

(1977) 11 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 184 of 1971 & Civil Writ Petition No. 184 of 1971

Jagdish Kumar Verma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-11-1977

Acts Referred:

National Cadets Corps Act, 1948 — Section 28

National Cadets Corps Rules, 1948 — Rule 22, 26(4), 28(2)

Citation : (1978) 7 ILR HP 119

Hon'ble Judges : C.R. Thakur, J

Bench : Single Bench

Advocate : Inder Singh, for the Appellant; H.K. Paul, for the Respondent

Final Decision : Allowed

Judgement

Chet Ram Thakur, J.—Shri Jagdish Kumar Verma who was working as National Cadet Corps Officer was granted Commission in the Senior Division (Army Naval Wing) by order, dated 29th April, 1965, (Annexure "A") with effect from 30th December, 1963, and by order, dated 28th August, 1971, (Annexure CL") he was de-commissioned with effect from 19th August, 1971, and the period between 29th April, 1965 to 18th August, 1971, was also ordered not to be counted for the purposes of seniority or promotion or any other benefits in the National Cadet Corps. This order purports to have been made under Rule 28(2)(f) of the National Cadet Corps Rules, 1948, (hereinafter called the Rules). The Petitioner has challenged this order, Annexure L, and has prayed for quashing the same.

2. From his last posting at Rampur Bushahr, vide order, Annexure R, dated 28-11-1970, he was transferred to the Government College of Education, Solan. According to the Petitioner he being the Senior Officer was to take the Commission and charge of N.C.C. Coy. Government College of Education, Solan, but that was not given to him as Respondent No. 4, Shri B.P. Gupta, was already working there and he was being favoured by the authority. He approached the principal of the College through Major D.C. Katoch, Administrative Officer, to

hand over the charge to him but it appeared that nothing was done. According to the Petitioner, the Education-Department was insisting that the Petitioner should work under Shri B.P. Gupta, Respondent No. 4, who was junior to the Petitioner and he had not been granted commission in the Senior Division National Cadet Corps. Thereafter he made a representation to Respondent No. 2 on 11th August, 1971, but the same was also not decided. However, the Petitioner was sent the communication, Annexure L, dated 28-8-1971, whereby he was ordered to relinquish his commission from the N.C.C.

3. The Petitioner attacks this order on the ground that his services in view of the provisions of Rule 28(2) could be discharged only according to the requirements mentioned therein. But the case is not covered by any of these conditions and as such the order is without jurisdiction. Further that the order is not a speaking order. He also complained of discrimination inasmuch as his junior Shri B.P. Gupta was retained in the Government College of Education, Solan, and he further contended that this order was mala fide. The order is not an order simplicitor of discharge but it is an order which has been passed as a matter of punishment.

4. The Respondents Nos. 3, 4 and 5 though had taken some preliminary objections but the same were not argued by Shri H.K. Paul, who appeared for the State.

5. The Respondents supported the order of de-commission-ing or discharging of the Petitioner from the National Cadet Corps. This order purports to have been made under Rule 28 (2)(f) of the Rules, which is to the following effect:

28. (1) Every officer and cadet shall on becoming entitled to receive his discharge under the Act or these rules, be so discharged with all convenient speed.

(2) Any officer or cadet may be discharged as hereinafter provided on any of the following grounds, namely-

(a) to (e)...

(f) that he ceases to be on the staff of or on the roll of the college or school, as the case may be, providing the unit or part thereof to which he had been posted or appointed.

6. The learned Counsel for the Petitioner contends that the conditions as contained in Clause (f) of Sub-Rule (2) of Rule 28 are not fulfilled in this case and he has further drawn my attention to Rule 22 of the Rules which lays down:

22. Subject to the provisions of Part VII of these rules, a person, commissioned in the National Cadet Corps shall hold that commission as an officer in that Corps for a period from the date of his commission until he reaches 45 years of age, when he shall be discharged from the Corps:

... ..

A perusal of the Rule 22 would show that a person shall hold that commission as an officer in that corps for a period from the date of his commission until he reaches 45 years of age. But this is subject to the provisions of Part VII of this rule. Section 28 falls under Part VI of the Rules. The requirements of Clause (f), Sub-Rule (2) of Rule 28 of the Rules are:

Firstly-that he ceases to be on the staff of

or

on the roll of the college

or

School, as the case may be, providing the unit or part thereof to which he had been posted or appointed.

