
(2008) 08 DEL CK 0127

In the Delhi High Court

Case No : Writ Petition (C) No. 22970 of 2005

Ex-Havildar Tilak Raj Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-08-2008

Acts Referred:

Citation : (2008) 08 DEL CK 0127

Hon'ble Judges : Sanjay Kishan Kaul, J;Mool Chand Garg, J

Bench : Division Bench

Advocate : PDP Deo, for the Appellant; Sonia Mathur and Major S.S. Pandey, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—Rule DB.

2. At the request of the learned Counsel for the parties, the petition is taken up for final disposal.

3. The petitioner was enrolled as Sepoy in the Indian Army on 01.3.1980 and earned his promotion. The petitioner as Havildar was posted to College of Combat at Mhow, for three and half years from May 1996 to 20 Sept. 1999 as one of the training staff on ERE. The petitioner thereafter joined his unit but was again posted to ERE for nine months. The petitioner re-joined the battalion thereafter on 01.1.2002.

4. The petitioner came to know that his batch mates were promoted to the rank of Naib Subedar while he was not granted promotion. The petitioner thus made a representation against his supersession. In response to the same, the respondents informed the petitioner vide letter dated 12.7.2002 that since the petitioner was posted on ERE and had not earned the requisite number of regimental ACRs, the petitioner was not fit for promotion. Surprisingly, the blame was sought to be put on petitioner that he should have been aware that he was posted in ERE and that he would not be entitled to promotion on account of

absence of requisite number of regimental ACRs. A further communication was also addressed to the petitioner on 19.9.2002 intimating that as per Record Office Instruction (ROI), the petitioner could be given notional seniority from the back date along with his batch mates but only after he earned minimum two regimental ACRs.

5. A second development which took place was that the petitioner was punished on the charge of not physically checking instruments deposited with the workshop while taking over the duties of Kote NCO. The petitioner aggrieved by this punishment imposed on 15.11.2002 as also by the denial of promotion, submitted statutory complaint to the Chief of Army staff through proper channels on 10.3.2003. Since no response was received, the petitioner filed Writ Petition (Civil) 6171 of 2003 which was disposed of on 29.8.2005 with a direction to dispose of the complaint by a speaking order before 15.10.2005. The travails of the petitioner did not even end there, these directions were not complied with and he had to file another Writ Petition (Civil) 20471/05. It is during those proceedings, learned Counsel for the respondents informed on 14.11.2005 that the punishment given to the petitioner had been set aside in terms of a communication dated 20.10.2005. However, no relief was provided to the petitioner on the issue of denial of promotion. The grievance of the petitioner was that there was no reasoned order in that behalf but the earlier writ petition was disposed of with liberty to the petitioner to challenge the order dated 20.10.2005 to the extent that the petitioner had not been granted relief in respect of the denial of his promotion.

6. Learned Counsel for the respondents has not been able to explain to us or seriously contend as to how the petitioner was to be blamed for his posting to ERE and the consequent non-earning of the regimental ACRs. It is not as if the petitioner sought that positing himself.

7. The petitioner served at the ERE as a Training Staff ACRs for three and half years and thereafter he joined the unit. The respondents in their own wisdom again decided to send him to Mhow for nine months possibly because his presence would have been useful to the respondents. The petitioner has been unjustifiably denied his promotion which was given to his contemporaries in August, 2001. The petitioner since then stands retired from 29.2.2004.

8. The illegal and unjustified action of the respondents has not only denied the petitioner the opportunity of serving in the higher rank but has also deprived him extension of his service which would have enured to his benefit along with the increased salary and other perks. In this day and age where the respondents has a problem of getting the requisite qualified persons it is highly deplorable that they should deal with their officer in the manner as has been done in this case. We see no reason why the petitioner must not be given all the benefits which would have enured to him but for the illegal action of the respondents.

9. We are aware that often while granting such relief it is not necessary that a

person be also granted the monetary benefits for the period he would have actually served though he has not so served. However, the present case is one where all the benefits must be given to the petitioner.

10. In the present case, the communication dated 18.9.2002 of the respondents shows that there is no other parameter lacking in the case of the petitioner for denying him the promotion as the record office itself has opined that the petitioner would get back dated seniority along with his batch mates, the moment he earned two regimental ACRs. Thus the petitioner is entitled to be promoted to the rank of Naib Subedar from the date his batch mates were so promoted along with all the consequential benefits of pay and allowances and extension of services arising from attaining the said rank.

11. The petitioner would in fact have been entitled to further consideration of promotion from the rank of Naib Subedar and extension of service but that would have required the petitioner to earn his ACRs as a Naib Subedar which is not possible in the present case. We, however, consider it appropriate to give a lump sum compensation to the petitioner for denial of further promotion to him. The respondents cannot be permitted to plead that the petitioner may or may not have earned the requisite level of ACRs as a Naib Subedar for subsequent promotion and thus no relief should be granted as the same has happened because of the illegal action of the respondents as also by reason of delay in taking action on statutory complaint. The emoluments that the petitioner would have earned in such a situation are agreed to be in the range of Rs. Three Lacs; or since the extended service would have been for two years on such promotion and with the monthly emoluments of approximately Rs. 14,000/-. We thus quantify the amount at Rs. One Lac.

12. A writ of mandamus is issued directing

a) the respondents to pass necessary order for promoting the petitioner to the rank of a Naib Subedar from the date when his batch mates were so promoted and to remit him the full consequential benefits till his notional date of retirement in the rank of Naib Subedar.

b) to pay the petitioner a further sum of Rs. One lac as ordered above for the denial of further opportunities of promotion and extended tenure of service of two years over and above the rank of Naib Subedar.

The petitioner is still also entitled to costs which is quantified as Rs. 5,000/-.

Needful be done within three months from today.

The petition is allowed in terms of aforesaid.