

(1999) 02 DEL CK 0045
In the Delhi High Court
Case No : C.W. No. 4615/94

Hav. Clk (GD) Khushal Singh		APPELLANT
	Vs	
Union of India (UOI)		RESPONDENT

Date of Decision : 01-02-1999

Acts Referred:

Citation : (1999) 78 DLT 757 : (1999) 49 DRJ 754

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Digamber Singh, for the Appellant; H.S. Phoolka and Lallan Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramamoorthy, J

1. The petitioner who Was working as Hav Clk in the Indian Army has prayed for the following relief:

Issue writ of Mandamus directing respondents to promote the petitioner to the rank of Naib Subedar immediately with all consequential benefits before retirement on 01.12.1994 with inters seniority.

2. The facts which are necessary for dealing with the point raised by the petitioner can be stated tersely in the following terms. The petitioner was promoted to the acting rank of Hav Clk (CD) with effect from 01.06.1983. He was granted substantive rank of Havildar w.e.f. 01.02.1986. According to the petitioner he came to know about the promotion of his juniors to the substantive rank of Havildar and he made non-statutory complaint and he was not given promotion as Naib Subedar and Therefore, he had to approach this court for the relief prayed for, as mentioned above. What has happened is that the petitioner was granted substantive rank of Havildar w.e.f. 01.02.1990 erroneously ignoring the punishment suffered by him on 21.08.1984 u/s 39(f) of the Army Act, 1950. Subsequently, with a view to correcting the error the promotion was cancelled

and he was again granted substantive rank of Havildar w.e.f. 01.02.1986. On the basis of his re-promotion to the rank of acting Havildar on 21.08.1984, the petitioner retired as Havildar and he was also given honorary commission.

3. The petitioner's claim is that his appointment on substantive rank of Havildar from 01.02.1986 cannot be cancelled without notice to him and after he was granted substantive rank. He was also sent for training which enabled the petitioner to be made eligible for promotion to the Naib Subedar. According to the petitioner the respondents are well aware of the punishment imposed and while giving the substantive rank w.e.f. 01.02.1986 the punishment was completely kept out of consideration on the ground that it was passed by a authority who was not competent to impose the penalty.

4. The petitioner contented that having given the substantive rank, after a long lapse of time the respondents cannot resuscitate the punishment and deny the petitioner his substantive rank.

5. On 27.09.1969, the Army Headquarter had issued instructions to the officer in charge relating to the cancellation of substantive rank granted to the Army personnel and the same reads as under:

Army Headquarters,

Adjutant General's Branch

DHQPO New Delhi-11

No. A/00659/Rtg 8(1 of R) (a)

dated 27.09.69

To

The Officer-in-Charge,

EME Record Office,

Secunderabad.

Publication of causality

Substantive proportions.

Reference your letter No. 30208/POI/17/AI dated 8 Aug 69.

Substantive rank, once granted by a competent authority against authorised establishment can not be subsequently cancelled except on grounds of error of facts or then such a reduction in rank is awarded as a punishment on disciplinary grounds as provided for in the Army Act.

In view of the above, cancellation of the notification of the substantive promotion of a NCO will not be in order.

6. On coming to the know the mistake committed, the respondents had set right the records and the petitioner was given the substantive rank of Havildar w.e.f. 01.02.1990. Therefore, I am of the view that the petitioner cannot have any grievance that his junior was promoted to the substantive rank of Havildar earlier to the petitioner.

7. Col. Digamber Singh, the learned counsel appearing for the petitioner referred to the message received from the petitioner Commanding Officer to the 3rd respondent to promote the petitioner to the rank of Naib Subedar on 02.07.1991. The learned counsel also referred to the communication to the petitioner Commanding Officer on 13.08.1991 (Annexure C) and also communication dated 27.08.1991 (Annexure E) to the third respondent. Col. Digamber Singh referred to the judgment of the Punjab & Haryana High Court reported in Gurdev Singh Inspector Police v. State of Haryana & ors. 1990 (1) SLR 44 and submitted that the petitioner would be entitled to his promotion earlier to the date of promotion of his juniors. The facts before the Punjab & Haryana High Court are entirely different and I am not able to see any ratio applicable to the facts of this case.

8. Col. Digamber Singh, the learned counsel for i.e petitioner relied upon the Judgment reported in C.O. Arumugam and ors. v. The State of Tamil Nadu and Ors. 1991 (1) SLR 288 wherein the Supreme Court has held:

As to the merits of the matter, it is necessary to state that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principle. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.

9. I fail to see how this could be of any use to the petitioner.

10. Trying to meet the point urged by the learned counsel for the respondents that the petitioner is guilty, of laches, in that the petitioner did not challenge the punishment imposed on 21.08.1984 and the same is reflected in the communication which is filed by petitioner himself as annexure D, the learned counsel referred to the Judgment of the Supreme Court in Ramchandra Shankar Deodhar and Ors. v. The State of Maharashtra and Ors. AIR 1974 SC 250. The annexure I is IIIrd communication from 3rd respondent to the second respondent clearly mentioning the punishment imposed on the petitioner. Annexure D reads as under:

FROM EME RECORDS

TO ARMY HQ STATE WESP

BT

UNCLASA.1171

PROMOTION HAV TO NB SUB. REF YOUR Q 9010 JUL 29. AT PRESENT 14503188 K HAV CLK (GD) KHUSHAL SINGH NOT ELIGIBLE FOR PROMOTION. INDVL. DEPRIVED ACTING RANK HAV ON.21 AUG 84 FOR OFFENCE u/s 39(f) AND REPROMOTED WEF 21 AUG 85. SENIORITY COUNTED WEF AUG 85.

11. The petitioner must have been aware of what had happened to him. From the records it is clear that the petitioner was imposed the punishment on 28.08.1984 and he had accepted the same. Col. Digamber Singh, the learned counsel for the petitioner made attempt to say that the correction has been made subsequently and the petitioner was not aware of it. The petitioner having been granted substantive rank of Havildar from 01.02.1986 and having undergone the training was under the impression that the respondents had cancelled the punishment imposed on him on 21.08.1984 and the petitioner is trying to make out a point on the error committed by the respondents and that is not permissible in law. The decision relied upon by the learned counsel for the petitioner in Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, does not at all help the petitioner. For all these reasons, I am of the view, that the petitioner has not made out any case for interference.

Accordingly, the writ petition stands dismissed. There shall be no order as to costs.