It is an admitted case that when he was transferred to the Government College of Education, Solan, he was working in the Government College, Rampur Bushahr. It is also not denied that in Rampur College there was N.C.C. provided and from there he was transferred to the Government College of Education, Solan, vide Annexure B, dated 28th November, 1970. The first question, therefore, is whether there was a unit of the N.C.C. provided to the Government College of Education, Solan. The submission of the learned Counsel for the Petitioner is that there is such a unit attached to that College. In para 7 he has stated that the Petitioner was transferred to the Government College of Education, Solan, and he being the Senior Officer was to take the Commission and charge of N.C.C. Coy., Government College of Education, Solan, but that was not given to him as the Respondent No. 4 was already working there. The reply to para 7 of the Respondents Nos. 3, 4, and 5 is that the Petitioner was transferred from Government College, Rampur Bushahr, to the C.P.Ed. Class Unit of Government College of Education, Solan which is quite independent and a distinct entity to which no N.C.C. unit is attached or granted. The N.C.C. unit was attached or granted to the B. Ed class of the College. The Respondents Nos. 1 and 2 in their reply to para 7 have admitted that the Petitioner was transferred to the Government College of Education, Solan, and that he was not given any charge of the N.C.C. unit. Therefore, the submission made by the Petitioner appears to be correct that there was N.C.C. unit attached to the Government college of Education, Solan, to which he was transferred. The Petitioner has also in his rejoinder to para 7 controverted the reply given by the Respondents Nos. 3, 4 and 5 and has submitted that it is wrong to say that C.P.Ed, is a quite independent and distinct entity to which no N.C.C. unit is attached. He has also contended that the statement made by the Respondents was incorrect that his posting was specifically in a unit where no N.C.C. was attached. The Petitioner has also annexed the transfer order made by the Office of the Director of Education, Himachal Pradesh, and which is Annexure N to the rejoinder. This clearly shows that the Petitioner's posting from Rampur Bushahr was made to the Government College of Education, Solan. This, therefore, falsifies the

avermment made by the Respondents in their reply that he was not transferred to the Government College of Education rather he was transferred to the C.P.Ed. College Solan.

7. Further, the Petitioner has annexed another document (Annexure "O"), dated 23rd February, 1970, which purports to be an office order issued by the Principal, Government College of Education, Solan, Himachal Pradesh, which reads as under:

It is the last month of parades for the current session. Therefore N.C.C. parades will be held each day in the college campus for the remaining days of this month. The parade hours will be from 1700 hrs to 1800 hrs.

All B.Ed, O.Ts. and CP.Ed. (Teachers-male) cadets will make it a point to attend the parades per programme. Attendance is compulsory.

This also shows that the N.C.C. was attached to the Government College of Education as also to the C.P.Ed. and by this order it was directed that the N.C.C. will be held each day in the college campus and all B.Ed., O.Ts. and C.P.Ed, cadets were required to make it a point to attend the parades per programme and this order purports to have been issued by the Principal, Government College of Education, Solan.

8. There is another document (Annexure "O/I") appended by the Petitioner which purports to be a copy of the N.C.C. Cadet of College of Education, Solan, for the annual training camp Barotiwala Senior Division with effect from 25-12-1969 to 3-1-1970 audit gives the names of the cadets etc., and it also shows the B.Ed., O.Ts and C.P.Ed, cadets who attended this training and this further falsifies the submission made by the Respondents Nos. 3, 4-and 5 in their reply.

9. Again the Petitioner filed a supplementary affidavit with the permission of the Court. In Para 2 of the supplementary affidavit he has submitted that since his transfer from the Government College, Rampur, to the Government College of Education, Solan, he was posted in that College and in para 3 he has further stated that certificate in physical education is one of the courses which is taught in the College of Education at Solan and it is one of the units of that College. In Para 4 he has also stated that there was N.C.C. in that College in which students of C.P.Ed. Section also used to attend the N.C.C. He has produced Annexure "X" which is a nominal roll of N.C.C. Cadets (Senior Division) of the College of Education, Solan (H.P.) A.T.C. Paonta Sahib, 25th December to 5th January, 1971. In Para No. 6 he has also stated that the officer commanding I H.P.Bn. N.C.C. Solan desired that he be permitted to perform the N.C.C. duties and that is Annexure "Y" He also has filed a further document (Annexure CZ") which shows that he performed the duties in that College as a Lecturer.

10.The Respondents in their reply submitted that the Himachal Pradesh Government had stopped admission to B.Ed. classes throughout the Pradesh during the academic Session as such no N.C.C. Troop has been allotted to any of

the Colleges of Education in the Pradesh. That being so, there is no N.C.C. Troop in the College of Education at Solan, where Shri J.K. Verma is presently posted. This reply was filed on 6th October, 1972. But it is quite apparent that when the Petitioner was not given the charge and that he was de-commissioned there was N.C.C. provided in the College of Education and the N.C.C. Cadets attended the parade and the training. Therefore even if the B.Ed, classes had been stopped in the year 1972, the fact remains that in the year 1971 the B.Ed. Classes were there and the N.C.C. unit was also attached to this College, where the Petitioner was transferred. Therefore, on that account the stand taken by the Respondents in their reply is totally baseless.

