
(1994) 05 DEL CK 0067

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 2177 of 1981

Naib Subedarjai Narain

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-05-1994

Acts Referred:

Citation : (1994) 2 AD 733 : (1994) 55 DLT 2 : (1994) 29 DRJ 375

Hon'ble Judges : K. Shivshankar Bhat, J

Bench : Single Bench

Advocate : Rishikesh, Madan Lokur and Nandini Ramachandran, for the Appellant;

Judgement

K. Shivashankar Bhat, J.

(1) The petitioner questions his retirement from the army as per the order dated 17.6.1981. By this order he was ordered to be retired w.e.f. 24.9.1981. According to the petitioner he was entitled to be in service till 27.6.1982 as per an earlier order. Petitioner also seeks a direction to the respondent to promote him. *

(2) The petitioner joined the service in the year 1956 as a Sepoy. In the year 1972 he was promoted as Naik Subedar. In February 1980 the Screening Board met as per letter dated 8.2.1980 and as revealed from the letter dated 8.2.1980 (Annexure G) it was stated that the Screening Body duly recommended the petitioner for retention in service up to the enhanced service/age limit. This document further states that since the petitioner was due for retirement during the month of June 1980, the retention in service may be published and the name of the petitioner from the list of pensioners (Appendix A) be deleted. On 13.2.1980 the proceedings held in connection with the promotion stated (as per annexure H) that since the petitioner had earned "one below average" report during 1977 he was not eligible for extension of service by screening. Consequently the previous letter dated 8.2.1980 was returned. By letter dated

13.2.1980 the Officer in charge (Records) was asked to reconsider the case of the petitioner having regard to the unblemished record and to exercise his powers in terms of para "6 of the Army Headquarters letter dated 20.12.1979. This letter is filed as Annexure "D" in the writ petition. The instructions governing the promotion relevant to the petitioner read as follows:

(C)FOR Promotion To The Rank Of RIS/SUB. i) Three out of the last five reports rendered on an individual should be "High Average" out of which at least two should be on regimental duty or as an Instructor in any Army School of Instruction in the rank of Nb Ris/Nb Sub. ii) No report should be lower than "Average" in the last three years. iii) Should have been recommended for promotion in the last three reports. Para 6 providing for the relaxation reads as follows: "(6) Oic Records (in the case of Infantry and Armoured Corps) and the Directors of Arms/Services (in the case of other Regts/Corps) are empowered to grant relaxation of ACR/CR grading criteria till 31 Dec. 81, at their discretion in deserving cases as per the procedure."

(3) The material on record reveals that the reports for several years indicated against the petitioner thus:

1974 Above average; 1975 Average; 1976 Above average ;1977 Below Average and not recommended for further promotion. 1978 High average.

(4) It also revealed that for the year 1978 also the report stated "High average". But the fact remains that the petitioner did not have grading of "High average" for 3 out of last 5 reports. Similarly he had one "below average" and Therefore the second condition stated in the instructions also was against the petitioner. The petitioner was also recommended for promotion in the last three reports. However, the fact remains that in May, 1980 (Annexure B-1) petitioner was granted 2 years extension by the Screening Board. The petitioner's name was to be deleted from the list of pensioners. Petitioner relies on this order under which he was he was entitled to be in service till the end of June 1982. The petitioner also relies on the letter dated 11.7.1980 (Annexure J-2) written by the Commanding Officer recommending the case of the petitioner for promotion.

(5) I may straightaway go into the question of promotion here itself because in spite of this recommendation by the Commanding Officer I find no specific order promoting the petitioner and the recommendation by the Commanding Officer cannot be equated to an order of promotion. I have also referred to the instructions governing the promotion. Since the petitioner has not satisfied the three conditions referred above governing the promotion it is not possible for this court to issue any direction to promote the petitioner.

(6) The only other question to be considered is whether the petitioner is entitled to be retained in service till the end of January 1982. In the counter affidavit filed on behalf of the respondents it is stated that even in the year 1978 the petitioner had sought retirement on completion of 24 years of service and this letter was written by the petitioner when he was faced with certain disciplinary

