
(2000) 05 DEL CK 0019

In the Delhi High Court

Case No : Civil Writ Petition No. 5867 of 1998

Guardsman Nanar Ram

APPELLANT

Vs

Chief of Army Staff and Another

RESPONDENT

Date of Decision : 12-05-2000

Acts Referred:

Citation : (2000) 5 AD 272

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Capt. Virender, Kumar, for the Appellant; Mr. Rajiv Shakdhar, for the Respondent

Judgement

A.K. Sikri, J.

1. Petitioner was enrolled in the army as an Infantry man on 9th March, 1988. He is metric fail. Minimum qualification for appointment to the post of infantry man is matriculation Therefore in normal course, petitioner could not have been appointed to this post as he did not fulfill the minimum educational qualification required for the post of Infantry man. However, it is the case of the petitioner that at the time of his recruitment, he had produced metric fail certificate and Therefore this fact was duly conveyed to the recruiting authority and notwithstanding this fact, the petitioner was recruited as Infantry man. He served for 7 years and 228 days and thereafter on 22nd October, 1995 he was illegally discharged from service under Item III(v), Rule 13(3) of the Army Rules, 1954 as shown in the discharge book. Petitioner submitted statutory complaint dated 13th November, 1995 to Army Chief with copy to various other authorities but it did not evoke any response. Instead an eight paged, casually signature discharge book without date was issued to the petitioner. Petitioner sent legal notice dated 12th December, 1996 which also remained unreplied. Reminders dated 7th August, 1997 was sent. This also met the same fate. Petitioner sent another reminder dated 11th August, 1998. Again with same result. At this stage, the present writ petition was filed seeking quashing of discharge order

dated 22nd October, 1995 and also claiming reinstatement with consequential benefits as well as damages. Petitioner also pressed for action to be taken by respondent no.1 against the guilty who have discharged the petitioner from service and contends that this act is malafide and arbitrary.

2. The main grounds on which the action is challenged are the following:-

I. It is submitted that petitioner had no knowledge about the minimum qualification required for entering into service and as far as he is concerned he had communicated to the respondents about his qualification. If he was recruited even thereafter, then he could not have been discharged after 7 years and 228 days of service on the ground that he was not fulfilling the required educational qualification for the said post. In any case, respondents were not able to show that minimum matriculation qualification was the mandatory requirement.

II. Petitioner served for 7 years and 228 days and his service during this period was exemplary as is clear from the discharge book issued to the petitioner. When petitioner was performing exemplary service, which has been recorded even in the discharge book, the action of discharging him from service could not have been taken at this stage.

III. Respondents did not carry out the statutory conditions laid in Army Rule 13(3) Item III(v) which inter alias demands "notice to show cause and the order of discharge to be issued by a Brigade or Sub-Area Commander, only". In this case, no such show cause notice was issued nor discharge letter was issued by the Brigade/Sub-Area Commander. Even discharge book suffers from various illegalities.

IV. Allegations that petitioner had fraudulently obtained the appointment was totally false moreover, petitioner was offered the lower post of cook and it was not understandable as to how respondents were still offering him the lower post if he had committed an act of fraud. It is also submitted that the allegations of fraud in any case are false which is clear from the fact that matriculation fail certificate, copy of which is produced clearly shows that at its back side it bears the signature of the petitioner's recruiting officer who had examined it on 7th November, 1987 and 4th January, 1988 and as respondents have admitted this document, it proves that there was no concealment of fact by the petitioner. Therefore, according to the petitioner it is the respondents who have taken fraudulent action against the petitioner as an after-thought and respondents are guilty of fraud and made false statements even in the counter affidavit.

3. On the other hand, submission of the respondents, as reflected from the counter affidavit as well as reply and written submissions, are as follows:-

A. The petitioner who was enrolled in service on 9th March, 1998 in the Brigade of the Guards as an infantry soldier by the Branch Recruiting officer at Jhunjhunu, in the state of Rajasthan had misrepresented his educational qualifications by declaring to the Recruitment officer that he had passed Class X,

whereas he had failed in his Class X examination. The original records produced by them in support of their submission and the photocopies of the same were also handed over to the counsel for the respondents during the arguments.

B. The enrollment sheet clearly shows that the recruitment officer based on the representation of the petitioner had recorded that the petitioner had passed his Class X examination and that the forms are filled by the Recruiting Officer based on oral representation of the persons desirous of getting recruited in the Armed Forces. At the time of recruitment there are at least three to four hundred candidates present at the Recruitment Centre. Therefore, the verification of the representation made by a candidate is only made with the help of certificates issued by the school of the candidates at the time the record office prepares a check-list.

C. In the instant case the check-list was prepared in March 1989 whereupon the respondents discovered that the petitioner had failed in his matriculation examination. This fact was brought to the notice of the petitioner who, vide his letter dated 19th November, 1991 gave his willingness to be considered for remustering in the Armed Forces in a lower category.

