

(1996) 07 AHC CK 0047

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24150 of 1988

Keshaw Kumar (Captain)

APPELLANT

Vs

Union of India through Director General NCC Govt.of India &
Anr.

RESPONDENT

Date of Decision : 26-07-1996

Acts Referred:

Citation : (1996) 07 AHC CK 0047

Hon'ble Judges : R.A.Sharma, J and D.K.Seth, J

Final Decision : Dismissed

Judgement

D. K. Seth, J.—The petitioner, in the present be se, has made out a case that since 111976 he was working in M.L.N. Medical College, Allahabad, as a teacher. He was also a part time National Cadet Corps Officer since 2561976. The National Cadet Corps. Organisation (hereinafter referred to as NCC) was disbanded between the period 151977 to 3101978 for the purpose of reorganisation. During the said period the petitioner was placed on supernumerary list; according to Rule 26(4) (a) and (4aa) of National Cadet Corps Rules, 1948. Though the petitioner had performed the duties between the said period 151977 to 3 101978, yet the said period was not counted for the purpose of counting seniority for promotion in NCC Despite his representation, no benefit was given to him in spite of the certificate granted by his officer. The seniority was not counted for the purposes of granting him promotion. According to him, if it was so counted he would have been entitled to the rank of Major with effect from 2561988. By order contained in communication dated 3101988 his claim was turned down. The petitioner has challenged the said order by means of present writ petition. In the present writ petition he has prayed for, (i) quashing of the decision contained in communication dated 310 1988 (Annexure7 to the writ petition), (ii) for reckoning the period 151977 to 3101978, (iii) to promote the petitioner to the rank of Major with effect from 2561988, (iv) Commanding the State of Uttar Pradesh to accept the petitioner as a regular employee of State of Uttar Pradesh with effect from the date of his Commission namely 2561976,

(v) Commanding the respondent No. 2 State of Uttar Pradesh include the petitioner's name in the list of Selection Grade Scale as Reader (Personal), (vi) Commanding the State of Uttar Pradesh to allow selection grade scale to the petitioner immediately after 31121988.

2. Sri S. Harkauli, learned counsel for the respondent, on the other hand contends that there is no nexus with regard to the case made out in the writ petition and the prayers (iv), (v) and (vi). Inasmuch as the appointment as part time commissioned officer in NCC has nothing to do with the appointment or conditions of service in the college itself. At this stage, Sri A. K. Shukla, learned counsel for the petitioner submits that he is pressing the writ petition only with regard to prayer No. (i), (ii) and (iii) and he is not pressing the rest of the prayers.

3. The case made out by the respondents in the counter affidavit is that on account of disbandment of the unit for reorganisation of NCC for the period between 151977 till 3101978 the petitioner could not be accommodated in any unit. Therefore, he was placed on supernumerary list, in terms of letter dated 16th October, 1963. By virtue thereof the said period cannot be reckoned for the grant of promotion. It is further contended that promotion is not the matter of right. The petitioner has not made out a case as to how he would be entitled to promotion to the post of Major with effect from 2561988. It is also contended by Sri Harkauli that admittedly the petitioner has been promoted to the rank of Major. Therefore, this writ petition has become infructuous.

4. Sri Shukla, learned counsel for the petitioner, on the other hand contends that in case the period between 151977 to 310 1978 is reckoned in that event the petitioner would have been entitled to promotion to the post of Major on 25th June, 1988.

5. Now, therefore, we are called upon to decide the following questions:

(i) As to whether the period between 151977 till 3101978 should be reckoned for the purposes of counting seniority of the petitioner;

(ii) If counted, whether the petitioner would be entitled to promotion to the rank of Major with effect from 25th June, 1988.

6. It is contended by Sri Shukla that the petitioner could not be placed in supernumerary list pursuant to subrule (4a) and (4 aa) of Rule 26. Therefore, the said period should be reckoned for the purposes of counting seniority of the petitioner. Rule 26(4a) and (4aa) are quoted below:

"(4a) National Cadet Corps Officers of the Senior and Junior Divisions who proceed on study leave, long leave or posted away to perform some other duties and are permitted to keep lien with their Schools/Colleges, shall be placed on supernumerary list for a period not exceeding two years unless Government in a special case agree to extend it. This period shall not be counted towards their seniority for promotions in the National Cadet Corps.

(4aa) Where an officer is transferred to a College or School having no unit or vacancy in any unit to absorb him, he shall be placed on supernumerary list for a period not exceeding one year at the discretion of the Director National Cadet Corps. This period shall not count towards his seniority for promotion in the National Cadet Corps."

