

(2007) 05 DEL CK 0326

In the Delhi High Court

Case No : Writ Petition (C) No. 2001 of 2007

DRF Satvir Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-05-2007

Acts Referred:

Citation : (2007) 96 DRJ 444

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : D.S. Kauntae, for the Appellant; Manisha Dhir and Preeti Dalal and Indra Sen Singh, Dy. JAG, for the Respondent

Final Decision : Allowed

Judgement

T.S. Thakur, J.—The short question that falls for consideration in this petition is whether the respondents could have cancelled the result of a promotion examination in which the petitioner had appeared and was declared successful year and a half after such declaration. The cancellation, it is common ground, was not on account of any inherent ineligibility suffered by the petitioner but on account of his failure to seek prior permission of the Commanding Officer of his Unit to write the examination. The respondents argue that any Non Commissioned Officer like the petitioner eligible for appearing in the promotion examination was required to take prior permission of the Commanding Officer concerned before he actually appeared in such examination. This permission was not in the case of the petitioner obtained before he was permitted to appear in the examination by the competent authority in the Automotive Regiment, Ahmednagar where he was sent on Extra Regimental Employment. Nearly 18 months after the declaration of the result, an order of cancellation was passed on the ground that the prior permission of the Commanding Officer of his parent unit had not been taken. The petitioner was sent home upon completion of 24 years of service as a Havildar. Aggrieved, he has in the present writ petition, not only assailed the order cancelling the result of his examination but prayed for a

mandamus directing the respondents to reinstate him with all consequential benefits including promotion to the next higher rank of Naib Risaldar/Naib Subedar.

2. The petitioner was serving as a Dafedar in 63, Cavalry. He was eligible for appearing in the promotion examination for his promotion to the next higher rank of Naib Subedar/Naib Risaldar as per the existing rules on the subject. He appeared for the said examination between 25th March, 2004 to 27th April, 2004 and cleared 7 out of 11 subjects in all. Before he could reappear in the subjects in which he had failed, he was sent on an Extra Regimental Employment to Automotive Regiment, Ahmednagar where he appeared in the remaining 4 subjects between 6th to 9th September, 2004. His result was declared by the concerned Board of Officers who conducted the examination. A copy of the Board proceedings and Part 2 Order notifying the result of the petitioner has been enclosed with the petition.

3. The petitioner returned to his parent unit, i.e. 63 Cavalry in October, 2005. He was then asked to appear again for the remaining 4 subjects which he had already passed while he was on Extra Regimental Employment. He appears to have made yet another attempt to appear in the said examination between 4th October, 2005 and 3rd November, 2005 and passed for the second time 2 out of the 4 subjects in which he had failed in his first attempt. In the meantime, the result of the examination taken by the petitioner in Automotive Regiment, Ahmednagar between 6th to 9th September, 2004 was cancelled by the respondents on 12th January, 2006. Because of the said cancellation and keeping in view the fact that the petitioner had not cleared the remaining 2 subjects, he no longer remained eligible for promotion to the rank of Naib Risaldar. He was, Therefore, sent home on superannuation w.e.f. 28th February, 2007 in the rank of a Havildar in terms of a certificate dated 28th February, 2007 enclosed to the writ petition as Annexure-P12. Aggrieved the petitioner has questioned the order of cancellation and discharge and prayed for a mandamus, as already indicated earlier.

4. We have heard learned Counsel for the parties at considerable length and perused the record. The material facts are not in dispute. It is not in dispute that the petitioner was eligible to appear in the promotion examination and even permitted by the Commanding Officer of 63 Cavalry to do so. It is also admitted that out of 11 subjects he had passed only 7 making it necessary for him to reappear in the remaining 4 subjects before he could become eligible for promotion to the next higher rank. That the petitioner cleared the said 4 subjects while he was on Extra Regimental Employment in Automotive Regiment, Ahmednagar, is also not in dispute. The result of the said examination was duly declared and notified to all concerned. More than a year and a half later, the result was cancelled not because there was anything inherently illegal about the petitioner's appearance in the examination nor also because the petitioner was ineligible for taking the examination but on the ground that the petitioner had

