
(1997) 03 DEL CK 0101

In the Delhi High Court

Case No : Civil Writ Petition No. 786 of 1996

K.S. Mankotia

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 3 AD 105 : (1997) 41 DRJ 477

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : D.D. Thakur, N.N. Bhatt, V.K. Singh and A.K. Wali, for the Appellant;

Judgement

Dalveer Bhandari, J.

(1) The petitioner was commissioned as an Emergency Commission-1 Officer on 30.6.1993 in the Indian Army Infantry. He underwent training for 18 months and the same was excluded and the seniority of the petitioner and of his batch mates was fixed as 15.1.1965.

(2) The petitioner had N.C.C. "C" certificate and was given seniority of six months accordingly another period of six months was added to his seniority and the date of seniority was raised to 15.7.1964. As a result of this Court's order in the case of Col. S.P. Aggarwal fifteen days' benefit was given to the petitioner and to all those similarly placed officers and consequently, the petitioner's seniority was finally fixed w.e.f. 30.6.1964.

(3) It is submitted that the petitioner was considered for selection for the post of Brigadier Along with other officers of 1964 batch. The result was declared in December, 1989. The petitioner was, however, not selected in the first attempt. According to the policy dated 11.12.1991, issued by the Military Secretary Branch of the Army Head Quarter, the sequence of the failure to get selected in first attempt to the next higher rank resulted in loss of seniority of one year and the petitioner slid down to the following year's batch (of 1965) and became an

officer of 1965 batch.

(4) According to the said policy dated 11.12.1991, an officer gets three opportunities for being considered for promotion to the higher rank. The second attempt is called the first review and the third attempt is called the second review. If an officer is not selected even in the third attempt then thereafter he is not considered for promotion at all. The petitioner admittedly was considered for the first review (after first attempt) held in the year 1990 and was selected for the post of Brigadier.

(5) The petitioner was aggrieved by his non- selection in the first attempt and he made a non- statutory complaint to the chief of the Army Staff but the same was rejected. Thereafter a statutory complaint was filed to the Ministry of defense, Government of India. The statutory complaint was decided by the Government of India on 6.10.1994 and according to the Government of India's said letter "the statutory complaint was rejected, subject to fixation of original seniority w.e.f. 30.6.1964 and all follow up actions will be governed by the revised original seniority."

(6) The main stress laid by the learned counsel for the petitioner that the Government of India had fixed the original seniority of the petitioner as 30.6.1964, then the petitioner ought to have been considered Along with 1964 batch officers for promotion to the post of Major General. The main submission of the petitioner is that when the original seniority had been fixed by the Government of India, w.e.f. 30.6.1964, Therefore, the petitioner had to be considered for promotion to the post of Brigadier for that of Colonel Along with 1964 batch and for the post of Major General Along with officers of the following years" seniority.

(7) The petitioner all along submitted that his ACRs had been far above average and no adverse Acr had even been communicated to him, Therefore, is justified in prosecuting that he never had any adverse entry in his service record. The respondents in their counter affidavit has also accepted the fact that the petitioner's ACRs are above average. The petitioner was not considered for promotion Along with the officers of 1964 batch, Therefore, he has preferred this writ petition before this Court with the prayer that the respondents be directed to consider the petitioner Along with the officers of 1964 batch.

(8) This Court issued notice on 22.2.1996 and in pursuance of it, a counter affidavit was filed on 19.4.1996. In the counter affidavit it is mentioned that the petitioner initially belonged to 1964 batch of infantry officers. Since the petitioner was not selected in the first attempt, Therefore, according to the said letter dated 11.12.1991 the petitioner's seniority slid down to 1965 batch.

(9) In the counter affidavit it is not denied that the officer was commissioned on 30.6.1963 as a part of Emergency Commission-1 case. The seniority of the entire batch was fixed as 15.1.1965. However, as he was in possession of the certificate of Ncc, he got the benefit and thus further seniority was fixed as 15.7.1964. The

petitioner was also given 15 days" benefit because of the order of this Court in the case of Col. S.P. Aggarwal and his seniority was fixed w.e.f. 30.6.1964. The petitioner was considered as a fresh case of 1964 for promotion to the rank of Brigadier but was found unfit and consequently slid down to 1965 batch. Again after one year in October, 1990 he was considered as a first review case for the batch of 1965 and was found fit for the promotion to the rank of Brigadier. Accordingly, the petitioner formed part of 1965 batch for the purposes of all future promotions.

(10) It is mentioned in the counter affidavit that the petitioner's contention, that he should be considered Along with the 1964 batch of officers for promotion to the rank of Major General by the Selection Board held in October, 1994 is not correct. The petitioner had lost his seniority by one year as he was found unfit in the first attempt of the selection. The seniority assigned to the petitioner is in accordance with the procedure and rules and this petition has no merit and deserves to be dismissed.

(11) I have carefully perused the pleadings in this case and heard learned counsel for the parties. The short question which arises in this case is whether the petitioner belongs to 1964 batch or 1965 batch and what is the interpretation of the order dated 6.10.1994? The order dated 6.10.1994 reads as under: "The Central Government after considering the Statutory Complaint dated 11.9.1993 submitted by IC-10015 Brig. K.S. Mankotia, VEN. Inf. against adjustment of seniority of the rank of Brig/Suppression at initial consideration and after examining relevant records hereby reject his Statutory Complaint subject to fixation of his original seniority w.e.f. 30.6.1964 and all follow up action be governed by the revised original seniority. By order and in the name of the President. sd/- (Ravi Mathur) Director to the Government of India

(12) According to this letter it is clear that original seniority has been fixed w.e.f. 30.6.1964 and all follow up action will be governed by the revised original seniority. The said order has been passed after considering the statutory complaint dated 11.9.1993 submitted by the Petitioner. The government has Fixed petitioner's seniority w.e.f. 30.6.1964.

(13) According to the letter dated 11.12.1991 issued by Military Secretary Branch, it is clear that "if an officer is not selected in the first attempt then he loses one year of seniority and slides into the batch of the next year". In this case because of non-selection in the first attempt, the petitioner slid back to the batch of 1965. In October, 1990, the petitioner was considered as a first review case for the batch of 1965 and was found fit for the promotion to the rank of Brigadier. The petitioner formed part of 1965 batch for the purposes of all future promotion.

(14) I have considered the rival contentions of the parties and also carefully perused the original record of this case. The petitioner originally belonged to 1964 batch (30-6-1964) but because of his non selection in the first attempt he

slided back to the batch of 1965. Therefore, in the impugned order dated 6.10.1964 it is correctly mentioned that after rejecting the petitioner's statutory complaint his original seniority has been fixed up w.e.f. 30.6.1964 and all follow up action means promotion, etc. will be governed by the revised original seniority. The clear interpretation of this letter is that the petitioner's original seniority is w.e.f. 30.6.1964 but for all future promotions the petitioner shall be considered as an officer of 1965 batch because of his non-selection in the first attempt.

(15) The writ petition and other civil miscellaneous applications being devoid of any merit are accordingly dismissed. In the facts and circumstances of this case, I direct the parties to bear their own costs.