
(2011) 03 DEL CK 0413

In the Delhi High Court

Case No : Writ Petition (C) 10520 of 2009

Rakesh Kumar Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Citation : (2011) 03 DEL CK 0413

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : D.S. Kauntae, for the Appellant; Anil Gautam and Ankur Chhibber for UOI, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Instant case highlights the insensitivity and lack of concern with which the Executive acts. A stitch in time saves nine. We wish the Executive would understand the meaning of this proverb and implement it.

2. We seek to justify our comments above.

3. On 31.3.1992 a show-cause notice was served upon the Petitioner informing him that having been enrolled in the Army Ordinance Corps on 9.5.1985, he had earned 3 red ink entries by committing the 3 offences reproduced in the show-cause notice; calling upon him to show cause why should he be not discharged from service.

4. Petitioner sent a response, which we may ignore as not needed; rejecting the same, vide order dated 25.5.1992, name of the Petitioner was struck off from the strength of the Indian Army.

5. Petitioner filed a writ petition which was registered as WP(C) 667/1994 in which stand taken by the Respondents was that the Petitioner had earned not 3 but 4 red ink entries.

6. The Respondents forgot that the 4th red ink entry earned by the Petitioner

was after the show-cause notice was issued.

7. Rather than withdraw the show-cause notice and issue a fresh one, listing therein the 4th red ink entry which Petitioner had earned, Respondent chose to litigate the matter, resulting in the writ petition filed by the Petitioner being allowed vide order dated 22.2.2008. The reason why the writ petition was allowed was the opinion that the 4th red ink entry could not be used by the Respondents to give effect to its show-cause notice for the obvious reason, the show-cause notice proposed the action restricted to only 3 red ink entries.

8. The Petitioner was accordingly directed to be reinstated in service with all benefits.

9. Needful has since been done. But there is a dispute, whether adequate relief, in terms of the decision of this Court, has been granted by the Respondents to the Petitioner.

10. As per the Respondents, the Petitioner was a Sepoy when his services were terminated and treating him as a Sepoy he has been paid all what was due and payable till he would have superannuated on 31.5.2002.

11. As per the Petitioner, he could not have been superannuated on 31.5.2002. He could be superannuated only on 31.5.2009.

12. Parties are not in dispute that if Petitioner had remained a Sepoy, he would have superannuated on 31.5.2002. But if he would have earned promotions to the rank of Havaldar, he would have served for 7 more years and hence would have superannuated on 31.5.2009.

13. Learned Counsel for the Petitioner would urge that promotions till Havaldar are not based on any selection criteria. These promotions are time-bound promotions and are earned by all.

14. Thus, the only issue would be, whether the Respondents have to give time-bound promotions to the Petitioner till he attained the rank of Havaldar and thus pay wages to the Petitioner in the scale applicable to various posts and additionally treat the Petitioner in service up till 31.5.2009.

15. The criteria for promotion of JCOs/NCOs as per office memorandum dated 10.10.1997 clearly stipulates that an individual should not have earned more than 3 red ink entries.

16. It is apparent that those who have earned 4 red ink entries cannot earn a promotion.

17. It be noted that as a Sepoy, by May 1992, the Petitioner had earned as many as 4 red ink entries. Thus, the question of the Petitioner earning any promotion does not arise and hence we conclude the issue by recording that the Respondents have correctly implemented the decision of this Court. They had rightly treated the Petitioner in service as a Sepoy till 31.5.2002. Wages payable

as per the scale applicable have been paid.

18. The Petitioner has claimed Transport Allowance, Hair-Cut Allowance, Washing Allowance, City Compensatory Allowance, Rum and Cigarette Allowance.

19. As regards rum and cigarette, no allowance would be paid, but had he been in service, Petitioner would have the benefit of purchasing these items from the subsidized canteen.

20. As regards transport, hair cutting and washing allowance, suffice would it be state that transport allowance would be linked to actual service. So would washing allowance be. This allowance was to make good the money spent by the Petitioner on travelling, washing and pressing his army uniform. He did not do so. As regards hair cutting allowance, suffice would it be to state that as a Sepoy, the Petitioner was required to have a crew cut. As a civilian he was not required to have a crew cut. This allowance would also be linked to actual service.

21. As regards the City Compensatory Allowance, everybody knows that the allowance varies from city to city. It has not to be paid if posting is in a rural area.

22. The claim is nebulous.

23. As regards the rum and cigarette allowance, the petitioner's counsel gives up the claim.

24. Thus, we find no infirmity in the action taken by the Respondents to pay back-wages to the Petitioner treating him to be a Sepoy till he would have superannuated on 31.5.2002. We note that pension is being paid to the Petitioner as payable to a Sepoy.

25. The writ petition is dismissed.

26. No costs.