being unable to attend the course because of his medical category, should have taken timely action to obtain waiver of the competent authority to his medical category for attending the course. The averments to this effect are as under:-

"it is further submitted that the petitioner being an officer was fully conversant/ aware that he would not be able to attend the course in his medical category. Thus, the petitioner should have taken timely action to obtain waiver of the competent authority in additional to his medical category for attending the

course. However, by the time the petitioner's request was received his order for release has already been issued by the competent authority. The case was, Therefore, not perused."

This stand makes it clear that in suitable cases, the competent authority can grant waiver for attending the course. Thus as per respondents' own showing the provision for waiver is there and undergoing this course is not absolutely essential in all cases, i.e., even when an officer is unable to attend the course because of his medical category that too because of the parameters set by the respondents themselves which do not allow an officer with A3 medical category to undergo the BYOs' course. In this view of the matter and keeping in view the aforesaid circumstances even if there was some delay on the part of the petitioner to apply for waiver, his request should have been considered by the competent authority and the matter should not have been ignored merely because the release order had been issued when this release order dated 13th December, 2001 was to take effect much after, i.e., from 7th March, 2002 (AN) and before that the petitioner had applied for waiver.

14. For all these reasons, we hold that the case of the petitioner has not been dealt with properly and in accordance with the extant Army Orders.

15. This writ petition is accordingly disposed of with directions to the respondents to consider the case of the petitioner for extension of Short Service Commission in terms of aforesaid Army Order 18/88 without insisting the petitioner to qualify in the BYOs' course. This consideration be done by the competent authority after granting waiver, if necessary, within a period of two months from the date of receipt of this judgment.

16. The petitioner shall also be entitled to cost which is quantified at Rs. 2,000/-.