
(2015) 07 P&H CK 0304
In the Punjab And Haryana At Chandigarh
Case No : C.W.P No. 5706 of 2007 (OandM)

Rakesh Chaudhary

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Citation : (2015) 4 SCT 318

Hon'ble Judges : Ajay Tewari, J.

Bench : Single Bench

Advocate : R.S. Khosla, Sr. Advocate and Aman Sharma, Advocate, for the Appellant; Vivek Singla Advocate Panel Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Tewari, J.—Counsel for the petitioner has placed on record a copy of the letter dated 14.09.2000. The same is taken on record as "Mark A". By this writ petition, the petitioner has challenged the impugned order dated 21.03.2007 (Annexure P-2), whereby it has been held that he was erroneously promoted as Deputy Commandant and, therefore, he was reverted to the post of Assistant Commandant.

2. Brief facts are that the petitioner had joined the ITBP in the year 1991 as Assistant Commandant after having been discharged from the Indian Army. He suffered injuries in the year 1997 on account of bursting of hand grenade which led to amputation of some fingers of his right hand but notwithstanding that he was promoted as Deputy Commandant on 17.4.2002 (w.e.f. 12.4.2002) by order, Annexure P-1. After five years, the impugned order (Annexure P-2) was passed holding that at the time of his promotion, he was wrongly classified in shape-2, whereas in fact he was in shape-3 and, therefore, was ineligible to be considered for promotion.

3. Counsel for the petitioner has argued that as per the ITBP Rules, when an Officer is to be considered for promotion by the Departmental Promotion

Committee, ACRs for the last five years have to be placed before it. As per the Rules, annual medical category of every Officer has to be embedded in the ACR of that year and throughout those five years, the petitioner was reported to be in shape-2 category. As per him, there is no material placed on record by the respondents to corroborate the assertion that the petitioner's category was wrongly reported or that he was infact in shape 3 category. Neither any medical board was convened nor any specialized doctor had equivocally opined that the petitioner was not in shape-2 category.

4. In the letter Mark A, it was mentioned that those ranks who had suffered injuries during service would be considered for promotion if they are in shape-2 category. In the written statement, it has been stated that in the opinion of the medical board held on 4.5.2001 he had been placed in shape-3 category. In the replication, it has been pointed out that apart from the written statement, there is no record of any medical board having been convened on 4.5.2001 and even in the subsequent medical board proceedings dated 25.11.2004 it was mentioned that the medical category of the petitioner was in shape-2 category w.e.f. 25.04.2001. Further, it has been mentioned that the petitioner had been placed in A-2 category from 25.04.2001. It has also been argued that as per instructions Annexure P-5, if an officer is in low medical category he would be informed thereof so that he can try and make the higher physical grade but instead of informing the petitioner he was promoted and sent off to Kosovo. I have gone through the arguments and the record. The facts which have emerged are that prior to the promotion on 17.04.2002 and even thereafter the material which had been placed on record does indicate that the petitioner was found to be in shape-2 category. No doubt, in the written statement reliance has been placed on the minutes of some medical board which was stated to be convened on 04.05.2001 but that is not reflected in any subsequent record. On the contrary, document Annexure P-9 specifically records that the petitioner was in shape-2 category since 25.04.2001. It is not disputed that in none of the ACRs of the petitioner was his category recorded as shape-3. Also no notice was issued to him. In totality of the circumstances and after considering the facts, it has to be held that the order demoting him after a period of five years is illegal. Consequently, this writ petition is allowed and the impugned order demoting the petitioner is set aside and his promotion as Deputy Commandant w.e.f. 12.04.2002 is held to be valid. The petitioner would be entitled to all consequential benefits. The respondents are directed to work out the same and the benefit thereof be granted to him within a period of three months from the date of receipt of certified copy of this order.