
(2001) 04 DEL CK 0141
In the Delhi High Court
Case No : C.W.No. 753 of 1998

Rajendra Singh Badathoki

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 09-04-2001

Acts Referred:

Army Rules, 1954 — Rule 13(3)

Citation : (2001) 04 DEL CK 0141

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Capt. Virender Kumar, for the Appellant; Ms. Pinky Anand and Mr. A.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Mukundakam Sharma, J.—Challenge is made in the present writ petition to the order of discharge of the petitioner from the army service. The petitioner was enrolled in the Indian Army on 20.10.73 and he was promoted to the rank of Havaldar on 24.5.85. According to the petitioner, thereafter he was due for promotion to the post of Naib Subedar, which is a promotional post. It is stated that although the petitioner qualified for such promotion, he was not given promotion to the said post and was instead discharged from service under the impugned order, the legality of which is under challenge in this writ petition.

2. Counsel appearing for the petitioner during the course of his submissions stated that the petitioner qualified for promotion to the post of Naib Subedar, as would be apparent from the contents of Annexure-3. Relying on the said document, counsel submitted that the said document clearly indicates that the petitioner passed the promotion cadre for Naib Subedar Group-D and Therefore, the action of the respondents in discharging instead of promoting is illegal and without jurisdiction. He also submitted that if the petitioner was not recommended for the said promotion because of certain adverse remarks in his Annual Confidential Reports, the petitioner should have been given the

opportunity to represent as against the said adverse entries in his Annual Confidential Reports and also that the respondents should have informed the petitioner that he was to improve upon his performance, which is a requirement under the policy of the respondents. He also submitted that if the petitioner did not satisfy the criteria, his case should not have been considered at all but the very fact that his case was considered and that the petitioner was shown passed in the promotional cadre for Naib Subedar, itself indicates that the petitioner should have been promoted to the said post and, Therefore, the action of the respondents in discharging the petitioner is illegal and is liable to be quashed and set aside.

3. Counsel appearing for the respondents, however, submitted that according to the promotion policy in the Indian Army an army personnel has to fulfill the laid down criteria like discipline, medical category, educational qualifications and annual confidential reports for further promotion. My specific attention was drawn to paragraph 6 of the Army Headquarters letter dt. 10.1.1993 whereunder the annual confidential reports criteria for promotion is prescribed as under:-

"(a) Last five reports in the rank of Havaldar are taken into account;

(b) Three out of the last five reports rendered in the rank of Havaldar should be "ABOVE AVERAGE" and the remaining two should be "HIGH AVERAGE";

(c) Out of the five reports, two reports should be on regimental duty or as an instructor in an Army School or Institution and out of which at least one should be "ABOVE AVERAGE"

4. The respondents have also placed in the counter affidavit the material contents in the annual confidential reports of the petitioner for the years 1990 to 1994. The same were shown as under:-

(a) 1990-Above Average "R" Headquarters 99 Mountain Brigade (b) 1991-High Average "R" 16 Kumaon (c) 1992-Average "NR" 16 Kumaon (d) 1993-Average "R" 16 Kumaon (e) 1994-Above average "R" 9 Gujarat Btn. NCC 5. It was stated by the counsel for the respondents that in view of the aforesaid position, the petitioner was not meeting the requisite annual confidential criteria and, Therefore, he was not promoted to the rank of Naib Subedar in 1994 and upon completion of his normal service of 24 years in the rank of Havaldar, the case of the petitioner was transferred to pension establishment in terms of Army Rule 13 (3)(i).

6. Promotion to the post of Naib Subedar is to be considered on the basis of the test to be taken for such promotion and also on the basis of the annual confidential reports, which are the two main criterias for giving promotion to the said post. Records disclose that the petitioner passed the test, which is required to be passed for getting promotion to the post of Naib Subedar, but his annual confidential reports for the years 1990 to 1994 would show that he had earned two "AVERAGE", two, "ABOVE AVERAGE" and one "HIGH AVERAGE" during the

preceding five years period. Therefore, he did not meet the requisite annual confidential report criteria for promotion as laid down in paragraph 6 of the Army Headquarters letter dt. 10.1.1993.

7. The respondents considered the case of the petitioner for promotion to the rank of the Naib Subedar and he was not found eligible for further promotion to the rank of Naib Subedar as he could not meet the requisite annual confidential report criteria and Therefore, the petitioner was retired on completion of normal service limit i.e. of 24 years and one month in the Army. The petitioner was, however, made the Hony. Naib Subedar after his retirement on 1.11.97. Counsel appearing for the petitioner tried to rely upon the said fact and submitted that when after retirement the petitioner could be designated as Hony. Naib Subedar, the same could have been done before his retirement. It was submitted by the respondents that the petitioner was given the Honorary rank of Naib Subedar taking into consideration his long army career and the said honour given to him cannot be equated with the regular promotion to the post of Naib Subedar where certain formalities and requirements as enumerated above are to be fulfilled in terms of the army rules.

8. The annual confidential reports of the petitioner, extracts of which are placed on record, indicate that the petitioner was getting "High Average", "Above Average" and "Average" reports for the preceding five years, as such the said remarks cannot be stated to be adverse. In terms of the Administrative Order No. 114/79, only the adverse remarks are to be communicated in writing to the army personnel. It is also laid down therein that non-recommendation for further promotion would not be communicated to the individual. Paragraph 11 of the said Administrative Order makes the aforesaid position clear and apparent.

9. Another contention that was raised by the counsel appearing for the petitioner is that the petitioner was not discharged by the competent authority. According to him, the Commanding Officer, who had issued the order of discharge in the present case, is not the competent authority. The aforesaid contention is without any merit, for Rule 13(III)(ii) of the Army Rules states that in the case of Havaldar, as of the petitioner, the Commanding Officer is the competent discharging authority and, Therefore, in the present case the competent authority has passed the order of discharge of the petitioner.

10. All the pleas taken by the counsel appearing for the petitioner, Therefore, are found to be without any substance. The writ petition has no merit and is dismissed accordingly.