
(2003) 12 DEL CK 0072

In the Delhi High Court

Case No : CWP No. 6972 of 1999

Nb. Sub. (Mt) Umesh Kumar Tyagi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 AD 396 : (2003) 108 DLT 727 : (2004) 72 DRJ 417 : (2003) 2 ILR Delhi 660 : (2004) 2 SLJ 360

Hon'ble Judges : V.K. Jain, J;Ramesh Chand Jain, J

Bench : Division Bench

Advocate : Vikas Mahajan, for the Appellant; Major Yaseen, for the Respondent

Final Decision : Allowed

Judgement

Vijender Jain, J.—Rule D.B.

This writ petition has been filed by the petitioner, inter alia, praying for a writ of mandamus for giving a direction to the respondents to write fresh ACR for the year 1996 and to get the petitioner assessed by a Promotion Board for promotion to the post of Naib Subedar after taking into consideration his fresh ACR for the year 1996 and for further direction that in case petitioner is found fit for promotion, he shall be given seniority and shall be promoted to the rank of Naib Subedar w.e.f. the date when batch mates of the petitioner/were promoted to the rank of Naib Subedar.

2. In short the controversy which has emerged in the writ petition is on account of the ACR for the year 1996. It is the case of the petitioner that the petitioner was given an ACR "high average" in 1996 by an officer with whom the petitioner has worked for 39 days only. This fact has been admitted by the respondent in their comments on non-statutory complaint of the petitioner which is at page 43 of the paper-book that the petitioner has served only for 39 days from 15th March, 1996 to 22nd June, 1996 in the Unit and not rendered mandatory

physical service of 90 days in the unit i.e. under IO 2 LT A.K. Madhusudan, Since the petitioner had not served physically for 90 days under IO 2 Lt A.K. Madhusudan, the ACR for the year 1996 initiated by the officer is technically wrong and recommended to be set aside. Thereafter, the ACR for the year 1996 was set aside on 2.1.1999 by Major General S.P. Singh, Dy. Commandant being technically incorrect. In the event of the ACR of 1996 being set aside, the petitioner was entitled for re-writing of his ACR on the basis of fresh appraisal of the petitioner. However, that was not done. Petitioner made a representation that his juniors have been promoted and he be also promoted. Learned Counsel for the petitioner has relied on a copy of the letter No. B/33507/ AG/PS2(c) dated 27.2.1992 addressed to all commands and copy to record office which finds mention in para 5 of the counter affidavit of the respondent regarding refixing of seniority, when an ACR has been set aside and is to the following effect:

"Point regarding refixation of seniority after setting aside ACRs by competent authority has been under examination at this HQ. It has been decided that on setting aside of an ACR, the JCO/NCO will be assessed afresh by the DPC/ Promotion Board on the basis of promotion criteria. In case found, fit for promotion they will be given notional seniority w.e.f. the date when their colleagues were promoted to the higher rank."

Instead of following the aforesaid circular of the Army Headquarters what the respondents did on the representation of the petitioner was that they took the ACR of 1992 into consideration, instead of taking into consideration ACRs for subsequent years, i.e. from the period 1993 to 1997 when the ACR for the year 1996 was set aside and no fresh grading was given to the petitioner and when the representation was considered by the respondent ACR for the year 1992 could not have been taken into consideration because firstly, that ACR of 1992 was in the rank of a Naik, secondly, the consideration of 1992 ACR was inconsistent with the policy of the respondent as reflected in the letter dated 27.2.1992. After the 1996 ACR was set aside, the best course for the respondents was either to give fresh assessment of 1996 ACR or ACR for 1998 should have been taken into consideration. We have perused the counter affidavit. In the ACR for 1998, petitioner got "above average". As far as the rule of promotion is concerned, 5 years period has to be taken into consideration. The petitioner got "above average" in 3 years i.e. for 1993, 1997 and 1998. Therefore, petitioner was entitled to be promoted with effect from the date from which his batchmates were promoted. We have been told, that petitioner has been promoted w.e.f. 1.11.1998 while his batchmates were promoted w.e.f. 26.2.1997. Therefore, the petitioner has to be promoted in terms of the letter dated 27.2.1992 by giving him seniority w.e.f. the date when his colleagues were promoted to the higher ranks of Naib Subedar w.e.f. i.e, 26.2.1997. We allow the writ petition. The petitioner shall be entitled to all the consequential benefits arising there from. Rule is made absolute.