

(2004) 05 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition No. 28068 of 2001

Ex. Naik Raja C.

APPELLANT

Vs

OIC Signals Records and Another

RESPONDENT

Date of Decision : 25-05-2004

Acts Referred:

Citation : (2004) ILR (Kar) 3074 : (2004) 3 KCCR 345 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : M.K. Krishnamurthy, for the Appellant; S.N. Rajendra, ACGSC, for the Respondent

Judgement

R. Gururajan, J.—Petitioner in this petition is seeking for a relief of promotion to the rank of Havildar and the consequential benefits including pensionary benefits. Petitioner joined the Corps of SIGNALS, Indian Army on 13.7.1984. He retired on 1.3.2000 due to his coming under low medical category.

2. Petitioner, while he was on part of annual leave in 1992, suffered an accident on 4.11.1992 and got himself injured on his left elbow. It was beyond his control. He was admitted to Command Airforce Hospital, Bangalore on 4.11.1992 and was discharged on 7.11.1992. Airforce Command Hospital forwarded the Categorisation Medical Board Proceedings of the individual to the OIC Signals Records, Jabalpur, MP with a copy of the proceedings along with the injury report vide their letter dated 21.12.1992 in terms of Annexure-A. According to the petitioner, it is the duty of the unit to conduct the enquiry and publish the injury casualty and also low medical category part-II order (Casualty) along with C of I to OIC Signals Records, Jabalpur. They had published the low category casualty in terms of the order dated 28.12.1992. They failed to publish the injury casualty. An order of promotion was issued in terms of the order dated 7.10.1998. It indicates that his promotion was with effect from 23rd May 1998. When promotion was on hand, OIC Signal Records sought for injury report casualty as well as C of I proceedings as well as C of I proceedings to establish

as to whether injury sustained is a self inflicted or not. 28 Infantry Division Signals Regiment wrote a letter to the Signal Records on 9.1.1999 stating that it was not in a position to implement the promotion order. Thereafter, petitioner states that Co.28 Infantry Division Signals Regiment has not acted to regularise the omission to publish the injury report casualty. Based on the demand of the medical authorities, 28 Infantry Division Signals Regiment held the C of I dated 22.12.1999 and in that it is indicated that the injury was caused under the circumstances beyond his control and the individual not to be blamed. Annexure H1 is the proceedings. Medical authorities approved the petitioner's state as fit to be relieved from service in CAT BEE (Permt), the disability being 25 per cent. Annexure-J is the document. Even after this order, no promotion was given to the rank of Havildar. He thereafter retired. Demands were made by way of legal notice. In the absence of any positive action, petitioner is before me.

3. Respondents have entered appearance and they have filed a detailed objection objecting to the prayer as sought for by the petitioner. They admit that the petitioner's promotion was held up on account of physical inability and the injuries suffered. They further say that the respondents are unable to consider the case of the petitioner because of the reason that they were not having the papers relating to the Court of enquiry proceeding including the injury casualty report, since under the Army Rules, 1954, records will not be preserved for more than three years. They also say that 28 Infantry Division Signals Regiment did not implement the promotion order as the petitioner was placed in low medical category CEE (Temporary) Group, which is a disqualification for consideration of his case for promotion. Annexure R-1 is the circular concerned. They want the petition to be dismissed.

4. Heard the learned Counsel for the parties and perused the material on record.

5. Material facts would reveal of an accident on 4.11.1992. Material on record also would reveal that the petitioner has suffered injury to his left elbow due to accident. Annexure-A is the Low Categorisation Medical Board Proceedings issued by the Command Hospital, Bangalore. Discharge slip is also available on record. Annexure A-3 is the Medical Board Proceedings. Extract of D.O. Part II Orders concerning the accident is seen at Annexure-B. It is stated therein that on 27.12.1999 the petitioner sustained injury of severe in nature whilst on BAL and not attributable to military service in peace area, and for which petitioner not to be blamed.

