

(2012) 05 DEL CK 0273

In the Delhi High Court

Case No : Writ Petition (C) No. 2471 of 2012 and CM No. 5293 of 2012

Naib Subedar Rahamat Khan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Citation : (2012) 05 DEL CK 0273

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Archanan Ramesh, for the Appellant; Ravinder Agarwal, Central Govt. Standing Counsel and Mr. Amit Yadav, for the Respondent

Judgement

Anil Kumar, J.—The petitioner, a Naib Subedar in the Indian Army, has sought a writ of certiorari seeking quashing of Regimental Headquarter Inter Office Note of 112 Engineer Regiment dated 20th March, 2012 holding that the petitioner cannot be considered for inclusion in Board Proceedings for UN Mission, as the Board of Officer has already finalized on 21st January, 2012 the names of the persons who have to proceed on the United Nation Mission which has also been counter signed by the GOC 9th Infantry Division by order dated 27th January, 2012. The petitioner has also sought direction to the respondents to allow the petitioner to join the team selected for UN Mission for Sudan, as being qualified and 8th in the order of merit as per merit list attached with the writ petition. The grievance of the petitioner is that he has been discriminated and favouritism has been shown by the respondents in selecting the persons for UN Mission at Sudan, as the petitioner, a Naib Subedar, has been deprived of going to UN Mission at Sudan though he is at No.8 position in the merit list.

2. The petitioner disclosed that he was enrolled on 27th March, 1985 in the Corps of Engineers and he has been working with sincerity and dedication. The petitioner asserted that he had been promoted to the post of Naib Subedar. The petitioner disclosed that Army Headquarter SD Branch by letter dated 12th January, 2012 directed 112 Engineer Regiment to dispatch a Company from the

unit to replace the earlier team at UN Mission deployed at Sudan.

3. The petitioner alleged that Screening Board on 18th January, 2012 had screened the Army personnels in the Regiment and a merit list was drawn. In the screening, the petitioner secured 59 points. The petitioner alleged that though he has secured 59 points, however, as an act of favoritism, the name of Subedar Paramjit Singh at merit position No.11 with 54.75 points has been included and the petitioner was verbally intimated that his premedical examination documents were misplaced and on such a plea his name has been excluded. The petitioner asserted that premedical examination qualification is required not for UN Mission, but for promotion to the rank of Naib Subedar which rank has already been given to the petitioner more than a year ago.

4. The petitioner further disclosed that he underwent another medical examination at MH Meerut and he was found fit and in Shape-I right from the date of his enrollment. The petitioner, in the circumstances, contended that even on the date of his screening for short-listing the Army Personnels for UN Mission, he was in the medical category Shape-I. The petitioner contended that he made an application to the Commanding officer on 13th March, 2012, and reiterated that he is still in Shape-I, and therefore, he is fit to go to the UN Mission at Sudan. The petitioner alleged that he was intimated by the Inter Office Note dated 20th March, 2012 that the proceedings of the Board were finalized on 21st January, 2012 which has been affirmed by the GOC 9th Infantry Division on 27th January, 2012, and therefore, the name of the petitioner cannot be included.

5. The petitioner contended that perhaps the author of Inter Office Note was under the wrong impression that the petitioner was a gullible character and can be taken for a ride, little realizing that someone with sympathy will intimate the petitioner that his name was also in the same screening board and was even approved, being at 8th in the merit list. In the circumstances, the petitioner alleged that injustice has been done to him. The petitioner contended that his Company is at Khanpur Camp near Mehrauli, New Delhi and is leaving for Sudan on 6th May, 2012, and therefore, immediate remedial measure be taken and the respondents be directed to take the petitioner to the UN Mission to Sudan.

6. The petitioner emphasized that he is in medical category SHAPE I right from the date of his enlistment, 27th March, 1985, till date. In the circumstances, it is contended that when the impugned letter dated 20th March, 2012 was issued, the author of the letter, Second in Command of the Unit, was under the impression that the petitioner would never come to know. The petitioner alleged that the medical category was never an embargo for him as he has continued in Shape-I all along which is also reflected from the merit list. According to the petitioner, the name of Naib Subedar Paramjit Singh who was 11th in the merit list has been included clandestinely. The petitioner asserted that the Commanding Officer may not be involved in this illegal activity, however, still it is command responsibility to ensure honesty and transparency in the matters of public dealings, and therefore, the action should have been taken by him. The

petitioner contended that the merit list is of long size and will be placed before the Court.

7. Along with the writ petition, the petitioner had filed an alleged merit list of JOCs 112 Engineer Regiment as on 18th January, 2012 which has columns of serial no.; Rank; name, medical category and total points. Regarding this merit list filed by the petitioner, the averments made in the writ petition are as under:-

3. That the unit had Screening Board on 18th January, 2012 and a Merit List was drawn for eight vacancies of JCOs and as can be seen the name of the petitioner Naib Subedar Rahamat Khan figures in it as the eighth one. The total point secured by the petitioner is 59 points and favouritism has been done by including the name of Subedar Paramjit Singh in Serial no.11 with 54.75 points only. A Copy of the aforesaid merit list is placed herein as Annexure P-2.