D. Respondents' letter dated 12th March, 1986 which stipulates a minimum qualification as Class X (i.e. matriculation) for candidates desirous of being recruited as infantry men. Those who are desirous of being recruited in a lower category, such as, drivers and cooks, as is, evident upon perusal of the said letter, candidates need not be matriculates. At request of the petitioner, since he was a good athlete, respondents processed his case for remustering in the Armed Forces in a lower category of a cook. The said option was given to the petitioner in October, 1992 and he was sent for remustering to the Brigade of the Guards Regimental Centre on 13th March, 1993. Since the petitioner conveyed his unwillingness for being recruited in the lower category of a cook, a show cause notice dated 26th March, 1995 was issued to the petitioner. The petitioner submitted his reply to the show cause notice on 8th April, 1995 and Therefore his contention that he was not issued a show cause notice is patently false.

E. The petitioner had firstly, misrepresented to the respondents his educational qualifications and secondly, when at his request his case was processed by the respondents for remustering in the lower category of a cook, he refused to give his willingness. Thus the respondents were left with no option but to discharge the petitioner from service. The fact that petitioner had knowingly misrepresented his educational qualification is established by the fact that the training imparted to Infantry men is different from that imparted to personnel in lower categories such as drivers and cooks. It stretches credulity to believe that the petitioner would have been under a bonafide belief that the educational qualification for an Infantry men was not that which was stipulated i.e. that the candidates should have passed Class X, as all such personnel in his category had the same minimum qualification.

F. Petitioner's unwillingness to remustering in the lower category was singularly unwarranted as not only was his case for remustering was processed based on his letter dated 19th November, 1991 but a similar undertaking was given by the petitioner at the time of recruitment vide letter/undertaking dated nil, at the time of his recruitment.

4. It is thus submitted by the respondents that their action of discharging the petitioner from service is bonafide, fair, just, reasonable and equitable. The refusal of the petitioner to remustering impelled the respondents to discharge him from service by the competent authority i.e. Commander 18 Armed Brigade vide his communication dated 9th June, 1995 who accorded his sanction to discharge the petitioner from service after considering his reply. Since the petitioner refused to sign his discharge papers the same was attested by two officers of the Regiment. The petitioner thereupon was dispatched to the Depot Company Brigade of the Guards in August, 1995 for completion of formalities connected with his discharge. Petitioner's name was finally struck off from the strength of the Indian Army on 23rd October, 1995. Respondents thus complied with Army Rule 13(3) Item III(v) in discharging the petitioner from service. The Commander 18 Armed Brigade was the appropriate authority to sanction the discharge of the petitioner from service.

5. The respondents have further contended that assuming without admitting that the petitioner had not misrepresented his educational qualification and a mistake was made regarding his educational qualification at the time of recruitment even then in law there can be no estoppel against them from discharging the petitioner from service if he fails to meet the stipulated educational qualification for recruitment in service. The respondents submitted that it is well settled that no vested right is created in favor of a personnel if his initial employment in service is based on a mistake, fraud or misrepresentation. In this regard, the respondent relied upon the following cases:-

- i. Dr. Ashok Kumar Maheshwari Vs. State of U.P. and Another,
- ii. Smt. Ravinder Sharma and Another Vs. State of Punjab and Others, .
- iii. Union of India and others Vs. M. Bhaskaran, G. Radhakrishnan and C. Devan, .

6. Let us first examine as to whether the matriculation qualification as minimum qualification is the requirement for enrolment in the army as an "infantry man". respondent in this connection, has relied upon letter dated March 12, 1986 as per which minimum qualification of class X is prescribed for candidates desirous of being recruited as infantry man. This fact is not disputed by the petitioner. Petitioner only states that it is not mandatory requirement. However, I am not inclined to accept the submission of the petitioner that the qualification laid down even in the aforesaid letter is not mandatory. It is well established principle that in the absence of statutory rules, qualifications for appointment to the post can be prescribed by means of administrative instructions and the respondents are supposed to adhere to the norms laid down in the aforesaid letter to recruit

persons.

