

(2007) 07 KAR CK 0085
In the Karnataka High Court
Case No : Writ Petition No. 4090 of 2007

Robinsons S.

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-07-2007

Acts Referred:

Army Regulations, 1987 — Regulation 149, 149C

Citation : (2008) 1 KarLJ 462 : (2007) 4 KCCR 216 SN

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Bhupinder Singh, for the Appellant; M. Narayana, CGC for R-1 to 3 and Aravind Kumar, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petition by a person serving in the Indian Army, who was promoted to the post of Havaldar from 1st January 2001 onwards. The petitioner is aspiring to be promoted to the post of Naib Subedar, the next promotional post. The requirement of havaldar to become eligible to be promoted as Naib Subedar is that he must have earned a minimum of five favourable annual confidential reports with two regiment reports indicating grading him "outstanding" and three more reports grading him in general as above average.

2. Unfortunately for the petitioner, the reports were lacking for consideration of his case for promotion, in the sense there was only one regimental report and the petitioner could not be considered for promotion.

3. The peculiar situation that prevails in the Indian Army is that a person will be eligible for being considered to the post of Naib Subedar only if he is within the age of 44 years and should have earned the necessary number of reports.

4. Submission of Col Bhupinder Singh, learned Counsel for the petitioner is that unfortunately for the petitioner, he could earn the necessary number of reports only after crossing the age of 44 years and this position was not entirely due to

the fault of the petitioner, but the respondents have also contributed to such possibility, as the respondents had not provided sufficient opportunity to the petitioner to remain in regimental service for sufficient duration so that he could have earned a minimum of two regiment reports. What is submitted is that the petitioner had been retained in a non-regiment service viz., IX Karnataka NCC Battalion, apart from another three years at the same station albeit in regiment service.

5. What is submitted is that the deficiency in securing the requisite number of reports was only because of the reason that the petitioner was not in regimental service for commensurate number of years and it is therefore urged that the petitioner's case was a fit case for relaxation in terms of the Regulation 149 of the Regulations for the Indian Army, Revised Edition, 1987 [for short "the Regulations").

6. Col Bhupinder Singh, learned Counsel for the petitioner has very vehemently urged that though there was an opportunity for the petitioner to earn requisite number of reports, namely, two regimental reports, three above average reports if the petitioner should have been posted to regimental service in terms of the order dated 21.5.2005 where under the petitioner had been directed to join the 1568 PNR Company, this did not happen only because the relief to relieve the petitioner from his posting at DC Karnataka NCC Battalion did not arrive in time and he was retained there till November-2005 where after only he had been relieved and joined the field duty at Leh in Ladakh.

7. Learned Counsel for the petitioner submits that it was not due to any contributing factor by the petitioner or folly of the petitioner; that he was unable to earn a report for the period from 21.5.2005 to 1.11.2005 which has virtually deprived the petitioner from earning report for this period and becoming eligible for being considered to the promotion of Naib Subedar.

8. Submission proceeds on the premise that even in terms of the circulars issued by the Army establishment, an Officer who is a Commanding Officer of the Unit etc., can sign a confidential report if the person has served under him for a minimum period of 90 days and the interval between 21.5.2005 and next possible report by October 2005 was sufficient for the Commanding Officer to sign the regimental report in favour of the petitioner and this did not happen only because the petitioner was not relieved from his posting at IX Karnataka NCC Battalion.

9. Further submission is that in the light of such circumstance, when there was no remiss or default on the part of the petitioner in earning the necessary number of confidential reports for consideration to be promoted as Naib Subedar and particularly as he was getting over aged by April 2006, petitioner's case was a fit case for relaxation in terms of Regulation 149 and that such relaxation is to be permitted only by the Chief of Army Staff and that not having happened in the case of the petitioner, in the sense that, the record produced by the respondents

did not indicate that the matter had received due attention of the Chief of Army Staff to exercise his power under regulation 149 of the Regulations; that it is a fit case where action for not according promotion or not considering the case of the petitioner by providing relaxation should be quashed and suitable direction issued to the respondents.

10. Respondents 1 to 3 are represented by their standing counsel Sri Narayana and have filed their statement of objections also.

