
(1998) 11 DEL CK 0112
In the Delhi High Court
Case No : CW. No. 188 of 1998

Col. A.K. Mehta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-11-1998

Acts Referred:

Citation : (1999) 48 DRJ 209

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Chandra Gupta, for the Appellant; B.P. Aggarwal and Neera Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramamoorthy, J.—The petitioner, who was working as Colonel, was approved for promotion to the rank of Acting Brigadier by the respondents on the 15th of November, 1995. On the 30th of July, 1997, the petitioner was posted as Deputy Director General (TA), Territorial Army Directorate, Army Headquarters, New Delhi in the local rank of Brigadier w.e.f.1.12.1997. On the 1st of December, 1997, the petitioner assumed charge of his promoted rank of Acting Brigadier. On the 3rd of December, 1997, the order promoting the petitioner to the rank of Acting Brigadier was kept in abeyance. On the 22nd of December, 1997, the General Officer Commanding-in-Chief, Northern Command passed a censure order. The same reads as under:-

"I have perused the reply of the officer to the show-cause notice bearing NO.22010/C/314/DV-3 dated 16 Oct 97. ,

I am not satisfied with the Explanation submitted by IC-23929Y Col A.K.Mehta, ex BRO Jammu presently att with Dte Gen Much Forces, Army HQ. I, Therefore, direct that my "Severe Displeasure" (To be recorded) be conveyed to him"

2. On the 2nd of January, 1998, the order promoting the petitioner to the rank of Acting Brigadier was cancelled. This is the order that is challenged by the

petitioner.

3. The learned counsel for the petitioner, Mr. Chandra Kumar, vehemently contended that once the petitioner was approved for being promoted to the rank of Acting Brigadier, which was in 1995, that must take him to the logical end and his position as Acting Brigadier cannot be disturbed by the respondents on the basis of what had happened subsequent to the approval of the petitioner being promoted to the rank of Acting Brigadier,

4. The promotion of the petitioner to the acting rank of Brigadier was not on any substantive basis, and unless and until he was appointed on substantive basis to the rank of brigadier, the petitioner does not acquire any right to hold the post in the rank of Brigadier. When the petitioner had been visited with the penalty of "Severe Displeasure", the petitioner cannot be continued in the rank of Acting Brigadier.

5. The learned counsel for the petitioner, Mr. Chandra Gupta, contended that the legal position is that once on the date of approval of the promotion there was no punishment imposed by the competent authority on the petitioner, his promotion cannot be affected by any subsequent event. The learned counsel relied upon the judgment of the Supreme Court in "Union of India, etc. etc., Vs. K.V.Jankiraman, etc. etc.", 7997 SC 2010 and the judgment of the Himachal Pradesh Administrative Tribunal in "Ramesh Chander v. Registrar Co-operative Societies", 1990 (6) SLR 309. The ratio decidendi in the decisions of the Supreme Court and the Himachal Pradesh Administrative Tribunal would not apply to the facts of this case.

6. The learned counsel for the petitioner, Mr. Chandra Gupta, stated that the petitioner had filed CWP.519/98 challenging the Censure Order imposed on him on 22nd of December, 1997. In the event of the petitioner succeeding in that writ petition, the respondent would have to consider the case of the petitioner for promotion to the rank of Acting Brigadier as on 15.11.1995. In this view, the writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed.

7. There shall be no order as to costs.