not taken the permission of the Commanding Officer which was necessary as per the prevalent policy. On behalf of the respondents, it was argued by Ms. Dhir that permission of the Commanding Officer was absolutely essential for the petitioner to take the examination and that an examination held contrary to the said requirement was liable to be cancelled. We find it difficult to appreciate that submission. If permission of the Commanding Officer was a sine qua non for the appearance of an eligible candidate in the examination, it was for the Board of Officers who conducted the examination in the Automotive Regiment, Ahmednagar to ensure that the requisite permission was obtained from the competent authority before the petitioner was given a roll number and allowed to sit in the examination. There is no Explanation forthcoming much less a cogent one for the failure of the Board of Officers holding the examination in this regard. Instead of checking the petitioner at the right stage and demanding the permission of the Commanding Officer, the Board of Officers found the petitioner eligible for appearing in the examination, issued a roll number to him, allowed him to enter the examination centre, evaluated his answer sheets and declared him successful in the same. Having gone that far, the respondents could not undo the effect of the examination by cancelling the same only on the ground that the permission of the Commanding Officer had not been obtained. This is particularly so when the Commanding Officer would have in the ordinary course permitted the petitioner to appear in the examination as he was admittedly eligible for doing so. Ms. Dhir, counsel for the respondents was asked whether there was any ineligibility attached to a person sent on Extra Regimental Employment preventing him from appearing in the promotion examination. She on instructions stated that there was no such disability. This would mean that any person sent on Extra Regimental Employment continued to be eligible for appearing in the examination like the petitioner. Permission of the Commanding Officer may be one of the requirements under the policy as indeed certain documents referred to by Ms. Dhir suggests so. The question however is not whether such permission was or was not taken. The question essentially is whether the non-issue of the permission would render the result of the petitioner liable to be cancelled. Our answer is in the negative. The examining authority charged with the duty of holding an examination must ensure that only eligible candidates are allowed to appear in the said examination. If the examining authority fails to do so and allows the examinee to take the examination and evaluates his papers and declares his result, it will be too late thereafter for either the examining body or any other authority to cancel the said examination unless the examination is shown to have been vitiated by fraud or such other similar grounds totally vitiating the entire exercise. There is no vitiating circumstance in the instant case. Failure to obtain permission of the Commanding Officer does not in our opinion provide a sound reason for us to uphold the cancellation order.

5. It was argued on behalf of the respondents by Ms. Dhir that although the examinations are held by a Board of Officers on Regiment/Unit basis, yet the

standards may be different from one regiment to the other and that in certain situations, those sent on Extra Regimental Employment may be given a very liberal treatment than what they would get if they had appeared in an examination held in their parent unit. We do not consider that to be a good reason to justify the cancellation of the petitioner's result. What are the standards prescribed for passing of the examination and whether those standards are uniform and if so to what extent are matters which must be left to the examining authorities. So long as the examination was held by an authority competent to do so and so long as there was no infirmity in the petitioner's eligibility or his appearance in the examination, the question of denying to him the fruits of his labour by cancelling the result does not arise.

6. The petitioner has, as noticed earlier, been sent home on superannuation w.e.f. 28th February, 2007. In the ordinary course, if he had continued in service and had been considered for promotion to the next higher rank of Naib Risaldar along with other eligible candidates by treating him to be duly qualified in the promotion examination, he would have had two additional years of service in the next higher rank. The cancellation of the examination has, in that sense, deprived him of the right to be considered for promotion to the next higher rank and to continue in service. We cannot obviously direct the respondents to straight away promote the petitioner to the next higher rank. All that we can do is to relegate the petitioner to the position that he would have held if the result of the examination taken by him had not been cancelled. That position would inter alias entitle the petitioner to be treated as eligible for consideration for promotion to the next higher rank in any DPC held after the passing of his examination in 2004. Since the reinstatement of the petitioner in service would depend entirely on whether he would on consideration be found fit for promotion to the next higher rank, all that we need direct is that the respondents ought to consider him for such promotion subject to fulfillment of all the essential criteria prescribed for that purpose.

7. In the result, we allow this petition; quash the impugned orders and direct that the respondents shall consider the case of the petitioner for promotion to the next higher rank of Naib Subedar by treating him to have qualified in the promotion examination held in 2004. In case upon consideration the petitioner is found fit for promotion to the next higher rank, the petitioner shall be reinstated to pick up the next higher rank and to serve the remainder of his tenure as a Naib Subedar with all consequential benefits and continuity of service. The respondents shall do the needful expeditiously but not later than 3 months from today. It goes without saying that in case the petitioner is not eventually held entitled for promotion after consideration, his discharge would remain valid.

Order dusty to both the parties.