
(1998) 01 DEL CK 0074
In the Delhi High Court
Case No : C.W. No. 4407 of 1996

Major Prithi Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 23-01-1998

Acts Referred:

Citation : (1998) 46 DRJ 58

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Amita Gupta, for the Appellant; P.N. Misra, for the Respondent

Final Decision : Allowed

Judgement

K. Ramamoorthy, J.—The petitioner was working as Lieutenant Along with other officers namely, S.K. Pandey and Mr. D.S. Chaturvedi. The Petitioner stated that he took part in operation when the Government of India sent a team of Indian Peace Keeping Force in Sri Lanka and he was seriously injured during the course of the operation and he was hospitalised. The above two officers were promoted as Acting Captain on 24.12.1985 and the petitioner could not promoted as he was hospitalised and he sustained injury. Soon after discharged from the hospital when he joined the duty 24.12.1985. He was given promotion as Acting Captain. On 02.06.1986, the Commanding Officer has given a certificate which is in the following terms:

CERTIFICATE

"This is to certify that since there was an existing vacancy for an Acting Captain in the unit 5/1 GR on 24 Dec. 85, IC-40721M Major Prithi Singh being the senior most Subaltern on that date would have been granted the Acting rank having completed 3 years of commissioned service."

2. The petitioner made a representation for the revision of scale of pay to be on par with the juniors already promoted. According to the petitioner, in law a senior

cannot be deprived of his pay when juniors draw higher pay.

3. On 03.02.1996 the representation of the petitioner was dealt with in the following manner:

Consequent upon the implementation of Fourth Central Pay Commission a number of statutory complaints have been reed. in this HQ from service offers in connection with fixation of their pay. rank pay. stagnation increment etc u/s 27 of Army Act 1950 read with Para 361 of defense Service Regulations.

In accordance with Section 27 of the Army Act 1950 read with para 361 of DSR, a statutory complaint may be referred by an officer who deems himself wronged by his Commanding officer or any superior officer because the CDA (()) is neither their Commanding Officer/Superior nor does he come within the ambit of Army Act.

In view of the above, the statutory complaints on the above aspects cannot be treated as such under the provisions of Section 27 of the Army Act 1950 read with para 361 of DSR.

It is, Therefore, requested that the contents of this letter be brought to the notice of all officers under your command and they be instructed to refrain from submitting statutory complaints on the points stated above. They can however, send representations which will be examined and replied suitably by this HQ.

In view of the above, if any officer files a statutory complain on the above, matter, the same should be returned to the officer on the above basis.

3. It is stated therein that if the petitioner makes a representation to the Headquarter it will consider in accordance with law. The Learned counsel for the petitioner Ms. Amita Gupta submits that as per the guidelines which is found at page 44, the respondent has got powers to step up the stage in the revised scale of pay under the circumstances and the respondents had declined to do it. Learned counsel relied upon the Judgment of the Supreme Court reported in Air Vice Marshal S.N. Chaturvedi v. Union of India and Ors. 1991 (1) SLR 724. Learned counsel for the respondents fairly submitted that the petitioner was entitled to promotion but he was unwell and he could not be given promotion when the juniors were promoted and as per the guidelines issued by the department if one has to be promoted from the post of Lieutenant to Acting Captain one should have physically attends 21 days on the 22nd day the concerned officers would be given the scale of pay and the petitioner having regard to the service rendered by him he was given promotion on 25.04.1996 and it is because of the guidelines and the cut off date had been fixed by the 4th Pay Commission, there has been a slight analogy and if the petitioner makes a representation to the Government it will consider in the light of the relevant provisions.

4. I have considered the arguments and having regard to the ratio laid down by this court and on the facts and circumstances of the case the scale of pay to the

petitioner cannot be denied by the respondents. It is not disputed that the moment he was discharged from the hospital on 25.04.1986 he was promoted as Acting Captain. Therefore, when he joined the post and Acting Captain he would be entitled to the scale of pay that was drawn by his juniors and he cannot be put to any prejudice owing to the circumstances beyond his control and especially when he was injured in operation as fixed by the Government of India. Therefore, the petitioner would be entitled to the scale of pay drawn by the juniors with effect from the relevant date and the respondents shall pay the salary due to him with effect from the date of his promotion i.e. 25.04.1986. The orders passed on 13.07.1994 and 03.02.1996 are set aside and writ of mandamus shall issued to the respondents to pay to the petitioner what is due on the basis of promotion on 25.04.1986, and the pay shall be fixed at par with the juniors who were promoted prior to the petitioner and the respondents cannot rely upon the what was observed by the Pay Commission and Accounts Department in law. The petitioner would be entitled to scale of pay with effect from 25.04.1986.

5. Accordingly the writ petition is allowed. There shall be no order as to costs.