
(2009) 12 GAU CK 0016

In the Gauhati High Court

Case No : Writ Petition (C) No. 182 (K) of 2006

Ramesh Chand Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Citation : (2006) 1 GLT 565

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : S. Dutta and M. Chanda, for the Appellant; T.B. Jamir, for the Respondent

Final Decision : Allowed

Judgement

Hrishikesh Roy, J.—Heard Mr. S. Dutta, learned Counsel appearing for the Petitioner also heard Mr. T.B. Jamir, learned Central Govt. Counsel appearing for the Respondents.

2. The Petitioner who was promoted to the rank of Havildar w.e.f. 10.10.1997 in the Assam Rifles Organization has approached this Court alleging wrongful denial of promotion to the post of Naib Subedar. The Respondent authority by the impugned communication dated 19.08.2005 have conveyed that the Petitioner cannot be considered because of his placement in the "low medical category" and it is reflected that only in case of injury attributable to war/counter insurgency operation, promotion can be considered for "low medical category" personnel.

3. It may be recorded that the Petitioner suffered his injury due to fall from height while attending the Section Commander Training Course at Infantry School, Mhow. The Medical Board in their report dated 12.08.1998 (Annexure-1) recorded that the Petitioner suffered fracture "Petella" (RT). It was also recorded by the medical report that the Petitioner suffered the injury and contacted the disability while in service and that the injury was suffered "in circumstances, over which the Petitioner had no control. The injury was attributed to the

conditions of the service in the report. By order dated 19.05.1998 the approving authority affirmed the aforesaid Medical Board's report. The Commanding Officer of the 30th Assam Rifles in his communication dated 03.08.2000 (Annexure-2) reported that the injury sustained by the Petitioner be attributed to Assam Rifles Service.

4. There is no disagreement amongst the counsels that promotion for personnel placed in "low medical category" is permissible in terms of Ministry of Home Affairs Circular No. 1/45020/45/99 dated 27.07.2001 subject of course to the condition that, the medical condition is incurred, inter alia, due to the accident "while on active Govt. duty". In Sub-clause 13(a) of the Ministry's Circular, it is provided that only injury incurred during war or fighting insurgents/militants etc. resulting in lower categorization, will make a personnel eligible for promotion.

5. The expression "active Govt. duty" is not defined under the Assam Rifles Act, 1941 (hereinafter referred to as "the 1941 Act"). But in the 1941 Act, "Active Service" is defined to mean service at outposts or against hostile tribes or either persons in the field. In the Assam Rifles Act, 2006 (herein referred to as "the 2006 Act") the expression "active duty" is defined as such duty performed in the force during the period in which such person is attached to or forms part of a unit of the force, which is engaged in operation against enemies, insurgents or terrorists or is engaged in patrol guard duty in the Country's border.

6. From the above definitions of "active duty" and "active service", it can be understood that the reference therein is to such duty where a personnel is involved in operation as part of his unit against Country's enemies or in counter insurgency operations. Such activities are akin to the activities mentioned in Sub-clause (a) of Clause-13 of the circular dated 27.07.2001.

7. Sub-clause (b) of Clause-13 of the Ministry's circular refers to another kind of situation, different from the one stated in Sub-clause (a) of the circular. In Sub-clause (b) the reference is to injury incurred during field firing, accidental firings, explosions of mines and other explosive devices and due to accidents while on "active Govt. duty". Consequently it is clear that Sub-clause (a) and Sub-clause (b) of Clause 13 refers to two different situations.

8. Mr. S. Dutta, learned Counsel for the Petitioner in course of his submission refers to the provision of FR 9(6)(b)(i) which describes that the Govt. servant may be treated as on duty "during the course of instruction or training". Even without answering as to whether the FR would apply in the present situation, in the absence of any contemporaneous provisions in the Assam Rifles Act, it may be appropriate to refer to the said provision of the FR to understand as to whether the Petitioner can be considered to be on duty, while he was undergoing training of Section Commanders Course at the Infantry School.

It is argued by Mr. S. Dutta that being on training is part of a Combatant's duty and merely because the injury was not suffered by the Petitioner during a war or fighting insurgents/militants, would not disentitle the Petitioner from the benefits

of the circular dated 27.07.2001.

It is pointed out by the learned Counsel that under the Assam Rifles Medical Examination (Categorization and Validation) Rule, 1988 it is provided that even personnel with deficiency in medical standards, but with ability to march up to 8 kms. and to stand for at least 2 hours, are considered fit for duty anywhere except in hilly terrain and since physical disability (upto a degree) does not come in the way of promotion, the Respondents should consider the Petitioner as entitled to the benefits of the circular dated 27.07.2001.

9. Mr. T.B. Jamir, learned Central Govt. Counsel on the other hand submits that the Petitioner's injury was the result of a fall suffered during training at the Infantry School, Mhow and since the Petitioner had not suffered the said injury while fighting a war or insurgency, the benefit of promotion for "low medical categorization" personnel, cannot be made available to the writ Petitioner.

10. Having noted the rival submission, let us now examine the purport of the beneficial circular dated 27.07.2001. If the circular is interpreted to mean that only for injury suffered in course of war or fighting insurgency, would entitle a personnel for promotion despite low medical categorization, the situation contemplated under Sub-clause (b) would be redundant as the situation referred to in Sub-clause (b) of Clause-13 are not akin to active battles or involvement in active fighting of insurgents. They relate to cases where injury is suffered through accidental situations and there is no reservation that such accidents should be in the battle fields or in course of active fighting in countering insurgency or border operations. Therefore, considering the fact that the circular is meant to confer promotional benefits to personnel suffering certain degree of medical disability, it must be given a liberal interpretation. Looked at thus, I feel that it would be logical to understand that Sub-clause (b) is intended to give benefits to personnel who might have been injured in training and in non-combat situations. Because even during training, a personnel is on "active Govt, duty", which is the requirement of the Circular.

11. Having noticed the two distinct situations in which the circular dated 27.01.2001 operates, it is difficult to accept that the case of the Petitioner does not deserve consideration (because of his low medical categorization) merely because his categorization is not attributable to an injury in a war/counter insurgency operation. If that were be the correct interpretation of the circular dated 27.07.2001, there would be no need to insert Sub-clause (b) in Clause 13, which does not contemplate any injury in war/counter insurgency operations. Therefore, I am of the opinion that the injury suffered during training will bring the Petitioner's case within the ambit of Clause-13(b) of the Ministry's Circular dated 27.7.2001.

12. In view of the above discussion, I am of the considered opinion that the Petitioner's injury was the result of an accident suffered by him "on active Govt, duty" as at the relevant time, he was under going Section Commander Course

training in the Infantry School, Mhow. Therefore, he was entitled to be considered for promotion despite his "low medical category" of status S1H1A2P1E1 (SHAPE standardization). Accordingly the impugned communication dated 19.08.2005 (Annexure-6) to the writ petition cannot be sustained in law and the same is hereby quashed. The Respondents are accordingly directed to consider the Petitioner for promotion to the post of Naib Subedar with effect from the date when it was due to him. Such consideration shall be made expeditiously and within the outer limit of 4 (four) months from today.

13. The Writ Petition stands allowed accordingly.