7. A plain reading of subrule (4a) specifies that an officer is placed on supernumerary list for a period not exceeding two years unless Government in a special case agree to extend it, in cases where an officer proceeded on study leave, long leave or posted away to perform some other duties and are permitted to keep lien with their, schools/colleges. An officer may also be placed on supernumerary list, for a period not exceeding two years at the discretion of Director NCC, if an officer is transferred to a college or school, having no unit or vacancy in any unit to absorb him. In both the subrules it has been provided that the period spent on supernumerary list shall not be counted towards seniority for promotion. Admittedly, the petitioner had joined Banaras Hindu University, Varanasi, on 11/5/1993. During the period. 15/1/1977 and 31/01/1978 the petitioner was continuing in M. L. N. Medical College, Allahabad. Therefore, subrule (4aa) cannot be attracted. It is also not a case that M. L. N. Medical College did not have any unit or vacancy. At the same time subrule (4a) also is in applicable in the present case. Inasmuch as the petitioner was neither on study leave nor on long leave nor was posted away to perform some other duties and was permitted to keep lien with their Schools/College. Admittedly, the petitioner was continuing in the college. Therefore, the condition for placement in supernumerary list as provided in subrule (4a) and (4aa) are not present in the case at hand. Therefore, by no stretch of imagination the said revision can be attracted in the present case, for placing the petitioner in supernumerary list either under subrule (4a) or under sub rule (4aa).

8. Sri Harkauli contends that the condition for placing an officer on supernumerary list as contained in Rule 26(4a) and (4aa) of the NCC Rules are not the only condition permitted under the Army Instructions on which an officer can be placed on supernumerary list. According to him the policy letters, issued from time to time by the Government of India, Ministry of Defence, provides for certain other contingencies in which an officer can be placed on supernumerary list. In the present case as it appears from the impugned letter that the decision was taken on the basis of the said policy letter, which was mentioned as 16th October, 1964, reproduced in the department's letters dated 17th March 1969 and 21st September 1973.

9. The condition contained in subrule (4a) and (4aa) of Rule 26 indicates that when a person is either absent on account of the reasons specified in subrule (4a) or an officer cannot be accommodated in absence of any Unit etc. as contained in subrule (4aa) in that event he is placed on supernumerary list. Which indicates suspended accumulation of a post. Such a period is not counted towards seniority. There might be a situation where an officer cannot be

accommodated in any unit and his post maybe required to be kept in suspended amination. Now the policy letter issued by the Government of India Ministry of Defence, are well within the jurisdiction of the Government. The said policy is also not subject matter of the writ petition nor the same has been challenged on any ground whatsoever. The existence of the policy has also not been disputed by Sri Shukla. No such case has been made out either in the writ petition or in the course of argument. Therefore, during the disbandment for the purposes of reorganisation of NCC Unit there is no post in which an Officer can be accommodated and in such cases his name be borne on supernumerary list having the consequence of nonrecognition of the period towards seniority. Such a situation can not be assailed to be bad.

10. According to concise Oxford Bictionary "disband* means to break up organisation of (a band or company); to dissolve and dismiss from service (a military force etc.); to break up as a body of soldiers or an organisation; cease to be a band or company; break rank, disperse; leave military service. The Lexicon Webster Dictionary defines "disband" as break up as a band or body of men; dismiss from military service; disperse break up and retire from military service. The word disbandment is the noun form of the word "disband". Therefore, the word disbandment means breaking up, dismissal, dispersal or cessation of a military service unit or organisation. The effect of disband is the cessation of existence of the unit.

11. If a unit is disbanded it cannot have any existence. If the unit ceases to exist the posts/ranks also cease to exist and the Officer can not be borne on the roll inasmuch as there can not be any roll without the unit. In such a case the College does not have any unit though the petitioner might not have been transferred to any other college. Even while continuing in the same college if the college does not have any unit, in that event, such an officer is obviously can not be absorbed in any unit, therefore, is liable to be placed on supernumerary list. The situation has the same effect as contemplated in subrule (4 aa). Therefore, the policy decision is an enumeration of the conditions which is normally included within the ambit of rule (4aa) though not specifically specified therein, but is illucidated by policy letter. Therefore, the period spent on supernumerary list even on contmugency when the officer continues in the college where there is no existence of any unit on account of disbandment thereof, the placement in supernumerary list and the nonrecognition of the period towards seniority would be the natural consequence because even in that even the officer cannot be treated differently.

12. In the icsuftttewrit petition fails and is dismissed. There will be, however, no order as to costs.