
(1989) 10 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3846 of 1988

Major I.S. Sabherwal

APPELLANT

Vs

Chief of Army Staff and Others

RESPONDENT

Date of Decision : 05-10-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1991) 1 ILR (P&H) 207

Hon'ble Judges : Harbans Singh Rai, J

Bench : Single Bench

Advocate : R.S. Randhawa and R.S. Bajaj, for the Appellant; R.S. Chahar, for the Respondent

Final Decision : Allowed

Judgement

Harbans Singh Rai, J.—The Petitioner has filed this petition under Articles 226/227 of the Constitution of India for issuance of a writ, order or direction quashing the decision of the Respondents whereby his acting rank of Lt. Colonel was taken away and for issuing a direction to the Respondents to regrant him the same rank of Lt. Colonel. He has also prayed for quashing the order conveying the severe displeasure to him being illegal and unjustified.

2. The Petitioner was commissioned into the Army service on October 6, 1963. He earned various promotions in his turn and in due course of his service carrier. It is averred in the petition that promotion upto the rank of Major is a time-scale promotion and granted after completion of particular number of years of service. Thereafter, the promotion depends upon the selection made by a Board constituted under the provisions of the Regulations for the Army.

3. The name of the Petitioner having been approved by the Board for promotion to the rank of Lt. Colonel, he was duly promoted to the rank of Lt. Colonel and was posted as Commanding Officer 9 Sikh Regiment on September 16, 1982. It is further stated in the petition that the performance of the regiment commanded

by the Petitioner was well as it achieved distinction in various competitions held in the Division under which the Unit was serving. But suddenly an unfortunate incident of desertion by some misguided troops took place on the night of June 7/8, 1984, on account of Operation Bluestar undertaken by the Armed Forces. It is not out of place to mention here that it was not the only Unit where desertion took place, there were Other Units and regiments constituted of Sikh troops who also resorted to desertion in the wake of Operation Blue Star.

4. In order to investigate the incident of desertion/mutiny, a court of enquiry was constituted. Before the start" of the Court of inquiry, the Petitioner was attached to HQ 180 Inf Bde under Army instruction 106/60,--vide letter dated August 16, 1984, (Annexure P. 1). Upon Attachment of the Petitioner under the above quoted Army Instruction, he was made to relinquish the rank of Lt. Colonel with effect from November 18, 1984 on the authority of Army Instruction 1/S/74 as amended by Army Instruction 2/76 (Annexure P-5). Thereafter, the Petitioner continued to remain on attachment with HQ 180 Inf Bde till he was posted out on December 8, 1986,--vide Annexure P. 10.

5. Consequent to his posting, the Petitioner reported to his place of posting on February 6, 1987. In the meantime, the Army Instruction 1/S/74 as amended,--vide Army Instruction 2/76 was further amended by Army Instruction 31/86. The grievance of the Petitioner is that he was still not restored to the rank of Lt. Colonel, though as per the Army Instruction on the basis of which he was reverted, lays down that if the person brought down in the rank of progressing the disciplinary proceedings, is acquitted, or is not brought to trial, he is to be granted back his acting rank and that acting rank will be deemed to be held by him continuously from the date he relinquished it.

6. The Petitioner further contends that though he was initially attached for taking disciplinary action against him, but subsequently, decision was taken not to take disciplinary action against him and accordingly, he was not brought to trial is apparent from the action of the authorities whereby the Petitioner was awarded a severe displeasure (Recordable) from the Chief of Array Staff (Annexure P. 8) on September 25, 1986. As already mentioned, after completion of the action of conveying the severe displeasure (Recordable), the Petitioner was posted out on December 8, 1986.

7. In the reply filed, by the Respondent, it was not disputed that the Petitioner was holding the rank of Acting Lt. Colonel upto November 18, 1984, and that he was reverted only on the authority of Army Instruction for progressing the disciplinary case against him. However, the Respondents took a stand that the Petitioner could not be given this rank, back as the Army Instruction 31/86 was not attracted in the case and his case was governed by Army Instruction 1/S/74 as amended by Army Instruction 2/76. Otherwise, it was not disputed that, in case, the, Petitioner was governed by Army Instruction 31/86 then he was, required, to be granted his rank back if he was not brought to, trial.

8. There is no denial by the Respondents in the written, statement to the, allegation that desertion took, place in almost all the Sikh Regiments and other regiments constituted by Sikh troops and none of other Commanding Officer was treated in the way the Petitioner has been treated. The action against other Commanding Officers, where desertion took place, only varied to the extent of posting them of such Units where it was so considered necessary.

9. I have heard the Learned Counsel for the parties at great length and given my careful consideration to the submissions made by them.