11. From the impugned order it is quite obvious that he was de-commissioned as envisaged under Clause (f) of Sub-Rule (2) of Rule 28 of the Rules. It is admitted that at Rampur Bushahr there was N.C.C. and the Petitioner was attached to that College. It is also obvious that when the Petitioner was transferred to Solan whether to the school of education or to the college of physical education, the N.C.C. Unit was provided to these institutions and, therefore, it can not be said that the Petitioner had ceased to be on the staff of or on the roll of the college or school of education providing the unit or part thereof to which he was attached. A person commissioned in N.C.C. as envisaged under Rule 22 cannot be discharged until he reaches 45 years of age. However, subject to the provisions of part VII of these rules under which Rule 28 falls he could be discharged only in case the requirements as contained under Clause (f) of Sub-Rule (2) of Rule 28 existed. The Petitioner was transferred to the Government College of Education, Solan, or say to the College of Physical Education, Solan, and it is apparent from the numerous documents filed that the N.C.C. unit was provided to these colleges. Therefore, it cannot be said that he had ceased to be on the staff of the college to which this unit was provided. If that facility had been taken away when the Petitioner had taken over or subsequently it had been taken away then the Petitioner would have ceased on the staff of or on the roll of that college. But that is not the case.

12. It is not disputed by the Respondents that Shri B.P. Gupta, Respondent No. 4, was junior to Shri Jagdish Kumar Verma. The Petitioner was commissioned to the Senior Division vide Annexure "A" Sub-Rule (4)(aa) of Rule 26 which has been amended under S.R.O. 184 on 18th April, 1970, now provides:

(4)(aa) Where an Officer of the National Cadet Corps is transferred to a college or school having no vacancy in the Unit to absorb him, the junior most amongst the officers junior to him, if any, in such a college or school shall be placed on supernumerary list for a period not exceeding one year at the discretion of the Director General National Cadet Corps. In case there is no such junior officer to be placed on the supernumerary list or where the transfer is to a college or school having no unit, the transferred officer shall be placed on the supernumerary list for a period not exceeding one year at the discretion of the Director General National Cadet Corps. The period for which such officer is placed

on the supernumerary list under this Sub-Rule shall not count towards seniority of the officer for promotion.

Provided that this Sub-Rule shall not apply to officers who leave one college or school of their own accord and are employed in another college or school.

13. The Petitioner was transferred to the College at Solan where the N.C.C. Unit was provided and the Respondent No. 4 was also working there. Therefore, in terms of this Sub-Rule the junior most, i.e. Shri B.P. Gupta, had to be placed on supernumerary list for a period of one year at the discretion of the Director General National Cadet Corps. But the Petitioner had not been given any charge and, therefore, there was a clear contravention of Sub-Rule (4)(aa). In fact the impugned order (Annexure "L") was passed on 19th August, 1971, whereas these rules had come into force about nine month earlier i.e. before the passing of the impugned order. Therefore, even if there was no post still Shri B.P. Gupta had to be placed on supernumerary list and the Petitioner had to be given the charge of the post.

14. The learned Counsel for the State contended that the Petitioner was discharged for reasons as contained in Annexure "L" and that he was holding an ex-officio post. But there is nothing in the reply of the Respondents if the Petitioner was holding merely an ex-officio post as commissioned officer in the N.C.C. This is only at the stage of the arguments that the Respondents have raised this point. In the reply filed the stand taken is that he was transferred to the C.P. Ed and not to the College of Education at Solan, and that there was no N.C.C. Unit attached to the former Collage and on that basis he had no right, and that he had ceased to be on the staff of or on the roll of the College within the meaning of Clause (f) of Sub-Rule (2) of Rule 28 of the Rules. So it is apparent that he was on the roll of the college in the year 1970 or 1971 when the order was passed.

15. The point with regard to the mala fide is that the Respondent No. 3 was favouring the Respondent No. 4 as the Respondent No. 4 had been teaching the children of the Director of Education and, therefore, it was manoeuvred that he should continue and the Petitioner should be discharged. Anyway there is no evidence on this point. The Petitioner succeeds on the first point that the order as contained in Annexure "L" does not satisfy the requirements as mentioned in Clause (f) Sub-Rule (2) of Rule 28.

16. In view of this the petition succeeds and the order (Annexure "L") is hereby quashed. The Petitioner shall be entitled to all the consequential benefits as a result of the quashing of this order. The Petitioner shall also get his costs, assessed at Rs. 200/- from the Respondent No. 5.