
(2011) 04 PAT CK 0147

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10002 of 1996

Lt. Col. Vijoy Kumar Prasad

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Citation : (2011) 04 PAT CK 0147

Judgement

R.M. Doshit, C.J.—This petition under Article 226 of the Constitution is filed by the Petitioner, a Lt. Colonel in the Army, to challenge the communication dated 13th September 1996 of the Army Headquarters, and New Delhi cancelling the earlier communication dated 21st May 1991. The impugned communication states that the Petitioner, a Major in the Army, posted at Danapur Cantonment, holds the rank of "Substantive Major" and not "Lt. Col. (Time Scale)".

2. It is the claim of the Petitioner that under the letter dated 21st May 1991 he was promoted to the rank of "Substantive Lt. Colonel by Time Scale". Under the impugned communication he has been shorn of his promotion and the status of Lt. Colonel in violation of principle of natural justice. From amongst the several Majors promoted as Lt. Colonels, the Petitioner was singled out for demotion to the post of Major. The Petitioner has, thus, been meted with discriminatory treatment.

3. The petition is contested by the Union of India. The Union of India has filed counter affidavit. At the outset, the petition is contested on the ground of territorial jurisdiction. It is stated that in November / December 1970 the Petitioner was court martialled for an incidence of theft and he was sentenced to forfeiture of seniority, forfeiture of service for promotion and pension and severe reprimand. Subsequently, he was considered for promotion from the post of Major in May 1989 but was found unfit. The Board of Review also found him unfit. His statutory complaint against his supersession was duly considered and was rejected on 9th September 1992. However, in the meantime, inadvertently the communication dated 21st May 1991 was issued permitting him to hold the

substantive rank of "Lt. Colonel by Time Scale". The said mistake was later discovered. Therefore, the impugned communication was issued on 13th September 1996. The affidavit also states that the rank of Major and the substantive rank of "Lt. Colonel by Time Scale" were in the same pay scale and had the same age of retirement by superannuation, i.e. 52 years. The impugned communication dated 13th September 1996 had, therefore, no consequences. The communication was issued with a view to correcting the record.

4. Learned Advocate Mr. Ambar Nath Banerji has appeared for the writ Petitioner. He has submitted that it is not true that the rank of Major and the rank of Lt. Colonel by Time Scale were equivalent as the rank of Lt. Colonel by Time Scale had several fringe benefits which were not attached to the rank of Major. He has further submitted that the Petitioner has been shorn of his rank of Lt. Colonel without affording him an opportunity of hearing.

5. Learned Advocate Mr. S.N. Pathak has appeared for the Union of India. At the outset, he has submitted that the petition suffers from the vice of want of territorial jurisdiction. In the submission of Mr. Pathak, the impugned communication was issued at New Delhi. Mere receipt of communication at Danapur Cantonment did not confer upon the Patna High Court the territorial jurisdiction to entertain the writ petition. In support thereof he has relied upon a judgment of the Hon'ble Supreme Court in the matter of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, and of this Court in the matter of Nand Kishore Singh Vs. Union of India (UOI) and Others, .

6. It is not in dispute that at the relevant time the Petitioner was posted at Danapur Cantonment. The impugned communication was received by him at Danapur Cantonment and the consequence fell upon him at Danapur Cantonment. Thus, part of the cause of action did arise at Danapur Cantonment within the territorial jurisdiction of the Patna High Court. The submission made by Mr. Pathak is thoroughly misconceived; is not supported by either of the aforesaid judgments and is rejected.

7. It does appear that the impugned communication was issued without affording opportunity of show cause or of hearing to the writ Petitioner. In view of the uncontroverted statements made in the counter affidavit that the Petitioner was found to be unfit for promotion as Lt. Colonel by Time Scale and that the communication dated 21st May 1991 was issued through oversight, the allegation that the impugned communication is vitiated by mala fide is rejected.

8. As the impugned communication had no other consequences except the Petitioner was shorn of the rank of Lt. Colonel; now that the Petitioner has retired from service for more than 10 years and that, in fact, the Petitioner was not found to be fit for promotion as Lt. Colonel by Time Scale, no further order is required to be made in this petition.

9. The petition is accordingly disposed of. The parties will bear their own cost.