
(2007) 05 DEL CK 0274

In the Delhi High Court

Case No : Writ Petition (C) 2787 of 2006

Nayab Subedar Paramjit Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-05-2007

Acts Referred:

Citation : (2007) 05 DEL CK 0274

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : Satyajeet Mukherjee, for the Appellant; Barkha Babbar and K.M. Rai, Dy. JAG, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—The petitioner was recruited as a Sepoy in the Ordinance Corps. He was promoted as a Naik w.e.f. 1st September, 1985 and as Havildar w.e.f. 1st June, 1988. He was then promoted as Naib Subedar w.e.f 1st August, 2003. He is presently working as Clerk in the Ordinance Depot of the Indian Army. In the present writ petition, he calls in question an order dated 14th December, 2005 passed by the Chief of Army Staff rejecting the statutory complaint filed by the petitioner against a red ink entry made as early as on 14th February, 1985. A reading of the order passed by the Chief of the Army Staff would show that the petitioner was summarily tried on two counts namely:

- i) In that he, at 16 FAD on 10 Feb 85 failed without sufficient cause to appear at 1930 hours at Unit Gurudwara, the place appointed for Guard Duty.
- ii) In that he, at 16 FAD unit lines on 10 Feb 85, when having been previously warned for Unit Gurudwara duty, was intoxicated.

2. The petitioner had pleaded guilty to both the charges mentioned above resulting in the award of a severe reprimand by the Chief Ordinance Officer, 16 Field Ammunition Depot.

3. Appearing for the petitioner Mr. Satyajeet Mukherjee argued that the order passed by the Commanding Officer on 14th February, 1985 was a complete fabrication in as much as the petitioner had never been marched up before him for being summarily tried nor had he pleaded guilty to the charges framed against him. He further argued that the summary trial statement produced as annexure R-1 with the counter affidavit filed by the respondent did not bear the signatures of the petitioner or that of any witness before whom he is said to have been tried and punished. He contended that the Commanding Officer had failed to fill up and enclose with the report, appendix "A" to Army order 70 of 1984 which according to Learned Counsel clearly showed that the summary trial of the petitioner was no more than a mere make believe.

4. On behalf of the respondent Ms. Barkha Babbar on the other hand, submitted that the petitioner's version that he was never reprimanded, marched up or tried by the Commanding Officer was an after thought. She urged that any challenge to the summary trial and the punishment imposed upon the petitioner coming after 22 years of the trial was clearly barred with inordinate delay and laches. She argued that the petitioner had been, on the basis of the punishment imposed upon him, superseded for promotion to the next higher rank of Naik. She urged that while the petitioner's junior were promoted in June, 1985, the petitioner was overlooked on account of the punishment imposed upon him and promoted to the next rank of Naik only in September, 1985. The petitioner's promotion for the next higher rank of Havildar was also delayed in comparison to his junior on account of the punishment imposed upon him. The supersession of the petitioner and his delayed promotion ought to put the petitioner to notice about the result of his Summary trial which he ought to have challenged at the appropriate stage. The fact that the petitioner accepted the supersession orders and remained content with the delayed promotion for nearly 15 years before he made the first statutory complaint in 21st May, 2004 clearly established that the petitioner was fully aware of the fact that he had been tried and punished summarily and that his promotion had been withheld on that account. His version that he was never tried or that the trial proceedings recorded in the official files were a fabricated one has, Therefore, to be rejected as has been done by the Chief of the Army Staff.

5. There is, in our opinion, considerable merit in the submission made by Ms. Babbar. It is true that the record of the summary trial proceedings does not bear the signatures of the petitioner in token of his having pleaded guilty to the charges framed against him but a perusal of the said proceedings in original produced before us by Ms. Babbar would show that the same bears the signatures of the Commanding Officer and the Company Commander who had remanded him to stand trial before the Chief Ordinance Officer. There is no allegation in the writ petition against the bonafides of either the Commanding Officer of the time or the Company Commander whose signatures are found on the summary trial proceedings. In the absence of anything to suggest that the said two officers were inimically disposed towards him, we have no hesitation in

assuming that the summary trial proceedings did take place, no matter, the petitioner was not called upon to sign the same in token of his pleading guilty to the charges.

6. So also the failure on the part of the Commanding Officer to fill up appendix "A" to Army Order No. 70 of 1984 does not make any material difference in as much as the legality of the petitioner's summary trial does not depend upon filling up or non-filling up of the form prescribed in the said appendix. A reading of the Army order, under which the appendix has been prescribed as one of the procedural requirements to be followed by the Commanding Officer, would show that the same is only intended to guarantee adherence to the relevant Rules and procedures at the time of the summary trial. Even if, the Commanding Officer fails to fill up the appendix as required under the Army order, the same would not ipso facto invalidate the summary trial or punishment imposed upon the delinquent officer. More importantly the allegation that the petitioner was never charged or punished, must be rejected also for the reason that the petitioner should have made his first grievance regarding the same in the year 1985 when he was superseded by his junior in the matter of promotion to the next higher rank of Naik or in 1988 when he was superseded once again for promotion to the next higher rank of Havildar. The fact that the petitioner accepted both the supersessions and remained content with the delayed promotion, clearly signifies that the petitioner was aware of the reason for the delay in his promotion. That reason, as rightly pointed by Ms. Barkha Babbar, was the punishment of severe reprimand imposed upon him by the Commanding Officer by order dated 15th February, 1985. The petitioner's belated representation, made 18 years after the punishment order, was, in that view, rightly rejected by the Chief of the Army Staff. There is, in our opinion, no illegality or procedural irregularity or perversity in either the order of the punishment imposed upon the petitioner or the rejection of the petitioner's statutory complaint to warrant interference.

7. This writ petition, accordingly, fails and is hereby dismissed but in the circumstances without any order as to costs.