proceedings. It is further stated that in October 1980 the petitioner was posted for duty at high altitude. He was found having hyper-tension. Consequently he had to stay at low altitude. Within 8 days of return of the unit to its permanent location from high altitude petitioner applied for 12 days leave on compassionate grounds to settle his domestic affairs. Thereafter the petitioner obtained leave of absence on several occasions continuously. Paras 5 and 6 of the counter affidavit require to be repeated here instead of summarizing various dates on which the petitioner went on leave; "5. The petitioner reported for duty at High altitude area on 8 Oct 80 where he was found having hypertension. As such the petitioner had to stay at lower altitude. Within 8 days of return of the unit to its permanent location from high altitude area the petitioner applied for twelve days leave on compassionate grounds to settle his domestic affairs. Since the petitioner had already availed his full entitlement of annual leave and casual leave for the year 1980, he was granted 12 days advance of annual leave from the leave entitlement of 1981 w.e.f. 17 Nov 80 to 28 Nov 80. While the petitioner was on leave, he further requested for extension of his leave for 7 days. He was further sanctioned leave up to 5 Dec 1980. However, the petitioner reported back to the unit on 28 Nov 80 (AN) even before the telegram for extension of his leave, could reach him. On hearing about the extension of his leave, he again proceeded on leave up to 5 Dec 80 on 28 Nov 80 (FN). Before proceeding on leave on 29 Nov 80, the petitioner filed an application written in Hindi for transfer to pension establishment on extreme compassionate ground. Accordingly, his case was taken up with the Records of the Jat Regiment for sanction of his pension. Again during the first week of Jan 81, the petitioner applied for leave. This time, he was apprised by the Sm that his application for transfer to pension establishment has already been forwarded to Records of the Jat Regiment and he can be asked at any time to report at Jat Regimental Centre. The petitioner insisted on going on leave. Sub. Major Om Prakash Dhaka and Officer Commanding Support Coy Major N.C. Dogra discussed the case with respondent No.2 and after going through the complete case, the respondent No.2 called the petitioner to his office and gave him the following two options:-

(A) To wait for the confirmation of date about his proceeding on pension establishment. (b) To proceed on casual leave with a movement order to report directly to the Regimental Centre on expiry of leave for proceeding on pension establishment.

(6) The petitioner preferred the second option and proceeded on leave with the movement order to report to the Jat Regimental Centre for transfer to pension establishment. During his stay with the centre before proceeding on pension, the petitioner had fallen sick and he was down categorised on 28 Feb 81 as category Cee for six months. Subsequently, the petitioner was finally transferred to pension establishment vide Regt. DO order No-33/1/81 dated 5 June 81."

(7) The counter further points out that the petitioner himself had applied for transfer to Pension Establishment on extreme compassionate grounds and this

was recommended on 29.11.1980 as per Annexure R-4. This recommendation also notes that the father of the petitioner expired recently and his case was genuine and Therefore, the pension documents may be finalised. Obviously based on the request of the petitioner order of discharge was issued.

(8) It is also necessary to note the conduct of the petitioner during the months of September and October 1980. Para 8 of the counter affidavit points out that the petitioner avoided his movement towards "Forward Area" and joining his Unit on one pretext or the other and the petitioner was seeking leave on one ground or another. The request for the leave was repeated again in January 1981.

(9) The counter also states that on 19.1.1981 the petitioner had lodged a statutory complaint or appeal to the Chief of Army Staff against the proposal to retire him. The petitioner has filed the said statutory complaint as per Annexure "N". Petitioner sought relief against premature retirement in this letter. Petitioner p73 does not say in the writ petition as to what happened to the complaint. The petitioner asserted in the writ petition that he did not receive any reply to the said complaint. However, in the counter affidavit it is stated that the complaint was rejected by the Chief of Army Staff and the petitioner was informed of this as per Annexure R-15 through the concerned Commanding Officer. Even after the filing of the counter and receipt of this document the petitioner had not thought it fit to amend the writ petition and challenge the rejection of his complaint. Even the petitioner proceeds on the basis that the Chief of Army Staff was competent to consider his complaint against his retirement. If so, the order of retirement practically stood affirmed by the order of the Chief of Army Staff rejecting the complaint of the petitioner. When the said order is not challenged, it is not possible to grant any relief to the petitioner. Even the Chief of Army Staff has not been impleaded as a party to the writ petition.

(10) It is true that there was an order earlier extending the services of the petitioner till the end of January 1982. However, his services were terminated w.e.f. 24.9.1981 (Annexure A). The petitioner was deprived of about 9 months service by this order of discharge. The specific stand of the respondent is that the petitioner himself sought premature retirement and that was acted upon and the petitioner never resiled from his request for premature retirement. The stand of the respondent cannot be rejected as unreasonable having regard to the circumstances of the case. It is quite clear that the petitioner was not anxious to render any active service and he has been seeking leave frequently during the last months of his service. Obviously, the circumstances of the petitioner were such that he wanted an early discharge without waiting for the extended periodic service. In the circumstances it is not possible for me to grant any relief to the petitioner. The writ petition is dismissed. No costs.