8. In the writ petition, though the petitioner alleged that the merit list is very long and would be placed before the High Court, however, it has not been disclosed whether any material information has been omitted. Rather, in the affidavit filed along with the writ petition, it is asserted by the petitioner that the annexures accompanying the writ petition, including Annexure P-2 merit list of JOCs 112 Engineer Regiment as on 18th January, 2012, is correct copy of the original.

9. In the circumstances, it was emphasized on behalf of the petitioner that though he was at serial No.8 in the merit list dated 18th January, 2012, however, he has been replaced by Subedar Paramjit Singh, respondent No.4, clandestinely and in a blatant act of discrimination as the petitioner's total points were 59, whereas, Subedar Paramjit Singh had been awarded only 54.75 points.

10. Learned counsel for the respondents, Sh. Ravinder Agarwal, Central Govt. Standing Counsel, who appears on advanced notice has refuted the pleas and contentions raised by the petitioner and has very emphatically contended that the petitioner has deliberately concealed the material information that he had not got himself medically examined after 2009 and that he was not placed in medical category Shape-I, which was an essential requirement for short listing the Regimental Personnel for going for the UN Mission at Sudan. Learned counsel also pointed out that the merit list dated 18th January, 2012 produced as Annexure P-2 along with writ petition is the abridged copy of the merit list which was prepared by the respondents and in the alleged merit list annexed with the petition the relevant information has been deliberately omitted by the petitioner.

11. Learned counsel for the respondents has also relied on a Court of Inquiry regarding the petitioner not appearing before the periodic medical board within the prescribed period i.e. by 3rd December, 2010 despite condonation of delay granted by the Commander JOB Sub Area. Learned counsel further referred to the statement given by the petitioner before the Court of Inquiry conducted on 12th January, 2012 in which the petitioner had admitted that he had appeared before the periodic medical board as he was medically unfit on account of his

ENT Examination. He contended that he was suggested by the medical specialist for a month long treatment. However, since the petitioner was supposed to hold the charge of CSD, therefore, he was called back by the Unit. In the findings, the Court of Inquiry had observed that the petitioner had accepted that he had a problem in his ear, which had not been treated in any of the Army Hospitals and that the petitioner had not reported his medical state at the time of his posting to any of the authorities at 112 Engineer Regiment. In the circumstances, the Court of Inquiry had opined that the petitioner had purposefully ignored his medical category and thus, he was directed to get his periodic medical board cleared at the earliest possible opportunity.

12. Learned counsel for the respondents has also produced the original merit list of 112 Engineer Regiment as on 18th January, 2012. The merit list is a detailed list indicating the points given under various acts along with the remarks. From the perusal of the detailed merit list of the JCOs of 112 Engineer Regiment as on 18th January, 2012, it is apparent that Subedar Sh. Paramjit Singh was at serial No.11 and there was no remark in front of his name, whereas, in front of the name of the petitioner under the column "remark" it is categorically stated that his medical category is not known.

13. This Court has heard the learned counsel for the parties in detail. In reply to the query by this Court about the alleged merit list dated 18th January, 2012 as to how the remarks in the merit list were not relevant for the purpose of determination of the controversy in the writ petition, learned counsel for the petitioner has not been able to give any satisfactory answer. This is not disputed that the merit list, Annexure P-2 produced along with the writ petition, was prepared on behalf of the petitioner from the original merit list which was prepared by the Regiment. If the medical category of the Regiment Personnel is a relevant criterion for consideration for going for the UN Mission to Sudan, then the remarks given in the merit list were relevant and should have been incorporated in the merit list prepared and filed by the petitioner or on his behalf. No satisfactory explanation has been given by the learned counsel for the petitioner as to why the relevant information of "remarks" was not included in the abridged merit list, Annexure P-2 produced along with the writ petition. Rather, perusal of the writ petition reveals that Annexure P-2 is an abridge copy of the merit list prepared and filed by the petitioner, while on the contrary, it was stated to be a copy of the merit list, thereby indicating that it is a complete copy of the merit list. The petitioner has also stated in his affidavit filed along with the writ petition that the Annexures are true copies of their original. In the circumstances, the affidavit filed by the petitioner is not correct as Annexure P-2 is not correct copy of the original merit list which had been prepared by the respondents. The petitioner, in the facts and circumstances, has deliberately concealed the material information which itself will be sufficient to decline any relief to the petitioner.

14. In any case, on the date the Regimental Personnel were considered on

different facets and were awarded points, on the basis of which the merit list was prepared, the petitioner did not have the medical category of Shape-I and consequently, despite having been awarded 59 points, he was not eligible to have been short listed for the UN Mission at Sudan, as his medical category was not known. Respondent No.4, though he had 54.75 points, on account of being the next candidate and since his medical category was in Shape-I, therefore, he became entitled to go for the UN Mission at Sudan. In the circumstances, short listing respondent No.4 in the place of the petitioner cannot be faulted on any of the grounds raised by the petitioner, rather, it is clear that the petitioner has tried to conceal material information and mislead this Court. In the totality of the facts and circumstances and for the foregoing reasons, the petitioner is not entitled for any relief and the writ petition is liable to be dismissed.

The writ petition is, therefore, dismissed. Parties are, however, left to bear their own costs. All the pending applications are also disposed off.