6. Annexure-C is the Order dated 7.10.1998 Petitioner's name was approved for promotion to the rank of Havildar along with others and the date of promotion is shown as 23.5.1998. Thereafter, the Major Adjudication has stated that the unit was not in a position to implement the promotion order on account of self-inflicted injuries. Maj.GSO (2) (Adm) states that all obsolete documents have been destroyed by burning. As such, neither the injury report nor the records regarding the receipt of injury report from Medical authority is available with the organisation. It is also stated therein that in the light of career interest of NCO,

28th Infantry Division Signal Regiment was requested to direct the petitioner to report the Medical Authority along with the initial AFMSF-15 and to get the injury report re-initiated on the basis of which C of I could be ordered. The Board met for the purpose of investigating the circumstances under which petitioner has sustained severe injury on 4.11.1992. It was presided by Capt. G. Pandi. There were other members, namely Sub. D.P. Singh and Nb. Sub. Karthikeyan E. They examined the witnesses and witnesses were cross-examined. Thereafter, the Court has opined that the petitioner sustained injury in a circumstance which is beyond his control since; that while the incident took place it was slightly dark and it was raining heavily. It was stated that the petitioner was not on bona fide military duty while he got injured. Opinion of the Officiating Commanding Officer 28 Infantry Division Signals Regiment is available. Lt. Colonel has opined that the petitioner sustained injury and dislocation of the left elbow severely on 4.11.92 while on BAL under the circumstances beyond his control. He is not to be blamed for the same. Even though the other materials are available on record, even after retirement petitioner was not provided either promotion or pensionary benefits on the promoted cadre. Hence notice came to be issued by the respondents and the same has been replied to in terms of Annexures-K and K1. Finally the petitioner has filed this petition.

7. Admitted facts would reveal of promotion to the post of Havildar but the promotion was not given effect to in terms of the Criteria for Promotion dated 10.10.1997 in terms of Clause 4 (b) of the Criteria for Promotion dated 10.10.1997. Clause 4(b) reads as under:

Medical Standards (all promotions to the rank of Dr/ Ha and above)

4. Must be in medical category "AYE", However personnel in lower medical category (both temporary and permanent) as a result of the circumstances indicated below would be eligible:

(a)..

(b) Eligible upped Medical Category "BEE": Personnel placed in medical category "BEE" will be eligible for promotion to the next higher rank. This will include both temporary and permanent low medical categories. This will be irrespective of whether or not the disease, sickness or injury is attributable / non-attributable to or aggravated by service conditions. However, cases of medical category "BEE" (both temporary and permanent) due to psychological cause, misconduct or self inflicted injuries will not be eligible for promotion.

(c)... ..

8. A reading of the said Section would show that the personnel placed in medical category "BEE" would be eligible for promotion to the next higher rank. This would include both temporary and permanent low medical categories. This will be irrespective of whether or not the disease, sickness or injury is attributable or non- attributable to or aggravated by the service conditions. However, the cases

of medical category BEE due to psychological causes, misconduct or self inflicted injuries will not be eligible for promotion. Respondents case is that the injury sustained in 1992 is self-inflicted and therefore he is not eligible for promotion. This finding in the given circumstances is unsustainable. Material on record would show that in terms of the proceedings dated 27.12.1999 in the extract of D.O. Part II Orders concerning the accident, the individual is not to be blamed. Similarly, the proceeding of the Court would show that the injury sustained is beyond his control. In fact, Lt. Colonel agreeing with the opinion of the Court has ruled that the injury sustained by the petitioner on 4.11.1992 whilst on BAL under the circumstances is beyond control and the individual not to be blamed for the same. All these materials on record would point out that there exists no self-inflicted injury in terms of Clause 4(b) of the Criteria for Promotion. Self-inflicted injury is totally different from an accident that occurred for reasons beyond his control. Both cannot be compared as each would depend upon different circumstances.

9. In the circumstances, it cannot be said that the petitioner is disentitled for promotion to the post of Havildar on the ground of self-inflicted injury. There is no material connecting the accident with self-inflicted injury. In the circumstances, I accept the arguments of the learned Counsel for the petitioner and direct the respondent to provide notional promotion to the petitioner in terms of this order in the light of his retirement only for the purpose of pecuniary benefits.

10. In the circumstances, respondents are directed to pay differential payment of pension on the basis of the rank of Havildar with effect from the date of his retirement in the light of an order dated 7.10.1998 with regard to promotion. No salary or any other benefit/s is/are payable to the petitioner on account of this promotion granted in terms of this order. Petitioner is not entitled for any interest on the differential amount on the facts of this case.

11. In the result, this petition is partly allowed. A direction is issued to the Respondent to provide differential pension from the date of retirement till date on the basis of the rank of Havildar and continue to pay pension payable to Havildar in accordance with law. Ordered accordingly. No costs.