11. It is urged on behalf of the respondents 1 to 3 that petitioner's case was considered in the normal course of the proceedings of the establishment; that it is a fact that the petitioner had not earned requisite number of reports at the time when the Board met which could have considered the case of the petitioner for the purpose of promotion; that the petitioner's case for request for relaxation was examined at various stages which reads as under:

The representation of the petitioner dated 30 Jan 2006 was received by the 4th respondent on 10 Feb 06 vide 1568 Pnr Coy letter No. 220/25/A dated 31 Jan 06 addressed to Dir Pnrs. HQ Northern Command with a copy to Deputy Directorate General of Pioneers vide their letter No. 93982/Q/Pnrs-1 dated 8 Feb 2006 directed 1568 Pnr Coy to initiate case under the provision of Para 5 of Integrated HQ of MoD [Army] letter No. B/33515/Prom/AG/PS-2 (c) dated 24 Aug 2005 [copy attached as Annexure-R4]. Accordingly, a court of inquiry was held under the jurisdiction of HQ 14 Corps. After perusal of Court of Inquiry directed that no waiver in ACRs. The case has also been rejected by integrated HQ of MoD [Army] vide their letter No. B/33515/AG/PS-2 (c) dated 08 Jun 2006 (copy attached as Annexure-R5]

12. Submission of Sri. Narayana, learned standing counsel appearing for respondents 1 to 3 is that while the competent authority did not find the petitioner's case was one fit for extending the benefit of relaxation of age for earning the necessary number of reports, the petitioner himself had contributed to this situation by making a request earlier for posting on DC Karnataka NCC Battalion which was extra regimental employment and had remained there till the year 2005 which if at all deprived him of opportunity of commensurate number of regimental reports; that nevertheless his case was considered for relaxation but was found not fit or suitable for relaxation and accordingly request of the petitioner had been turned down and in support of such submissions, Annexures-R5 & R6 are produced along with the statement of objections.

13. I have given my anxious consideration to the rival submissions, pleadings and extracts of the records placed before the court

14. It is a fact that the petitioner had not earned necessary number of reports for meeting the eligibility criteria for being considered to be promoted as "Naib Subedar". It is exactly for this purpose, petitioner is invoking the provisions of regulation-149 of the regulations which provides relaxation of age, in the sense that, a person beyond the age of 44 also can be considered for promotion if he

has earned necessary number of reports by the time of such consideration.

15. Though Col. Bhupinder Singh, learned Counsel for the petitioner has vehemently urged that the matter has not received due consideration at the level of the Chief of Army Staff and therefore the respondents should be directed to place the matter before the Chief of Army Staff for such consideration in terms of regulation-149, I am not impressed by such submission on a reading of regulation 149 of the Regulations for the Indian Army, Revised Edition, 1987 which reads as under:

149. Promotion - JCOs -

[a] NCOs except those given in sub para (b) below will not normally be promoted to the rank of JCO if over 44 years of age or with more than twenty-two years" service.

[b] NCOs of the undermentioned categories will not be promoted to JCO rank if over 46 years of age or with more than 25 years of service-

(i) Clerks GD, GD (SD) and Store,

(ii) Storekeeper [Storeman Technical]

(iii) Ammunition [Technicians] Examiners

(iv) Personal Assistants [ASC]

[c] The age and service limits given in sub paras (a) and (b) above may be waived in very exceptional cases with the permission of the COAS.

16. While regulation-149 provides for relaxation, what is required under this regulation is that it can be extended only after receiving permission from the Chief of Army Staff. The role of the Chief of Army Staff is for according permission for which the matter should be placed before him for doing a particular thing. It presupposes that there should be a recommendation for a person like the petitioner for extending the relaxation in terms of regulation 149(c) of the Regulations.

17. Unfortunately for the petitioner, such a situation did not arise as the officers or authorities who examined the case of the petitioner and if it was also before the court of enquiry as submitted by the learned standing counsel for the respondents 1 to 3, there also none of the authorities opined in favour of the petitioner for extending the benefit of regulation 149(c), in which event there would not have arisen the need for obtaining the permission of the Chief of Army Staff and therefore the matter did not go before the Chief of Army Staff for according his permission.

18. It may be a fortuitous circumstance and may be because of inaction or even remiss on the part of some superior officers of the petitioner monitoring the career of the petitioner who could have enabled the petitioner to earn commensurate reports within the permitted time. Unfortunately, for the

petitioner, this did not happen. It is not the function of this Court to examine the nature of lack of decision, if any, in the organisation. This court will interfere: in such matters which is essentially one of employer employee relationship more so in an establishment like the Army only if there is a statutory violation or inaction on the part of the statutory authority.

19. Though learned Counsel for the petitioner would vehemently urge that the view taken by the authorities for not extending the benefit of relaxation in favour of the petitioner in terms of regulation 149(c) is not justified, this Court does not sit as a court of appeal for review of such matters in the exercise of writ jurisdiction. A technical error or error of Judgment or what could have been a better decision or Judgment are not matters for this Court to interfere in the exercise of writ jurisdiction. It is for this reason, I am not inclined to interfere in respect of the action or inaction which petitioner thinks resulted in depriving promotion which otherwise he would have earned.

20. I do not find any illegality or statutory violation which is required to be corrected in the exercise of writ jurisdiction.

21. Without prejudice to the rights of the petitioner to avail of the remedy as available under the Act itself or under any other provision of law, this writ petition is dismissed.