10. Relevant part of para 7 of Army Instruction 2/76 (Annexure P-5) is as under:

(a) An Officer ceasing to carry out the duties of his appointment by being attached to another unit for disciplinary purposes will immediately relinquish his appointment and relinquish acting rank, if any, after 3 months from the date of his attachment or after 21 days from the receipt of the direction of the competent authority on the recommendation of Court of Inquiry to initiate disciplinary action.

(b) If the officer is subsequently acquitted or for any reason is not brought to trial, or his character is vindicated to the satisfaction of the appropriate authorities at Army Hqrs,--vide such enquiry as is made under para 346 of the Regulations for the Army 1962, he may be reappointed:

(1) at the discretion of the authority whichever is superior who ordered the suspension/arrest/attachment or took a decision to dismiss the charge or confirm acquittal, to the post vacated by the officer, if it has remained unfilled. The acting rank of the officer will then be deemed to have been held by him continuously with effect from the date he relinquished it.

11. As is evident from Army Instruction 31/86 (Annexure P-6), the aforesaid para 7 of the said Army Instruction has been substituted by a new para. It is necessary to notice Clause (b) of the amended Army Instruction which reads as under:

(b) If the officer is subsequently acquitted or for any reason is not brought to trial or his character is vindicated to the satisfaction of appointee authorities at Army Hqrs,--vide such enquiry as is made under Para (sic) of the Regulations for the Army, he will be re-appointed:

(i) to the post vacated by the officer. The acting rank of the officer will then be deemed to have been held by him continuously with effect from the date he relinquished it.

(ii) by the Army Hqrs. to a post carrying equivalent rank, when a replacement has been provided in the post vacated by the officer with the approval of the prescribed authority. A Superannuary appointment appropriate to the acting rank of the officer will be deemed to have been created and the acting rank of the officer will then be deemed to have been held by him continuously with effect

from the date he relinquished it.

12. This substituted clause underscores that in any of the 3 eventualities laid down, it is now imperative and no longer at the discretion of the authorities concerned, to reappoint the officer to the acting rank from the date he relinquished it. Since the Petitioner, after his attachment continued to remain with HQ 180 Inf Bde, till his posting was issued by the Army HQ on December 8, 1986, it is clear that the date on which it was decided not to bring him to trial was the date it was decided to post him out and thus bring to an end the attachment order. Going further, it can also be noticed that the action against the Petitioner to award him recordable censure was taken on September 25, 1986 whereafter the Petitioner was posted out with effect from December 8, 1986. In view of these facts, it is clear that the re-grant of the acting rank of Lt. Colonel to the Petitioner would be governed by the Army Instruction 31/86 and not the Army Instruction 2/76 as has been held by this Court in Major J.S. Kang v. Union of India 1987 (5) S.L.R. 66. In that case, Major J.S. Kang in similar circumstances was reappointed to the rank of Lt. Colonel with effect from the date he made to relinquish his acting rank. The case of the Petitioner is squarely covered by the decision in Major J.S. Kang's case (supra). This decision has been affirmed by a DB decision of this Court in LPA No. 396 of 1987, decided on March 10, 1989. If that be so, the Petitioner is required to be regranted the rank vacated by him on account of the amended Clause 7(b) of the Army Instruction 31/86 since he was admittedly not brought to any trial.

13. The Petitioner has also challenged the award of severe displeasure (Recordable) given to him,--vide Annexure P-8. The ground of challenge advanced by the Petitioner is that there is no provision in the statute in which the administrative action of this nature can be taken. In this regard, the Petitioner has relied upon Paragraph 17 of the decision in Major J.S. Kang's case (supra).

14. As is clear from Paragraph 17 of the judgment, the power to grant this punishment is regulated by a confidential circular dated April 18, 1979. After making elaborate reference to various provisions of the case law, D.V. Sehgal, J., in Major J.S. Kang's case (supra) held that the award of such punishment cannot be sustained as there is no sanction of law behind it.

15. The Learned Counsel for the Respondents could not advance any meaningful argument to contest the claim of the Petitioner in view of the law laid down by this Court in Major J.S. Kang's case (supra).

16. In view of the above discussion, this petition is allowed and the order of Respondents reducing the Petitioner from the acting rank of Lt. Colonel to the substantive rank of Major with effect from November 18, 1984 is hereby quashed. It is directed that the Petitioner be restored to the acting rank of Lt. Colonel from the date it was taken away, that is, November 18, 1984, and also a declaration is granted that the Petitioner continues to hold the acting rank of Lt. Colonel continuously with effect from the date he was promoted to this rank with

all the consequential benefits, including arrears of salary and seniority etc. It is directed that the Petitioner shall be paid the arrears of salary of the acting rank of Lt. Colonel within four months from today along with the interest at the rate of 12 per cent per annum. The order of severe displeasure (to be recorded) Annexure P. 8 is also quashed as there is no sanction of law behind it. The Petitioner shall also be entitled to the cost of writ petition which are assessed at Rs. 1000.