

(2005) 01 DEL CK 0054

In the Delhi High Court

Case No : Writ Petition (Civil) No. 5527 of 2003

Hav. A.K. Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-01-2005

Acts Referred:

Citation : (2005) 116 DLT 630 : (2005) 80 DRJ 205 : (2006) 2 SLJ 395

Hon'ble Judges : Gita Mittal, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : S.R. Kalkal, for the Appellant; A.K. Bhardwaj, J.G. Manhas and Party-in-person, for the Respondent

Final Decision : Allowed

Judgement

Mukundakam Sharma, J.—This petition is filed by the petitioner for restoration of his notional seniority in terms of the Army Order No. 20/81 to the rank of Naib Subedar after quashing the order dated 18th October, 2001 passed by the respondents.

2. The petitioner was enrolled in the Indian Army on 25th March, 1987. While on leave, the petitioner was implicated in a murder case u/s 302 and Section 34 IPC in the month of June 1992.

Around the same time, the cases of batch mates of the petitioner as also of the petitioner were considered for promotion to the rank of Naik. As a criminal case was pending against the petitioner at the relevant time, the petitioner was not given promotion to the rank of Naik but some of his batch mates were promoted to the said rank of Naik.

3. By a letter dated 25th January, 1996, a clarification was issued that since the petitioner is involved in a criminal case registered under Sections 302/34 IPC, he is not eligible for promotion to the rank of Naik till finalisation of the case as per instructions contained in para 3 (a)(iii) of AO 21/81. It is, however, stated in the said communication that the petitioner shall, however, be entitled to get notional

seniority for the promotion purpose if he is acquitted of the offence by the court. The petitioner was acquitted by the Additional Sessions Judge in the aforesaid criminal case, which was registered against him and judgment was rendered to this effect by the trial court on 3rd May, 2001.

4. As stated in the communication dated 25th January, 1996, the case of the petitioner was thereafter considered for promotion to the rank of Naik. After such consideration, the case of the petitioner for promotion was approved. Consequently, the petitioner was promoted on 27th July, 2001 with notional seniority with effect from 1st December, 1992 i.e. the date on which his batch mates were promoted.

5. In the meantime, the batch mates of the petitioner were also promoted to the rank of Havildar with effect from September 1997 but the petitioner was not so promoted to the said rank as the said criminal case was also pending and also on the ground that the petitioner has not completed the requisite intermediate cadet course and has not passed the said course. The petitioner completed his intermediate cadet course with distinction on 10th November, 2001. Even thereafter he was not promoted to the said rank on the ground that he did not have two annual confidential reports in the rank of Naik. The petitioner was promoted to the rank of Havildar only on 8th February, 2003 after he had two annual confidential reports but his notional seniority was given with effect from 1st December, 2001 instead of September 1997 when his batch mates were promoted to the rank of Havildar.

6. Being aggrieved by the aforesaid order of the respondents, the petitioner submitted a statutory complaint requesting for dispensation of two annual confidential reports as per policy letter dated 10th October, 1997. Since the respondents did not pass any order giving notional seniority to the petitioner with effect from September 1997, the present petition is filed in this court.

7. It is the specific plea of the respondents in their counter affidavit that the petitioner could not be given notional seniority in the rank of Havildar in view of pendency of the criminal case and also on the ground that he could not attend and clear the course called intermediate cadet course, which is mandatory to be cleared for getting promotion from the rank of Naik to Havildar.

8. We have heard the learned counsel appearing for the parties. The facts stated herein are practically all admitted. The batch mates of the petitioner were promoted to the rank of Naik with effect from 1st December, 1992 and to the rank of Havildar some time in September 1997. The petitioner could not be promoted to the rank of Naik at the time when his batch mates were so promoted to the rank of Naik in view of pendency of the criminal case against him. Same was the case of his promotion to the rank of Havildar although his batch mates were promoted in the month of September 1997. The petitioner was finally acquitted by the Additional Sessions Judge from the charge on 3rd May, 2001.

After acquittal of the petitioner, the respondents considered the case of the petitioner for his promotion and gave promotion to the petitioner to the rank of Naik in terms of the instructions contained in para 3 (a)(iii) of AO 21/81 giving him notional seniority from the date his batch mates were promoted to the said rank of Naik with effect from 1st December, 1992.

9. It is to be noted that the same treatment and benefit was, however, not meted out to the petitioner for his promotion to the rank of Havildar on the ground that the petitioner did not complete and clear the intermediate cadet course and also because he did not have two annual confidential reports in the rank of Naik. Subsequently, the petitioner was given promotion to the said rank of Havildar giving effect of the said promotion with effect from 1st December, 2001 on the ground that he completed his intermediate cadet course with distinction on 10th November, 2001. That being the position, the respondents themselves have given promotion to the petitioner to the rank of Havildar with effect from 1st December, 2001. The petitioner cleared the aforesaid course immediately when he was permitted to appear in the said course/exam. The Army Order 20/81 permits a person to get his notional seniority for the purpose of promotion after his acquittal from the offence in the criminal course. There is also an instance of waiving of one ACR by the respondents in similar cases, which is placed on record. In fact it was also stated by the counsel for the respondents that the petitioner has been given promotion to the post of Havildar with effect from 1st December, 2001 after his completion of the course in the year November 2001.

10. We do not find any reasonable ground as to why the petitioner should be deprived from getting the notional seniority from the date his batch mates were promoted i.e. from September 1997. When the petitioner could get promotion notionally to the rank of Naik with effect from 1st December, 1992 although he was actually promoted to the said post on 27th July, 2001, he cannot be deprived from getting his promotion to the rank of Havildar in September 1997 when his batch mates were so promoted as he had subsequently completed and cleared the intermediate cadet course with distinction on the very first opportunity that was given to him. Therefore, the order of promotion, which was given to the petitioner to the rank of Havildar shall now take effect from September 1997; otherwise the petitioner would become junior to his batch mates which would also consequently result in his supersession as his juniors would become his seniors for no fault of the petitioner. The petitioner was acquitted in the criminal case and, Therefore, he cannot be deprived from getting his promotion which is due to him in the natural course. The respondents had also laid down the criteria for promotion for the rank of JCO's/NCO's by letter dated 10th October, 1997. Paragraph 12 thereof makes provision for relaxation of one ACR out of the mandatory number of ACRs in exceptional circumstances.

11. In our considered opinion, this is a fit and appropriate case for exercising such powers as this case is an exceptional case, for the petitioner was deprived from getting his promotion as he was falsely implicated in a case, from which he

was acquitted.

12. In the light of the aforesaid discussion, we allow this writ petition and direct that the petitioner shall be given promotion to the post of Havildar from the month of September, 1997 when his batch mates were promoted. It is, however, ordered that he shall not be entitled to any pay and allowances from the said date and that the said promotion shall be treated as a notional promotion without pay and allowances. We may also note that the counsel for the petitioner, during the course of his submissions, had agreed that the petitioner, if an order of promotion is made to the post of Havildar, would not claim the benefit of his pay and allowances.

13. We leave the parties to bear their own costs.