

(2001) 05 DEL CK 0123
In the Delhi High Court
Case No : C.W. No. 1857 of 1997

Havaladar Ratan Singh Chauhan

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 29-05-2001

Acts Referred:

Citation : (2001) 05 DEL CK 0123

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

Bench : Single Bench

Advocate : Mr. J.C. Malik, for the Appellant; Mr. A.K. Malik, for the Respondent

Final Decision : Allowed

Judgement

Dr. Mukundakam Sharma, J.—In this writ petition, the petitioner has prayed for a direction to the respondent to promote the petitioner to the rank of Naib Subedar from the date the said promotion was due to the petitioner with a further direction to pass an order to give all consequential benefits to the petitioner, in accordance with law.

2. The petitioner joined the Indian army on 11th August, 1972 as a regular Soldier. In due course, the petitioner was promoted to the post of L/Naik and Naik. The petitioner was promoted to the rank Havaladar with effect from 1st September, 1989. It is alleged in the petition that due to personal animosity on the part of Ltd.Col. S.C. Basu, who was the initiating officer in respect of the confidential report of the petitioner, being the Commanding Officer, he spoiled the Annual Confidential Report of the petitioner for the year 1993 as a measure to wreck vengeance although such adverse entries were made in the Annual confidential Repot of the petitioner for the year 1993, the same was not communicated to the petitioner and he was informed for the first time about the aforesaid adverse entries in his Annual Confidential Report for the year 1993 only in the month of March, 1995.

3. It is stated that on coming to know about the aforesaid adverse entries in his

Annual Confidential Report for the year 1993, the petitioner immediately submitted his non-statutory complaint against the said adverse entries in his Annual Confidential Report for the year 1993 to the higher authority on 15th April, 1995. The said non-statutory complaint was accepted and the adverse entries for the year 1993 were struck out and set aside by the higher authorities but in the process, the petitioner lost his opportunity of promotion to the post of Naib Subedar and he stood retired from the Indian Army in the post of Havaldar. Consequently, it is stated that not only the petitioner lost his status but also monetary benefits to which the petitioner would have been otherwise entitled to. It is also stated that because of the aforesaid adverse entries in his Annual Confidential Report for the year 1993, the petitioner was not detailed for "S" Course which was held in the month of June, 1995 and as a result he was not even considered for promotion to the post of Naik Subedar.

4. From the statements made in the counter affidavit, it is clear and apparent that the petitioner from the year 1989 to 1992 was given uniform good grading in his confidential reports, both the initiating officer as also by the reviewing officer. However, adverse entries came to be recorded in his Annual Confidential Report for the year 1993 presumably on the ground stated in his writ petition which stands established from the subsequent action of the respondents. It is an admitted position that the said adverse entries were not communicated to the petitioner immediately as required under the relevant Rules. It is also an admitted position that the said adverse entries recorded in the Annual Confidential Report of the petitioner for the year 1993 was communicated to him only on 6th March, 1995. The petitioner filed a complaint to the higher authority but the respondent informed the petitioner that such a complaint was to be made in the prescribed format and accordingly the petitioner filed a non-statutory complaint in the prescribed format on 2nd December, 1995 which was disposed of on 10th July, 1996 by the Army Headquarters and his Annual Confidential Report for the year 1993 was quashed and set aside. Consequently now, the petitioner has acquired a good grading in his Annual Confidential Report even for the year 1993.

5. Having heard the learned counsel for the parties and having perused the records, I find that due to circumstances not within his control, the petitioner was given adverse entries in his annual confidential Report for the year 1993 which, however, was later on rectified and quashed. If the petitioner would have obtained the Annual Confidential Report for the year 1993 of good grading as of now immediately on completion of the exercise when it was recorded, in that case the petitioner would have been entitled to undergo the "S" Course in June, 1995 itself and then in due course the petitioner, by virtue of his good Annual Confidential Report, would also have been promoted to the post of Naib Subedar. The reason given by the respondent for not detailing the petitioner for "S" Course in June, 1995 is the adverse entries in his Annual Confidential Report for the year 1993 for he was graded as "Average" for the said year. Being so placed and having been denied the opportunity to undergo the "S" Course, the

petitioner stood retired from Army service in the post of Havaldar with effect from 1st September, 1996.

6. Considering the entire facts and circumstances of the case, I am satisfied that the respondent was responsible and acted illegally in not communicating the adverse entries made in the Annual Confidential Report of the petitioner for the year 1993 immediately and in communicating the same only on 6th March, 1995, whereas, the screening for retailment in "S" Course was to be held in the months of June, 1995. Consequently, no reasonable time was even afforded by the respondent to the petitioner to get the said adverse entries set aside and quashed. It is settled law that an uncommunicated adverse entry cannot be relied upon by the respondent for the purpose of considering the matter of promotion of a service personnel. The petitioner, Therefore, cannot be allowed to suffer because of the lapses and laches on the part of the respondent.

7. The petitioner filed a representation as against the adverse entries made in his Annual Confidential Report for the year 1993 immediately after the receipt of the same, although not in the prescribed format which was, however, later on submitted to the higher authorities in proper format when so intimated. On the basis of the same, the adverse entries were struck out which proves and establishes that the petitioner was denied justice in getting retailment for undergoing "S" Course and also in getting his due promotion.

8. In the light of the aforesaid facts, I am satisfied that the petitioner has suffered a loss for no fault of his and entirely due to the fault of the respondent. Therefore, the respondent is directed to consider the case of the petitioner by holding a review screening for retailment in "S" Course, which was held in the month of June, 1995 within four weeks from today. On the basis of the assessment, if it is found that the petitioner was entitled to be detailed for undergoing such "S" Course, then the case of the petitioner shall immediately be placed before the review DPC for consideration of his case for promotion to the post of "Naib Subedar" without even undergoing the aforesaid "S" Course. It is to be mentioned that the petitioner has since retired from service and, Therefore, it is not possible for him to undergo the aforesaid Course. But at the same time he cannot be denied his promotion, which could be otherwise due to him.

9. The entire records of the petitioner for the relevant period shall be placed before the review DPC for considering the case of the petitioner for promotion to the post of Naib Subedar within six weeks from the date of the decision of Screening Board for retailment in "S" Course and a decision shall be taken by the competent authority on the recommendation of the review DPC. The decision of the Screening Committee in respect of retailment in "S" Course as also of the review DPC and of the competent authority shall be intimated to the petitioner well in time. It is also made clear that in case the name of the petitioner is recommended for promotion to the post of Naib Subedar by the review DPC, he shall be given notional promotion to the post of Naib Subedar from the date his juniors were promoted with all consequential benefits as he would be entitled to

under the provisions of the Rules. This order is being passed considering the fact that if the petitioner would have been detailed for "S" Course in the month of June, 1995, he would definitely have had the opportunity to be considered for promotion to the post of Naib Subedar before he stood retired from service.

10. In terms of the aforesaid order, the writ petition stands allowed to the aforesaid extent but without any costs.