7. In the enrolment sheet it has been recorded that petitioner had passed his Class X examination and on that basis he was enrolled as an "Infantry man". Therefore one thing is clear namely that the petitioner was enrolled as "infantry man" only because of the statement that he had passed class X examination. The contention of the petitioner is that he did not make any misrepresentation and infact he had given the certificate at the time of enrolment which clearly disclose that petitioner had passed IX standard (i.e. Xth fail). On the other hand, the submission of respondent is that it is the petitioner who misrepresented and got it recorded in the enrolment sheet that he had passed class Xth examination. The respondent have also explained that at any given time, at the time of recruitment there are atleast 300-400 candidates present at the recruitment centres and Therefore verification of the representations made by the candidate is only made with the help of certificate issued by the School of the candidate at the time record office prepares the checked list . Therefore, the statement of the petitioner at the time of enrolment was not checked as check list was prepared in March 1989 only and at that time respondent discovered that the petitioner was not fulfilling the requisite qualifications. Without going into the aforesaid dispute as to whose version is correct, following two admitted aspects would clinch the matter:-

i. Petitioner would not have got the appointment if it was known that he has passed IXth class and is not a matriculate. This is clear from the fact that in the enrolment sheet it has been recorded that petitioner has passed his class Xth examination. Therefore, either the petitioner had made misrepresentation to this effect or the recruitment officer by mistake recorded that the petitioner was a matriculate i.e. "petitioner had passed his class Xth examination".

ii. It is the petitioner only who is the beneficiary of this wrong recording in the enrolment sheet as he could get the employment which he would not have got otherwise.

8. Therefore whether the petitioner is responsible or his appointment is the outcome of mistake committed by respondents in either case it was permissible for the respondent to straight the wrong, right. The respondent for this purpose issued show cause notice to the petitioner, received his reply and thereafter discharged him from duties. Thus the principles of natural justice were also followed before taking action against the petitioner.

9. Once it is shown that petitioner was not entitled to be enrolled as infantry man, merely because he served for seven years and 228 days or his service was exemplary would not make any difference. In Union of India and others Vs. M. Bhaskaran, G. Radhakrishnan and C. Devan, , the Supreme Court held that where the employment was secured by fraud such appointment would be rendered voidable on the option of the employee and employee cannot plead estoppel in such a case. Merely allowing continuance of such an employment

could not create any equity in favor of the employee or any estoppel against the employer.

10. Similarly in Smt. Ravinder Sharma and Another Vs. State of Punjab and Others, the apex Court held that where the concerned employee (appellant in that case) did not possess the requisite qualification for appointment to the post of a clerk the appointment was bad in law and was liable to be set aside. There was no question of estoppel in such a case. In that case also appellant had raised the contention that she had not concealed her qualification and Therefore she could not be blamed. This contention of the petitioner was repelled. This contention is noted in para 6 of the judgment and dealt with in para 11. Both the paragraphs are reproduced below:-

6. Before the High Court, the argument was that inasmuch as the appellant did not conceal her qualification, she could not be blamed if she had been appointed. Therefore, no order adverse to her, could have ever been passed.

7. x x x x

8. x x x x

9. x x x x

10. x x x x

11. We are of the view that no exception could be taken with the impugned judgment. The appellant is not found fault with for concealment of qualification. On the contrary, what is complained against her is lack of qualification. We may now extract Regulation 7 of the Regulations. It reads as under:-

a.

b.

c.

d.

e. in the case of Junior scale stenographer

i.

ii.....

(iii) by direct appointment of a persons who is a Graduate or Intermediate Second Class or a matriculate first class of a recognised University and qualifies such tests as may be prescribed by the Establishment Member.

f. in the case of clerks -

i.

ii.

(iii) by direct appointment of a person who is a Graduate or Intermediate second class or matriculate first class of a recognised University and has passed a qualifying examination conducted by the Board.

To the same effect is the judgment in the case of Dr. Ashok Kumar Maheshwari Vs. State of Uttar Pradesh and another reported in (1988) 2 SCC 502.

Before concluding I may refer to one more aspect. Petitioner in this petition had stated that no show cause notice was issued before discharging him from service. This is a false statement made in the petition. As already noticed above as not only show cause notice dated 26th March, 1995 was issued to him, petitioner even replied to the said show cause notice vide his reply dated 8th April, 1995. Therefore, there is a concealment of material fact and the petitioner had not come to this Court with clean hands. Further in para 2 of his reply at 8th April, 1995 the petitioner had stated as under (English translation) :-

I was enrolled on 9th March, 1988 in DRO, Jhunjhunu. At the time I was enrolled, I was enrolled in Group D as non metric. I had submitted original Non-metric TC at that time. Babu (recording officer/clerk) had prepared my document of Xth pass and sent me to the course regimental centre for training. In this there is no mistake of mine. I had come after being enrolled as "group D".

Perusal of the aforesaid para would show that petitioner himself admits that he had come for enrolment in Group "D" although he maintained that it is the recording officer who prepared wrong document and enrolled him as an infantry man and sent him for requisite training. Be as it may, petitioner was ready to accept his position as "Group D" employee. It may be relevant to mention that after it was detected that petitioner was wrongly recruited as infantry man he was offered post in the lower category of cook (i.e. Group "D"). However, it is petitioner who refused to accept the same.

11. This writ petition is Therefore devoid of merits and is accordingly dismissed. Rule is discharged. No order as to costs.